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Dear Sir/Madam

DRAFT REGULATION FOR CLADDING & EXEMPT DEVELOPMENT FOR CLADDING

I refer to the proposed regulation for identification of buildings with combustible cladding and to proposed amendments to a number of State Environmental Planning Policies to reduce risks arising from the use of combustible cladding.

The following comments are made in respect of these proposals:

Draft Regulation for Cladding

- While it may be reasonably apparent to persons with an understanding of the Building Code of Australia (BCA) that the proposed regulation is structured to address issues that potentially extend beyond BCA compliance, other persons, such as building owners, may struggle to appreciate this subtlety. A clear statement regarding the relationship between the requirements of the proposed regulation and BCA compliance should be a prominent part of the implementation of the regulation.
- While the proposed definition of '*combustible cladding*' is reasonably clear, in that it includes elements that may be located behind the surface cladding of a building, a building owner may not appreciate the need to investigate the potential existence of such materials in the process of determining whether a building is categorised as being a building with combustible cladding. The implementation of the regulation should highlight this aspect of the process that is required to determine whether a building is categorised as a building with combustible cladding.
- Consideration should be given to formally identifying the attributes that would constitute a person being a '*properly qualified person*' for the purpose of the regulation, noting that many people hold properly obtained qualifications that are unsuitable for the intended purpose of the proposed regulation. The proposed regulation should be structured so as to achieve a reasonably consistent approach and methodology for establishing risk, which would be assisted by establishing a consistent approach to the suitability of persons involved in the process.
- It is noted that the draft regulation does not address the likelihood that some cladding statements will not be fit for purpose. Consideration should be given to providing for a process to dispute the suitability of a cladding statement, including the possibility of the statement being prepared by a person who is not a '*properly qualified person*'.

It is understood that background documents related to the preparation of a cladding statement will not be required to be provided with the statement. Such background documents may be relevant to determining whether a cladding statement is fit for purpose.

- Though the regulation is primarily directed toward retrospectively identifying cladding issues, it is noted that it will also apply to buildings that are to be constructed in the future or are partially built when the regulation takes effect. Further consideration should be given to the regime for identifying those buildings that are yet to be built or completed. The likelihood of identifying which of those buildings has combustible cladding may be enhanced by integrating registration requirements with building certification processes.
- Given that the draft regulation would create a situation whereby a relatively large number of cladding statements are likely to be due across New South Wales over a relatively short period of time, the timing requirements may impact on the quality of those statements. Consideration should be given to the relative benefits of providing further refinement to the staging of reporting requirements under the regulation.
- It is noted that some buildings that are likely to be of a type that is being targeted by the regulation are stratum subdivided, effectively meaning that there will be more than one ownership entity for such a building. While arrangements should be in place for the management and maintenance of such a building to be implemented as a whole entity, potential complications may arise with respect to apportioning responsibility for combustible cladding. Consideration should be given to whether the proposed regulation needs to specifically address such a situation.
- The fines identified for penalty notice offences in the draft regulation should be reviewed to ensure that the fines are appropriate for the purpose of being a motivating factor for building owners to comply with the regulation.

Exempt Development for Cladding

- While the underlying reason for amending provisions for exempt development, to reduce risks associated with combustible cladding, is understood, it is less clear why the recladding of buildings that are not high-risk buildings needs to be restricted.

Given that a significant proportion of buildings that are not high-risk buildings have combustible cladding (eg dwelling houses clad with timber weatherboards) and there appears to be no proposal to restrict the use combustible cladding on such buildings via the BCA, the benefit in requiring an approval process for cladding work on such buildings is considered to be questionable.

If you require any further information please contact Geoffrey Douglass, Senior Development Officer (Projects) on telephone 4974 2728.

Yours faithfully



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