

29 September 2021

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Dear Kristy

**RE: Proposed Environmental Planning and Assessment Regulation 2021**

Thank you for the opportunity to provide this submission on the proposed Environmental Planning & Assessment Regulation 2021 (EPAR2021).

The Association of Australian Certifiers (AAC) is the peak body for registered certifiers in private practice and in local government in NSW.

The following feedback has been informed by the practical experience of our members and the expertise of our Technical Committee. Our suggested changes are designed to improve outcomes for applicants and the general public. We have tabulated our comments within **Table 1 below**.

As per our correspondence to the Minister for Planning and Public Spaces of 14 September, we have requested that the provisions made under Part 6 and section 10.13 (1)1(d) of the Environmental Planning and Assessment Act 1979 also be released for feedback as soon as possible.

Following this correspondence, we welcome the Department's offer to provide feedback on these provisions which will be transferred into a new regulation called the Environmental Planning & Assessment (Development Certification and Fire Safety) Regulation 2021.

Therefore, this submission also includes suggested changes to these provisions that will be transferred to the new, standalone Regulation. Those comments are identified within **Table 2 below**.

Again, these suggested changes are designed to improve outcomes for applicants and the general public.

If it would be of assistance, we would welcome the opportunity to discuss this submission further at your convenience.

Do not hesitate to contact me on 0431 082 259 if you would like to discuss further.

Yours sincerely



Jill Brookfield  
Chief Executive Officer

**Table 1: AAC Comments Specific to the Exhibition version of EPAR2021**

EPAR2021 Regulation detail / proposed changes	Reason for change
<p><b>123 Compliance with Building Code of Australia</b>  <i>(4) A certifier must not issue a complying development certificate unless the certifier has <b>referenced the plans, specifications and other documents that were relied upon and lodged with the application for the certificate or submitted to the certifier under Division 1 as evidence of the issue of the certificate.</b></i></p>	<p>We have added the <b>red text</b> to ensure the regulation provides clear guidance and consistency between clauses 122 and 123(4).</p> <p>Regulation 122 is currently inconsistent with Regulation 123(4) with regard to whether the department requires a CDC to be issued with “a list” of documents relied upon that were provided with the application <b>OR</b> whether the Regulation requires “a list and a stamped approved copy of all documents relied upon, that were provided with the application”.</p> <p>Alignment between these two clauses the documents that are relied upon in the issue of the CDC will be specifically referenced. The current wording infers endorsement of all documents received.</p> <p>There is no ability for the deletion of incorrect or superfluous information lodged on the Planning Portal. This reason for change enables the certifier to sort through and reference only those documents relied upon in the issue of the CDC.</p> <p>Importantly this will provide much needed clarity for the applicant and the public regarding what relevant documentation is included in the CDC.</p> <p>This change should also be made to the relevant <b>Construction Certificate and Occupation Certificate</b> regulations.</p>
<p><b>106 Application for complying development certificate</b>  <i>(1) An application for a complying development certificate must—                  (a) be in the approved form, and                  (b) contain all the <b>relevant</b> information and documents specified in the approved form or required by the Act or this Regulation, and                  (c) be lodged on the NSW planning portal. (2) The applicant must be notified, by means of the NSW planning portal, that th....</i></p> <p><b>107 Plans and drawings to accompany complying development certificate application</b>  <i>(1) An application for a complying development certificate must be accompanied by the following <b>(to the extent relevant to the application)</b> —                  (2) <b>Drawings -</b>                  (a) a site plan of the land,                  (b) a drawing of the development.                  (3) The site plan of the land must be drawn to a suitable scale and indicate the following—</i></p>	<p>We have added the <b>red text</b> to ensure that documents listed are not required by Building Certifiers where they are simply not relevant to a particular application.</p> <p>For example, A CDC application for an internal office fitout in an existing office building at Level 30, should not require plans to show "existing levels of land in relation to buildings and road". Some listed items would be irrelevant for such an application.</p> <p>There are too many documents required if the works are purely internal for commercial, industrial or retail applications. The provisions are possible housing centric and does not work cater for commercial or retail buildings.</p> <p>Schedule 1 of the current EP&amp;A Regulation never appreciated the scope and wide nature of CDCs available and the certifier's ability to use reasonable judgment to not unduly burden the applicant and the public in sourcing and providing documentation that is not relevant. This will lead to a reduction in red-tape.</p> <p>The Certifier Practice Standard provide certifiers with appropriate guidance.</p>

EPAR2021 Regulation detail / proposed changes	Reason for change
<p><i>(a) the location, boundary dimensions, site area and north point of the land, (b) existing vegetation and trees on the land, (c) the location and uses of existing buildings on the land,.....</i></p> <p><b>109 Fire safety requirements for complying development certificate application</b></p> <p><i>(1) An application for a complying development certificate for development involving a change of use of a building must be accompanied by—</i></p> <p><del><i>(a) a list of the Category 1 fire safety provisions that currently apply to the existing building, and</i></del></p> <p><del><i>(b) a list of the Category 1 fire safety provisions that will apply to the building after its change of use.</i></del></p> <p><del><i>Drop in clause (2) and cross it out.</i></del></p> <p><i>(3) An application for a complying development certificate for development that involves building work must be accompanied by—</i></p> <p><i>(a) a list of the existing fire safety measures provided in relation to the land or an existing building on the land, and</i></p> <p><del><i>(8) The preparation of the schedules and documents to form part of the application for a Complying Development Certificate are subject to the roles defined under the EPAR (Development Certification and Fire Safety) 2021),</i></del></p>	<p>We have added the <b>red text</b> to suggest changes that improve the accuracy of the information delivered as part of CDC applications and that support the integrity of the certification regulations.</p> <p>These matters are too complex for the majority of applicants to understand or provide with the required degree of accuracy.</p> <p>This results in applications being lodged on the portal that are inaccurate or could have their legitimacy questioned.</p> <p>We have removed (1) and (2) as it should not be relevant in this regulation and should be addressed in the new EPAR (Development Certification and Fire Safety) 2021.</p> <p>The regulation needs to be changed to allow one or more specific professionals to assist with preparing this critical documentation.</p> <p>We understand this may be part of a new role under the EPAR (Development Certification and Fire Safety) 2021, which is not available for review. We again ask the Department to release this new Regulation as a matter of urgency for consultation.</p>
<p><b>122 Form of complying development certificate</b></p> <p><i>(6) A certifier must not issue a compliance certificate that does not comply with subclause (1), (2)(b) or (4).</i></p> <p><i>Maximum penalty (subclause (6))—</i></p> <p><i>(a) for non-compliance with subclause (1) or (2)(b)—</i></p> <p><i>(i) 300 penalty units for a corporation, or</i></p> <p><i>(ii) 150 penalty units for an individual, and</i></p> <p><i>(b) for non-compliance with subclause (4)—</i></p> <p><i>(i) 600 penalty units for a corporation, or</i></p> <p><i>(ii) 300 penalty units for an individual.</i></p>	<p>AAC queries the reasons for targeting these specific clauses.</p> <p>These penalties are disproportionate to what is potentially a minor administrative error. This is reasonably covered in other areas of the Regulation.</p> <p>For example, 20 penalty units apply for low-range drink driving.</p>
<p><b>133 - Fire safety systems in class 2–9 buildings</b></p>	<p>AAC asks that this clause is redrafted to require the applicant provide endorsed fire plans and specifications, prior to the issue of the CDC.</p> <p>The regulation currently allows applicants for a CDC to provide the endorsed plans and specifications prior to starting those works. In practice, this simply results in unauthorised</p>

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EPAR2021 Regulation detail / proposed changes	Reason for change
	<p>works given that many contractors simply ignore or choose to remain unaware of their regulatory responsibilities. Given this is a structural provision, it puts the integrity of the system at risk, given that an OC cannot be issued and this creates unwanted regulatory work for the Local Council. Alternatively, the new regulation needs to introduce clear regulatory provisions and procedure for formalising unauthorised works.</p> <p>This clause also needs to be redrafted to clarify any overlap with the DABP Act.</p> <p>For internal fitout works to existing buildings, any new fire services work should be carried out to meet the Standard of Performance of the existing fire safety services within the building and any existing applicable performance solution.. This needs to be harmonised with the new EPAR (Development Certification and Fire Safety) 2021, which is not available for review. We again ask the Department release this new Regulation as a matter of urgency for consultation.</p>
<p><b>138 Asbestos</b> (d) if the contract indicates that asbestos will be removed to a specified landfill site—the person having the benefit of the complying development certificate must give the principal certifier a copy of a receipt from the operator of the landfill site detailing the quantity of material deposited at their facility and written confirmation from asbestos removal contractor that all the asbestos referred to in the contract has been disposed of at the facility.</p>	<p>Landfill operators cannot confirm this as they are not party to the asbestos contract nor aware of the works on the building site, they are purely a receiving site for landfill.</p> <p>The change requested provides a reasonable confirmation that the asbestos being removed has been appropriately disposed of.</p>
<p><b>142 Development contributions</b></p>	<p>Some Councils will not accept payment for contributions applicable under this clause until an approved copy of the relevant CDC is provided too them.</p> <p>In addition, many applicants do not in practice make payment to Council until the receipt of payment is holding up issue of their OC.</p> <p>The provision to make payment prior to commencing work results in widespread work carried out in contravention of the Consent. Then there is the issue of whether an OC can be issued. These are unnecessary risks to the integrity of the certification system.</p> <p>AAC requests amendment to require payment prior to issue of a CDC, or written confirmation from the authority that such payment is not required. This is a matter of service to the community.</p>
<p><b>144 Application to modify complying development</b> (3) a modified complying development certificate may adopt the same version of the</p>	<p>We have added the red text.</p> <p>AAC requests addition of a new subclause (3).</p>

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<p><i>BCA as the first Complying Development Certificate.</i></p>	<p>This is to simplify the compliance process and ensure applicants are not subject to unnecessary costs and complexity.</p> <p>Using the word "may" is requested as there may be instances where a change to the BCA is the reason for the modification to the CDC.</p> <p>Please refer to the <a href="#">AAC's submission to Minister for Better Regulation &amp; Innovation dated 24 August 2021</a> providing clear and reasoned case for this change for the benefit of all stakeholders and the public.</p>

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Table 2 below, identifies the further concerns we have relating to the existing regulation, that are not addressed in the Exhibition version of EPAR2021.

**Table 2 – Issues not captured in the EPAR2021 Exhibition copy**

<b>Further regulation changes needed EXISTING EPAR2000</b>	<b>Comment</b>
<b>139 Applications for construction certificates and Schedule 1</b>	Application for Construction Certificate, documentation required should be modified to be in line with comments in Table 1 above under EPAR2021, 106 and 107.
<b>143 Fire protection and structural capacity</b>  <i>(a) the fire protection and structural capacity of the building will be appropriate to its new use, and</i>	This requires clarification.  Does it need to comply with the BCA or not? "Appropriate" is not defined. What is the standard here?
<i>(b) the building will comply with such of the Category 1 fire safety provisions as are applicable to the new use, assuming that the building work is carried out in accordance with the plans and specifications to which the construction certificate relates and any conditions to which the construction certificate is subject.</i>	Needs clarification with respect to a change of use for part of a building only, Entire system? Only the parts of the fire system in the part of the building with is the subject of the change in use?
<i>(b)(3) In the case of building work that involves the alteration, enlargement or extension of an existing building in circumstances in which no change of building use is proposed, a certifier must not issue a construction certificate for the work unless, on completion of the building work, the fire protection and structural capacity of the building will not be reduced, assuming that the building work is carried out in accordance with the plans and specifications to which the construction certificate relates and any conditions to which the construction certificate is subject.</i>	What about if the new configuration is still compliant, but could be argued as less safe?  These words could use clarification around this issue so that if a feature is compliant both before and after the building work it is not affected by the clause.
<b>145 Compliance with development consent and Building Code of Australia</b>	The connection of the version of the BCA with the first Construction Certificate where multiple or modified CCs may be required.  Please refer to the <a href="#">AAC submission to Minister for Better Regulation &amp; Innovation dated 24 August 2021</a> concerning this.  Also, see further comments below related to the standards of performance on the FFSC. Building alterations should only be required to comply with the standards on the Annual FSC not the current standards.
<b>146B Condition relating to fire safety systems in class 2–9 buildings</b>	Remove the option to submit fire services plans and endorsements after a Construction Certificate has been

Further regulation changes needed EXISTING EPAR2000	Comment
	issued. Same reasoning as stated under Reg 133 in Table 1 above.
<b>153 Fire safety certificates</b>	<p>The required scope of the FFSC is completely unclear when the scope of works relates to part of a building or an alteration to part of an existing building.</p> <p>The standards of performance should remain constant for the life of the building (except where an order is issued by the authority for fire safety upgrade).</p> <p>Alterations to existing services should only require compliance with the standards on the schedule. This will make the task of Local Government simpler in identifying buildings that need review, over time with regard to fire safety upgrade as a whole.</p>
<b>162C Progress inspection unavoidably missed</b>	<p>Practical application of "unavoidable" is unknown. Further, the possibility if one inspection is avoidably missed is that a building is left in limbo with no OC.</p> <p>Punishes certifiers who refuse to issue an OC and Councils are left to resolve the issue.</p>
<b>164B Certain building work on fire safety systems may be exempt from compliance with the BCA standards</b>	<p><b>Option 1</b> Remove 164B(2) in its entirety as it is being misused by the fire services industry to seek to adopt all existing major fire safety systems in existing buildings that do not meet current BCA adopted standards, rather than for a specific non-compliant "<b>component</b>" of one fire safety system.</p> <p>AAC recommends this clause be replaced with a new clause to state that works in an existing building to which no change of use is proposed are able to be undertaken in accordance with the existing base building fire safety systems listed on the Fire Safety Schedule or AFSS.</p> <p>This should be an inherent part of the process as it is in other states in Australia. As there are adequate triggers in the Regulations for upgrade of systems – Cat 1 triggers, Change of Use, DA works , Fire orders etc all giving opportunity to upgrade systems at appropriate times in the life cycle, not each time a minor fitout occurs in the building.</p> <p>This will also provide the best opportunity to simplify the Fire Safety Schedules and Building Manual moving forward rather than having a menu of different standards and BCA versions all through the building.</p> <p><b>Option 2</b> If the clause is retained -</p>

Further regulation changes needed EXISTING EPAR2000	Comment
	<ul style="list-style-type: none"> <li>- The 6-month time bar, where the fire safety certificate or statement is older than 6 months is unnecessarily obstructive. Change to 12 months would be appropriate to enable this to be better utilised.</li> <li>- Change the party responsible for lodgement from the applicant to the CFSP, as applicants do not have the knowledge to make a exemption application.</li> <li>- Also identify what justification is required as a minimum – what documentation needs to be included with a 164B exemption</li> <li>- Change wording to require that the CFSP provide confirmation that the proposed exemption relates to the operational characteristic of an individual system only as a required statement</li> <li>- The exemption is to be issued from the expert being the CFPS, not the certifier and the certifier is to endorse the exemption with the CDC/CC as a documentary exercise.</li> </ul>
<p><b>171 Issue of final fire safety certificates</b></p>	<p>The rule that restricts the issue of an OC if the fire safety certificate or statement is older than 6 months is highly obstructive and result incomplete (final) OC being issued for many major projects where items not related to fire are the restrictor on the Full OC such as landscaping or lodgement of easements for example.</p>
<p><b>103 Notification of commencement and appointment of the Principal Certifier</b></p>	<p>The process is overly complicated given the opportunity to make both a Planning Portal process requirement.</p> <p>At present there are three (3) steps:</p> <ol style="list-style-type: none"> <li>1. Issue of CC/CDC</li> <li>2. PCA appointment</li> <li>3. Notice of Commencement</li> </ol> <p>Some alignment is required as in reality 99.9% of CC/CDCs are issued by the person/entity who will be the PCA.</p> <p>We recommend streamlining the application for CC/CDC and PCA appointment in one application on the portal rather than splitting them.</p>
<p><b>136I Levies</b></p>	<p>Many Councils refuse to accept these payments until they have logged a CDC on their own system for the work.</p> <p>This means delays of up to two weeks. There needs to be a way of getting these paid before the CDC is issued so the PC can accept the appointment at the same time as issuing the CDC.</p> <p>It should be calculated and paid on the Portal by the applicant at time of lodgement.</p>



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Further regulation changes needed EXISTING EPAR2000	Comment
	<p>Levy collection should be a portal function and not a Certifier function.</p>
<p><b>25J Levy exemptions</b></p>	<p>Exemptions are allowed for refitting and refurbishing.</p> <p>However, these exemptions are being interpreted inconsistently by different councils, which is creating conflict. Some Councils are attempting to enforce levies when they are not due, e.g. shop to shop and office to office fitout work.</p> <p>The exemptions need to be clarified by a guidance note from Dept of Planning.</p> <p>It should be calculated and paid on the Portal by the applicant at time of lodgement. Or a low blanket levy applied through the fees paid on the portal and distributed to all Councils</p> <p>Levy collection should be a portal function and not a Certifier function.</p>