

Council Ref: 145-211-1/12; 34-38-1/16

31 January 2017

Ms Helen Ting  
Principal Policy Officer  
Environment and Building Policy  
NSW Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Ms Ting,

**Proposed Fire Safety and Building Certification Changes  
Environmental Planning and Assessment Regulation 2000**

Thank you for the opportunity to comment on the proposed changes to the *Environmental Planning and Assessment Regulation 2000 (Regulation)* that will relate to the fire safety and building certification aspects of the legislation.

Our submission will focus on the public consultation draft of the Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017 (**Draft Regulation**), but will also comment on the Part 9 provisions of the Regulation that, although not included in the current proposed amendments, are considered no less important than the current proposals.

It is acknowledged that the current proposals will integrate with future legislative reforms that will address the design, approval, construction, certification and ongoing maintenance of the built environment where fire safety is a priority.

This is to request that following comments be considered in your forthcoming deliberations.

**Draft Regulation**

General

The introduction of "competent fire safety practitioners" into the building design, approval, construction and certification procedures, in the current economic environment, will place a significant demand on these yet-to-be-identified people to contribute to the development process. The transitional provisions of the legislation will need to phase in the new provisions and make adequate allowance for these

people to be accredited and establish truly competitive services to the development industry and broader community.

Equally, the legislated expanded roles and responsibilities for “principal certifiers” (principal certifying authorities) and accredited certifiers will place additional demands upon the limited pool of certifiers. The NSW Government should devote resources to ensure the ongoing viability of the development certification industry to competently undertake the current and proposed future involvement in the State’s important building certification processes.

The Draft Regulation prescribes the form of construction certificates, fire safety certificates and occupation certificates, but does not adequately prescribe the form or content of a fire safety schedule. Fire safety schedules are pivotal documents that are the basis for all fire safety statements and fire safety certificates. This issue is expanded later in this submission.

#### Specific Provisions

Serial	Provision	Suggestion	Comment
1	P1, Explanatory note, (b).	Insert “enhanced” or “improved” after “introduce”.	This will remove the inference that there are currently no critical stage inspections required for class 2-9 buildings.
2	P1, Explanatory note, (e).	Insert “fire safety schedules,” after “require”.	Fire safety schedules are pivotal documents that are the basis for all fire safety statements and fire safety certificates.
3	P 4, cl 136AA (2) (a)	Comprehensively define “endorsed”.	This Council’s experience is that some private accredited certifiers merely stamp an approved document with a logo, without identifying the relevant certificate number or name of the certifier.
4	P 4, cl 136AA (2) (a), and wherever else appearing.	Insert “principal certifier” and delete “principal certifying authority”.	To reflect proposed new terminology.

Serial	Provision	Suggestion	Comment
5	P4, cl 136AA (2) (a) (i) and (b) (ii), and wherever else appearing.	Comprehensively define "key components", "minor modification" and "minor extension".	This Council's experience has been that unscrupulous private accredited certifiers often exploit ambiguous and "grey" provisions of legislation or planning instruments to certify development that does not meet the legislative intent.
6	P4, cl 144A (1)	Insert after (c) a provision that mandates the issue of an Amended Fire Safety Schedule whenever an alternative solution report is issued after the initial construction certificate or complying development certificate.	Cl 168 of the current Regulation neither precludes nor mandates the issue of an Amended Fire Safety Schedule.
7	P6, cl 147 (1) (g)	Prescribe that the development address, building or building portion and BPB accreditation number of the practitioner be included in the alternative solution report.	This will identify the practitioner and clarify the application of the alternative solution report.
8	P6, cl 152A (1)	Require that the request by the principal certifier be accompanied by the relevant fire safety schedule.	This will provide Fire and Rescue NSW ( <b>FRNSW</b> ) with some information about the complexity of the installed fire safety measures and assist FRNSW decide whether it will conduct an inspection and issue a fire safety system report.
9	P6, cl 152A (5)	Require the principal certifier to advise FRNSW of the reasons any	A principal certifier can comply with the provision by considering, but not implementing, the

Serial	Provision	Suggestion	Comment
		<p>recommendation of the fire safety system report is not incorporated in the building.</p>	<p>recommendations in the FRNSW fire safety system report. This Council's experience has been that unscrupulous private accredited certifiers often exploit discretionary provisions of legislation to certify development that does not satisfy expert opinion or meet the legislative intent.</p>
10	P8, cl 162A (5) (a) & (6) (a)	Delete "floor area" and insert "number of service penetrations".	<p>This Council's experience has been that unscrupulous private accredited certifiers often exploit ambiguous and "grey" legislative provisions in a manner that does not meet the legislative intent. A certifier could elect to inspect that 20% of a floor area which contains no service penetrations.</p>
11	P8, cl 162A (5) (a1)	Delete "30%" and insert "20%".	For consistency with other Draft Regulation provisions.
12	P8, cl 164B (1)	Amend related Regulation provisions to prescribe the issue of an amended (and dated) fire safety schedule, construction certificate and complying development certificate.	The Building Code of Australia objection may occur post - construction certificate/ complying development.

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## Recommendation

The "Suggestions" in the above matrix be incorporated in the Draft Regulation.

## **Regulation**

### General

The Draft Regulation proposals appear to concentrate on procedures around complying development certificate (CDC) approvals, occupation certificates (OC), fire safety certificates (FSC) and annual fire safety statements (AFSS) relating to a single building on a single Torrens title allotment.

The proposed changes are supported but are considered not to address longstanding deficiencies in Part 9 of the Regulation.

The review and proposals give scant attention to other shortcomings of Part 9, which are considered as important as the proposed amendments.

### Fire Safety Schedules (FSS)

A FSS is the sole and complete basis of any subsequent Fire Safety Certificate and Annual Fire Safety Statement.

Clause 168 (1) prescribes when a FSS must be issued, but does not prescribe the form or content of the FSS and does not differentiate between the various land titles (Torrens, Strata or Community land titles) on which a building may be constructed or located. There is an absolute reliance by all interested parties upon the integrity, accuracy and comprehensiveness of a FSS.

This Council's experience has been that many FSSs issued by private accredited certifiers (as a stand-alone document) do not include the address of the development, date of issue or the name and signature of the person who prepared and issued the document. Further, FSSs attached to CDCs for a Strata title allotment (especially commercial and industrial tenancies) often do not deal with the whole of the building but, nevertheless, technically supersede any earlier FSS.

Clause 168 (5) provides that each FSS will supersede any earlier FSS, regardless of the integrity, accuracy or comprehensiveness of the most recent FSS. Successive inconsistent, undated, inaccurate and/or incomplete FSSs will progressively dilute the efficacy of future AFSSs relating to any particular premises, thereby potentially degrading the fire safety of the premises.

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Tenancies in large shopping centres (predominantly in a mall/arcade scenario) are subject to frequent and ongoing CDC fitout approvals. These CDC approvals are often accompanied by an FSS that only applies to the individual tenancy and yet clause 168 (5) provides that it supersedes any previous FSS issued for the entire building development.

#### Annual Fire Safety Statements

Clause 175 requires building owners to submit AFSSs to councils.

The Regulation is unclear as to who is required to submit the AFSS in relation to buildings on Strata and Community titled land. The installed fire safety measures would generally benefit all the title owners. The Regulation does not prescribe who is to submit an AFSS in relation to Strata or Community titled buildings, either the owners' corporation or the individual title owners.

Difficulties have arisen in the interpretation of Clause 177 where a multitude of AFSSs may be submitted to Council in relation to one development, but no one AFSS may verify any particular fire safety measure in its entirety (for example, a fire main passing through several Strata or Community titles).

Several large shopping centres within the Blacktown City are subject to frequent and ongoing approvals for shop fitouts, predominantly in a mall/arcade scenario. This may be considered to place an unreasonable and onerous obligation on both the certifier and building owner to meticulously identify and certify each fire safety measure installed within the building (and, by definition, possibly the land and other separate buildings upon the land), even when minor approved building work (incorporating, for example, emergency lighting, illuminated exit signs and portable fire extinguishers in a comparatively small tenancy) will not compromise the currently implemented measures.

Further, clause 177 (2) (b) requires that an AFSS be issued within 12 months of a FSC (presumably in conjunction with an OC) being issued. Frequent CDCs for shop fitouts in a shopping mall or a mixed classification development (such as ground floor commercial/retail and high-rise apartments) could result in an AFSS never being issued for these high population premises.

#### Recommendations

The Draft Regulation provisions be expanded to include Part 9 provisions that prescribe:

1. A prescribed standard Fire Safety Schedule form which includes the address of the development, date of issue and the name and signature of the person who prepared and issued the document;
2. In the case of development on Strata or Community titled land, the AFSS is to apply to the entire development on the land, and not just individual land titles;
3. The person/entity (landowner or owners' corporation) of Torrens, Strata or Community titled land who is required to submit the AFSS; and
4. The AFSS anniversary date for Strata and Community titled developments, such as the date of the first OC or FSC issued for the development.

Should you require any further information regarding this submission, please contact either myself on 9839 6162, or Mr Brian Malouf, Executive Building Surveyor, on 9839 6129.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Trevor Taylor', with a stylized, cursive flourish extending to the right.

Trevor Taylor  
Manager Development Policy