

# 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 combustibile 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.