
Appendix one – Response from agencies

Response from Department of Customer Service



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Service**

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Office of the Secretary

Our reference: BN-01516-2022

Ms Margaret Crawford
Auditor-General for New South Wales
Audit Office of NSW
Level 19, 201 Sussex Street
Darling Park Tower 2
SYDNEY NSW 2000

Dear Ms Crawford

Thank you for your letter dated 7 March 2022 and for the opportunity to respond to your audit report *Building regulation – Combustible external cladding* ("the Report").

The Department of Customer Service (DCS) welcomes the opportunity to gain feedback from an independent review of the work of the Cladding Taskforce, chaired by DCS, to understand and maximise the benefits of the review and the lessons learned. DCS welcomes the close collaboration between the Audit Office and the auditees at every stage of the audit and has provided assistance, information and documents to inform the Audit Office's review.

On behalf of the Taskforce, DCS accepts the recommendations and will develop action plans to implement them.

The work of the Taskforce during and since June 2017 has been inherently challenging, as noted in the Report. The challenges of identifying affected buildings and products, along with planning and overseeing their clearance or rectification, have been substantial. It has included working closely with large numbers of owners, residents, consent authorities, other government agencies, and industry in the context of competing priorities and objectives over nearly five years. The work of the Taskforce emphasised collaboration with and support to the many diverse stakeholders with an interest and/or a responsibility to address the issues and potential risks of combustible cladding.

The Taskforce has operated in a complex and dynamic environment, particularly in the early stages, when governments and communities in Australia and internationally grappled with the impacts of the tragic Grenfell Tower fire. The Taskforce's commitment to managing the fire safety issues has never wavered. The Audit Office now has the benefit of conducting a retrospective review nearly five years later.

The Report notes the inherent challenges of the absence of a single, reliable data source to identify cladding-affected buildings. The Taskforce elected to have a high tolerance for receiving and managing all the available data sources. Throughout the time since 2017, the Taskforce has accepted the challenge of working with big, 'dirty' data from external sources. As the Report notes the ultimate success of that data management task has contributed towards the identifying and tracking all affected buildings.

The expertise and operational resources of Fire & Rescue NSW (FRNSW) has been invaluable to the work of the Taskforce. The low-risk appetite of FRNSW guided the Taskforce in making initial assessments and triaging the results.

In designing the response to this issue the NSW Government and the Taskforce relied on the extensive powers of the NSW planning legislation and system, and the critical role and expertise of local councils and other consent authorities within that framework.

In accepting the report's recommendations, DCS notes the following:

- The variations in the approaches taken by local councils is not solely a result of advice or guidance provided by the Taskforce. As independent entities, local councils determined their own methods, risk appetites and resourcing levels which were not under the control or direction of the Taskforce. This explains the variety of responses from councils as much as the availability of Taskforce 'guidance'.
- The Audit Office has made some findings relating to: the understanding of councils and some government agencies of the cladding product use ban; the provision of advice regarding the use of experts to advise on cladding identification and rectification; and the provision of guidance on assessment frameworks and methodologies. These findings are based in part on the absence of documentary evidence available to the Audit Office to demonstrate that such advice and guidance was available prior to mid-to-late 2019.

DCS re-states, as we did during the audit, that the Taskforce knows that advice and support was provided in numerous meetings, direct engagements and phone conversations with affected parties from July 2017 onwards. Nevertheless, the Taskforce will implement Recommendation 1 in the Report to address any remaining 'confusion' by October 2022, noting that it may not be practicable to complete action under that recommendation by that date as it is dependent on action by consent authorities and building owners.

- As was explained during the audit, the Taskforce is responsible for oversight, assessment, triaging, and rectification of all affected buildings. We do not agree that "DCS had no compliance or enforcement strategies or policies for the product use ban..." (p10), as management of banned cladding products formed part of the Taskforce's core work.
- Regarding FRNSW's risk assessment work and information exchange between Taskforce members and FRNSW and consent authorities, we are confident that building records have been exchanged iteratively and comprehensively between parties and continue to be.

The Taskforce seeks to continually make improvements in its approach to the management of buildings with combustible cladding and will commence work to implement the audit recommendations immediately, noting that work has already commenced on improving information systems. The Taskforce will continue to work collaboratively with building owners and consent authorities in implementing the recommendations.

I wish to thank you and your team for your work.

Yours sincerely



Emma Hogan
Secretary

Date: 05/04/22

Response from Department of Planning and Environment



Office of the Secretary

IRF22/388

Ms Margaret Crawford
Auditor General for NSW
GPO Box 12
SYDNEY NSW 2001

Via email: mail@audit.nsw.gov.au

Dear Ms Crawford

Thank you for referring the final report of the Audit Office performance audit on combustible external cladding and providing the opportunity for a formal response ahead of tabling the document.

I acknowledge the extensive efforts of your team in auditing this complex subject matter and the contribution that this report makes in ensuring the Government's response is adequate to manage the risk.

I also appreciate the finding the Department of Planning and Environment's process for assessing and overseeing the remediation process for buildings approved by the Minister for Planning was robust and applied consistently. The Department's compliance team invested considerable effort and resources to ensure that these buildings were appropriately managed and to demonstrate an appropriate response for local councils in meeting their regulatory responsibilities.

I note your report makes three recommendations for further action by the Department and the Department of Customer Service (DCS). Whilst the Department is responsible for maintaining the combustible cladding register and for action in relation to some buildings, the lead agency for further building safety reforms is now DCS. We will however work closely with DCS to ensure that the recommendations in the report are implemented.

In relation to the first recommendation regarding potential confusion of the Commissioner for Fair Trading's product use ban and its application to processes for building assessment to date, the Department will be led by DCS and the Cladding Taskforce findings as the lead agencies. The Department will assist, particularly in communicating any new or additional requirements or enhanced information or guidance to councils for implementation, NSW government agencies and other relevant stakeholders through the development assessment process.

I note that recommendation 2 requires the Cladding Taskforce to develop an action plan to address buildings with combustible cladding that were previously identified as low risk. I understand that the Taskforce is led by DCS staff and therefore DCS staff

will be the key responsibility for delivery of this action, but the Department will assist with policy considerations where appropriate.

Recommendation 3 requires an improvement to the information systems to ensure complete and accurate information of affected buildings. I am confident the Department's information management system is very comprehensive and does record the complete history of the process of identification, assessment and remediation in relation to buildings for which we have responsibility in the assessment process. However, I do acknowledge some inconsistencies with other information management systems used by local councils and the Cladding Taskforce. The Department will work with the Cladding Taskforce to bring together the various separate databases and develop a comprehensive and consistent solution to information management.

Overall, I accept the recommendations made in the report, but I am concerned the timeframe provided for completion of each recommendation is insufficient. Instead, I consider that a minimum of 12 months (from the date the report is tabled) will be required to enable the extensive analysis and consultation with agencies, Fire Rescue NSW and affected councils to be undertaken in order to determine and complete any necessary further action.

If you have any more questions, please contact Ms Kristy Chan, Director Regulatory Reform, at the Department.

Yours sincerely



Mick Cassel
Secretary

Response from Newcastle City Council

Governance D Clarke / M Bisson
Reference: PB2022/0231



05 April 2022

Auditor General for New South
Wales Margaret Crawford
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford

PERFORMANCE AUDIT – BUILDING REGULATION – COMBUSTIBLE EXTERNAL CLADDING YOUR REF D2203518/PA6694

Thank you for your letter dated 7 March 2022, regarding the above matter, and for the opportunity to formally respond to the audit report.

City of Newcastle (CN) appreciated being a stakeholder in the performance audit process on how effectively the State Government Departments of Planning & Environment and Customer Service have led reforms to manage fire safety risks associated with external combustible cladding.

As highlighted in the draft report, delays in providing clear guidance and advice from the State to councils, on how to appropriately manage this issue, are evident. While not a strong focus of the audit, it is notable that, despite an Act being made, with specific powers for councils to order cladding rectification (i.e., the *Building Products (Safety) Act 2017*), the State promotes the use of more general fire safety powers under the *Environmental Planning and Assessment Act 1979* for cladding rectification. Such anomalies are difficult to rationalise.

A significant challenge for councils, including CN, has been how to effectively manage additional responsibilities of combustible cladding auditing and regulatory enforcement, with limited staffing resources or funding to achieve the aims of such a complex program.

It is now over 4.5 years since the State released its 10-point plan of action for the management of potential fire safety risks associated with combustible external cladding.

While CN appreciates that the State is looking at providing limited council funding support, only when building owners choose to be involved with the 'project remediate' program, this contribution can be seen as too little, too late to be effective in assisting councils to manage an issue that has been created by the building standards and building certification processes adopted by State and Federal governments.

CN will continue to work with building owners to ensure that external combustible cladding remediation works are completed, however, it is envisaged that these processes will take years and significant resources to implement.

It is hoped that the release of the final audit results will result in further improvements at a State Government level, more resources for local councils and provide further clarification of key issues relevant to the ongoing management of this important issue.

Should you require any further information please contact Michelle Bisson,
Manager Regulatory, Planning and Assessment.

Yours faithfully

A handwritten signature in black ink, appearing to read 'JB' or similar, with a stylized flourish at the end.

Jeremy Bath
CHIEF EXECUTIVE OFFICER

Response from Cumberland City Council



6 April 2022

Contact **Charlie Ayoub**

Ms Margaret Crawford
Auditor-General for New South Wales

Dear Ms Crawford

RESPONSE TO LETTER – PERFORMANCE AUDIT – BUILDING REGULATION – COMBUSTIBLE EXTERNAL CLADDING

Thank you for your correspondence dated 7 March 2022, in relation to the NSW Audit Office Performance Audit Report – Combustible External Cladding.

Council found the performance audit engagement and overall process to be a valuable process. Following the incidents of the Grenfell Tower building fire, the issue around building cladding became a highly discussed agenda item at Council's Audit, Risk and Improvement Committee, with multiple reports considered with regard to standards of compliance, insurance implications and also Council's Facilities with potential fire prone cladding. Multiple reports were presented to the Committee in 2017-2018 period detailing the issue and potential controls Council could put into place. The elected Council were also duly briefed on this key matter at the time.

Council officers subsequently identified the potential high risk buildings across the Local Government Area, in accordance with NSW Government Directives.

Separately to this, I briefed the elected Council on the heavily impacted Auburn Council Administration building, and released a tender process to rectify the fire prone cladding on the building. Council subsequently resolved to award a tender to have all the cladding on Councils Administration Building in Auburn to be replaced, and this occurred in 2020 at a considerable cost to Council.

I welcome the findings and recommendations of the Audit, noting that I am strongly of the view that more should be done to clarify the certification process of new cladding.

I thank you once again for selecting Council as a participant of this performance audit, and I look forward to our continued relationship with the NSW Audit Office.

Yours faithfully,


Peter J Fitzgerald
GENERAL MANAGER

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Welcome *Belong* Succeed

Response from City of Canterbury Bankstown



21 March 2022

Ref: CREQ-1247485829-382
Please reference in all correspondence

Ms Margaret Crawford
Auditor-General for New South Wales
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford

Thank you for your letter of 7 March 2022 regarding the final report for the performance audit on Building regulation – Combustible external cladding for which Canterbury Bankstown City Council (CBCity) was an auditee.

Combustible cladding installed on buildings in our local government area and more broadly throughout New South Wales poses a significant risk to the occupants of those buildings and is rightly required to be addressed. I am pleased to say that CBCity has been vocal in its support for a coordinated approach to addressing this important issue. In addition, CBCity has also sought to ensure that building owners do not face undue hardship when faced with rectification works and, in this regard, our Council previously called on the New South Wales Government to provide financial assistance to affected residents in the form of government administered interest free loans, payment plans and other forms of assistance where required.

CBCity has long held the view that better coordination, guidance, and appropriate resourcing should have been provided to Councils from the NSW Government and has advocated for this since 2017. The Audit report confirms that better coordination and guidance from the NSW Government was initially lacking from the Government agencies responsible for managing the process and that it was not until during 2019 and 2020, some two years after the release of the Government's action plan that this was addressed.

CBCity strongly supports the recommendations outlined in Part 2 of the audit report which will improve the management and rectification of cladding affected buildings in New South Wales. We acknowledge and appreciate a focus on suggestions in the report aimed at ensuring that the Department of Customer Service and the Department of Planning and Environment create a more simplified, consistent, holistic, and reasonable approach to managing low risk buildings and rectifying cladding affected buildings for relevant stakeholders. With consideration to recommendations 1(a) and 1(b), it is important to recognise the need to offer guidance and support to affected Councils surrounding expectations to ensure a consistent approach to undertaking risk assessments for affected buildings.

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Challenges associated with building risk assessment remain ongoing. CBCity remains of the opinion that the current approach to Risk assessment is opinion based and this has inherent risks for inconsistencies in approach. For example, in some instances it has been identified that when presented with the same scenario, different engineers/certifiers have considered a given building to have a different risk rating, where risk rating is the key identifier of the risk assessment of the building, whether the building is occupiable or not. CBCity also advises that there remains uncertainty surrounding 'acceptable risk' during risk assessment and we have not received any documentation to date to clarify/verify acceptable risk assessment scenarios. There would be benefit in the formulation of a guideline associated with the risk assessment method for engineers and certifiers which can be relied upon to increase consistency in approach.

Diversity in opinions may also be formed by a third party undertaking an independent peer review, resulting in confusion for building owners and Council officers. In this regard, it is suggested that there would be benefit in the creation of guidelines for the undertaking of third-party independent peer reviews as well as guidance as to whether such reviews would be mandated. If peer reviews were to be a requirement, the cost to Councils in obtaining peer reviews should be further considered.

Lastly, CBCity is concerned that the current approach considers residential class buildings only. Implementation of an approach that considers other classes of buildings is required, including documentation surrounding those buildings classified as low risk buildings to ensure the safety of the broader community.

We look forward to the implementation of the report's recommendations and thank you for the opportunity to contribute to this important process.

Yours sincerely



Ken Manoski

ACTING GENERAL MANAGER

Response from City of Sydney Council



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11 April 2022

Our Ref: 2021/506378-08
File No: S125487.061:

Ms Margaret Crawford
Auditor-General for NSW
Audit Office of NSW

Dear Ms Crawford,

Performance Audit – Building Regulation – Combustible Cladding (Ref D2124782)

I refer to your correspondence to the City of Sydney dated 7 March 2022 advising that the NSW Audit Office had completed the audit and thank you for providing a copy of the final report.

The City notes the findings which focuses on how effectively the Department of Planning and Environment and Department of Customer Service have led the reforms to manage the fire safety risk of combustible external cladding on existing residential and public buildings.

Of particular interest to the City is the reference to Project Remediate on page 18 of the final report:

While Project Remediate is relevant background to the audit, its performance is out of scope as no work had commenced on approved buildings during the audit. However, its instigation may have had a delaying effect on apartment owners committing to undertake cladding remediation.

I can confirm that the City is experiencing compliance delays with a number of cladding remediation projects. The City has 18 projects where remove and replace Orders have either expired (in some case more than 17 months) or are in a non-compliant state (failed to meet compliance requirements). This is due to building owners expressing an interest in aligning themselves with Project Remediate.

Consequently, in associating with Project Remediate, owners' corporations cannot initiate any construction work, as this may prejudice future contractual agreements.

The City is yet to be made aware of any owners' corporation that has entered into a full remediation contract with Project Remediate.

In these circumstances the City requires owners put into place interim fire safety measures to mitigate fire risks whilst Project Remediate scheduling and administrative agreements are developed, however flammable cladding remains on the building for a longer period than would otherwise be the case.

Green, Global, Connected.

The City is requesting that Government accelerate this Project Remediate program having regard to premises that are subject to Council fire safety orders which have expired or in the process of expiring.

Should you wish to speak with a Council officer about this response, please contact Andrew Thomas, Executive Manager Planning and Development.

Yours sincerely

A handwritten signature in black ink that reads "P. M. Barone". The signature is written in a cursive, flowing style.

Monica Barone
Chief Executive Officer