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31 January 2017

Our ref: 2016/661658

NSW Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Sir/Madam,

**Subject: Proposed fire safety changes to the Environment Planning and Assessment Regulation 2000 - submission**

Please find attached the City's submission on the proposed Regulation amendments.

I note in the background information accompanying the proposed Regulation amendments that the changes form part of a broader package of reforms that are required to improve rigour in the building certification processes. This includes:

- strengthening and streamlining building safety maintenance regulation;
- improving certainty regarding changes to existing buildings;
- clarifying roles and responsibilities of various persons within the certification processes; and
- providing better support for certifiers and industry generally.

I understand these additional reforms and other associated initiatives will be the subject of further industry and local government consultation. In this regard the City is prepared to contribute and assist the Department in its future work in this area to achieve long overdue improvements to the building certification processes and fire safety regulation.

Should you wish to speak with a Council officer about any matters or require clarification of any aspects of the City's submission please contact John Riley, Manager Construction and Building Certification Services on 9246 7786, email: [jriley@cityofsydney.nsw.gov.au](mailto:jriley@cityofsydney.nsw.gov.au) or Peter Conroy, Standards and Policy Specialist on 9246 7678, email: [paconroy@cityofsydney.nsw.gov.au](mailto:paconroy@cityofsydney.nsw.gov.au)

Yours faithfully,

**Graham Jahn**  
**Director**  
City Planning | Development | Transport

*city of villages*

# **Proposed fire safety changes to the Environmental Planning and Assessment Regulation 2000**

**Environmental Planning and Assessment  
Amendment (Fire Safety and Building  
Certification) Regulation 2017**

**Submission: Sydney City Council**

**January 2017**

### Clause 3 Definitions

Throughout the draft regulation amendments there are references and requirements relating to documents and endorsement of matters by '*competent fire safety practitioners*' however there is no specific requirement for the practitioner's name and contact details to be included in documentation. It is therefore suggested that the Regulations or practice guides make it a requirement that this information must be included in any certificates or document endorsements made by fire safety practitioners.

#### Recommendation:

Include within the Regulations or practice guides provisions relating to minimum details that must be provided by practitioners when issuing certificates or endorsements.

### Clause 134 Form of complying development certificate

Minor changes to the provisions are recommended in relation to subclause 1(f1). Many existing buildings in the City's area undergoing change have alternative solutions resulting from proposed and approved alterations. Often these alternative solutions involve multi-level buildings.

For ease of reviewing reports against fire safety schedules held by local government it is considered important for alternative solution reports to include the following additional details:

- the property address; and
- in circumstances where part of a building is affected, a clear description of the part of the building affected such as floor level.

This information should be clearly stated on the front cover of an alternative solution report.

The following changes and additions to the provision (**red** text and deletions struck-through) are therefore recommended:

#### Recommendation:

#### [3] Clause 134 Form of complying development certificate

*Insert after clause 134 (1) (f):*

*(f1) ~~the following~~ details of any alternative solution report about the building work that complies with clause 130 (2A) (a) and (b) **and includes:***

- (i) the title of the report,*
- (ii) the date on which the report was made, and the version number of the report,*
- (iii) the name of the competent fire safety practitioner who prepared the report,*
- (iv) **the property address, and in circumstances where part of a building is affected, details identifying the location of the work within the building,***

(f2) *if any of the building work is exempt from compliance with the Building Code of Australia because of clause 164B—the details of that exemption,*

#### **Clause 134 (2)**

The minor inclusion of “the” (in red text) within the clause is recommended.

#### **Recommendation:**

##### **[4] Clause 134 (2)**

*Insert “If any of the building work is exempt from compliance with the Building Code of Australia because of clause 164B, that **the** fire safety schedule must include details of that exemption.” after “Part 9).”.*

#### **Clause 136AA Condition relating to fire safety systems in Class 2-9 buildings**

Subclauses (1) and (2) require the imposition of a condition for prescribed documents to be provided to the principal certifying authority (PCA) before work commences. The proposed structure of the provision does not clearly indicate circumstances where documents may be provided to a certifying authority (CA) as part of a complying development certificate application.

It is suggested that the intention of this clause is to allow documents to be lodged at any stage prior to work commencing i.e. at application stage to the CA or alternatively to the PCA after a certificate (approval) is issued. The current clause wording could however be interpreted that it is mandatory for documents to be lodged only to the PCA (as indicated by the proposed prescribed condition). A change to the structure of the clause to permit documents to be lodged to either a CA (at application stage) or to the PCA prior to work commencing, would clarify this matter. It is therefore recommended that the draft clause should be amended to accommodate these scenarios.

In relation to subclause (3) ‘*relevant fire safety system*’, it is unclear why only ducted smoke control systems are captured. Some smoke control systems such as roof-mounted exhaust fans and fire stair pressurisation fans mounted at the top of fire-isolated stairways may not have ducts attached to fans therefore by this definition such systems would not be caught by the proposed amendments.

#### **Recommendation:**

1. Amend subclauses (1) and (2) to permit the lodgement of endorsed documents at either the application stage to the certifying authority or to the principal certifying authority, prior to work commencing; and
2. Delete the word “*ducted*” from the definition (and also in all other clauses in which the definition is included).

#### **Clause 144A Alternative solution report required for certain fire safety aspects of building work**

To ensure consistency across the building certification sector guidelines and the standardisation of forms (and mandatory statements) is considered essential.

**Recommendation:**

1. Guidance material should be available to assist certifying authorities in relation to subclause (1)(a)(iv); and
2. A standard template for construction certificates should be created and its use made mandatory including a standardised statement as required by subclause (1)(b).

**Clause 146B Condition relating to fire safety systems in class 2–9 buildings**

Refer to the comments and recommendation regarding Clause 136AA.

**Clause 147 Form of construction certificate**

Refer to the comments and recommendation regarding Clause 134.

**Clause 152A Reports of Fire and Rescue NSW for class 2 or 3 buildings containing certain fire safety systems: section 109H**

Seeking and obtaining occupation certificates is often a critically important part of the construction and building certification processes. Any delays in issuing occupation certificates particularly in relation to large development projects, can have significant contractual and financial ramifications for the development and construction sectors.

To reduce potential delays and to streamline the referral process to Fire and Rescue NSW it is recommended that an online referral process be available for use by the building certification sector. An online form should include relevant information fields for certifiers to complete including a brief description of the building and number of storeys. It may also be appropriate to include a copy of the final fire safety certificate which will provide an indication of the fire-safety complexity of a building being notified to FRNSW.

**Recommendation:**

An effective and user-friendly online system must be available to streamline the request/referral process to FRNSW. The system should capture relevant information to assist FRNSW in determining whether a building should be audited. The system should also include an electronic acknowledgment function to record the date of referral/receipt to establish the commencement of the 10 days' referral period.

**Clause 152B Alternative solution report must be considered before issuing occupation certificate**

Subclause (b) requires a certifier to be satisfied that the relevant building work has been constructed or installed in accordance with an alternative solution. There are however no details prescribed on how a certifier should verify that works are satisfactory and comply with this requirement including whether inspections of the works (whole or part) associated with an alternative solution must be inspected/checked by a certifying authority.

**Recommendation:**

Guidance material should be developed and made available to certifiers to clarify the minimum methods and systems that should be employed to verify to the certifier's 'satisfaction' that the relevant work is constructed/installed in accordance with the report.

<b>Clause 155</b>	<b>Form of occupation certificate</b>
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A minor adjustment is recommended to align with the suggested additional content for complying development certificates and construction certificates – see comments under Clauses 134 and 147.

<b>Clause 162A</b>	<b>Critical stage inspections required by section 109E (3) (d)</b>
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The proposed additional critical stage inspections affecting higher fire-risk building occupancies (Class 2, 3 and 4 buildings in which people sleep) is considered appropriate and should improve quality control generally during the construction of these buildings.

The proposed changes and additional inspection requirements will however add considerable workload to the role of a certifier and also increase costs within the building certification processes including cost of development.

In relation to certifier workload it is unclear whether there is sufficient capacity, i.e. the number of accredited certifiers, available to carry out the proposed additional critical stage inspections for all Class 1b-9 buildings. This needs to be considered prior to the change being introduced, including the ability of the certification sector to fully and effectively undertake this additional function.

Furthermore, the proposed additional subclauses lack detail on the method/s to be employed to verify the acceptability or otherwise of fire protection works. In the absence of such guidance there will be inconsistency in the inspection processes across the certification sector. It is therefore strongly recommended that guidance material or practice guides be developed and issued for this area of the inspection and certification functions. The City has had some experience in this area of building inspection and certification and could therefore assist the Department, if so requested, in any future development of a practice guide.

Additionally, there may be benefits through specifying a common percentage of floor area in which fire protection elements must be inspected. It is suggested that either 20% or 30% of floor area be specified for all classes of buildings. Several minor changes to the clauses are also recommended.

**Recommendations:**

1. Amend the following clauses as highlighted in **red** text.

**[14] Clause 162A Critical stage inspections required by section 109E (3) (d)**

*Insert before clause 162A (5) (b):*

(a) prior to **the** covering of fire protection **elements** at service penetrations to fire-resistant walls, floors and ceilings, for a minimum of 20% of the total floor area of each storey of the building, and

(a1) prior to covering the junction of any fire-resisting construction between or bounding a sole-occupancy unit and any other building element, for a minimum of 30% of sole-occupancy units on each storey of the building containing sole-occupancy units, and

**[15] Clause 162A (6) (a) Insert before clause 162A (6) (b):**

(a) prior to **the** covering of fire protection **elements** at service penetrations to fire-resistant walls, floors and ceilings, for a minimum of 20% of the total floor area of each storey of the building, and

2. Develop and release to the certification sector detailed practice guidelines that clearly set out a minimum standard of inspection regime to ensure consistency across the sector and also to maintain acceptable standards.
3. For simplicity, nominate a common percentage of floor area requiring inspection in which fire protection elements are located.

<p><b>164B Certain building work on fire safety systems may be exempt from compliance with the BCA standards</b></p>
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To ensure consistency across the relevant industry sectors in relation to making an objection it is important that a standard form/objection process be available and its use made mandatory.

In relation to subclause (5)(b), there may be circumstances in which the current operational performance of a '*relevant fire safety system*' is found to be inadequate for the current use and configuration of a building. This may therefore present a fire safety issue for occupants and Fire and Rescue NSW (predominately fire-fighting functions and actions).

Under these circumstances it is considered appropriate that the local council be formally notified so that an assessment can be made to determine if further action is need such as system upgrading through a fire safety order. This process would operate in a similar way to the current provisions and requirements under Clause 129D of the Regulations (notification of significant fire safety issues) applying to complying development and the inspection and assessment requirements that must be followed prior to the issuing of a certificate.

**Recommendation:**

1. Create a standard form for objections and make its use mandatory to achieve consistency of structure and content throughout the various affected industry sectors; and
2. In relation to subclause (5)(b), include a requirement that when a certifying authority becomes aware (when assessing an objection application, or otherwise) of an operational performance issue with a relevant fire safety system that the certifying authority be required to give written notice to the local council.

**167A Competent fire safety practitioners**

In relation to subclause (4)(a) requiring a 'certifying authority' or 'principal certifying authority' to issue a written opinion confirming the competency of a person to act as a '*competent fire safety practitioner*', this will place considerable additional responsibilities including liability on certifiers as they will be required, in the short-term until formal industry-based accreditation schemes are in place, to endorse that a practitioner is competent to perform fire safety assessment functions.

The same obligations will also affect property owners under the provisions of subclause 4(b). Although guidance material for use by property owners is planned, in many cases it will be more difficult and onerous under the proposed changes for property owners to establishment whether a practitioner is competent and has the necessary skills, experience and qualifications to check and assess fire safety systems.

Under the proposed regulation amendments certifiers appointed to certify buildings (issue statutory certificates) will be required to formally determine the competency of a fire safety practitioner which generally will have been appointed by a builder or property owner. It is possible that a certifying authority (CA) or principal certifying authority (PCA) may determine that a particular practitioner is not suitable and therefore refuse to endorse the practitioner thereby preventing the issuing of a statutory certificate. This will effectively prevent work commencing or a building being occupied. This could place undesirable pressures and influences on a certifier. An alternative to this is to have an independent accredited certifier endorse the practitioner's appointment by building owners or builders.

Until the proposed industry-based accreditation schemes are established consideration should be given to require a BPB accredited person, independent of the CA and PCA, to assess the competency of fire safety practitioners undertaking fire safety assessment functions and to oversight the certification functions of this activity. Ideally this process should be verified and endorsed through the issuing of Part 4A compliance certificate to the CA/PCA. This will add rigour to the process and relieve CAs and PCAs of any potential or perceived conflicts of interest including associated liabilities.

An alternative to requiring Part 4A compliance certification is to have an independent accredited certifier check and endorse designs and/or final fire safety certificates (and practitioner certificates) which a CA and PCA could rely upon without the need to endorse a fire safety practitioner as being competent.

A similar system as suggested above could also be applied to the checking and certification of fire safety systems in relation to annual fire safety statements. This will avoid the need for property owners to establish the competence of non-accredited persons undertaking fire safety assessment functions i.e. this function being carried out by a person who has the necessary skills and experience in the building construction and regulatory fields to make an informed and professional endorsement.

This additional process will also add greater rigor to the current inadequate system (and the proposed process) until the industry-based accreditation schemes are established.

If the suggested interim measures i.e. to have independent accredited certifiers confirm the competency of fire safety practitioners, is not adopted it will be important



for the purposes of achieving industry-wide consistency to have detailed practice guides available to both certifiers and building owners to apply when determining the competency of practitioners. Factors that could be used to form the basis for establishing a practitioner's suitability to perform fire safety assessment functions are:

- membership of a relevant industry body or association such as the Fire Protection Association Australia; or
- the person holds a relevant licence issued by Fair Trading NSW; or
- formal accreditation issued by a Government authority is held by the person; or
- qualifications, training, experience and knowledge through working in a particular field of fire-safety specialty to perform the relevant certification task.

**Recommendation:**

1. As an interim measure until industry accreditation schemes are established, require independent BPB accredited certifiers to assess the competency of fire safety practitioners and to certify through the issuing of Part 4A compliance certificates or alternatively for independent certifiers to confirm/endorse that the fire safety assessment functions have been performed properly by a competent person (fire safety practitioner); or if this is not adopted;
2. Comprehensive guidance material should be developed to provide assistance to building certifiers and property owners when determining the competency of a fire safety practitioner.

**Clause 171 Issue of final fire safety certificates**

The additional provision should be extended to final fire safety certificates associated with works that are carried out under the terms of a fire order issued under section 121B of the Act.

**Recommendation:**

Amend the clause as follows (deletion struck-through and additions in red text):

**[19]** *Insert after clause 171 (4):*

- (4A) *A final fire safety certificate authorised or required by a development consent, ~~or construction certificate~~ or fire safety order issued under section 121B of the Act, and involving building work in a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, must not be issued unless the assessment of essential fire safety measures was carried out by a competent fire safety practitioner.*

**Clause 174 (1) (h)**

There is an incorrect reference to a subclause (i). The reference should be (h).

**Recommendation:**

Amend the provision as follows:

**[22] Clause 174 (1) (h)**

*Insert after clause 174 (1) (g):*

~~(f)~~ *(h) the name and contact details of the person who issued the certificate.*

**Other suggested amendments**

It is important for approved alternative solutions to be included with certificates and documentation when lodged with consent authorities (Clauses 130(4), 142(2) and 151(2)). It is therefore suggested that additional provisions should be included in the subject provisions to make this clear.

**Recommendation:**

Amend the relevant provisions to clearly state that alternative solutions must be included the documentation forwarded to local councils.

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