



Fire Protection
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Life. Property. Environment.

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NSW Department of Planning
GPO Box 39
SYDNEY NSW 2001

Via email: codes@planning.nsw.gov.au

To whom it may concern,

RE: Public Consultation Draft(s)

Proposed Amendments to State Environmental Planning Policies (SEPP) regarding minor external building alterations (cladding and decorative work) as exempt development

Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017

Fire Protection Association Australia (FPA Australia) acknowledges the fire safety package and associated 10-Point Plan released by the Minister for Innovation and Better Regulation in response to issues around the Grenfell Tower fire in June 2017 and the Lacrosse Apartments fire in December 2014.

The Association contends that concerns in relation to the use of cladding that may contribute to fire spread is attributable to a lack of compliance with the Building Code of Australia (BCA). The current BCA provisions, now supported by an Australian Building Codes Board (ABCB) Advisory Note (2016-3) include a Performance Requirement (CP2) with a clear intent and objective that external walls of buildings, including cladding products and attachments (signs and awnings etc.), must not contribute to the spread of fire in a building and between buildings.

Both the public consultation draft of the regulation and amendments to SEPP have been reviewed by FPA Australia with this intent and objective in mind acknowledging that compliance with the BCA and therefore the EP&A Regulation itself, can be achieved via either a performance solution or deemed-to-satisfy prescriptive solution. FPA Australia considers that these proposed amendments are generally sound but lack consistency with the terminology used in the BCA (as adopted by the EP&A Regulation directly) and other regulatory reforms already in place regarding practitioner competency. This lack of consistency is problematic for industry and accordingly FPA Australia makes the following comments for your consideration.

Proposed SEPP Amendments

1. FPA Australia supports amending the exempt provisions in the eight SEPPs to ensure external wall construction on certain high-risk buildings is validated via the permit process. This should specify that "any cladding must comply with the BCA."

In relation to cladding on other buildings, FPA Australia supports the proposal to specify that exempt development cannot use combustible cladding, however this wording should be revised to link back

to the BCA for consistency—i.e. “specify that any cladding undertaken on other buildings as exempt development cannot use cladding that does not comply with the BCA.”

Note that complying with the BCA can be via a performance solution or a deemed-to-satisfy solution and therefore cladding products and systems that may contain a range of materials could be engineered for use on external walls subject to demonstrating that they will not spread fire and satisfying Performance Requirement CP2.

Proposed EP&A Regulation Amendment

1. Definitions

“Combustible cladding”— FPA Australia contends that in order to be consistent with the BCA, the BCA definition of combustible should be applied. i.e. Combustible cladding means any cladding determined to be combustible by AS 1530.1.”

“Building with combustible cladding”— FPA Australia notes the use of the words “other than a roof”. Depending on the orientation of roofs to walls, combustible cladding of a roof may still contribute to fire spread. Accordingly, to ensure all buildings are captured where it’s possible that fire spreads as a result of combustible cladding, these words “other than a roof” could be deleted.

2. Class of building and calculation of the number of storeys

FPA Australia notes that proposed clauses 186T, 186U reference providing the classification of the building under the BCA, however 186V does not and should. This reference to the BCA should also be applied to calculating the number of storeys for each of these clauses.

3. New buildings

Why are owners of new buildings required to report? Shouldn’t their building comply given it’s just been certified? Perhaps the certifier should report to council where a design they have approved includes cladding and state how it was determined to comply with the BCA.

4. Competency of inspector

The proposed regulation requires inspection by a “properly qualified person”. This statement requires an extremely subjective judgement to be made either by the person appointing the inspector or the inspector themselves, that they are “properly qualified”.

The extensive Independent Report into the Building Professionals Act by Michael Lambert, known as the Lambert report recommended specific change in this regard to make roles, responsibilities and minimum competency requirements clear. The NSW government has already acted on this introducing regulatory change to the EP&A regulation that removes the term “properly qualified person” and replaces it with the term “competent fire safety practitioner”. This regulatory change (EP&A (Fire Safety and Building Certification) Regulation 2017 – 1 October 2017) has also introduced a co-regulatory framework that allows government to recognise existing government recognition schemes such as licensing and registration as well as industry accreditation schemes that demonstrate appropriate rigour, as providing formal recognition of competence.

Why would the NSW government ignore this good work in the same regulatory instrument? FPA Australia contends that the term “properly qualified person” in these proposed amendments to the EP&A regulation should be changed to “competent fire safety practitioner”. The Secretary should

then utilise clause 167A of the EP&A regulation to recognise individuals who hold a certificate of accreditation under the Building Professionals Act 2005 in the category of fire safety engineers as the competent fire safety practitioners required to complete this cladding inspection task.

5. Assessment approach

Although the proposed regulatory amendment requires an inspection to be undertaken, it is silent in relation to the methodology expected to be used for this. In order for the results of any inspection to be considered valid and meet the objective of this proposed regulation, it is critical that the assessment methodology applied is consistent, or at the very least includes consistent elements / aspects that were considered.

The NFPA Research Foundation in the US has recently completed work on an assessment tool that is intended for global application. FPA Australia recognises that whilst it may not be appropriate for the regulation to directly reference this tool, it could require that inspections must be done in a way that considers key elements included in the tool.

Please visit www.nfpa.org/exteriorwalls to access information regarding the tool.

Thank you for the opportunity to provide comment on these proposed regulation amendments. If you have any further queries please contact Matthew Wright, General Manager Technical Services / Deputy CEO via email matthew.wright@fpaa.com.au or telephone 03 8892 3131.

Yours sincerely,



Scott Williams
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