Fire safety requirements when development affects an existing building

This technical guideline outlines the fire safety provisions that apply when proposed development affects an existing Class 1b to 9 building (as defined under the Building Code of Australia), which includes all buildings other than a detached house or outbuilding. These provisions replace clause 132A of the Environmental Planning and Assessment Regulation 2000 (the Regulation) in relation to complying development for commercial and industrial buildings built before 1 January 1993.

Introduction

This technical guideline provides advice on amendments to the Regulation made on 18 July 2014. These amendments introduced new fire safety provisions and repeal clause 132A of the Regulation. The new provisions apply when proposed development affects an existing Class 1b to 9 building (as defined under the Building Code of Australia), which includes all buildings other than a detached house or outbuilding. These amendments reflect current development application (DA) processes.

The fire safety provisions

The amendments to the Regulation remove requirements for a building fire safety report to be submitted with the CDC, as previously required under Clause 132A.

The fire safety provisions include:
1. An obligation for certifying authorities and principal certifying authorities to notify council of any ‘significant’ fire safety issue upon becoming aware of such an issue (see clauses 129D and 162D).
2. Clearer inspection obligations for certifying authorities prior to issuing a CDC or construction certificate (see clauses 129B (1A) and 143B (2)).
3. CDC development standards for changes of building use or internal alterations that reconfigure a building space that is occupied or will be occupied in the future (see clauses 131(2)(a1) and 132(2)).

1. Obligation to notify of existing ‘significant’ fire safety issues

A certifying authority or a principal certifying authority must notify the council in writing if, at any time during the course of their work, they become aware that the building has a ‘significant’ fire safety issue. If the certifying authority is the council, the council certifier must report the matter to the council.

This notification must:
- describe the issue, and the parts of the building affected by the issue; and
- be given to the council within 2 days of the certifying authority or principal certifying authority becoming aware of the issue.

The Department has prepared a template for this notification as an attachment to this guideline to assist certifiers and councils in implementing the notification requirements. Sufficient information should be provided by the certifier in the notification to allow the council to effectively fulfil its responsibilities. It is not sufficient to issue a generic notification which, for example, simply states that the entire building does not comply with the current version of the Building Code of Australia. Also, a generic notification does not satisfy the requirements of the Regulation.

The requirement to notify only arises where the certifying authority is actually aware of a significant fire safety issue. There is no obligation to undertake investigations that might lead to the discovery of such issues.

This obligation applies to a certifying authority who has received an application for a CDC or a Part 4A certificate relating to an existing building. It also applies to principal certifying authorities appointed in relation to building work that affects an existing building. Unlike the repealed clause 132A it applies regardless of the building’s age or development area.

Importantly, becoming aware of a ‘significant’ fire safety issue does not of itself prevent a CDC or Part 4A certificate from being issued, provided the written notice is given to the council.

Council to consider fire safety notifications

Upon receiving written notice from a certifying authority or principal certifying authority under clauses 129D and 162D of the Regulation, the council should consider the information contained within the notice and determine what action, if any, is required. Options include:
- The issue may not warrant action to be taken
- Issue a fire safety order that specifies how the significant issue must be addressed
• Issue a fire safety order that directs the owner to
  determine and specify how the significant issue will
  be addressed. This will result in a further fire safety
  order requiring that the agreed remedy be completed
  within a specified period of time.

**No obligation to notify council in some circumstances**

There is no obligation to notify the council if the
proposed building works authorised by the development
consent (including a CDC) or construction certificate will
address the issue, or if the issue is already being
addressed by a fire safety order or some other
development consent that applies to the building.

In this case, good practice would suggest that the
certifying authority or principal certifying authority
records the issue and indicates how it is being
addressed in their approval documentation.

**What is a significant fire safety issue?**

Use of the word ‘significant’ ensures that minor matters
do not need to be reported. For an issue to be
considered ‘significant’ it would have to be of a nature or
scale that, at least, would warrant a fire safety order
(order No.6 under section 121B of the EP&A Act) to be
issued to ensure adequate “provision for fire safety”.

"Provision for fire safety" is defined by the EP&A Act to
mean provision for any or all of the following:
  • safety of persons in the event of fire
  • prevention of fire
  • detection of fire
  • suppression of fire
  • prevention of the spread of fire.

Significant fire safety issues in existing buildings may be
influenced by:
  • The age of the building –building standards have
    changed over time, but a report does not have to be
    made just because an existing building does not
    comply with today’s standards. Only significant fire
    safety issues must be reported
  • The nature of its construction
  • Its configuration
  • How well the building is maintained
  • Whether the present use of the building is consistent
    with the building’s approved purpose.

Examples of issues that may be considered ‘significant’
for fire safety include:
  • Inadequate fire-resistance of building elements
  • Inadequate fire compartmentalisation
  • Multi-storey buildings with only a single exit, when
    two or more would be expected
  • Open stairways connecting multiple storeys when
    fire-isolated stairways would be expected
  • Buildings with obvious unauthorised and
    unacceptable modifications
  • Missing or damaged fire safety measures of
    significance
  • Obstructions to major escape routes
  • Obstructions to access or facilities for fire fighters
  • Excessive combustible materials
  • Overcrowding
  • Buildings with obvious unacceptable uses.

In all cases professional judgement must be used to
determine whether a fire safety issue is significant
having regard to the risks it presents if the issue is
allowed to persist without remediation.

It is also recommended that certifying authorities record
the reasons why they determined whether or not to
notify an issue to the council.

2. Clearer CDC/CC inspection obligations

Clauses 129B and 143B of the Regulation have also
been amended. These provisions require compulsory
inspection of the site by the certifying authority before
issuing a CDC or construction certificate. The provisions
have been amended to specify the minimum areas
which must be inspected when proposed development
affects an existing building. These are:
  • the part of the existing building affected by the
    proposed development, and
  • any escape routes from that part.

The escape routes will not need to be inspected if the
proposed development involves only external changes.

If the certifying authority becomes aware that the
existing building has a ‘significant’ fire safety issue
during this inspection, the matter must be reported
under clauses 129D or 162D (whichever is applicable).
Reporting is not required if the proposed development
will remedy the problem, or if the matter is already being
addressed by a fire safety order or another development
consent that applies to the building. These provisions
ensure that the obligation to identify and notify council of
any significant fire safety issues applies throughout the
duration of the project, until an occupation certificate is
issued.

3. CDC development standards

Clauses 131 and 132 of the Regulation set out
development standards for CDCs that involve:
  • a change of building use, or
  • an internal alteration to an existing building that
    reconfigures a building space that is occupied or
    will be occupied in the future.

The development standards require the building to
contain measures that are adequate, in the event of a
fire, so that the certifying authority is satisfied that the
existing building will allow people to safely exit the part
of the building affected by the development.

**Reconfiguration work**

Reconfiguration work may include the installation or
relocation of walls, partitions and floors. Reconfiguration
might extend the distance to an exit or otherwise reduce
the ability to safely exit the building.

It does not include:
• Reconfiguration of an existing building space that is not usually occupied, such as a roof space or a subfloor space
• Works to the exterior of an existing building
• Building work that does not reconfigure an existing building space, such as installing new wall linings; replacing doors; building repairs; retrofitting, extending or modifying an existing building service or system (for example, a fire sprinkler system or mechanical ventilation system).

Alterations to an existing building may involve a combination of these building works and may affect more than one part of an existing building. In these circumstances, only the parts of the existing building that will be reconfigured will need to address the new CDC development standards.

**Adequate measures to facilitate safe exit**

In determining whether there are or will be adequate measures to facilitate safe egress certifiers are reminded that they only need consider egress from the part of the existing building affected by the development – not egress for the whole building.

In assessing for compliance with this development standard consideration should be given to the physical means of escape from fire (e.g. paths of travel to exits, exits, public corridors, stairways, doorways and doors); as well as to other measures that contribute to safe escape e.g. early warning systems, smoke control systems and exit signs.

As a part of their assessment certifying authorities may have regard to expert reports, fire safety schedules and fire safety certificates or statements in addition to their inspections to assist them in determining whether there are or will be adequate measures.

An example of when an expert report may be used is to confirm the adequacy of egress from a building.

Certifying authorities should consider what additional information (if any) they will require to be submitted with the CDC/CC application in order to be able to determine whether the development standard is met.

Note - Adequate egress measures do not necessarily mean measures that comply with the current version of the Building Code of Australia. Several approaches could be applied to determine adequacy – including expert judgement, or other assessment against relevant BCA performance provisions.

Again, in all cases, it is strongly recommended that certifying authorities record the method used and the process undertaken to determine that this development standard has been satisfied.