

**Council Ref:** Planning & Development Division  
HPE Doc No. 18/20524

15 February, 2018

Mr Stephen Durnford  
Acting Director  
Environment and Building Policy  
Department of Planning & Environment  
GPO Box 39  
Sydney, NSW 2001

Dear Mr Durnford,

**Draft regulation on buildings with combustible cladding  
Draft changes to exempt development provisions – combustible cladding**

I refer the above draft documents that are on public exhibition until Friday 16 February 2018 and the stakeholder meetings held on Thursday 1 and Friday 2 February 2018.

Due to the timeframes involved, the following submission has been compiled by the relevant professional staff of Woollahra Council and has not been formerly endorsed by Council.

Unfortunately, the burden of addressing the ever increasing problem of combustible cladding has again been devolved to local government, with little understanding of the size and scale of the problem or the capacity of local councils and the existing regulatory framework to respond. Regrettably local councils continue to be required to take on additional functions without the appropriate tools, resources or guidelines.

The approach being suggested by the documents on public exhibition is not supported and will result in a fragmented implementation and inconsistent assessment and upgrading of buildings across the State and country.

A national approach should be considered possibly following the Victorian model, with the allocation of all the regulatory responsibilities to an appropriately funded and resourced Government agency, rather than individual local councils. Such an approach would ensure all 'at risk buildings' are consistently assessed and prioritised, with rectification works, if required, being determined in a uniform manner and timeframe.

While not supporting the model advanced, the following comments are provided specifically in response to the documents on public exhibition.

**1.0 Draft regulation on buildings with combustible cladding**

The draft regulation has been prepared for situations where everyone in the system and effected by the regulation have perfect knowledge and understanding. However, this is far from reality and disputes will arise over;

- whether a specific material is or isn't combustible;
- whether a building has combustible cladding installed;
- who is a properly qualified person; and



- whether a properly qualified person's professional view/report should be vetted.

### 1.1 Definition of combustible cladding

The draft regulation provides no direction on how to deal with disputes over the primary issue of whether or not a particular cladding is combustible and assumes it will always be known.

The definition of *combustible cladding* needs to be more precise and linked to a simple test that can be conducted on a small sample of material by government approved facilities. This is particularly important where there is no historic information held by councils, owners or certifying authorities to indicate, with a significant degree of certainty, what material has been installed on a building.

'Readily burning' is no more helpful and will in no way reduce disputes.

The existing tests listed in the Building Code of Australia (BCA) are not the answer and cannot be easily used on unknown composite cladding that is already affixed to a building. Time and cost are critical factors in obtaining a definitive answer on whether or not a cladding is combustible.

In addition, the new verification method to be introduced into the BCA is also not the answer and adds a further level of complexity that may be appropriate during the approval processes, but not for older existing buildings.

As stated, there must be a simple test developed that allows a small sample of an unknown composite cladding to be removed from a building to clarify if the material is or isn't combustible for the purpose of the regulation.

For any regulatory authority to be able to take any action they need to know, with certainty, that a material is combustible.

The following promotional material was seen in 'CCN - Combustible Cladding News Australia February 2018 Vol. 3'. While Council in no way endorses or supports the promotional material or Excelplas, it has been included below to illustrate what type of simple testing may be available and should be considered;

#### ***"Is your Building Cladding Safe?"***

*ACP – Aluminium Composite Cladding – Assessment & Investigation Service*

#### ***An Easy 3-Step Process:***

##### ***STAGE 1 - Site Inspection and Sample Extraction:***

*An ExcelPlas Australia representative visits the property, inspects the type and style of external walls, looks at the available architectural documents and takes a series of cladding samples from different locations on the wall. Samples are 50mm in diameter and are taken from different locations to reduce visual impact and for ease of access. Samples are sealed and sent to ExcelPlas' Melbourne Laboratory for testing.*  
<http://www.excelplas.com/>

##### ***STAGE 2 - ExcelPlas Sample NATA Testing:***

*ExcelPlas examines the character of each sample core material by:*

- *Metal analysis of the sheeting on either side of the core*
- *X-ray elemental identification analysis of the core components*

- *Infrared spectroscopy of chemical make-up*  
<http://www.excelplas.com/>

*Wall cladding typically falls into two main categories as defined by the combustion of its core material:*

- *Combustible – A high or low percentage of polyethylene (PE) or polyurethane (PU) or polystyrene (PS) is present in the sample*
- *Non-combustible – The sample is a mineral wool or other non-combustible compound comprised primarily of mineral content.*

### ***STAGE 3 - ACP wall cladding report on combustibility:***

*As your test results identify your sample(s) of the ACP cladding are combustible, our report will outline the results and conclusions from the ExcelPlas testing and analysis.”*

The recommended simply testing regime needs to be supplement by a centralised register of all known products declared to be combustible for the purpose of the regulation, listed by product name and manufacturers.

The register and testing regime must be in place before any regulation of this nature comes into force.

#### **1.2 Owners’ knowledge**

Having regard to the large number and variety of buildings that will be captured by the regulation, it is considered that there will be a high number of owners who will not be able to readily respond to the details contained in the regulation. Uninformed owners will not;

- understand building classification in accordance with the BCA;
- be able to identify combustible cladding in all circumstances;
- be able to describe how much combustible cladding is installed on a building; or
- be able to meaningfully describe where combustible cladding has been used on a building eg. as an attachment, on spandrels, over exits, etc.

#### **1.3 Direction provisions**

The ‘direction’ to provide details to the Secretary can be given when it is known that a building has combustible cladding and the owner has not entered the details of the building on the proposed register. However, as identified above, there is likely to be numerous circumstances where the status of the material on an existing building will be unknown.

Accordingly, the ‘direction’ provisions need to be expanded to allow a ‘direction’ to be given requiring confirmation that a material is or is not combustible, as ultimately defined by the regulation.

#### **1.4 Properly qualified person**

‘Properly qualified person’ needs to be clearly defined before the commencement of any regulation and must be determined based on the skillset required and not the timeframes list in the draft regulation. Timeframes should be amended to match the availability of the nominated professionals and experts.

Furthermore, the class of professional nominated must be accredited by the Building Professionals Board, with appropriate PI insurance, and councils must be permitted to rely on the certification/statements issued without any further assessment or vetting. Such protection for councils must be included in any regulation.

## 1.5 Miscellaneous issues

- Clause 167 (1)(c)  
Class 10 buildings should be listed in the class of buildings that the regulation does not apply to.
- Number of storeys  
Should there be a correlation between 'number of storeys' in the regulation and 'rise in storeys' in the BCA?
- New developments  
The requirements of the draft regulation are not limited to existing buildings and would apply to buildings after construction and the issue of an occupation certificate.

To ensure the correct information is collected on any new building, and given the Principal Certifying Authority (PCA) would have all the necessary documentation on the cladding attached, it may be appropriate for the registration of the building to be required before (or as part of) the occupation certificate process.

## 2.0 **Draft changes to exempt development provisions – combustible cladding**

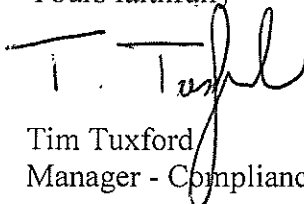
The proposed amendments to the various *State Environmental Planning Policies* detailed in the 'Explanation of Intended Effect' paper are generally supported. However, only permitting 'cladding and decorative work' on class 1a and 10 buildings as exempt development when the materials used are non-combustible is onerous and would preclude maintenance of existing domestic buildings clad in combustible material such as weatherboard.

Accordingly, the current exempt development work should be permissible for class 1a and 10 buildings with the qualification that external 'cladding and decorative work' must be located 900mm or more from the boundary of the property or another building. This will remove the need for 'mum and dad' owners to try and decide whether or not a product is combustible or non-combustible.

Furthermore, if the above modification is made, any proposed external 'cladding and decorative work' that is less than 900mm from the boundary of the property or another building would be subject to at least a complying development certificate, whereby the certifying authority can adjudicate on whether or not the nominated material complies with the BCA.

Thank you for considering the above submission. Please do not hesitate to contact me by calling 9391 7065 if you have any questions or require clarification of any of the above points.

Yours faithfully



Tim Tuxford  
Manager - Compliance