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5 January 2018

Director, Environment and Building Policy
NSW Department of Planning & Environment
GPO Box 39
SYDNEY 2000

Dear Sir/Madam

**Re: PROPOSED REFORMS – IDENTIFICATION OF BUILDINGS WITH
COMBUSTIBLE CLADDING – DRAFT REGULATION**

I refer to a letter from Felicity Greenway, Acting Executive Director, Resource and Industry Policy dated 7 December 2017, seeking comments on the proposed draft Environmental Planning & Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017.

I wish to thank you for the opportunity to make a submission to the Department on the proposed reforms for buildings with combustible cladding. Please note that the submission has not been the subject of a report to Council and therefore has not been endorsed by Council. It reflects the issues raised by Council staff in considering the exhibited material.

Please see below the response to the draft Regulation:

Clause 167

Clause 167 (1)(c) appears to have been drafted with the intent of excluding all class 1 and Type C buildings from the requirements of Division 7C. This opinion is formed on the basis that the rise in storeys for each class of building is consistent with the type of construction required by table C1.1 of the BCA.

The exemptions afforded under clause 167 (1)(c) include some buildings that are required to be of Type A or B Construction. For example, a two storey class 6 building with a floor area of 2001m² must be of Type B construction in accordance to C2.2 of the BCA. However, this particular building would be exempt from the requirements of Division 7C pursuant to clause 167 (1)(c).

Furthermore, the exemptions afforded under clause 167(1)(c) do not to apply to class 10 buildings, which would include buildings such as a private garage or shed. Consideration should be given to allowing Class 10 buildings to be exempt from the requirements of Division 7C given the risk associated with this building classification.

Clause 186T

Clause 186T (3)(b) places the onus on the owner of a new building with combustible cladding to provide details to the Secretary about the building and the cladding. It is unreasonable for the owner of a new building to provide these details, particularly new

residential flat buildings. In this circumstance, the owners have typically purchased their new home off the plan and had no involvement in the design, approval, construction or commissioning of the building.

Consideration should be given to amended clause 186T (3)(b) to place the onus on the Accredited Certifier who issues an Occupation Certificate for a building that is being occupied for the first time to provide details to the Secretary. The Accredited Certifier is required to have an appropriate qualification, experience, access to the construction documentation and has conducted critical stage inspections of the building prior to issuing an occupation certificate. Therefore, it would be practical and reasonable for the Accredited Certifier to provide these details to the Secretary instead of the new residents.

Clause 186V

Clause 186V (2) defines a "*cladding statement*" as a statement to the effect that the cladding applied to a building has been inspected by a properly qualified person. The recent fire safety regulation reforms sought to tighten the regulations relating to persons in the fire safety industry. These reforms included the introduction of the defined term "*competent fire safety practitioner*" to replace an appropriately qualified person. Consideration should be given to amending term "*properly qualified person*" to "*competent fire safety practitioner*" or Accredited Certifier to ensure the person preparing the cladding statement is accredited or registered.

The author of the cladding statement is required to undertake an assessment and determine if the cladding presents a risk to the safety of persons or to the spread of fire, in the event of a fire. This assessment and determination is highly qualitative, open to interpretation and makes no reference to the relevant Performance Requirements of the BCA.

The BCA is the uniform set of technical provisions for the design and construction of buildings throughout Australia to achieve a nationally consistent, minimum standard of safety. The BCA contains minimum requirements for external cladding. Therefore, the relevant Performance Requirements of the BCA should be the benchmark that the author of the cladding statement is conducting their assessment against. Consideration should be given to amending the definition of a cladding statement to determine if the cladding complies with the relevant Performance Requirements of the BCA, as determined by the Department.

Clause 186V (3)(i) requires a description of the documentation prepared or relied on by the author of the report to be included in the cladding statement. However, the clause does not require a copy of the documentation relied upon to be submitted with or form part of the cladding statement. It is requested that this information be required to be submitted with the cladding statement to the Planning Portal. Obtaining copies of specific documentation months/years after the fact will become an avoidable and unnecessary burden for regulatory authorities in the future.

Should you require any further information please contact Council's Fire Safety Officers Paul Curran or Jad Davis on 9843 0427.

Yours faithfully



Craig Woods

MANAGER – REGULATORY SERVICES