



# EXTERNAL COMBUSTIBLE CLADDING POLICY

Policy Number 20/2024-2028

**DATE**

- Ordinary Meeting of Council - 24 September 2019, 23 August 2022 and 8 April 2025

<b>LEGISLATIVE REQUIREMENTS:</b>	Environmental Planning and Assessment Act, 1979 (NSW) Building Products (Safety) Act, 2017 (NSW)
<b>RESPONSIBILITY:</b>	Development and Compliance
<b>OBJECTIVES:</b>	<ul style="list-style-type: none"> <li>a) Safeguard occupants from injury or fatality due to a fire involving external combustible cladding on a multi-storey building.</li> <li>b) Develop scope and methodology for the identification of all buildings with external combustible cladding within The Hills LGA.</li> <li>c) Specify the criteria that Council staff will take into consideration when determining an appropriate course of action when a building is identified with external combustible cladding.</li> <li>d) Publicly notify the circumstances that Council will consider when determining whether to serve a Notice of Intention to give a Fire Safety Order Number 1 under Section 9.34 of the Environmental Planning and Assessment Act in relation to buildings identified with external combustible cladding.</li> <li>e) Develop and specify a fire safety benchmark to which a building must comply with in the event a Fire Safety Order is issued with regard to external combustible cladding.</li> <li>f) Develop and specify a rectification standard to which a building must be upgraded to with regard to external combustible cladding in the event a development application subject to Section 62 and 64 of the Environmental Planning and Assessment Regulation 2021 is received.</li> </ul>

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## 1. Adoption and Amendments

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The External Combustible Cladding Policy was originally adopted on 24 September 2019.

The policy was reviewed and adopted at the Ordinary Meeting of Council on 23 August 2022 and 8 April 2025.

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## 2. Overview

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All occupants have a right to feel and be safe when occupying a building. Recent high-profile building fires have raised concerns about the use of external combustible cladding on the façade of certain multi-storey buildings.

The purpose of this policy is to develop an inspection program to identify all relevant buildings with external combustible cladding within The Hills LGA, specify the criteria which will be considered when determining an appropriate course of action and develop an appropriate safety benchmark that must be achieved where rectification is required.

Council is the appropriate regulatory authority for building fire safety. Where the provision for fire safety is inadequate, Council can require an owner of a building to undertake rectification works. However, this authority must be exercised consistently and reasonably based on the risk to the health and safety of building occupants.

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## 3. Introduction

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Certain types of external combustible cladding can have an impact on the safe egress of occupants from the building, significantly contribute to the spread of fire via the external façade of the building and impact the fire-fighting operations of NSW Fire & Rescue.

The Policy aims to:

- a) promote the safety of persons in the event of a fire, and
- b) ensure the provision for fire safety is adequate to prevent the spread of fire, and
- c) develop a process for prompt identification, risk assessment and rectification (where required) of buildings with an external combustible cladding to protect the health and safety of building occupants.

The presence of external combustible cladding does not automatically deem the provision of fire safety inadequate or the building unsafe. A case-by-case assessment must be undertaken to determine the risk associated with the use of the external combustible cladding. There may be circumstances where Council identifies that a building has an external combustible cladding and chooses to take no action.

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## 4. Policy Objectives

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- a) Safeguard occupants from injury or fatality due to a fire involving external combustible cladding on a multi-storey building.
- b) Develop scope and methodology for the identification of all buildings with external combustible cladding within The Hills LGA.
- c) Specify the criteria that Council staff will take into consideration when determining an appropriate course of action when a building is identified with external combustible cladding.
- d) Publicly notify the circumstances that Council will consider when determining whether to serve a Notice of Intention to give a Fire Safety Order Number 1 under

Section 9.34 of the Environmental Planning and Assessment Act in relation to buildings identified with external combustible cladding.

- e) Develop and specify a fire safety benchmark to which a building must comply with in the event a Fire Safety Order is issued with regard to external combustible cladding.
- f) Develop and specify a rectification standard to which a building must be upgraded to with regard to external combustible cladding in the event a development application subject to Section 62 and 64 of the Environmental Planning and Assessment Regulation 2021 is received.

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## **5. External Combustible Cladding**

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There are primarily two types of external combustible cladding systems used in Australia, metal composite panels, such as Aluminium Composite Panels (ACP) and insulated cladding systems, such as Expanded Polystyrene (EPS).

Metal composite panel products are sandwich-type panels, usually between 2mm - 5mm thick, which consist of two metal outer layers and a core material. Metal composite panels include products that have outer layers of copper, zinc, and stainless steel; however, the most common products use aluminium. These products are referred to as Aluminium Composite Panels (ACP).

The core of the panel comprises of a variety of materials (including polyethylene), which may vary in terms of combustibility and ability to spread fire. ACP has been used on high-profile building fires such as the 2017 Grenfell Tower fire in London and the 2014 Lacrosse fire in Melbourne.

Expanded Polystyrene (EPS) is a lightweight material that is commonly used in the packaging and construction industry. The material is refined from oil and gas, polymerised and expanded to form EPS. EPS is typically rendered with cement when used as a cladding material.

EPS is combustible and may melt or ignite when exposed to temperatures above of 100°C. The oxygen voids created by melting EPS may intensify fire and molten droplets may cause fire to spread.

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## **6. Building Code of Australia**

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The Building Code of Australia (BCA) is the nationally consistent, minimum standard of safety for buildings and includes provisions for structural safety, fire safety, health and amenity. The BCA contains specific provisions for the construction of an external wall and the use of cladding.

The BCA is constantly being revised and updated as new forms of construction and technology emerge. When determining if the existing external cladding complies with the BCA, it is important to identify which version of the BCA applies to the external cladding. Section 19 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 clarifies that the BCA which was in force at the time the construction certificate application was lodged is the applicable version of the BCA for that building work.

The provisions for external cladding have generally remained the same until BCA 2016 (Amendment 1) was adopted on 12 March 2018. This amendment to the BCA introduced Verification Method CV3 and clarified provisions relating to the use of external wall cladding and attachments. Accordingly, the external cladding would generally need to

comply with the provisions which were in force before 12 March 2018 or after 12 March 2018.

## 6.1 Compliance with the BCA

Compliance with the BCA may be achieved by a Performance Solution (previously known as an Alternative Solution) and/ or a Deemed-to-Satisfy (DTS) Solution. A Performance Solution is a unique solution designed specifically for an individual building or building product to demonstrate compliance with the Performance Requirements of the BCA. A DTS Solution is a generic solution that applies to all buildings in New South Wales and demonstrates compliance with the DTS Provisions of the BCA.

## 6.2 CodeMark Certificate of Conformity

A building product, including an external cladding system, may obtain a CodeMark Certificate of Conformity to confirm compliance with the BCA as a Performance Solution or a DTS Solution. A CodeMark Certificate of Conformity can be subject to limitations, conditions, installation requirements and may only demonstrate compliance with specific provisions of the BCA (not all relevant provisions).

Caution must be exercised when relying upon a CodeMark Certificate of Conformity to ensure it is relevant to the specific building and to be mindful of the information contained on the certificate including:

- a) The provisions of the BCA which the product or system has been assessed against, and
- b) The approved application of the product or system, and
- c) Any conditions of the certificate, and
- d) Any limitations of the certificate, and
- e) The certificate's currency, including the date, revision, date the product was installed or used and which edition of the BCA the certificate references. Note: several certificates were withdrawn in February 2019.

If strict compliance with the CodeMark Certificate of Conformity is not achieved, the certificate is not considered relevant to the specific building and cannot be relied upon.

## 6.3 Prior to BCA 2016 (Amendment 1)

External combustible cladding typically forms part of an external wall or is an attachment to the external wall. Prior to BCA 2016 (Amendment 1), the BCA had different requirements for cladding that formed part of the external wall and cladding that was used as an attachment to an external wall. Therefore, it is important to identify how the external cladding has been used on the building.

### 6.3.1 External Wall or Attachment

The BCA defines an external wall to mean *an outer wall of a building which is not a common wall*.

The Australian Building Codes Board has provided further clarification for this definition and released Advisory Note 2016-3: Fire Performance of External Walls and Cladding version 1.1. The Advisory Note states *a building element is considered part of an external wall if it is integral (i.e. is not ancillary) to the construction of the wall. For example, the following elements are considered to be part of an external wall, façade covering, external cladding, framing, insulation, sarking, spandrels and internal linings*.

The CSIRO also released Fire Safety Guideline for External Walls (A Guide for High-Rise Construction in Australia) version 2. The guideline states *if the cladding/ lining/ other item is removed and the remaining structure no longer functions suitably as an external wall (for example, the remaining structure has no fire resistance level, is unable to prevent the penetration of water, is unable to resist wind loads, or in certain applications cannot meet acoustic requirements), then it is considered an integral part of the external wall.*

The CSIRO Fire Safety Guideline for External Walls (A Guide for High-Rise Construction in Australia) version 2 also provides clarification when cladding is considered an attachment. The guideline states *if the cladding/ lining/ other item is removed and the remaining wall system still functions as an external wall, then it would be considered an attachment.*

### **6.3.2 External Cladding as External Wall – DTS Provisions**

Specification C1.1 Clause 3.1(b) and Clause 4.1(b) of the BCA require buildings of Type A and B construction to have external walls and common walls which are non-combustible. Type A and B construction are the most fire-resisting types of construction.

Non-combustible is defined in A1.1 of the BCA to mean *a material not deemed combustible as determined by AS1530.1.*

C1.12 of the BCA contains a concession that allows certain materials, though combustible or containing combustible fibre, to be used wherever a non-combustible material is required. This concession includes bonded laminated materials where:

- a) each laminate is non-combustible; and
- b) each adhesive layer does not exceed 1 mm in thickness; and
- c) the total thickness of the adhesive layer does not exceed 2 mm; and
- d) the Spread-of-Flame Index and the Smoke-Developed Index of the laminated material as a whole do not exceed 0 and 3 respectively.

In summary, where the external cladding forms part of an external wall, each part of the material (including the core) must have been tested to AS1530.1 and not deemed combustible to comply. Alternatively, the material must meet the requirements for bonded laminated materials and each laminate (including the core) must have been tested to AS1530.1 and not deemed combustible to comply.

### **6.3.3 External Cladding as Attachment – DTS Provisions**

Specification C1.1 Clause 2.4 allows a combustible material to be used as a finish or lining to a wall or other building element which has the required Fire-Resistance Level (FRL) if:

- a) the material is exempt under C1.10 or complies with the fire hazard properties prescribed in Specification C1.10; and
- b) it is not located near or directly above a required exit so as to make the exit unusable in a fire; and
- c) it does not otherwise constitute an undue risk of fire spread via the façade of the building.
- d) the attachment of a facing or finish to part of a building required to have a FRL does not impair the required FRL of that part.



Some parts of this provision are subjective in nature and therefore a case-by-case assessment of the cladding and its application to the specific building must be conducted by the relevant authority to ensure the attachment complies.

When undertaking this assessment, it is important to note that when some ACPs are exposed to fire the outer layer will delaminate from the core. The delaminated material may fall from the ACP as debris and make the exit unusable in a fire. Some EPS products may melt or ignite when exposed to fire and cause molten droplets to fall from the material and make the exit unusable in a fire. Furthermore, some combustible ACPs and EPS products may ignite and emit excessive radiant heat, making the exit unusable in a fire. Finally, some ACPs and EPS products are combustible and may unduly contribute to the spread of fire via the façade of the building.

#### **6.4 BCA 2016 (Amendment 1) and onwards**

The definition of an external wall has remained unchanged; however, the provisions regarding the non-combustible construction of an external wall have been further clarified and moved from Specification C1.1 to C1.9 of the BCA. The provisions for an attachment to an external wall have been removed and a new defined term for an ancillary element has been introduced to mean *an element that is secondary to and not an integral part of another element to which it is attached*.

##### **6.4.1 External Walls – DTS Provisions**

In a building required to be of Type A or B construction, C1.9(a) of the BCA requires the external wall (including all components incorporated in the wall) to be non-combustible. This includes all building elements and components such as the facade covering, framing and insulation. However, some concessions are applicable such as C1.9(d), which permits combustible gaskets, caulking sealants and damp-proof courses to be used.

Non-combustible is defined in A1.1 of the BCA to mean *a material not deemed combustible as determined by AS1530.1*.

C1.9(e) of the BCA also contains a concession that allows certain materials, though combustible or containing combustible fibre, to be used wherever a non-combustible material is required. This concession includes bonded laminated materials where:

- a) each lamina, including any core, is non-combustible; and
- b) each adhesive layer does not exceed 1 mm in thickness and the total thickness of the adhesive layers does not exceed 2 mm, and
- c) the Spread-of-Flame Index and the Smoke-Developed Index of the bonded laminated material as a whole do not exceed 0 and 3 respectively.

For a bonded laminated material to receive the concession, every condition must be satisfied. If one or more of the lamina is combustible, the concession cannot apply. For example, a bonded laminated material with a core that is deemed combustible in accordance with AS1530.1 is not permitted by C1.9(e)(vi) and therefore cannot be used as part of a DTS Solution where a non-combustible material is required.

In summary, where external cladding forms part of an external wall, each part of the material (including the core) must have been tested to AS1530.1 and not deemed combustible to comply. Alternatively, the material must meet the requirements for bonded laminated materials and each lamina (including the core) must have been tested to AS1530.1 and not deemed combustible to comply.

### 6.4.2 Ancillary Elements – DTS Provisions

An ancillary element must not be fixed, installed or attached to the internal parts or external face of an external wall that is required to be non-combustible unless it complies with the concessions permitted by C1.14. Furthermore, the ancillary element must be installed in accordance with Specification C1.1 Clause 2.4 which requires the finish, lining, ancillary element or service to not compromise the fire-resistance of the building element it is being attached to. For example, mechanical fixing bolts may penetrate a fire-resisting covering in a manner that impairs its performance, thereby reducing the FRL of the building element. It must also be noted that Specification C1.1 Clause 2.4 only applies to the method of attachment, not the ancillary element being attached.

External cladding can be installed so that it is a secondary element that is not an integral part of the external wall and therefore is considered an ancillary element. However, the external cladding must be non-combustible in accordance with C1.14(a) of the BCA.

### 6.4.3 Performance Solution

A Performance Solution may verify compliance with CP2 of the BCA when compliance with CV3 of the BCA is demonstrated. Typically, CV3 of the BCA requires the external wall system to be tested in accordance with AS5113-2016 and achieve the classification of EW and for sprinklers to be provided throughout the whole building.

CV3 is one of the multiple methods available to verify compliance with the relevant Performance Requirements. CV3 does not need to be used if a DTS Solution is proposed or if another method of verifying compliance with the relevant Performance Requirements is used. However, pursuant to Clause 26 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, where an application for a construction certificate (for certain buildings) proposes a Performance Solution that does not apply CV3 of the BCA in its entirety, the proposal must be referred to NSW Fire & Rescue for comment.

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## 7. NSW Fair Trading - Building Product Ban

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The Building Products (Safety) Act 2017 enables the Commissioner for NSW Fair Trading to prohibit the use of a certain building product by issuing a building product ban if the product could cause serious injury or death.

### 7.1 Cladding Ban

On 15 August 2018, NSW Fair Trading issued a building product ban to prohibit the use of Aluminium Composite Panels (ACPs) with a core comprised of greater than 30 percent polyethylene by mass in any external cladding, external wall, external insulation, façade or rendered finish in:

- Class 2, 3 and 9 buildings with a rise in storeys of two or more; and
- Class 5, 6, 7 and 8 buildings with a rise in storeys of three or more.

However, ACP with a core of more than 30% polyethylene is exempt from the building product ban if:

- a) The building product is not deemed combustible by successfully passing a test in accordance with AS1530.1-1994; or
- b) The building product and external wall assembly have successfully passed a test for both the EW (external wall fire spread) and BB (building-to-building fire spread) classifications in accordance with AS5113-2016. However, the building product

must be installed in a manner identical to the tested prototype wall assembly or façade.

The AS1530.1-1994 or AS5113-2016 test results must be produced by an Accredited Testing Laboratory, and describe the methods and conditions of the test and the form of construction of the tested building product or prototype wall assembly or façade, and are dated on or after 1 July 2017.

## **7.2 Cladding Ban and Relationship to the BCA**

While ACP with a core of more than 30% polyethylene may comply with the Performance Requirements of the BCA, any provision of the BCA may be overridden by, or subject to, State legislation.

The Building Products (Safety) Act, 2017 and building product ban takes precedence over the BCA and the banned product may not be used, even if it complies with the BCA or has a CodeMark Certificate of Conformity.

## **7.3 Affected Building Notices**

If NSW Fair Trading is satisfied, on reasonable grounds that a banned building product has been used in a building, the building will be deemed an affected building and serve an Affected Building Notice.

If the Secretary of NSW Fair Trading serves an Affected Building Notice on a building with ACP, a copy of the notice will be sent to Council to determine if a rectification order is required and report back to NSW Fair Trading.

In this circumstance, Council must provide a report to the Secretary about the steps it has taken concerning the Affected Building Notice within 30 days. The report must indicate the following:

- a) whether the Council has made a Building Product Rectification Order in respect of the building,
- b) whether the Order has been complied with or the progress that has been made towards compliance with the Order,
- c) any other steps that are being taken by the Council to ensure that the building is made safe.

## **7.4 Building Product Rectification Orders**

Council, as a relevant enforcement authority has been given new powers under the Building Products (Safety) Act, 2017 to serve Building Product Rectification Orders on an affected building.

A Building Product Rectification Order is an Order that requires the owner of a building to do such things that are necessary for either or both of the following purposes:

- a) to eliminate or minimise a safety risk posed by the use in the building of a building product to which a building product use ban applies,
- b) to remediate or restore the building following the elimination or minimisation of the safety risk.

## **7.5 Council response to Affected Building Notices**

In the event an Affected Building Notice is received from NSW Fair Trading, Council staff will advise the Secretary that a Building Product Rectification Order has not and will not be

issued. Information will be provided regarding the steps taken by Council to ensure the particular building is made safe in accordance with this Policy.

Where rectification is required, Council will pursue the rectification works with the owners via a voluntary fire safety upgrade or by serving a Fire Safety Order pursuant to the existing powers of the Environmental Planning and Assessment Act, 1979 (NSW) instead of a Building Product Rectification Order pursuant to the Building Products (Safety) Act, 2017.

## 8. Identification and Rectification Procedure

The following procedure will be used by Council staff to promptly and consistently identify buildings with external combustible cladding, assess the risk associated with the use of external combustible cladding and ensure rectification works are undertaken (where required) to achieve an acceptable level of fire safety.

### 1. Identification of buildings

Review Council's records and conduct an initial site inspection of all relevant buildings within The Hills LGA to identify any potentially external combustible cladding.



### 2. Cladding Identification Statement

Owners of the building engage an appropriately qualified and experienced consultant to identify the properties of any external combustible cladding on the building.



### 3. Determining Appropriate Action (Risk Assessment)

All information is reviewed and assessed by Council staff to determine if circumstances exist where the provisions for fire safety are inadequate due to use of external combustible cladding.



### 4. Rectification Works (where required)

The owners may commence a voluntary fire safety upgrade of the external combustible cladding by obtaining development consent or Council may issue a Fire Safety Order to upgrade the building.

## 8.1 Identification of Buildings

The following methodology will be used to identify relevant buildings located in The Hills LGA that have external combustible cladding:

- a) Review of annual fire safety statements submitted to Council to identify all Class 2-9 buildings.
- b) Desktop review of Council's records, including development consents and construction certificates to determine the required Type of construction.
- c) Conduct an initial visual inspection of the external façade of all buildings identified as Type A or Type B construction to identify any potentially external combustible cladding.
- d) The results of the building identification process will be maintained in Council's central document management system.

In October 2018, the NSW Government introduced the Environmental Planning and Assessment Regulation Amendment (Identification of Buildings with Combustible Cladding) 2017. The Cladding Regulation introduced a requirement for owners of certain residential and public buildings with external combustible cladding to register their building on a NSW Government portal by 19 February 2019.

Given the limited scope of the buildings affected by the Cladding Regulation, it is expected the buildings identified by Council will include all buildings registered on the NSW Government portal. However, the NSW Government portal will be monitored and cross-referenced by Council staff to ensure all relevant buildings have been identified.

If an Affected Building Notice is received from NSW Fair Trading, the building will be cross-referenced by Council staff to ensure all relevant buildings have been identified. It is expected the buildings identified by Council will include all buildings which are served with an Affected Building Notice by NSW Fair Trading.

## 8.2 Cladding Identification Statement

Council is the appropriate regulatory authority for building fire safety; however, building fire safety is the responsibility of the building owner. Where Council has identified a building with external combustible cladding, the owners of the building, will be requested to submit a Cladding Identification Statement to Council for review.

The Cladding Identification Statement is a document prepared by a Building Surveyor - Unrestricted or Certifier – Fire Safety that includes the following information:

- Address of the building
- Building classification(s)
- Rise in storeys
- Number of storeys below ground
- Type of construction
- Type of external combustible cladding (e.g. product name or material properties)
- Confirmation if the external combustible cladding forms part of the external wall or is an attachment
- Location and extent of external combustible cladding (including photographs)
- An opinion from the author if the external combustible cladding causes a circumstance where the provision for fire safety is inadequate to prevent the spread of fire or promote the safety of persons in the event of fire
- Accreditation details of person issuing the Cladding Identification Statement
- Date of the site inspection carried out by the person issuing the Cladding Identification Statement
- A copy of any information relied upon to prepare the Cladding Identification Statement

## 8.3 Determining Appropriate Action (Risk Assessment)

Where a building is confirmed to have external combustible cladding, it is the responsibility of Council to determine the appropriate action. This function will be administered by an external combustible cladding panel. The panel will comprise of appropriately qualified and experienced staff from Council's Regulatory Services team.

The external combustible cladding panel's role is to assess the overall fire safety risk presented by the building (including external combustible cladding) and determine the appropriate action. When conducting this assessment, all relevant information available, including observations made by Council staff and the Cladding Identification Statement will be reviewed to determine the appropriate action.

To ensure a reliable and consistent outcome is achieved, a Risk Assessment Tool has been developed to provide a risk rating to the building based on the specific circumstances of each building. A copy of the Risk Assessment Tool is located in Appendix A.

Where the risk rating of a building is identified as "No Action", Council will advise the owners of the building that it is the opinion of Council that the external combustible cladding does not comply with the DTS Provisions of the BCA; however a Registered Certifier has deemed the building suitable for occupation and issued an occupation certificate. On this basis, Council will not be taking any regulatory action; however, the

owners may wish to commence a voluntary fire safety upgrade of the external combustible cladding due to other considerations, such as the ability to obtain building insurance.

Where the risk rating of a building is identified as “Take Action”, rectification of the building will be required.

**8.4 Rectification Works (where required)**

Where the risk rating of a building is identified as “Take Action”, the owners of the building will be provided with an option to commence a voluntary fire safety upgrade of the building or for Council to serve a Fire Safety Order.

**8.4.1 Voluntary Fire Safety Upgrade**

State Environmental Planning Policy (Exempt and Complying Development) 2008 Clause 2.54(d1)(ii) does not permit external alterations to a building that involve the use of external combustible cladding to be carried out as exempt development.

Development consent will be required if the owners of a building choose to commence a voluntary fire safety upgrade to achieve an acceptable level of safety concerning the external combustible cladding. This may be obtained by lodging a development application with Council or a complying development certificate with a Registered Certifier (where permitted).

If a development application is received by Council, the application will be subject to the provisions of Section 64 of the Environmental Planning and Assessment Regulation 2021. Please refer to Section 10.2 of this Policy for development applications subject to the requirements of Section 64.

**8.4.2 Fire Safety Order to Upgrade**

Council may serve a Fire Safety Order pursuant to Section 9.34(1)(b) in accordance with Part 2 of Schedule 5 of the Environmental Planning and Assessment Act, 1979 (NSW) (the Act).

The following is an extract from Part 2 of Schedule 5 of the Act.

To do what?	In what circumstance?	To Whom?
To do or stop doing things for the purposes of ensuring or promoting adequate fire safety or fire safety awareness	<p>When provision for fire safety or fire safety awareness is inadequate to:</p> <ul style="list-style-type: none"> <li>• Prevent fire, or</li> <li>• Suppress fire, or</li> <li>• Prevent the spread of fire</li> </ul> <p>To ensure or promote the safety of persons in the event of fire.</p> <p>When lack of maintenance of the premises or the use of the premises constitutes a significant fire hazard.</p>	The owner of the premises or, in the case of a place of shared accommodation, the owner or manager

Where the risk rating of a building is identified as “Take Action” and the owners have not initiated a voluntary fire safety upgrade, a Notice of Intention to give a Fire Safety Order will be given to the owners of the premises.

The Notice of intention will require the owners of the premises to upgrade the existing building to comply with the relevant Performance Requirements of the BCA. The relevant

Performance Requirements of the BCA will vary from building to building and must be identified by Council staff.

Compliance with the Performance Requirements of the BCA can be achieved by a Deemed-to-Satisfy Solution and/ or a Performance Solution. Where a Performance Solution is proposed by the Owners as part of the Fire Safety Order process, the Performance Solution must be:

- a) Developed by a Certifier – Fire Safety in accordance with the International Fire Engineering Guidelines (IFEG) 2005 or the Australian Fire Engineering Guidelines (AFEG) 2021; and
- b) Referred to NSW Fire & Rescue for comment (at the owners expense), if the Performance Solution does not apply CV3 of the BCA in its entirety; and
- c) Use the acceptance criteria as detailed in Section 9 of this Policy.

The proposed period of compliance will be 6 months. However, it is acknowledged that further time may be required to comply due to circumstances that are unique to an individual building. Where representations to the Notice of Intention to give a Fire Safety Order are received, the representations will be reviewed by Council's Manager – Regulatory Services and an appropriate period of compliance will be determined on a case-by-case basis.

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## **9. Performance Solution - Rectification Standard (Acceptance Criteria)**

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When a fire engineering design is proposed, acceptance criteria must be developed to analyse the outcome of the design. Acceptance criteria are often a matter of engineering judgement and therefore can vary between individual practitioners. Accordingly, it is appropriate to establish standardised and consistent acceptance criteria which will be used for all buildings where Council is identified as a stakeholder.

The following acceptance criteria will be used for all Performance Solutions where Council is identified as a stakeholder:

1. Fire spread must be minimised to not spread to:
  - i. exits; and
  - ii. a fire compartment, other than the fire compartment of origin; and
  - iii. a sole-occupancy unit in a class 2, 3 or class 4 part of a building, other than the sole-occupancy unit of origin; and
  - iv. a public corridor in a class 2, 3 or class 4 part of a building, other than the public corridor of origin; and
  - v. between buildings
2. The path of travel from an exit of the building to the road must:
  - i. be protected from any debris ejected/ delaminated from external combustible cladding as a result of a fire; and
  - ii. not be exposed to a radiant heat threshold of more than 2.5 kW/m<sup>2</sup>.

It is noted that additional Acceptance Criteria may need to be developed for certain site-specific issues which arise from the combustible external cladding (eg. cladding is located adjacent to a fire hydrant booster assembly or over the doorway providing access to a fire control centre). Any additional Acceptance Criteria will be reviewed by Council's external combustible cladding panel before use.

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## 10. Redevelopment of existing buildings

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When a development application is received by Council, it may be subject to the provisions of Section 62 or 64 of the Environmental Planning and Assessment Regulation 2021.

### 10.1 Section 62 of Environmental Planning and Assessment Regulation 2021

Section 62 applies to a development application where the applicant proposes a change of building use and does not propose any building works.

In determining the development application, Council must take into consideration whether the fire protection and structural capacity of the building will be appropriate for the building's proposed use. Furthermore, the consent authority must not issue the development consent unless it is satisfied that the building complies (or will comply when completed) with the Category 1 fire safety provisions.

When a development application subject to the requirements of Section 62 is received in a building with external combustible cladding, a condition will be imposed to upgrade the building to comply with the relevant Performance Requirements of the BCA before an occupation certificate is issued.

### 10.2 Section 64 of Environmental Planning and Assessment Regulation 2021

Section 64 applies to a development application where the applicant has proposed building works. Council must determine if the measures contained within the building are satisfactory to protect persons using the building and assist in their egress in the event of a fire and restrict the spread of fire to other nearby buildings.

Where a development application is received for building works in a building which has been identified as having an external combustible cladding, Council will determine if the existing measures contained within the building are satisfactory to protect persons using the building and assist in their egress in the event of a fire and restrict the spread of fire to other nearby buildings.

If the existing measures are not satisfactory, a condition will be imposed to upgrade the building to comply with the relevant Performance Requirements of the BCA prior to an occupation certificate being issued.

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## 11. Legislation and References

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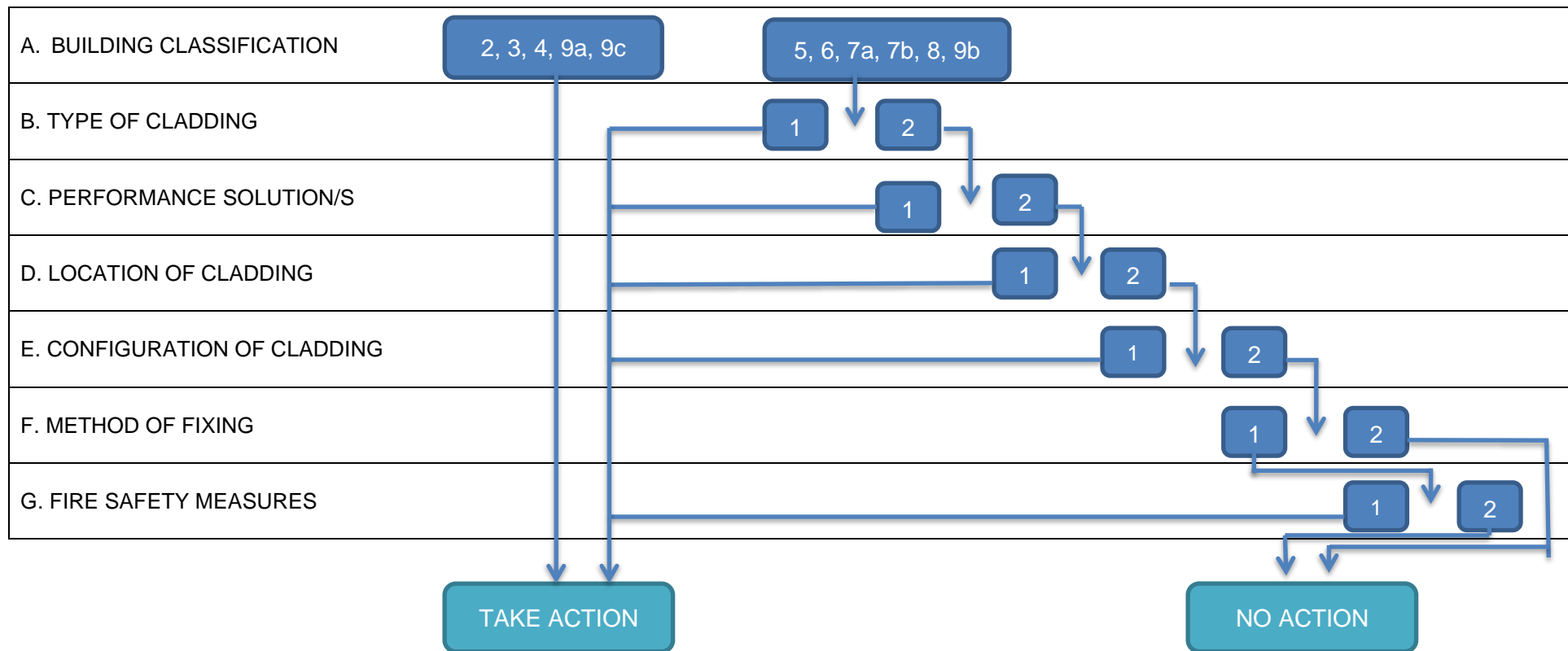
- a) Building Code of Australia
- b) Environmental Planning and Assessment Act, 1979 (NSW)
- c) Environmental Planning and Assessment Regulation 2021
- d) Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021
- e) Fire Safety Guideline for External Walls (A Guide for High-Rise Construction in Australia) version 2 dated 18 April 2016
- f) Advisory Note 2016-3: Fire Performance of External Walls and Cladding, print version 2.0 dated March 2018
- g) International Fire Engineering Guidelines 2005
- h) Australian Fire Engineering Guidelines 2021
- i) State Environmental Planning Policy (Exempt and Complying Development Codes) 2008



## Appendix 1 – Risk Assessment Tool

It is important to note that 'non-compliant' does not necessarily mean the building is unsafe to occupy. A number of fire safety features in buildings may protect occupants from fire. If a building has external wall cladding that does not comply with the BCA, it may still be considered safe to occupy due to the type of cladding, location of cladding, configuration of cladding and existing fire safety measures (eg. sprinkler system and smoke detection system).

The tool below has been developed to act as a Risk Assessment Tool to assist Council determine the level of risk to occupants associated with the installation of external cladding on a specific building in the event of a fire to determine the appropriate course of action. The Risk Assessment Tool does not constitute a fire engineering assessment and may not be used or relied upon to form the basis of a fire engineering analysis.



A. BUILDING CLASSIFICATION	
Class	Description
2	<b>Class 2:</b> a building containing 2 or more <i>sole-occupancy units</i> each being a separate dwelling.
3	<b>Class 3:</b> a residential building, other than a building of Class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including— (a) a boarding house, guest house, hostel, lodging house or backpackers accommodation; or (b) a residential part of a hotel or motel; or (c) a residential part of a <i>school</i> ; or (d) accommodation for the aged, children or people with disabilities; or (e) a residential part of a <i>health-care building</i> which accommodates members of staff; or (f) a residential part of a <i>detention centre</i> .
4	<b>Class 4:</b> a dwelling in a building that is Class 5, 6, 7, 8 or 9 if it is the only dwelling in the building.
5	<b>Class 5:</b> an office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9.
6	<b>Class 6:</b> a shop or other building for the sale of goods by retail or the supply of services direct to the public, including— (a) an eating room, cafe, restaurant, milk or soft-drink bar; or (b) a dining room, bar, shop or kiosk part of a hotel or motel; or (c) a hairdresser's or barber's shop, public laundry, or undertaker's establishment; or (d) market or sale room, showroom, or <i>service station</i> .
7	<b>Class 7:</b> a building which is— (a) <b>Class 7a</b> — a <i>carpark</i> ; or (b) <b>Class 7b</b> — for storage, or display of goods or produce for sale by wholesale.
8	<b>Class 8:</b> a laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing, or cleaning of goods or produce is carried on for trade, sale, or gain.

9	<p><b>Class 9:</b> a building of a public nature—</p> <ul style="list-style-type: none"> <li>(a) <b>Class 9a</b> — a <i>health-care building</i>, including those parts of the building set aside as a laboratory; or</li> <li>(b) <b>Class 9b</b> — an <i>assembly building</i>, including a trade workshop, laboratory or the like in a primary or secondary <i>school</i>, but excluding any other parts of the building that are of another Class; or</li> <li>(c) <b>Class 9c</b> — an <i>aged care building</i>.</li> </ul> <p><b>Assembly building</b> means a building where people may assemble for—</p> <ul style="list-style-type: none"> <li>(a) civic, theatrical, social, political or religious purposes including a library, theatre, public hall or place of worship; or</li> <li>(b) educational purposes in a <i>school</i>, <i>early childhood centre</i>, preschool, or the like; or</li> <li>(c) entertainment, recreational or sporting purposes including— <ul style="list-style-type: none"> <li>(i) a cinema; or</li> <li>(ii) a sports stadium, sporting or other club; or</li> </ul> </li> <li>(d) transit purposes including a bus station, railway station, airport or ferry terminal.</li> </ul>
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B. TYPE OF CLADDING	
Rating	Description
1	The external cladding panels contain 30% or more combustible material by mass
2	The external cladding panels contain less than 30% combustible material by mass

C. PERFORMANCE SOLUTIONS	
Rating	Description
1	The building is subject to a Performance Solution relating to fire safety. The Performance Solution has been reviewed by a Certifier – Fire Safety and they have determined the presence of external combustible cladding makes the building inconsistent with the Performance Solution.
2	The building is not subject to any existing Performance Solutions relating to fire safety, <b>OR</b> The building is subject to a Performance Solution relating to fire safety. The Performance Solution has been reviewed by a Certifier – Fire Safety and they have determined the presence of external combustible cladding does not make the building inconsistent with the Performance Solution.

**D. LOCATION OF CLADDING**

Rating	Description
1	<p>External cladding is located:</p> <ul style="list-style-type: none"> <li>- within 6m horizontally in all directions (for the full height of the building) of the required path/s of travel to the road, <b>OR</b></li> <li>- within 6m horizontally in all directions (for the full height of the building) of the required path/s of travel from the road to firefighting equipment (eg. pump room, fire indicator panel, fire control centre/ room, booster assembly, sprinkler stop valve, external fire hydrants) <b>OR</b></li> <li>- within 3m of the allotment boundary or 6m of another building on the same allotment</li> </ul> <p>Note: The following image provides an indicative example of external cladding which is located within 6m of the path of travel to the road.</p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div data-bbox="560 574 1176 1021" style="text-align: center;"> <p>ELEVATION</p> <p> <span style="color: yellow;">■</span> Combustible cladding not within 6m  <span style="color: lightblue;">■</span> Combustible cladding within 6m         </p> </div> <div data-bbox="1366 678 2027 1021" style="text-align: center;"> <p>FLOOR PLAN</p> <p>             Cladding within 6m of path of travel              EXIT              Path of Travel              Minimum 6 m              Minimum 6 m              Hydrant booster              Road         </p> </div> </div>
2	External cladding is not located in any of the abovementioned locations.

### E. CONFIGURATION OF CLADDING

Rating	Description
1	Cladding is configured so that fire could reasonably spread between fire compartments via the external cladding. (eg. cladding is located near balcony's, openings or walls which do not have a Fire-Resistance Level)
2	Fire could not reasonably spread between fire compartments via the external cladding

### F. METHOD OF FIXING CLADDING

Rating	Description
1	All other forms of attaching/ fixing the cladding to the building (eg. double-sided tape)
2	Cassette style system with non-combustible supporting structure (eg. steel brackets and screws)

### G. FIRE SAFETY MEASURES

Rating	Description
1	The building is not provided with either of the fire safety measures listed below
2	<p>A sprinkler system is installed throughout the whole building (including balconies) in accordance with AS2118.1 and alarm signalling equipment is provided, <b>OR</b></p> <p>A fire detection and alarm system is installed throughout the whole building in accordance with AS1670.1 and alarm signalling equipment is provided</p> <p>Note: Fire safety measures must be operating to the relevant minimum standard of performance. If the system is installed but not operating as required, Council staff will advise the owner and provide a reasonable period of time (maximum 90 days) to repair the system. The building will be re-assessed after 90 days to determine the risk level in accordance with the Risk Assessment Tool</p>