

THE HILLS SHIRE COUNCIL

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25 January 2017

Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2000

Dear Sir/ Madam

**Proposed Changes to the Environmental Planning
and Assessment Regulation – Fire Safety**

Thank you for the opportunity to provide comment on the draft Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017. Please note that due to the limited time-frame provided this submission has not been the subject of a report to Council. It provides only the issues raised by staff in considering the exhibited material.

Council staff have considered the draft and are supportive of the proposed amendments, particularly in relation to the accreditation of fire safety practitioners and the additional critical stage inspections relating to fire safety. However, it is requested that the following issues be given further consideration:

Terminology

In recent years the Australian Building Codes Board has identified the future gains from a performance based building code and endeavoured to increase the use of Performance Solutions. Building Code of Australia 2016 changed the terminology from an Alternative Solution to a Performance Solution in an effort to emphasise the compliance choices available to practitioners.

It is recommended that this opportunity be taken to review the defined terminology in the Regulation from *Alternative Solution* to *Performance Solution* in an effort to be consistent with the Building Code of Australia.

Clause 130

An Accredited Certifier may issue a complying development certificate for a change in building use that does not involve any building work and be subject to a Performance Solution. The Performance Solution may relate to the non-provision of the fire safety systems that would be required to comply with the Deemed-to-Satisfy Provisions of the Building Code of Australia as a result of the change in building use.

It is recommended that the scope of Clause 130 (2A) be broadened to include all complying development certificates in lieu of complying development certificates where building works are being undertaken.

Clause 164B

Prior to issuing development consent; the consent authority must consider if it would be appropriate to bring the building into total or partial conformity with the Building Code of Australia pursuant to Clause 94 of the Environmental Planning and Assessment Regulation 2000. As such, the consent authority may impose a condition on the development consent requiring that a relevant fire safety system be modified or extended to achieve total or partial compliance with the current Building Code of Australia. This clause may be interpreted by some Accredited Certifiers in a way that enables them to re-consider the need to upgrade the relevant fire services at the Construction Certificate stage and deem the works are being exempt from compliance with the Building Code of Australia.

It is recommended that Clause 164B (5) be amended to include clarification that an Accredited Certifier cannot exempt building work from the Building Code of Australia when required to be undertaken by the consent authority.

Section 149D

Section 149D of the Environmental Planning and Assessment Act specifies that Council may require the applicant to supply it with information as reasonably necessary to enable the proper determination of a building certificate application.

While Section 149D of the Environmental Planning and Assessment Act is outside the scope of the draft amendments to the Regulation, there are parallels between the building certificate assessment process and complying development certificate/ construction certificate assessment process in relation to fire safety systems.

Clause 130 and Clause 144A of the draft Regulation makes reference to a Performance Solution report being required for certain new development that is subject to a complying development certificate or construction certificate. However, frequently unauthorised development does not comply with the Deemed-to-Satisfy Provisions of the Building Code of Australia and would have been subject to Clause 130 or 144A of the draft Regulation if the legislative process was adhered to.

It would appear that a Performance Solution report is associated with proposed development rather than unauthorised building work as there are no legislation provisions that explicitly state that a Performance Solution report may relate to building work that have been constructed.

It is recommended that a new term 'Performance Verification report' be introduced to provide clarification and distinction between a Performance Solution that relates to proposed development and unauthorised building works.

152A – Reports for class 2 or 3 buildings

The proposed clause will relate to NSWFR being furnished with a fire safety system report for an occupation certificate for building works that involve installing, extending or modifying a relevant fire safety measure. Since the introduction of the affordable housing SEPP, Council has received a substantial increase in single class 1a dwellings being converted into class 2 buildings. Clarification is sought as to whether this clause applies where a change in use from a class 1a dwelling to a class two building where building works are required (such as a granny flat being built underneath an existing dwelling) where a relevant fire safety measure are required to be installed.

Further, will there be consideration for change in use to class 2 or 3 buildings where no building works are required but relevant fire safety systems are required to be installed?

Thank you for considering our comments. We are supportive of the reforms for fire safety.

Should you have further enquiries, please contact Paul Curran, Fire Safety Officer on 9843 0323.

Yours faithfully

A handwritten signature in black ink that reads "Cameron McKenzie". The signature is written in a cursive, slightly slanted style.

Cameron McKenzie

GROUP MANAGER – ENVIRONMENT & PLANNING