



PERFORMANCE AUDIT

13 APRIL 2022

Building regulation: combustible external cladding

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

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In accordance with section 38E of the *Government Sector Audit Act 1983*, I present a report titled '**Building regulation: combustible external cladding**'.

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford
Auditor-General for New South Wales
13 April 2022

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RECONCILIATION COMMITMENT STATEMENT

The Audit Office of New South Wales pay our respect and recognise Aboriginal people as the traditional custodians of the land in NSW.

We recognise that Aboriginal people, as custodians, have a spiritual, social and cultural connection with their lands and waters, and have made and continue to make a rich, unique and lasting contribution to the State. We are committed to continue learning about Aboriginal and Torres Strait Islander peoples' history and culture.

We honour and thank the traditional owners of the land on which our office is located, the Gadigal people of the Eora nation, and the traditional owners of the lands on which our staff live and work. We pay our respects to their Elders past and present, and to the next generation of leaders.

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Section one

Building regulation:
combustible external
cladding

Executive summary

NSW Government's response to the risks posed by combustible external cladding

The NSW Government first became aware of the potential heightened risks posed by combustible external cladding on building exteriors after the 2014 Lacrosse Tower fire in Melbourne. However, it was the tragic loss of life from the Grenfell Tower fire in London, in June 2017, that gave added urgency to the need to address these risks.

Within six weeks of the London fire, the NSW Government committed to a ten-point plan of action for NSW to:

- identify and remediate any buildings with combustible external cladding
- ensure that regulation prevented the unsafe use of such cladding
- ensure that experts involved in providing advice and certifying fire safety measures had the necessary skills and experience.

One of the actions in the ten-point plan was the creation of the NSW Government's Fire Safety and External Wall Cladding Taskforce (the Cladding Taskforce) chaired by the Department of Customer Service (DCS) and with the Department of Planning and Environment (DPE) as a key member.

The ten-point plan also specified that NSW Government departments would be responsible, in regard to buildings they owned to '...audit their buildings and determine if they have aluminium cladding'.

Local councils play a key role in implementing the Government's reforms, given their responsibilities and powers under the *Environmental Planning and Assessment Act 1979* (EPA Act) and *Local Government Act 1993* (Local Government Act) to approve building works (as 'consent authorities'), as well as to ensure fire safety standards are met. DPE plays an equivalent role for a smaller number of 'State Significant Developments' for which it is the consent authority under delegation from the Minister for Planning.

Commissioner for Fair Trading's building product use ban

On 18 December 2017, the *Building Products (Safety) Act 2017* (BPS Act) came into effect in NSW, introducing new laws to prevent the use of unsafe building products. Notably, the BPS Act gave the Secretary of DCS and the Commissioner for Fair Trading the power to ban unsafe uses of building products.

After an extensive consultative process, the Commissioner for Fair Trading used these powers to issue a product use ban on 15 August 2018. This banned the use of external wall cladding of aluminium composite panels with a core comprised of more than 30 per cent polyethylene by mass on new buildings, unless the proposed use was subject to independent fire propagation testing of the specific product and method of application to a building in accordance with relevant Australian Standards.

Buildings occupied before the product use ban came into force are not automatically required to have the banned product removed. Under the BPS Act, consent authorities may determine necessary actions to eliminate or minimise the risk posed by the banned material on existing buildings.

Project Remediate

Project Remediate is a three-year NSW Government program announced in November 2020. The program was designed by the NSW Government to assist building owners of multi-storey apartments (two storeys or more) with high-risk combustible cladding to remediate their building to a high standard and for a fair price.

The scheme is voluntary and includes government paying for the interest on ten-year loans, as well as incorporating assurance and project management services to provide technical and practical support to owners' corporations and strata managing agents. Building remediations under the program are expected to commence in 2022.

About this audit

This audit assessed whether DCS and DPE effectively led reforms to manage the fire safety risk of combustible external cladding on existing residential and public buildings.

In making this assessment, we considered whether the expressed policy intent of the NSW Government's ten-point plan for fire safety reform had been achieved by asking:

- are the fire safety risks of combustible external cladding on existing buildings identified and remediated?
- is there a comprehensive building product safety scheme that prevents the dangerous use of combustible external cladding products on existing buildings?
- is fire safety certification for combustible external cladding on existing buildings carried out impartially, ethically and in the public interest by qualified experts?

Consistent with the focus of the Cladding Taskforce on multi-storey residential buildings and public buildings, the scope of our audit is limited to buildings categorised under the Building Code of Australia (BCA) as class 2, 3 and 9. These classes are defined in detail in section 1.2, but include: multi-unit residential apartments, hotels, motels, hostels, back-packers, and buildings of a public nature, including health care buildings, schools, and aged care buildings. The scope was also limited to existing buildings, which is defined as buildings occupied by 22 October 2018.

Auditees

The Department of Customer Service chairs the NSW Government's Cladding Taskforce, which is responsible for coordinating the combustible external cladding reforms. The Commissioner of Fair Trading sits within DCS and DCS regulates the industry accreditation scheme for fire safety practitioners, as well as administering the BPS Act.

The Department of Planning and Environment administers the EPA Act and the *Environmental Planning and Assessment Regulation 2000* (EPA Regulation), which regulate the building development process. As well as being the delegated consent authority for State Significant Developments, DPE is also responsible for maintaining the mandatory cladding register requiring building owners of multi-storey (BCA class 2, 3 or 9) buildings to register buildings with combustible external cladding on an online portal.

Functions and responsibilities between DCS and DPE varied over time. For example, in October 2019, the DPE building policy team responsible for co-ordinating the DPE response to the combustible cladding issue was transferred to DCS, following changes to agency responsibilities resulting from machinery of government changes. DPE advised this resulted in a lessening of DPE's subsequent policy work on combustible cladding and its involvement in the Cladding Taskforce.

While the focus of the audit was on the oversight and coordination provided by DCS and DPE, nine councils were also auditees for this performance audit. Councils play an essential part as consent authorities for building development approvals in NSW, as well as having responsibilities and powers to ensure fire safety standards. To fully understand how well their activities were overseen and coordinated, a sample of councils was included as auditees.

Nine councils were selected to represent both metropolitan and regional areas, noting that there are very few in-scope buildings in rural areas. The audited councils were:

- Bayside Council
- City of Canterbury Bankstown Council
- Cumberland City Council
- Liverpool City Council
- City of Newcastle Council
- City of Parramatta Council
- City of Ryde Council
- City of Sydney Council
- Wollongong City Council.

Terminology

The two NSW Government department auditees have, over time, been subject to machinery of government changes, which have changed some of their functions and what the departments are called.

Relevant to this audit, the effect of these changes has been:

- the Department of Finance, Services, and Innovation (DFSI) became the Department of Customer Services (DCS) on 1 July 2019
- on 1 July 2019, the Department of Planning and Environment became the Department of Planning, Industry, and Environment (DPIE)
- on 21 December 2021, DPIE became the Department of Planning and Environment (DPE).

To avoid confusion, we use the titles by which these departments are known at the date of this report: the Department of Customer Service and the Department of Planning and Environment.

Conclusion

At July 2017, immediately after the Grenfell Tower fire, there was no reliable source to identify buildings that may have had combustible external cladding. However, it is now likely that most high-risk buildings have been identified.

Following the 2014 Lacrosse Tower fire in Melbourne, the NSW Government recognised that there was a need to be able to identify buildings in NSW that could have combustible external cladding.

The process of identifying buildings that could have combustible external cladding has been complex, resource-intensive, and inefficient principally due to the lack of centralised and coordinated building records in NSW. In total, approximately 1,200 BCA class 2, 3 and 9 buildings have been brought to the attention of councils by either Fire and Rescue NSW (FRNSW), the Cladding Taskforce, or through councils' own inspection for possible further action. In addition, approximately 2,000 more buildings were inspected by FRNSW but not referred to local councils because they either had no combustible external cladding or had combustible external cladding not assessed as being high-risk.

A multi-pronged approach to identifying buildings has been used by the DCS and DPE, through the Cladding Taskforce. While it is impossible to know the full scope of potentially affected buildings, the approach appears thorough in having identified most relevant buildings.

The process of clearing buildings with combustible external cladding has been inconsistent.

In the more than four years since the NSW Government's ten-point plan was announced, around 40 per cent of the buildings brought to the attention of councils have been cleared by either rectification or being found not to pose an unacceptable fire risk. Also, around 50 per cent of NSW Government-owned buildings identified with combustible external cladding and almost 90 per cent of identified buildings for which DPE is consent authority have been cleared or remediation is underway.

While DCS and DPE did seek to work cooperatively with councils and provided high-level guidance on the NSW Government's fire safety reforms, it took until September 2019 before a model process and other detailed advice was provided to councils to encourage consistent processes. DCS and DPE advice to councils and NSW Government-building owners should have been more timely on two key issues:

- the use of experts in the process of assessing and remediating existing buildings, and
- the implementation of the product use ban on aluminium composite panels with polyethylene content 30 per cent or greater.

Clarifying the application of the product use ban may require consent authorities and building owners to revisit how some buildings have been cleared.

The management of buildings assessed as low-risk by FRNSW, estimated to be over 500, has not been a priority of the Cladding Taskforce to date, despite those buildings potentially posing unacceptable fire risks.

Information management by the Cladding Taskforce is inadequate to provide a high-level of assurance that all known affected buildings have been given proper attention.

While most high-risk buildings have likely been identified, information management is not sufficiently robust to reliably track all buildings through the process from identification, through to risk assessment and, where necessary, remediation.

Reforms to certifier registration schemes are limited to new buildings and do not apply to the existing buildings covered by this audit.

While reforms are limited in application to new buildings, some consent authorities took steps to obtain greater assurance on the quality of the work done by fire safety experts regarding combustible external cladding on existing buildings. For example, by requiring fire safety experts to be appropriately qualified and requiring peer review of cladding risk assessments and proposed remediation plans.

1. Key findings

Immediately after the Grenfell Tower fire in June 2017, there was no existing reliable source to identify buildings that might have combustible external cladding

Following the Lacrosse Tower fire in Melbourne in 2014, the NSW Government had undertaken some actions to respond to the recognised fire risk of combustible external cladding.

This had included exploratory work initiated by the DCS and DPE to identify buildings, particularly residential buildings, that could have combustible cladding using the Data Analytics Centre. This work proved largely unsuccessful, primarily because buildings records often lacked the necessary information and were held disparately by each local council across the State.

In the absence of a reliable data source to identify the scope of at-risk buildings, the NSW Government's focus continued to be on encouraging councils and the building sector to risk assess existing building stock and understand the steps that could be taken to reduce the risks in the construction of new buildings.

This meant that immediately after the Grenfell Tower fire, there was no existing list of buildings identified as possibly having combustible external cladding in NSW.

The rate at which more buildings are being added to the cladding register is falling, suggesting the number remaining to be added has gradually reduced

After the Grenfell Tower fire in London, in 2017, the Cladding Taskforce renewed efforts to identify buildings that might have combustible external cladding, with a multi-pronged approach being adopted, that included:

- data analytics of historical building records sourced from the private sector
- local inspections and reporting by councils and FRNSW
- use of other NSW Government records, including from DPE and the Office of State Revenue
- from late 2018, a mandatory register of buildings with combustible cladding on to which building owners were required to add their own buildings.

In total, this resulted in 4,101 buildings being inspected by FRNSW by 18 October 2019, of which 2,489 were assessed as completed BCA class 2, 3 and 9 buildings, with 563 of these subsequently referred to councils for further investigation as potentially high-risk. A further 536 BCA class 2, 3 and 9 buildings were assessed as having combustible external cladding that posed a low-risk, with 1,390 having no aluminium composite cladding.

This was a complex and time-consuming process, given the absence of more convenient alternatives and the need to integrate and match data from so many different sources. Some identified buildings appear on more than one list (for example, if they were identified through the data analytics but also registered by their owners).

On balance, it seems likely that this multi-pronged and multi-source approach has resulted in the identification of most—though probably not all—BCA designated class 2, 3 and 9 buildings with combustible external cladding. In this regard, we note that:

- inquiries about alternative sources of data for data analytics work have failed to result in new sources of information that could be used to identify additional buildings
- almost all of the nine councils included in the audit expressed confidence that their local inspections had captured all relevant buildings in their area
- the rate at which more buildings are added to the mandatory cladding register has progressively fallen — since the mandatory register was nominally closed for existing buildings in February 2019, the number of buildings added to the mandatory register by their owners has fallen from an average of 26 per month in each month from March 2019 to the end of 2019 down to:
 - 4.5 per month in 2020
 - 2.5 per month in 2021.

DCS and DPE endeavoured to oversee and coordinate local councils' remediation activity

DCS and DPE, through the Cladding Taskforce, sought to establish a cooperative approach with local councils, where the focus was on encouraging and empowering councils to use the powers available to them under the EPA Act and *Local Government Act 1993* to remediate combustible external cladding.

Under this cooperative approach, DCS and DPE provided high-level support to councils in explaining the NSW Government's ten-point action plan and highlighting the role that councils were expected to play.

In instances where DCS and DPE found that councils were unresponsive in meeting their obligations, a firmer approach was adopted that recognised the regulatory role played by DPE through the Office of Local Government. This included writing to councils that failed to action referrals from FRNSW in a timely manner.

Councils required earlier guidance and advice to encourage consistent processes

In response to requests from councils for greater advice on their implementation of the NSW Government's fire safety reforms, DCS and DPE produced useful materials in the form of a guide, model processes, template fire safety orders, and specific FAQs. This material was not released to most councils until various times between September 2019 and July 2020¹, more than two years after the Grenfell Tower fire in London and the release of the NSW Government's action plan.

There were two critical areas where earlier intervention and specific guidance from the Cladding Taskforce would have helped avoid inconsistency and weaknesses in the different processes adopted by the nine councils included in this audit. These were:

- whether the councils required building owners to engage appropriately qualified experts in the combustible cladding assessment and remediation process, including whether they required building owners to engage expert peer-review of proposals to retain combustible external cladding on buildings
- how the councils interpreted the Commissioner of Fair Trading's product use ban of August 2018, especially the application of the threshold of 30 per cent polyethylene in the core of aluminium composite panels (ACP).

In the more than four years since the NSW Government's ten-point plan was announced, around 40 per cent of the approximately 1,200 buildings potentially with combustible external cladding brought to the attention of councils have been cleared by either rectification or being found not to pose an unacceptable fire risk. Also, around 50 per cent of 66 NSW Government-owned buildings with combustible external cladding and almost 90 per cent of 137 buildings with combustible external cladding with DPE as consent authority have been cleared or remediation is underway.

NSW Government departments were inconsistent in their management of buildings that they owned

The NSW Government's ten-point plan following the Grenfell building fire in London made government departments responsible for 'auditing their own buildings and determine if they have aluminium cladding'. However, DCS and DPE, through the Cladding Taskforce, retained a responsibility to oversee and coordinate this work, including requiring regular reporting from departments to maintain a whole-of-government overview of progress.

In line with its primary focus on privately owned residential buildings, the Cladding Taskforce took a relatively hands-off approach to this oversight and coordination, based on its view that government departments would generally have qualified property managers, and an approach consistent with its initial brief to focus on 'identification of risks to the general public and private building owners'. However, based on a sample of departments to which we spoke, this resulted in inconsistencies similar to, and perhaps even more divergent, than we found for council processes in regard to the use of independent experts, and the application on existing buildings of the 30 per cent polyethylene threshold criteria in the product use ban.

¹ Some guidance was provided to five councils in December 2017

We note that the Cladding Taskforce has, from around August 2021, pivoted to focus on NSW Government-owned buildings on the basis that most privately owned residential apartment buildings yet to be remediated are expected to move under the Project Remediate scheme.

DPE's process for assessing and remediating buildings for which it was the consent authority offered strong assurance that the risk of combustible cladding was being adequately addressed

DPE had a robust process for assessing and remediating those buildings for which it was the consent authority, and this process was followed consistently.

This included requiring building owners to employ multiple levels of risk assessment and mitigation, through the use of independent accredited experts who were subject to peer review, and external review commissioned by DPE. This is important in an area like fire safety, where the assessment of risk, and decisions about how to manage that risk, relies on expertise and professional judgement.

Information management has been inadequate to provide a high-level of assurance that all known affected buildings have been given proper attention

While most high-risk buildings have likely been identified, information management is still not sufficiently robust to reliably track all buildings through the process from identification, through to risk assessment and, where necessary, remediation.

The use of multiple sources by the Cladding Taskforce to identify potentially at-risk buildings, resulted in multiple sources of data that needed to be exhaustively integrated by the Cladding Taskforce. Factors such as multiple or alternative addresses for the same property, different spellings, or incorrectly identified council areas add to the complexity of cleaning and reconciling the content of the sources into a high-quality single source of truth.

While the Cladding Taskforce was diligent in its efforts to track buildings individually, the size of the task, the number of contributing stakeholders, and the inherent difficulty in data matching across sources would have benefitted from greater initial investment in information management systems by DCS. The Cladding Taskforce secretariat has recognised some of these information management limitations and initial work has been undertaken to address them.

There is no process by the Cladding Taskforce for clearing buildings other than those in the high-risk category

A large number of buildings were subject to initial assessment by FRNSW as 'low-risk'. This means that they have combustible external cladding on their exteriors, though not of a type, amount, arrangement and location to increase the risk of fire spread on buildings. Only buildings assessed as high-risk by FRNSW are referred to local councils — local councils are not told about buildings that have combustible external cladding assessed as low-risk (nor that these buildings have been assessed).

However, any level of combustible external cladding poses a residual risk to buildings, and some further action may be warranted, subject to appropriate risk assessment and taking into account a proper balance of cost versus risk and benefit. There is no forward plan for any action by DCS and DPE on these buildings.

The application of the product use ban for ACP with 30 per cent polyethylene content to existing buildings has caused confusion

The application of the ban to ACP cladding on existing buildings has caused confusion, in that some stakeholders believe that it establishes a mandatory, singular criteria for determining whether cladding should be removed from existing buildings, when it does not. This confusion was also the source of the partially inconsistent practices described above between councils as consent authorities or between government departments with NSW Government-owned buildings.

Depending on the assessed fire risk of an individual building, a council or government department could decide to allow cladding with more than 30 per cent polyethylene (sometimes called 'PE') in its core, or alternatively to require remediation of cladding with less than 30 per cent polyethylene. We found evidence of this confusion among council staff and other stakeholders, such as building and strata managers.

While some guidance was released by DCS when the product use ban was made, it was of a general nature, high-level and did not address this key issue. Comprehensive guidance to councils on this matter was not provided by the Cladding Taskforce until September 2019, with subsequent guidance released through to July 2020.

There are no compliance or enforcement strategies or policies for the product use ban

There is substantial evidence from the Grenfell Tower and Lacrosse Tower experiences to highlight the importance of effective compliance – through both education and enforcement – in building regulatory schemes.

We found DCS had no compliance or enforcement strategies or policies for the product use ban. Moreover, communication of the ban by DCS was not underpinned by a documented communications strategy or plan. This is despite the importance of the product use ban to meeting the NSW Government's commitment in its ten-point plan to 'ensure there is a comprehensive building product safety scheme that prevents the dangerous use of combustible external cladding products'. It is also despite the substantial penalties for non-compliance.

Responsibility for compliance and communication of the ban rests in the same policy area of DCS that made the instrument, rather than in specialist areas of DCS. DCS will need to monitor the allocation of responsibilities for compliance and communications to ensure a performance gap does not emerge.

Inspections of existing buildings and development of any subsequent action plans to address combustible external cladding are not activities covered by accreditation or registration schemes for building certifiers

Inspections, risk assessments and action plans for most of the buildings in the scope of this audit have been undertaken under fire safety orders issued by consent authorities to building owners using their powers under the EPA Act. This has been the recommended approach by DPE and DCS since at least 2016 (that is, before the Grenfell Tower fire).

This approach also recommended that consent authorities require building owners to engage independent experts to conduct building inspections, and to develop action plans if combustible cladding was identified for approval of the consent authority.

For consent authorities to have comfort that the experts engaged by owners have adequate expertise, the recommended fire safety orders listed that the experts be accredited or registered in certain categories relevant to fire safety under the DCS operated schemes for accrediting or registering certifiers in the building industry. However, in providing their expert services, these persons were not doing so under their registration or accreditation functions, but as consultants to the building owner.

While there have been reforms to certifier registration schemes, these have not been intended to ensure that combustible cladding-remediation on existing buildings is supported by people with the necessary skills and experience in fire safety under the fire safety order process. Instead, they are focused on offering better assurance for new building projects.

2. Recommendations

By October 2022, the Department of Customer Service and the Department of Planning and Environment should:

1. address the confusion surrounding the application of the Commissioner for Fair Trading's product use ban for aluminium composite panels with polyethylene content greater than 30 per cent, by ensuring that councils and NSW Government departments have risk assessments conducted for existing buildings with combustible external cladding that:
 - a) are holistic in nature and relevant to the particular circumstances of each specific building
 - b) include consideration of the type, location, arrangement, installation method and amount of combustible external cladding installed on the subject building.
2. ensure that the NSW Government Cladding Taskforce develops an action plan, taking into account an assessment of cost versus benefit and risk, to address buildings with combustible external cladding assessed by Fire and Rescue NSW as low-risk.

By December 2022, the Department of Customer Service and Department of Planning and Environment should:

3. improve information systems to ensure there is an accurate, timely and complete history of how buildings with combustible external cladding have been identified, assessed and (where necessary) remediated.

1. Introduction

1.1 Combustible external cladding and building fires

Grenfell Tower fire

On 14 June 2017, an electrical fault in a refrigerator ignited a fire in a flat in the Grenfell Tower social housing apartment block in London. The building was constructed of reinforced concrete, to which aluminium composite panels had been attached to act as rainscreen for insulation panels. The aluminium composite panels contained a polyethylene core.

As noted in the subsequent public inquiry report:

Kitchen fires are not uncommon and in terms of its origin and magnitude this one was nothing out of the ordinary.

However, the fire escaped from the kitchen onto the external surface of the building, spreading from its starting point on the fourth floor to the top of the 23-storey building. The principal reason for the rapid spread of the fire was the polyethylene core of the aluminium cladding, which provided a source of fuel for the fire. Melting and dripping polyethylene ignited fires lower down the building, which then travelled vertically, eventually to cover each face of the tower.

Seventy people died as a result of the fire.

Lacrosse Tower fire

On 24 November 2014, almost three years before the Grenfell Tower fire, a fire was ignited by a cigarette butt disposed of in a plastic coffee cup on an 8th storey balcony of the Lacrosse Tower in Melbourne.

Within approximately 11 minutes, the fire spread vertically via the building's cladding to the top of the 21-storey building, as well as spreading to lower balconies. Unlike the London fire, there were no fatalities, though over 400 people were forced to evacuate.

The Metropolitan Fire and Emergency Services Board found that the use of aluminium composite panels cladding was a contributing factor to the rapid vertical spread of the fire.

In March 2019, the Victorian Civil and Administrative Tribunal determined that the builder, architects and consultants of the Lacrosse Tower were liable to pay \$12.5 million in compensation to the building owners. This was on the grounds that the use of the cladding had been non-compliant with applicable building standards at the time in the Building Code of Australia (BCA).

Other fires have been reported around the world as being related to combustible external cladding, including in the US, France, New Zealand, Sharjah, Russia, Italy, South Korea, Malaysia, and several in Dubai (including two fires in the 'Torch Tower').

1.2 What is combustible cladding

Cladding is a type of building material that can be used on the outside of a building. It may be used for various reasons, like to manage temperature, wind or rain, or for cosmetic purposes. There are many different types of cladding, though some are made of combustible material that burns quickly if ignited. Because the material can melt at relatively low temperatures, it can drip and spread fire to lower levels of a building or fall off and ignite surrounding areas. These types of cladding are broadly known as combustible external cladding.

The presence of combustible external cladding on a building however does not necessarily mean the building is unsafe in terms of fire safety. Its type, location, amount, arrangement, and the use of other fire safety measures such as sprinklers all can impact on the overall fire safety status of a building.

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

This performance audit is primarily focused on ACP, which has been most commonly associated with many of the building fires described above.

ACP is typically between three and six millimetres thick, with two thin layers of aluminium sheet bonded to a material core, typically polyethylene. It is mostly manufactured overseas and imported into Australia.

ACP with 100 per cent polyethylene in its core, or with varying amounts of mineral filler, began to be used for external wall cladding in Australia in the 1980s. Benefits of this cladding include its ability to stop wind and rain entering a building, as well as providing sound and thermal insulation in a relatively cost-effective way. The fire risks of ACP began to be recognised in Australia '... not long after sales began to accelerate in the late 1990s'.

Polyethylene is highly combustible, hence even a small amount of polyethylene core in ACP, depending on where the ACP is located on a building, may pose a serious fire safety risk. Depending on how much mineral filler is included in the material, the percentage of ACP core that is polyethylene can vary from 0 to 100 per cent. Reliably determining the percentage of polyethylene by mass in an ACP core requires invasive sampling of the product.

Regulation of ACP on existing buildings

The BCA is part of the National Construction Code (NCC). The BCA has been adopted as a national construction standard under NSW planning and building legislation, and it contains specific provisions for the construction of external walls and the use of cladding.

The BCA draws a distinction between material that forms an external wall and material that is ancillary to an external wall. For certain buildings, the BCA also requires external walls to be non-combustible. Specified combustible materials or ancillary elements may be incorporated in or attached to these external walls subject to certain limitations:

In Australia, ACP was up until changes to the BCA in 2018 often interpreted as being an attachment to an external wall. Combustible attachments were able to be used as a finish or lining to a wall or roof, subject to compliance with certain criteria, including that the attachment:

- is not located near or directly above a required exit
- does not otherwise constitute an undue risk of fire spread via the façade of the building.

Hence, any risk assessment would require expert judgement by a suitably qualified person, particularly to determine if the cladding poses an 'undue risk of fire spread' via the building's façade.

In March 2018, the BCA amendment was adopted by NSW. This clarified the provisions relating to external walls. The amendment reinforced that an external wall included all components that are integral to the construction of the wall. This includes the various elements within the wall required to comply with the BCA requirements for weatherproofing, structural adequacy, energy efficiency, fire resistance levels and combustibility.

Where the components of the wall are not integral to its construction, they would be treated as an ancillary element and subject to the BCA requirements for ancillary elements.

Compliance with the BCA is achieved by satisfying its performance requirements, which can only be done by:

- a deemed to satisfy solution which is a generic solution that demonstrates compliance with the prescriptive provisions of the BCA
- a performance solution — in contrast to the prescriptive 'deemed to satisfy' approach, is a bespoke design for a specific building that demonstrates compliance with the performance requirements of the BCA (these were also previously called 'alternative solutions')
- a combination of 'deemed to satisfy' solutions and performance solution.

Relevant to this audit, the BCA also designates classes of buildings by their intended use. This audit focus is on class 2, 3 and 9 buildings, the definitions for which are shown below.

Class	Definition
2	A building containing two or more sole-occupancy units each being a separate dwelling.
3	A residential building, other than a Class 1 or 2 building, which is a common place of long term or transient living for a number of unrelated persons. Example: boarding-house, hostel, backpackers' accommodation or residential part of a hotel, motel, school or detention centre. (Class 1 buildings are typically standalone single dwellings of a domestic or residential nature. They can include small boarding houses, guest houses hostels and the like).
9	A building of a public nature, including: <ul style="list-style-type: none"> • A health care building, including those parts of the building set aside as a laboratory. • An assembly building, including a trade workshop, laboratory or the like, in a primary or secondary school, but excluding any other parts of the building that are of another class. • An aged care residential building.

1.3 NSW Government response to the Grenfell Tower fire

Ten-point action plan

In July 2017, following the Grenfell Tower fire in London six weeks earlier, the NSW Government announced a ten-point fire safety reform plan intended to be '...Australia's most comprehensive response' to that disaster. The NSW Government intended these reforms to:

- ensure there is a comprehensive building product safety scheme that prevents the dangerous use of combustible external cladding products
- ensure that professionals identify buildings with combustible cladding and that building owners are notified
- ensure that only people with the necessary skills and experience are certifying buildings and signing off on fire-safety.

Previous initiatives after the 2014 Lacrosse Tower fire

The NSW Government's ten-point plan included follow up with '...local councils on correspondence they received from the NSW Government after Melbourne's Lacrosse Tower fire' in 2016 (see Exhibit 1 below).

This correspondence, from the Secretary of the Department of Planning and Environment (DPE) in February 2016, highlighted the potential fire safety risk for buildings that have used combustible external wall cladding and encouraged councils to consider what actions they could take given their powers under the *Environmental Planning and Assessment Act 1979* (EPA Act).

Following the Grenfell Tower fire, the Secretary of DPE and the Commissioner of Fire and Rescue NSW (FRNSW) wrote jointly to all councils seeking advice on what actions had been taken in a response to the February 2016 letter, as well as providing a preliminary list of buildings that had been identified as potentially having combustible external cladding.

Exhibit 1: NSW Government's ten-point plan released in July 2017

NSW Government's ten-point plan released in response to the June 2017 Grenfell Tower fire

1. a comprehensive building product safety scheme that would prevent the use of dangerous products on buildings
2. identifying buildings that might have aluminium or other cladding
3. writing to the building / strata managers or owners of those buildings to encourage them to inspect the cladding and installation of cladding, if it exists
4. NSW Fire and Rescue visiting all buildings on the list, as part of a fire safety education program. This will allow them to gather information they need to prepare for a potential fire at that building, and provide additional information to building owners
5. creating a new fire safety declaration that will require high rise residential buildings to inform State and local governments as well as NSW Fire and Rescue if their building has cladding on it
6. expediting reforms to toughen up the regulation of building certifiers
7. reforms to create an industry based accreditation, that will ensure only skilled and experienced people can do fire safety inspections
8. establishing a whole-of-government taskforce that will coordinate and roll out the reforms
9. instructing all government departments to audit their buildings and determine if they have aluminium cladding, with an initial focus on social housing
10. writing to local councils to follow up on correspondence they received from the State government, after Melbourne's Lacrosse Tower fire, in 2016.

Source: NSW Government media released, 28 July 2017, 'Fire safety reforms to put consumers first'.

NSW Government Cladding Taskforce

The NSW Government established the Fire Safety and External Wall Cladding Taskforce (the Cladding Taskforce) to coordinate and roll out the reforms detailed in the ten-point plan. DCS chairs the Cladding Taskforce, which also includes the DPE, FRNSW, Treasury and the Department of Premier and Cabinet.

In addition to working with councils and other stakeholder to coordinate and monitor reforms for privately held buildings, the Cladding Taskforce 'has overseen and coordinated the work' of NSW Government departments when ensuring that NSW Government-owned buildings with cladding are remediated.

The Cladding Taskforce terms of reference became effective from 2 May 2019, and describe the purpose of the Cladding Taskforce as:

- being a central forum for ensuring that initiatives and communications are consistent and coordinated
- overseeing the implementation of the government's action plan and related actions
- developing new policies and operational proposals related to the action plan, and
- being a coordinating forum for related actions undertaken by member agencies.

Use of fire safety orders

In almost all cases in NSW, in response to the NSW Government's ten-point plan, combustible cladding is assessed and, where necessary, remediated under fire safety orders issued by either a council or DPE (depending on which was the original consent authority for the building in question). The major exception is for NSW Government-owned buildings where the relevant government department carries out any assessment and remediation work under the exempt development provisions in the EPA Act and the *Environmental Assessment and Planning Regulation 2000* (EPA Regulation). This does not require any direct involvement or approval of the original consent authority.

A fire safety order is a type of development control order that may be issued by a consent authority (as well as by FRNSW) to building owners under the EPA Act and the Local Government Act.² It is used when provision for fire safety awareness is inadequate to:

- prevent fire
- suppress fire
- prevent the spread of fire.

The EPA Act requires that, except in an emergency, building owners must be afforded natural justice in responding to a fire safety order. Accordingly, the process that is followed is for a Notice of Proposed Order (NOPO) to be issued, allowing the owner to challenge the requirements of the proposed order.

Depending on each council's particular process and their preliminary inquiries with building owners, the process would normally include a series of NOPOs and formal orders for building inspections, risk assessment and, where necessary, for rectification of the building.

1.4 Process for remediating high-risk combustible external cladding

In general, there was no single process followed by more than one consent authority (council or DPE) or NSW Government department, with each developing and implementing processes to suit their own purposes and circumstances.

However, there were three common stages.

Initial identification of buildings that could have combustible cladding

In seeking to implement the ten-point plan, there was no single, reliable source of information about which existing buildings in NSW may have combustible external cladding. This was largely because records for building and development often lacking the necessary formation and were stored separately across the State in individual councils and by DPE as consent authorities under the EPA Act.

Accordingly, it was necessary for the Cladding Taskforce and consent authorities to draw on multiple sources of data to establish a prospective list of buildings that could have combustible external cladding and that warranted further investigation.

This initial identification was done by collating data from:

- record searching conducted by the NSW Government's Data Analytics Centre (DAC)
- desktop research and local inspections conducted by local councils
- FRNSW identifying possible buildings of concern in local areas
- other government records, including DPE's records of buildings for which it was the consent authority
- a mandatory register (from late 2018) established by DPE onto which building owners were required to enter their buildings if they had combustible external cladding.

² Part 2 of Schedule 5 of the EPA Act.

Preliminary inquiries and risk assessment

Once buildings were identified as potentially having combustible external cladding, preliminary inquiries were conducted to determine whether any further action may be necessary. Most commonly, this involved:

- the Cladding Taskforce writing to owners of identified buildings, requesting they:
 - review plans and specifications to determine whether external cladding was installed
 - seek advice about suitability of external cladding if installed
 - consider engaging a suitable professional to inspect the building and review fire safety, including external cladding
 - register their findings with Fair Trading to inform the Cladding Taskforce.
- FRNSW conducting visual inspections of buildings to determine whether cladding may exist of a type, amount, arrangement and in a location to increase the risk of fire spreading on the building — where FRNSW assessed a building as 'high-risk', it would write or 'refer' buildings to the consent authority (generally, councils) seeking that it conducts inspections of the building under the EPA Act and notify FRNSW of its findings
- councils and, where it was a consent authority, DPE conducting preliminary inquiries of buildings prospectively identified as potentially having combustible external cladding — this included desktop research of detailed building records held by the consent authority, as well as physical external inspection.

Engagement with building owners and remediation

The next step was for the consent authority to contact building owners and require them to provide information about the suspect cladding on their buildings.

Processes at this stage varied between consent authorities, though in general, a NOPO would be issued to the building owner. This notice is a procedural fairness step preceding the issue of a final order on the building owner to perform some form of action.

If the process proceeded to a formal order being made by the consent authority, this would generally require the building owner, at their own expense, to engage a third-party expert to conduct an audit or risk assessment of the cladding on their building to determine whether it conforms with the BCA or complies with the Commissioner for Fair Trading's product use ban.

If the cladding audit determined that the cladding did not meet necessary fire safety standards, then a second NOPO and order would be issued requiring the building owner to provide a report, prepared by an expert, explaining what would be done to mitigate the risk (a rectification order).

In some cases, the two steps were merged into a single NOPO and final order process - in other cases, there was a separate 'risk assessment' step between the audit and rectification.

The process would be complete when the building owner confirmed and provided proof that they had performed the proposed work that satisfied the consent authority's rectification order.

Holistic approach to assessing fire safety risk posed by combustible external cladding

The Cladding Taskforce, particularly from around September 2019, established through its FAQs to councils good practice principles for assessing and remediating combustible external cladding, including that the assessment, remediation planning and fire safety strategy:

- are holistic in nature, in that 'all facets of the building design, construction and occupancy that can contribute to overall fire safety' including not just the combustible external cladding but 'all building fire safety systems that have a bearing on risk'
- are relevant to the particular circumstances of each specific building
- include consideration of the type, location, arrangement, installation method and amount of combustible external cladding installed on the subject building.

1.5 Project Remediate

Project Remediate is a three-year NSW Government program that commenced in 2021. The program was designed by the NSW Government to assist building owners of multi-storey apartments (two storeys or more) with high-risk combustible cladding to remediate their building to a high standard and for a fair price.

The scheme is voluntary and includes government paying for the interest on ten-year loans, as well as incorporating assurance and project management services to provide technical and practical support to owners' corporations and strata managing agents.

Cladding Taskforce figures suggest that up to 225 buildings are potentially eligible to participate in the program. 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.

2. Identifying and remediating high-risk buildings

This chapter considers the part played by DCS and DPE as key members of the Cladding Taskforce in ensuring that buildings with combustible external cladding were effectively identified and remediated through processes implemented by:

- local councils or DPE, where those bodies were consent authorities under the EPA Act for the relevant buildings
- in the case of NSW Government buildings, the departments that owned those buildings.

2.1 Initial steps to identify buildings with combustible cladding

There was no existing reliable source to identify buildings that could have combustible external cladding

Following the 2014 Lacrosse Tower fire in Melbourne, the NSW Government recognised that there was a need to be able to identify buildings in NSW that could have combustible external cladding. It was also recognised that there was no complete data set that could definitively identify such buildings.

This was largely due to historical buildings construction and development records often lacked the necessary information and being held disparately across individual councils, as the primary consent authorities for private buildings in NSW. As the Independent Review of the *Building Professionals Act 2005* (the Lambert Review) found in 2015:

Councils are the holders of documentation on buildings and building approvals and work undertaken but it is not complete or in a useful form.

DAC, within DCS, was commissioned by DPE and Fair Trading (also within DCS) in March 2016 in an attempt to '...use advanced data analytics techniques to try to locate high-risk buildings that may contain external cladding'. The definition of 'high-risk buildings' relied on advice from FRNSW that these buildings were any multi-story residential and short-term accommodation buildings and multi-storey health care buildings built in the preceding ten years.

A project outcomes report was prepared by the DAC in October 2016. This report detailed a range of large datasets that were employed as a proof-of-concept to answer the problem statement: 'Can we use available data sets to build a risk model and visualisation for identifying buildings with a potential fire problem due to cladding (for NSW)?'

The paper concluded that the project had 'resulted in an excellent tool set being created', however:

...the lack of effective data means we are not as close to answer to the central problem as we would like.

Consistent with the findings of the 2015 Lambert Review, the DAC observed that:

Councils in NSW have documentation for building works which include Development Applications and Construction Certificates

However, the documents are not uniformly available from councils. Not all are in digital form, and those that are digitised are generally not machine readable.

The DAC's report made a number of recommendations as to how the data limitations could be overcome, including through the purchase of data from the private sector and the digitisation of paper records held by councils.

A subsequent briefing paper from DPE to the Minister for Planning, dated 7 December 2016, noted:

- concerns about the reliability of the DAC findings because of the lack of useful and complete data
- that there were many errors, including the inclusion of single-storey buildings and
- that there was little likelihood that additional proposed datasets would be reliable in identifying at risk buildings.

It was recommended that the data analytics project not continue, and that an awareness campaign and the development of improved data-gathering capabilities be pursued as an alternative.

In absence of a reliable data source to identify the scope of at-risk buildings, the NSW Government's focus continued to encourage councils and the building sector to risk assess existing building stock and understand the steps that can be taken to reduce the risks in the construction of new buildings.

After the Grenfell Tower fire, there was a period of renewed urgency and focus in addressing the risks of combustible external cladding in NSW

The Grenfell Tower fire occurred on 14 June 2017. An initial seven-point government plan for addressing the risks of combustible cladding was developed around 21 June 2017. The NSW Government publicly released a ten-point plan for fire safety reforms approximately five weeks later on 28 July 2017. The ten-point plan included the establishment of a whole-of-government taskforce to co-ordinate and roll-out the reforms. This became the Fire Safety and External Wall Cladding Taskforce (Cladding Taskforce), chaired by DCS and with DPE as a key member. Other members were FRNSW and central agencies Department of Premier and Cabinet and Treasury.

Engagement was also renewed with councils and the work of the DAC was revisited.

It was complex and time-consuming to identify buildings that could have combustible external cladding

The task of identifying the total pool of buildings that could have combustible external cladding was complex and time-consuming. This is because of historical practices, whereby building records were stored disparately across different development consent authorities (primarily local councils), often not in the same format (or even medium), and often not including the necessary information to identify a risk.

To have reasonable confidence that all high-risk buildings were identified, DCS and DPE (along with other Cladding Taskforce members) were required to coordinate a range of stakeholders, including local councils, FRNSW, and building owners, through a complex and time-consuming process, drawing on multiple information sources to centralise and validate the data. None of these processes, individually, were intended to capture all possible buildings of interest.

The three primary sources for identifying buildings were:

- analysis of building records by the DAC
- self-reporting by building owners to the mandatory register of buildings with combustible external cladding
- local knowledge, desktop research and inspection by councils, FRNSW, and DPE.

The relative contribution of the various sources can be seen in Table 1 below. Up to 18 October 2019, FRNSW inspected 4,101 buildings. Of these, 2,489 were assessed as existing BCA class 2, 3 or 9 buildings, with the largest percentage (45) of these being sourced from the mandatory register.

Table 1: Source of identification of building assessed by FRNSW

Data source (Input)	Proportion of buildings assessed (%)	Outcome of risk assessment (Output)	Proportion of assessed outcomes (%)
Mandatory register	45	No-ACP	56
Local councils	18	Low-risk	22
Data Analytics Centre	17	High-risk	23
DPE	12	TOTAL	100*
FRNSW	7		
Misc.	1		
TOTAL	100		

Notes:

- 1 'Proportion of buildings assessed' is based on all BCA class 2, 3 and 9 buildings that were assessed as high-risk, low-risk, and no ACP. It does not include buildings that were incomplete or under construction, or buildings that could not be found.
 - 2 'Proportion of assessed outcomes' is based on all BCA class 2, 3 and 9 buildings except those that were assessed as incomplete or under construction, or buildings that could not be found.
 - 3 These data should be treated as approximates only, as it can be complex to determine from where a potentially high-risk building was first identified - for example, a building may have been identified by the DAC and entered on the mandatory register by its owner. We used the identifier entered into the FRNSW database.
- * Numbers may not equal 100 due to rounding.

Source: Audit Office analysis of data provided by the Cladding Taskforce and dated 18 October 2019.

The rate at which buildings are being added to the register is falling, suggesting the number remaining to be identified is also gradually reducing

The number of additional buildings being identified as potentially having combustible external cladding has fallen since the mandatory register was nominally closed for existing buildings in February 2019. This is the case for all the sources of buildings, suggesting that the outstanding pool of buildings not yet identified is relatively small.

Initial attempts were made to identify potentially high-risk buildings through data analysis of buildings records. The DAC revisited the previously largely unsuccessful work in identifying buildings through the analysis of existing data, including by extending the period covered by the data back to 1997.

The DAC conducted key word searches of this data to identify possibly buildings with combustible external cladding. This work was completed by September 2017, with the building lists provided to FRNSW and councils for action before December 2017.

By 28 July 2017, DCS had also commenced sending letters directly to around 5,800 owners of 1,041 potentially at-risk buildings identified by DAC. This was completed by September 2017.

Despite efforts to identify other possible data sources for the DAC to interrogate, no such alternatives were found by the Cladding Taskforce. For example, a joint NSW-Commonwealth Government pilot was announced in 2017 to seek to source and use ACP manufacturers' and suppliers' records to track ACP across NSW to '...help us find buildings where aluminium composite cladding has been used so we can make sure those buildings are safe'. However, these attempts proved unfruitful due to the lack of quality or utility of the industry's records.

Local knowledge, either from councils or FRNSW officers, was also an important source of identifying high-risk buildings. Of the nine councils we audited:

- six expressed confidence that the majority of buildings in their area were known
- one was unsure whether all class 9 buildings would have been identified
- only two were unsure whether all buildings in their area were likely to be identified, and this lack of confidence appeared to be attributed to the high false-positive rates initially achieved by the data analytics process, which 'didn't give us much confidence in information being provided'.

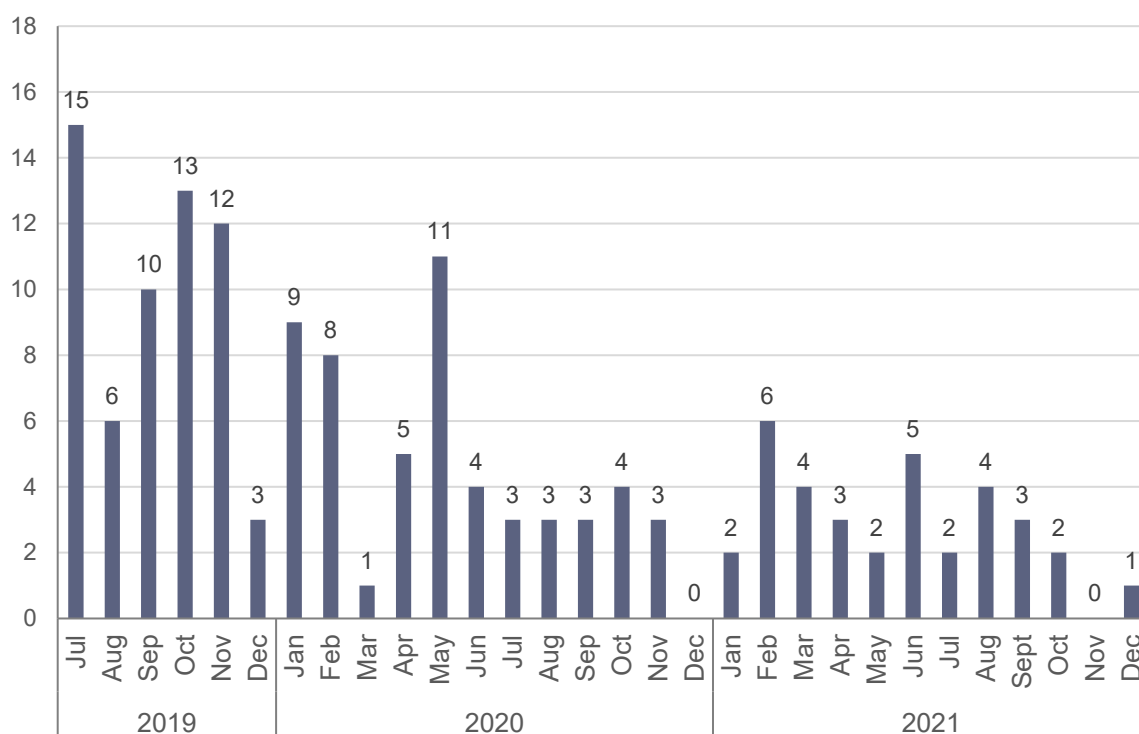
The third major source of identified buildings was the mandatory self-reported register established by DPE. As discussed in detail later in this chapter, many registered buildings were subsequently deemed to have no combustible cladding, suggesting a high rate of over-registration.

The mandatory register nominally closed for existing buildings (those occupied on 22 October 2018) on 22 February 2019, though is still open for new entries. The inclusion of existing buildings on the mandatory cladding register has progressively fallen — since the mandatory register was nominally closed, the number of additional registrations for existing buildings has fallen from an average of:

- 26 per month for the balance of 2019
- to 4.5 per month in 2020
- to 2.5 per month in 2021.

As shown in Exhibit 2 below, we found that the number of existing buildings still being added to the mandatory cladding register has reduced over time and is now comparatively low.

Exhibit 2: Additional class 2 and 3 existing buildings added to mandatory register by month, July 2019 to December 2021



Source: NSW Audit Office analysis of NSW Government's Cladding Regulation Online Registration System.

On balance, it is likely that the majority of BCA class 2, 3 and 9 existing buildings with combustible external cladding have been identified, particularly those buildings likely to be assessed as high-risk. This finding is made for the reasons outlined above, that is:

- despite efforts by the Cladding Taskforce, no further data sources have been identified for data analysis
- local investigations becoming exhausted
- the decline in the number of additional registrations on the mandatory register.

The exception to this is the identification of NSW Government-owned buildings. As discussed later in this chapter, the process for identifying these buildings does not appear to have had the same rigour and focus as shown by the consent authorities (both DPE and councils). We note that, with the transition to Project Remediate of responsibility for many outstanding high-risk residential buildings, the Cladding Taskforce has advised that it has pivoted toward driving the necessary work for NSW Government-owned buildings. To date, 66 NSW Government-owned buildings have been identified with combustible external cladding, of which around 50 per cent have cleared by either being remediated or risk assessed as not posing unacceptable fire risk.

Information management is inadequate to provide a high-level of assurance that all affected buildings have been given proper attention

Tracking the implementation of the cladding reforms in relation to identifying and remediating buildings with combustible cladding relies on four primary sources of data — these being lists of buildings compiled and maintained for different but related purposes. These lists were:

1. individual spreadsheets of identified potentially at-risk buildings in each local council area available only to nominated staff from the respective council
2. a restricted online database of buildings that had been assessed by FRNSW, which is searchable for only single records at a time and unable to generate reports
3. a database containing all BCA class 2, 3 and 9 buildings with combustible cladding registered by building owners under the NSW Government's mandatory registration scheme maintained by DPE
4. a database containing all buildings for which DPE is the consent authority.

While the council spreadsheets managed by DCS were described as the 'single source of truth' for those consent authorities, we found that this was not the case.

As the data custodian, DCS restricted access to each spreadsheet to only specific individuals from the respective council, though there were no data entry protocols to maintain data quality across these sources, with different users entering data according to their own preferences.

This invariably resulted in different data entry formats and methods, making it hard to form an overall, consistent and comparable understanding of how councils were progressing.

Factors such as multiple or alternative addresses for the same property, different spellings, or incorrectly identified council areas make it hard to reconcile the content of the sources into a high-quality single source of truth.

For example, during the audit, either through targeted data-matching efforts, manual checking, or incidentally, we found:

- buildings that had been assessed by FRNSW as 'high-risk' that could not be located on the respective council spreadsheet
- buildings for which planning consent responsibility was transferred from DPE to select local councils, but which did not appear on council spreadsheets
- buildings on the DPE register that were not in the FRNSW database, making it unclear whether they had been assessed for risk before being referred to councils
- buildings that had been assessed as having no aluminium composite panels by FRNSW, which had nonetheless been subsequently entered into council-managed assessment and remediation processes—in some of these cases, building owners were required to pay to engage professionals for building assessments on buildings already assessed by FRNSW as presenting no risk.

While evidence was provided that the Cladding Taskforce, through its Secretariat, was diligent in seeking to keep track of the progress of individual buildings, the size and complexity of the task required a greater initial investment in better information management. When presented with these various data anomalies, omissions, or inconsistencies, the Cladding Taskforce Secretariat was also able to provide some assurance that at least some of these data issues could be reconciled. However, this was done by drawing on supplementary or historical data sources. This further underscored the need for a consolidated, up to date, single of source of truth for managing building information.

Efforts were made to improve the handling of building information, with work done throughout 2018 to address some of these issues, including the integration of records with Microsoft PowerBI to provide some query and reporting functions. However, this work appears not to have overcome the data quality and accessibility challenges posed by disparate and incompatible data sources held by councils, or the relatively open data entry and alteration permissions given to council staff.

We were advised that DCS is working to improve its information management through the development of a new database to enhance how buildings are recorded and tracked through the process. Mapping of the existing information management structure has been done to assist this work.

The 2020 DCS internal audit of the fire safety reform implementation also noted the key person risk that was apparent by knowledge for data management, among other things, residing in one person. Improved information management systems and processes may also assist in addressing this risk.

2.2 Mandatory registration of buildings with combustible external cladding

DPE undertook effective consultation and communication when developing the mandatory register

The NSW Government's ten-point plan included the proposed creation of a '... new fire safety declaration that will require high rise residential buildings to inform State and local governments as well as NSW Fire and Rescue if their building has cladding on it'.

In October 2018, amendments to the EPA Regulation required owners of new and existing BCA designated class 2 (such as apartment buildings), 3 (including hotels and motels), and 9 (including hospitals, aged care centres, and public buildings) buildings of more than two levels to register on an online database operated by DPE if their building had combustible external cladding. The object of the amendment was to make provision for the identification of, and collection of information about, buildings to which combustible external cladding has been applied.

Existing buildings (defined as those occupied before 22 October 2018) were required to be registered by 22 February 2019. The Secretary of DPE is required to maintain a register of all eligible buildings that have combustible external cladding.

The regulation also allowed for an authorised fire officer, a local council officer or the Secretary DPE (where DPE was the consent authority for the building) to direct a building owner to register their building on the DPE online register by a date specified in the direction.

This obligation remains in force, with owners of existing buildings now liable for fines of between \$1,500 (for individuals) or \$3,000 (for corporations) for registering their building late. Fines also apply for not complying with a direction to register.

Notably, this regulation sets an objective test that assumes owners know whether their cladding is combustible. The only way to definitively know if external cladding is combustible is to extract and test a sample at an accredited testing laboratory.

We found that DPE consulted extensively in developing the regulation, and in communicating it to its target audience. Through late 2017 and 2018, these activities included:

- inviting public comment on the proposed amendment via media release
- inviting comment from DPE stakeholders (including councils and industry bodies) on the draft amendment
- detailed acquittal of public submissions
- at least three stakeholder roundtables for each of: owners and strata managers; councils; and building industry bodies
- developing a communications strategy
- presenting to a Local Government NSW forum for councils on the amendment
- publishing a planning circular on the amendment, along with FAQs for owners and industry
- direct correspondence with every council prior to the amendment coming into force, along with publishing FAQs for councils
- providing advice and correspondence to building owners with identified cladding risks on the need to register.

The operation of the cladding register was also subject to a largely positive internal audit report in 2019, which included assessment of DPE's processes and controls to ensure accuracy and completeness of information.

The mandatory registration scheme identified around 200 additional high-risk buildings

Of the 2,174 buildings included on the register by May 2019, unaudited figures from DCS state that around 178 were assessed by FRNSW as potentially high-risk buildings requiring further investigation from their respective consent authority (162 were referred to local councils, with the balance referred to DPE). Most buildings with combustible cladding on the register had already been identified through other sources.

Accordingly, while only a relatively small proportion of high-risk buildings were uniquely identified by the register, these buildings may not have been detected any other way. While notionally inefficient, the register still served an essential role in leading to the identification of these buildings.

Around one-fifth of existing buildings were registered late, though no fines were issued, and no framework exists for their issuance

Up to 17 August 2021, 541 existing buildings (including some buildings outside the scope of this audit, such as office buildings) were registered after the closing date for registrations of 22 February 2019. After allowing for duplicated and multiple entries from single sites (such as retirement villages), 351 buildings within the scope of this audit were registered late. On average, these buildings were registered 87 days late.

While it is beyond the scope of this audit to conduct risk assessments, it seems at least possible that many of these buildings would have met thresholds for further investigation by FRNSW or consent authorities (such as local councils). For example, the list of buildings registered late included:

- 51 buildings of ten or more levels, of which 29 were self-reported as being more than 25 per cent covered in cladding, with three having no sprinklers
- in one case, a residential building of more than ten levels, was self-reported to be more than 50 per cent covered in cladding and have no sprinklers.

While the register shows that up to 17 December 2022, 127 directions to register had been issued, DPE was not able to provide any advice that any penalties have been applied. Irrespective of actions by councils or FRNSW, as DPE administers the cladding register, and has full visibility of 'late' registrations, it is reasonable to expect it to have a policy to deal with application of penalties for 'late' registrations. In FAQs and in a presentation to a local council forum on 24 August 2018, DPE did explain that councils had '...new powers and responsibilities to... issue penalties of up to \$1,500 for individuals or \$3,000 for corporations if they fail to register their building'.

DPE advised its approach to compliance was to encourage people to register through information campaigns rather than through the financial penalty that may have been a disincentive to register, with a penalty being applied as a last resort. However, in the absence of a written policy on the administration of penalties, it is unclear how and when such penalties would be applied.

The online database of FRNSW assessments seems incomplete, raising doubts whether buildings are still to be risk assessed

We reviewed the list of in-scope buildings that were registered late to assess whether they had been assessed by FRNSW. We did this by comparing the late registered buildings to a report of FRNSW assessments provided to the audit and dated 18 October 2019. We were told by DCS that a more recent report was not available.

We sampled 81 BCA class 2 or 3 buildings of more than five storeys and found that 30 were not recorded as having been assessed by FRNSW.

2.3 Oversight and coordination of local council remediation efforts

DPE and DCS endeavoured to oversee and coordinate local council initiatives

Through the Cladding Taskforce, DCS and DPE sought to provide oversight and coordination of how councils, as consent authorities, met their obligations under the EPA Act to engage with local building owners to ensure adequate fire safety when:

...provision for fire safety or fire safety awareness is inadequate to —

- prevent fire, or
- suppress fire, or
- prevent the spread of fire.

In such circumstances, councils have the power to issue development control orders in the form of a fire safety order under the EPA Act or building product rectification orders (within the meaning of the *Building Products (Safety) Act 2017*).

The Cladding Taskforce provided oversight and coordination through:

- facilitating the identification of buildings that could have combustible external cladding, including through the work done by the DAC, information collected through the mandatory register, and by referral of buildings by FRNSW
- encouraging, by as early as 3 August 2017, councils' assistance '...in helping the collection of information to assist in identifying buildings at highest risk, and to communicate with building owners on actions to address this risk'
- explaining the NSW Government's ten-point plan
- encouraging councils to engage with owners to commence the process of assessing and, where necessary, rectifying combustible cladding
- actively following-up councils that were slow in responding to requests for action, particularly councils that failed to respond adequately to referrals of building from FRNSW
- centrally collating and maintaining lists of buildings that required councils' attention.

In its engagement with councils, the Cladding Taskforce highlighted that the government was '...keen to build a collaborative relationship with local councils to respond to this important public safety issue'. Councils were also told in August 2017 that the Cladding Taskforce had no plan to issue directions about how councils should perform their functions, and that it '... appreciated that different councils will have different risk profiles and capacity to take actions'.

Accordingly, we found that DCS and DPE, through the Cladding Taskforce, sought to establish a cooperative approach with councils, where the focus was on encouraging and advising councils to use the powers available to them under the EPA Act to remediate combustible external cladding.

Where councils were demonstrably unresponsive in meeting their obligations, a firmer approach was adopted that recognised the regulatory role played by DPE through the Office of Local Government.

There were key differences in the processes adopted by councils to ensure that building owners addressed the risk of combustible external cladding

In the two years after the Grenfell Tower fire, most of the nine councils included in this audit had been proactive in developing and implementing their own processes. There were two areas where councils' processes showed the greatest variation.

The role of experts in risk assessment and remediation of buildings

As shown in Table 2 below, councils varied in their requirement for building owners to engage experts at various stages of the remediation process.

Table 2: Role of experts in council cladding processes

Council	Requires A1 or C10 for cladding risk assessment?	Requires independent peer review of performance solutions?
A	Yes	Yes
B	Yes	Yes
C	Yes	Suggested, not mandatory
D	Yes	No
E	Yes - stresses 'independent'	No
F	Yes	No, internal review only
G	Yes - stresses 'independent'	No
H	Yes - C10 only	No
I	No, though suggested	No, internal review only

Source: Audit Office analysis of sample documents provided by councils and interviews.

We found that eight of the nine councils required building owners to engage either an A1 (building surveyor-unrestricted) or C10 (fire safety engineer) certifier accredited under the DCS operated accreditation scheme for building certifiers to conduct the initial cladding risk assessment of a building.

However, only two councils stressed the importance of the expert being independent of any other work on the building (to provide an opinion '...impartial, unbiased, free from any undue influence or conflict of interest'). One council set no requirement on the expertise required to conduct a risk assessment.

Further, only two councils required that an independent peer review be conducted if it was proposed to retain combustible external cladding on a building. This is despite peer review being considered good practice, in that it offers an additional level of assurance that fire safety risks are being adequately managed. For example, in its guideline on assessment of cladding, the Insurance Council of Australia notes that:

As the methodology in this guideline is dependent on a given level of subjectivity – e.g., when applying a risk rating, when assessing the reliability of systems, when assessing means of escape pre-movement time – it is expected that the fire risk assessment be subjected to a peer review by a Fire Safety Engineer.

One expert stakeholder noted that while cladding risk assessment requires expert judgement by a suitably qualified person, as in any case where judgement is exercised, risk may be 'misjudged, overlooked, and in some cases blatantly ignored'. Peer review is intended to provide a check against such errors of judgement. Some of the experts whose advice is now being relied upon for cladding remediation, may have been responsible for the original certification of non-BCA compliant cladding at the time of construction. This highlights the potential value of peer review for any proposals to retain cladding.

The flow chart for initiating and managing fire safety orders developed by the Cladding Taskforce and provided to councils also stated that in councils assessing any proposals made by owners' experts, councils 'may seek peer review by another suitably qualified expert if technical or complex issues arise'. We also note that DPE, in dealing with buildings for which it was the consent authority, required independent peer review by a C10 fire safety engineer if the initial assessment proposed to retain combustible external cladding.

The application of the 30 per cent polyethylene threshold prescribed in the product use ban

As discussed further in Chapter three, there was inconsistency and uncertainty in councils' understanding about the implications of the 30 per cent polyethylene core threshold in the Fair Trading Commissioner's building product use ban.

While most councils required a complete and holistic risk assessment of the building with combustible cladding, irrespective of the polyethylene content, some councils treated the 30 per cent polyethylene threshold as the only criteria in determining whether additional measures were required to mitigate the risk of combustible cladding. This fundamentally changed how buildings with less than 30 per cent polyethylene in the core of any ACPs were treated across council areas.

We were advised that at least one council had to return to building owners and require their buildings be further risk assessed after having been initially cleared because the cladding had a core of less than 30 per cent polyethylene. The initial decision failed to recognise the fire safety risks that may still exist from ACP with less than 30 per cent polyethylene.

It is likely that there are still buildings that require further detailed risk assessment, but which have been presumptively cleared solely on the basis of the percentage of polyethylene in the core of their ACPs.

DCS and DPE produced guidance to councils on these critical issues from around September 2019

We have outlined above the active role played by DCS and DPE through the Cladding Taskforce in seeking to encourage cooperation and activity from councils.

Notwithstanding this, we found that the agencies could have been more proactive in providing specific advice on the two critical issues outlined above.

While comprehensive and useful guidance was produced, including DPE's Guide for the Assessment of Buildings with Combustible Cladding, and various model processes, fire safety orders, and specific FAQs from the Cladding Taskforce, these were not provided to most councils until various times between September 2019 and July 2020.³ Moreover, that we found ongoing inconsistency and uncertainty in council processes, suggests that further communications work is still warranted on these issues.

³ Copies of template fire safety orders used by DPE were provided to five councils in December 2017.

In late 2019, the Cladding Taskforce established the Cladding Support Unit to provide dedicated support to local councils. This was announced to councils by undated letters sent around 6 September 2019. The Cladding Taskforce acknowledged that councils had, among other things:

...told us that more tools and guidance are needed to help assess and prioritise potentially high-risk buildings.

We found evidence that the establishment of the Cladding Support Unit did appear to usher in a period of more direct engagement with, and support to, individual councils. An informed view was put to us that 'prior to the Cladding Support Unit there was no mechanism of oversight to ensure council did anything'.

2.4 Remediation of NSW Government-owned buildings

Departments were responsible for clearing NSW Government-owned buildings of combustible external cladding

On 27 July 2017, around six-weeks after the Grenfell Tower fire, the Secretary of DCS tabled a paper to the Secretaries' Board announcing the establishment of the Cladding Taskforce. This paper explained the government's decision that each government department would be responsible to ensure that buildings they owned were determined to be safe from the risks of combustible cladding, and that Secretaries should take action to give effect to this requirement.

In effect, NSW Government building owners were deemed to have the same responsibility as other private building owners to ensure the fire safety of their buildings. However, unlike private building owners, NSW Government building owners were not subject to the same formal oversight and assurance that is afforded by a consent authority (such as local councils or DPE).

Importantly, the paper also noted that external cladding is safe if installed in accordance with the BCA, relevant technical standards, and local laws.

The paper described actions that could be applicable to NSW Government-owned buildings. These actions, which mirrored advice that was being provided to private building owners, included:

- reviewing design, construction, and approval documents to determine whether external cladding was installed, and, if so, seeking expert advice about the risk of the material
- ensuring an up-to-date annual fire safety statement is complied with
- consider engaging a suitable fire safety professional to review and inspect fire safety, including external cladding, and take action to implement any recommendations made by the expert.

The NSW Government announced its ten-point plan the following day, 28 July 2017, which included the requirement for 'all Government Departments to audit their buildings and determine if they have aluminium cladding, with initial focus on social housing'.

DCS and DPE, through the Cladding Taskforce, oversaw and coordinated the remediation of government buildings

While the Cladding Taskforce's initial brief was focused on 'identification of risks to the general public and private building owners' it also maintained a role in overseeing and coordinating the work of the government departments.

This included semi-regular reporting by each department Secretary to the DCS Secretary to ensure that the Cladding Taskforce maintained a '...a whole-of-government overview about non-compliant cladding and fire safety'.

DCS and DPE, through the Cladding Taskforce, initially adopted a 'light-touch' approach to the oversight and coordination of departments

The Cladding Taskforce's initial work with departments was focused on DCS, as Taskforce chair, seeking reports from departments on how they were progressing their efforts in identifying and remediating any NSW Government-owned buildings that could have combustible cladding.

The first progress report from each department was requested by the DCS Secretary on 10 December 2017. Departments were asked to include in their reports:

- the process applied in reviewing and assessing the cluster properties
- the outcomes of that process
- specific details of any at-risk buildings that need further assessment and/or may require rectification.

Progress by the departments was reported in Cladding Taskforce meeting papers on at least three occasions in March 2018, July 2018, and November 2018. Information on progress for some departments was limited and high-level in describing the processes used for department-owned properties. Overall, the reporting also provided little insight into whether the advice of the DCS Secretary from 27 July 2017, particularly to consider engaging fire safety professionals in the case of some departments, was being adopted. Further reporting was provided to DCS, on behalf of the Cladding Taskforce, in 2019.

In receiving reports from departments on their identification and any proposed actions on buildings with combustible cladding, we found no evidence the Cladding Taskforce actively scrutinised the reports in line with the requirements of the DCS Secretary's letter of 10 December 2017.

Despite reviewing a large volume of Cladding Taskforce minutes, emails and other correspondence, the audit was unable to source evidence that the Cladding Taskforce provided detailed guidance on a recommended process for identification of combustible cladding and actions to address this if found using an independent Building Surveyor (A1) or Fire Safety Engineer (C10). This compared unfavourably to the advice that was provided to councils from September 2019. We note advice from DCS that while it did provide substantial guidance to government departments, email archiving limitations and the absence of records of phone discussions from 2018 and 2019 meant that it was unable to provide evidence of these interactions.

Nor, until mid-2021, did it provide clear advice to departments on the handling of ACP cladding that fell below or above the 30 per cent polyethylene threshold in the Fair Trading Commissioner's product use ban.

By July 2020, the Cladding Taskforce Secretariat had identified issues about the completeness of the departmental reporting, and whether departments understood the process for reporting and managing NSW Government-owned buildings suspected of having combustible external cladding.

Subsequently, in July 2021, a revised reporting process was developed to improve the reliability of information and to ensure that both FRNSW and local councils could be informed of the status of buildings in local areas. This was presented to departments at a meeting on 18 August 2021, where additional guidance was also provided on assessing and treating combustible external cladding.

NSW Government departments required better guidance to avoid inconsistent assessment and remediation of buildings that they owned

We spoke to five departments that were the most likely to own BCA class 2, 3 or 9 buildings, to understand what processes they followed in managing potential combustible external cladding. These departments were not auditees, and we make no findings about them individually. Instead, they provide examples of some of the practices across the NSW Government.

Not all departments we spoke to engaged accredited experts to either conduct initial assessments of potential combustible cladding, or to devise and recommend actions to mitigate risks where combustible cladding is found. This compares unfavourably to the process adopted by DPE and by most councils we examined, which routinely specified in their fire safety orders the level of accredited expert required. Unlike for councils, the Cladding Taskforce did not directly provide government departments detailed guidance on a recommended process for identification of combustible cladding and actions to address this if found using an independent accredited Building Surveyor (A1) or Fire Safety Engineer (C10).

In addition, departments appeared to be relying on the exempt development provisions of the EPA Act and EPA Regulation to conduct their cladding inspections and implementing action plans on any subsequent remediations. While this is a valid approach, any work done under this exemption must still comply with the BCA. However, some departments were simply adopting as their criteria the 30 per cent polyethylene threshold for ACP used in the product use ban, without regard to any risks posed by cladding with lower levels of combustibility.

This approach affords lower levels of assurance than work done under a fire safety order, where local councils or DPE as consent authorities have the authority to require rigorous, independent, peer reviewed risk assessment, and action plans, as well as the authority to issue enforceable orders about how ACP with less than 30 per cent polyethylene in its core should be managed.

2.5 DPE's process to mitigate the risk of combustible external cladding in buildings for which it was the consent authority

Where DPE was the consent authority for a building, it adopted a rigorous process to ensure that building owners addressed the risk of combustible external cladding in those buildings

In addition to participating on the Cladding Taskforce and having policy and administrative responsibility for the EPA Act and EPA Regulation, DPE is also, in its own right, a consent authority for some building developments. On delegation from the Minister for Planning, DPE may approve certain types of developments, such as State Significant Developments.

DPE does not own these buildings but serves as the consent authority for their development and any subsequent building works (including for the identification and remediation of combustible cladding under the provisions relating to fire safety).

The audit examined the process used by DPE in managing these buildings for which it was the consent authority. As set out below in Exhibit 3, DPE's process employed multiple levels of risk assessment and mitigation, through the use by building owners of independent accredited experts who were subject to peer review, and external review commissioned by DPE. This is important in an area like fire safety, where the assessment of risk, and decisions about how to manage that risk, relies on expertise and professional judgement.

A critical feature of the fire safety order approach is that the consent authority (DPE or a local council) may approve an action plan proposed by a building owner even if the plan does not result in compliance with the BCA. In making its decision, the consent authority may take into account the risk assessment and proposed action plan undertaken by the owner's independent C10 fire safety engineer.

In assessing the various reports and action plans submitted by the building owner, DPE engaged a C10 fire safety engineer to provide expert advice on the building owner's compliance with the notice or order issued by DPE. In reviewing the reports and action plans, DPE's C10 Fire safety engineer commented on issues such as whether the experts were independent and held the required accreditation.

Exhibit 3: DPE process for ensuring building owners assess and remediate combustible external cladding on buildings for which it is the consent authority

DPE management of buildings for which it is the consent authority

DPE's model process can be summarised as:

1. initial DPE desktop assessments, and review of reports from FRNSW, local councils and building owners, as well as DPE-initiated physical inspections, to determine whether buildings required more than preliminary investigation
2. where buildings require further investigation, DPE issues a notice of imposition of a condition under Section 122C(2) or Section 9.40 of the EPA Act (as in force at the time) requiring the building owner to engage an independent accredited Building Surveyor (A1) or Fire Safety Engineer (C10) to audit the building's cladding and prepare a report about:
 - how the building cladding complies with the current BCA
 - what actions can be taken to make the building's cladding compliant with the BCA.
3. if the building owner does not propose to make the building cladding compliant with the current BCA, they must engage an independent C10 to assess the fire safety risk to the building and report on how to mitigate the fire safety risk posed by the combustible cladding
4. if it is decided that the building requires the removal of combustible cladding, DPE issues a fire safety order under Section 9.34 of the EPA Act for the removal of identified combustible cladding, and its replacement with BCA compliant cladding, based on an acceptable fire safety risk assessment and action plan presented by the building owner
5. the fire safety order provides extensive details of the work to be carried out by the owner to satisfy the order
6. following advice by the owner that the fire safety order had been complied with, and the owner providing DPE with suitable evidence from independent certifiers, DPE issues a letter to the owner confirming the fire safety order has been satisfied.

DPE's process for ensuring that building owners addressed the risk of combustible external cladding was applied consistently and strictly

We reviewed DPE's list of 394 BCA class 2, 3 and 9 buildings that had been identified as potential risks. From its inquiries under step 1 of the process described above, DPE determined that:

- 211 buildings did not require further investigation through the DPE process, including buildings that were subject to the consent authority of local councils, NSW Government buildings, buildings out of scope, and duplicates, as well as 70 buildings deemed not to have combustible cladding.
- 183 buildings required further action from their owners to assess and possibly remediate a potential risk from combustible cladding. It must be noted that these were buildings with combustible cladding, but not necessarily ones which FRNSW may have assessed as high-risk.

From this list, we reviewed information and documents about 50 individual buildings to determine whether the process applied was consistent with the DPE flowchart. These 50 buildings were:

- from the 183 buildings referred to owners for further action — 40 of the 133 that had been cleared
- from the 211 buildings not actioned further by DPE — we reviewed ten of the 70 that had been determined to not have combustible external cladding.

In reviewing case documents from a sample of 50 buildings, we found that the model process was applied consistently and strictly. For example, for ten buildings that were cleared of combustible cladding at the first stage in the process, DPE was able to provide convincing desktop research material, including building records, high quality geospatial images, and photographs taken during physical inspections.

For cases that progressed to fire safety orders, DPE provided documents such as the initial notice of imposition of a condition and any subsequent DPE communications with the building owner, the responses by the building owner including the reports by their independent A1 or C10, reviews conducted by the DPE engaged C10 Fire Safety engineer, the fire safety order for remediation and the Fire Safety Order completion report which resulted in DPE clearing the building.

2.6 Future progress and directions

There is no process for clearing buildings other than those in the high-risk category

Of the roughly 4,101 buildings assessed by FRNSW by 18 October 2018, around 536 BCA class 2, 3 or 9 existing buildings were classified as 'low-risk'. As explained to us by FRNSW, the terminology 'low-risk' may be misleading if taken in an everyday sense, when it is simply a category of heightened risk that does not meet the criteria of the highest risk category — it does not equate to 'no-risk' and is effectively an assessment of heightened risk that is below the most severe.

As shown in Table 3 below, the distinction between low and high-risk turns on the assessment of whether the type, amount, arrangement and location of cladding material increases the risk of fire spread on a building. It does not turn on whether there is no residual risk posed by the cladding.

Buildings assessed as 'low-risk' may still have combustible cladding on their exteriors, potentially increasing risks to firefighters and occupants. Notably, buildings with no cladding are recorded as 'No ACP'.

Table 3: FRNSW determinants for operational risk assessment classification

Assessed level of risk	Determinants
High-risk	When ACP cladding on a building: <ul style="list-style-type: none"> increases the risk of fire spread and the risk of injury to firefighters conducting firefighting operations increases and/or the risk of injury to occupants of that building during a fire increases.
Low-risk	When ACP cladding on a building is assessed to not increase the risk of fire spread on a building.

In cases of low-risk buildings, good practice provides that the management of existing buildings should take into account an assessment of cost versus benefit and risk. This recognises that there may be cases where, when considered holistically, some cladding applications may be suitable for retention on a risk and cost basis with little or no modification.

As councils only receive referrals about high-risk buildings, there is currently no process or forward workplan to provide for councils to be notified about the need to ensure that these additional buildings are investigated, risk assessed, and where necessary remediated.

Delays were experienced in identifying, assessing, and remediating combustible external cladding

A number of factors likely affected the timely completion of assessment and remediation work, particularly:

1. after the Grenfell Tower fire, insurers either withdrew coverage completely, or increased premiums for professional indemnity insurance for cladding related advisory work — this resulted in many professionals refusing to do this type of work
2. through 2020 and 2021, the COVID-19 related public health orders in NSW reduced access to potentially affected buildings, particularly in the Sydney metropolitan area where almost all the identified buildings are located
3. the announcement of Project Remediate on 17 November 2020 resulted in some qualifying residential building owners seeking to delay remediation work under fire safety orders pending the roll-out of the scheme to take advantage of the ten year interest free loans available — this has also afforded the Cladding Taskforce the opportunity to refocus its attention on how effectively departments are processing NSW Government-owned buildings.

3. Product regulation

This chapter considers what has been done to deliver a comprehensive building product safety scheme that prevents the dangerous use of combustible external cladding products.

3.1 Building product use ban

Building products safety legislation was introduced shortly after the Grenfell Tower fire

On 18 December 2017, the *Building Products (Safety) Act 2017* (BPS Act) came into effect in NSW under the administration of DCS. It introduced new laws to prevent the use of unsafe building products. The explanatory statement for the Bill introducing the Act explained that it was:

... in response to the Grenfell Tower fire in London, where it is thought that external cladding attached to the building may have accelerated the spread of fire in the building.

This Bill will enable the Secretary to impose a ban on the use of a specified building product in a building, such as external cladding, if the Secretary [including the Commissioner for Fair Trading] is satisfied that there is a safety risk posed by the use of the building product, including a safety risk that arises in the event of fire.

While an action under the NSW Government's ten-point plan, work on model building product safety legislation had been progressing under the auspices of the Building Ministers' Forum since after the 2014 Lacrosse Tower fire in Melbourne.

Under the BPS Act, penalties can be applied to breaches of a product use ban of up to \$1.1 million for corporations, or for an individual up to \$220,000 or imprisonment for two years (or both).

There was a consultative and evidence-based approach to making the building product use ban

On 15 August 2018, the NSW Commissioner for Fair Trading (being part of DCS) used powers under the BPS Act to impose a building product use ban under on external wall cladding of aluminium composite panels (ACP) with a core comprised of greater than 30 per cent polyethylene (PE) by mass, unless the product or external wall system passed specified fire tests conducted after July 2017.

The ban covers BCA class:

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

The building product ban overrides the BCA, and the banned product may not be used, even if it complies with the BCA.

In making this decision, the Commissioner noted that:

'...at present, the National Construction Code (NCC) is not sufficient to regulate building products and cannot be relied on in isolation to address the safety risks associated with the use of aluminium composite panels with a core comprised of greater than 30 per cent PE by mass'.

The Commissioner also explained that:

'...misapplication of or non-compliance with the performance requirements of the NCC raises a significant risk and concern for the safety of buildings and the community'.

The product use ban order noted the public consultation that was undertaken (as required under the BPS Act), and the reasons why the ban was necessary. These included alignment with a similar ban in Victoria, as well as reports on cladding fires such as the Lacrosse Tower in Melbourne and the Grenfell Tower in the UK, and expert advice from within DCS and FRNSW.

In giving reasons for the ban, the Commissioner also explained that the 30 per cent polyethylene threshold was informed by advice from the CSIRO, which in turn described three 'classes' of core composition in aluminium composite panels based on European fire certification standards. The Commissioner explained:

'A ban directed only to ACP with a core comprised of greater than 30 per cent polyethylene targets the impact of the product ban and focuses regulatory intervention on the types of ACP panels that are most likely to pose a safety risk. This threshold aligns with the FR [fire retardation] European standard which is considered the benchmark for an ACP product to be of low flammability'.

In developing the product use ban, the Commissioner produced background papers outlining the rationale for a ban and an implementation strategy. These included the background to a potential ban, proposed regulatory framework, entities (government and non-government) involved in operation of a ban, departmental delegations, NATA testing requirements, relevant Australian Standards and a flow chart mapping out its proposed operation.

The product use ban does not include other types of combustible products

We note that, unlike the bans introduced in Victoria and Queensland, the Fair Trading Commissioner's product use ban does not extend to combustible cladding products that are described as 'expanded polystyrene product used in an external insulation and finish (rendered) system'.

In a 2020 technical review of ACP product bans across Australia, the CSIRO noted that bans based on polyethylene content do '...not capture all other combustible polymers that may potentially be used in ACP'.

The application of the product use ban to existing buildings has caused confusion

The primary effect of the building product use ban on ACP with greater than 30 per cent polyethylene is to prevent new uses of these products (either in new buildings or as replacement product in existing buildings).

The application of the ban to ACP on existing buildings has caused confusion, in that some stakeholders believe that it establishes a mandatory, singular criteria for determining whether ACP should be removed from existing buildings: it does not. Section 17 of the BPS Act establishes that the identification and remediation provisions apply to a building (which becomes an 'affected building') if '...a building product the subject of a building product use ban has been used in the building for a use that is prohibited by the building product use ban'. The Act makes clear that:

'[i]t does not matter that the building product was used in the building before the building product use ban was in force'.

However, just because a building becomes an 'affected building' does not necessarily mean that ACP with greater than 30 per cent polyethylene must be removed. For buildings that already have the banned product installed, a relevant enforcement authority, such as a local council, may issue a building product rectification order under clause 20 of the BPS Act to the building owner. The rectification order will require the building owner 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
- remediate or restore the building following the elimination or minimisation of the safety risk.

Treatment of affected buildings may also be addressed through the issue of fire safety orders by the relevant consent authority under the EPA Act. This approach would follow the typical processes being used by councils and DPE as consent authorities.

Depending on the assessed fire risk of an individual building, a council could decide to allow ACP with more than 30 per cent polyethylene its core, or alternatively to require removal of ACP with less than 30 per cent polyethylene.

We found many examples of confusion in how this 30 per cent polyethylene threshold should be applied to existing buildings with ACP of less than 30 per cent polyethylene. These examples were drawn both from councils included in this audit, as well as from other non-auditee councils across NSW through documents provided by DCS and DPE.

As one experienced fire safety professional from a consent authority explained to us:

'Some owners have been satisfied when their product comes back at 29.8 per cent - they mistakenly think they don't have to do anything... they think the 30 per cent is a strict standard they have to pass'.

We saw evidence of this in a different consent authority, where a property manager wrote in response to a proposed fire safety order:

'I'm wondering if you've read this notice, in particular the second paragraph where she [the Commissioner] stated, 'prohibit the use of aluminium composite panels with a core comprised of greater than 30 per cent polyethylene by mass in any external cladding, external wall, external insulation, façade or rendered finish.

I bring to your attention again the word 'greater' than 30 per cent and the fact that our test results are not greater'.

And from another council:

I have received submissions from owners claiming that no further action is required because the cladding on their buildings contain less than 30% PE

...

My issue is that certain products seem to fall just short of 30% PE, like 28.7%, giving a false sense of security for building owners who believe that no further justification or action is required.

In contrast, staff from yet another council queried if cladding with a polyethylene core above 30 per cent could be retained (it can, subject to a risk assessment):

Are you of the opinion that if you can manage the safety risk (i.e., through a fire engineering report/peer review) then it may be permissible to allow the product to remain although it is a banned product?

This confusion was also the source of the inconsistent practices across councils and NSW Government departments described in Chapter two.

DCS and DPE published advice for councils on how to apply the product use ban over 12 months after the ban was introduced

In September 2019, DPE published a Guide for Assessment of Buildings with Combustible Cladding. The purpose of the guide was to inform and assist councils and relevant authorities to undertake or review combustible cladding risk assessments and determine what, if any, next steps were necessary. The guide explains:

Neither the cladding ban nor the cladding register automatically require rectification or other actions be taken with regard to cladding on a building.

Councils, relevant authorities, and the Commissioner for Fair Trading (in the case of a banned product) may determine necessary actions to address the risk posed by the cladding and take any necessary compliance and enforcement actions.

In November 2019 and July 2020, the Cladding Taskforce released a series of three detailed FAQs to councils that sought to address uncertainty about how to apply the product use ban. Among other things, these FAQs sought to clarify that the product use ban:

- aimed to prevent the products from being used in the future on specific building types
- does not have any automatic effect on buildings that have already have this product on them before the ban
- does not establish 30 per cent polyethylene as hard threshold criteria for acceptability
- eliminate the need for a building to be assessed, as a whole, for its level of fire risk
- if combustible cladding is present, its risk must be assessed on an individual building basis, regardless of whether its core is more or less than 30 per cent polyethylene
- whether combustible cladding should be removed will depend on the level of risk posed to that individual building.

While this advice seems well targeted at the sources of confusion, it would have been more helpful if released closer to the time the product use ban was made in August 2018.

While there was a series of short and general FAQs released to accompany the introduction of the product use ban, these were high-level and did not address these more practical and technical issues; they were also targeted at owners and builders, rather than to councils.

Communication and compliance responsibilities for the product use ban are located outside of specialist areas of DCS

In the *Independent Review of Building Regulations and Fire Safety*, commissioned in response to the Grenfell Tower fire, Dame Judith Hackett found four key issues underpinning regulatory system failure in the UK, two of which were:

- ignorance, with regulations and guidance not always read by those who need to, or misunderstood and misinterpreted when they are read
- inadequate regulatory oversight and enforcement tools.

The regulatory challenges posed by non-conforming, non-compliant, or substitute building products, including cladding, have also been recognised in Australia. The Victorian Cladding Taskforce found after the Lacrosse Tower fire that:

The problem of widespread non-compliant cladding can be attributed to three factors: the supply and marketing of inappropriate building materials, a poor culture of compliance in the industry, and the failure of the regulatory system to deal with these issues.

In its post-incident review report following the Lacrosse Tower fire, the Metropolitan Fire Board said:

Product accreditation in Australia is hit and miss, with many of the new products being supplied and installed without proper accreditation or review.

Common products which may have been accredited are being replicated in part and provided without equivalent accreditation.

Taking into consideration the complexity of building today and the variety of building products and methodology it has become almost impossible to police.

The Senate Economics Committee similarly found:

Product substitution has been identified as perhaps the most significant contributing factor to the prevalence of non-compliant external cladding materials on Australian buildings.

And in our audit, a council told us of:

..instances of substitution where specified non-combustible cladding was replaced by non-compliant material. This would only be picked up by inspection and/or testing, not from desktop audits of documents.

In regard to the product use ban, despite the substantial penalties of up to \$1.1 million for corporations and \$220,000 for individual (or imprisonment) applicable for breaches of the ban, we were unable to source any compliance or enforcement policies or strategy within DCS.

In addition, responsibility for compliance rests with the same DCS policy area that developed the product ban instrument, notwithstanding the seemingly very different skills required by policy and compliance functions.

Leadership of communications for the product use ban also rested with the DCS policy area. We reviewed the communications that supported the ban. This included a comprehensive, though undated, Fair Trading online bulletin outlining the details of the product use ban. DCS's communication with stakeholders on cladding issues relied on electronic direct mail. In addition, DCS's industry focussed eNewsletters were archived on the enews site on the Fair Trading website, though we found no content on the product use ban in the archive.

The 2015 Lambert Review proposed the principle that that there should be:

Separation of responsibilities for policy and operations but with strong linkage between the two such that practical 'in the field' experience is drawn on in formulating policy.

Without sound compliance measures, both through effective enforcement and communications, there remains a risk that product bans will not address root causes of non-conforming or non-compliant product use, either on existing buildings or in the future. DCS will need to monitor the allocation of responsibilities for compliance and communications to ensure a performance gap does not emerge in the future.

4. Experts performing investigations and developing action plans

This chapter considers whether reforms have ensured that only people with the necessary skills and experience are certifying buildings and signing off on fire-safety.

Inspections of existing buildings and development of any subsequent action plans to address combustible external cladding are not activities covered by accreditation or registration schemes for building certifiers

Almost all the risk assessment and remediation work done on buildings in the scope of this audit have been undertaken under fire safety orders issued by consent authorities using their powers under the EPA Act. This has been the recommended approach by DPE and DCS since at least 2016 (that is, before the Grenfell Tower fire in London).

While there have been reforms to certifier registrations scheme, these were not intended to ensure that combustible cladding-remediation on existing buildings is supported by people with the necessary skills and experience in fire safety under the fire safety order process. Instead, they are focused on offering better assurance for work done in respect to new building projects where accredited experts certify that building work is carried out in accordance with BCA under the DCS managed certifier registration schemes.

No steps have been taken to ensure the quality of the work done by experts inspecting, assessing the fire risk and developing action plans to address combustible external cladding on existing buildings, other than where consent authorities have chosen to exercise their discretion. This includes requiring fire safety experts to be appropriately qualified and requiring peer review of some cladding risk assessments and remediation plans.

Consent authorities determine whether individuals with accreditation are required for combustible cladding inspection, risk assessments and remediation on existing buildings

Whether an individual with certifier accreditation participates in a cladding inspection, risk assessment, or remediation for an existing building will be determined by what councils as consent authorities specify in their fire safety orders unless building owners opt to use such experts without being directed to do so by the consent authority.

As discussed earlier, councils acting as consent authorities vary in whether they require building owners to engage individuals with certifier accreditation. In most of the councils we audited, A1 or C10 accredited experts were either required, or recommended, to perform functions such as auditing suspected combustible cladding, or conducting fire safety risk assessments and developing plans to rectify combustible cladding.

However, these types of work are not functions covered by the accreditation or registration schemes that apply to building and development certifiers.

Certifier accreditation schemes do not cover cladding remediation work done under fire safety orders

While councils may require or recommend that independent accredited A1 or C10 certifiers be engaged by building owners for cladding risk assessment and remediation, they are not performing those functions as certifiers — they are, in effect, more akin to expert consultants. Accordingly, how they perform their functions and duties is not covered by the legislation supporting the accreditation scheme for certifiers that was operated until July 2020 by the Building Professional Board.

Instead, their use in this process is a convenient and practical way for consent authorities to ensure that building owners use appropriate experts who have the qualifications, skills and experience needed to investigate and identify combustible cladding, and then to formulate appropriate action to deal with such cladding. However, these individuals are not performing regulated or accredited work, are not subject to regulatory oversight, and are not accountable to any accreditation body for the quality of the work they perform.

While councils could (and sometimes do) choose to decline poor quality or incomplete cladding-related work prepared by A1 or C10 certifiers, the burden of resolving poor quality would fall on the building owner, who would have to seek amended or additional risk assessments or rectification plans.

In the absence of regulatory oversight, disincentives for poor quality cladding-related work, may include litigation being commenced by the property owner, harm to the expert's reputation in a small and competitive market, and the potential impact on whether the individual could retain their professional indemnity insurance at a reasonable cost (especially in an environment when many insurance providers withdrew coverage for cladding related work).

Reforms impact on regulated experts doing work on new buildings

The reforms that commenced on 1 July 2020, replaced categories of accreditation with classes of registration, and varied the classes such that:

- accredited building surveyor category A1 became registered building surveyor-unrestricted
- accredited certifier—fire safety engineer category C10 became registered certifiers-fire safety.

The legislation that introduced these reforms, the *Building and Development Certifiers Act 2018*, also repealed the pre-existing *Building Professionals Act 2005* and abolished the Building Professionals Board. The new Act was accompanied by the *Building and Development Certifiers Regulation 2020*.

While the scope of this audit is limited to existing buildings, we note that there are buildings with combustible external cladding that are yet to be remediated. Just as these processes previously drew on the expertise of A1 and C10 category certifiers, it seems inevitable that the remediation of existing buildings will continue to draw on the expertise of the equivalent new classes of registered building surveyor-unrestricted and registered certifier-fire safety.

Section two

Appendices

Appendix one – Response from agencies

Response from Department of Customer Service



**Customer
Service**

McKell Building – 2-24 Rawson Place, Sydney NSW 2000
Tel 02 9372 8877 | TTY 1300 301 181
ABN 81 913 830 179 | www.nsw.gov.au

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', is written over a horizontal line.

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

16 Memorial Avenue, PO Box 42, Merrylands NSW 2160
T 02 8757 9000 E council@cumberland.nsw.gov.au W cumberland.nsw.gov.au
ABN 22 798 563 329

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



City of Sydney
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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, slightly slanted style.

Monica Barone
Chief Executive Officer

Appendix two – About the audit

Audit objective

This audit assessed how effectively the Department of Customer Service and the Department of Planning and Environment have led reforms to manage the fire safety risk of combustible external cladding on existing residential and public buildings.

The selection of these auditees was based on their involvement in the co-ordination and implementation of the Government's ten-point reform agenda for combustible external cladding.

While the focus of the audit was on the oversight and coordination provided by DCS and DPE, councils play an essential part as consent authorities for building development approvals in NSW, as well as having responsibilities and powers to ensure fire safety standards. To fully understand how well their activities were overseen and coordinated, a sample of nine councils was included as auditees.

Audit criteria

In addressing the audit objective, the audit answered three questions, being:

- a) Are the fire safety risks of combustible external cladding on existing buildings identified and remediated?
- b) Is there a comprehensive building product safety scheme that prevents the dangerous use of combustible external cladding products on existing buildings?
- c) Is fire safety certification for combustible external cladding on existing buildings carried out impartially, ethically and in the public interest by qualified experts?

These questions broadly align with government's expressed intention for the ten-point fire safety reforms to ensure:

- i) buildings with combustible external cladding are identified and notified
- ii) there is a comprehensive building product safety scheme that prevents the dangerous use of combustible external cladding products
- iii) that only people with the necessary skills and experience are certifying buildings and signing off on fire-safety.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standard ASAE 3500 'Performance Engagements' and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We gratefully acknowledge the co-operation and assistance provided by auditee staff from the Department of Customer Service, Department of Planning and Environment, Bayside Council, City of Canterbury Bankstown Council, Cumberland City Council, Liverpool City Council, City of Newcastle Council, City of Parramatta Council, City of Ryde Council, City of Sydney Council and Wollongong City Council.

We also gratefully acknowledge the co-operation and assistance provided by the following stakeholders: Fire and Rescue NSW; Local Government NSW; Owners Corporation Network; Strata Community Association NSW; Fire Protection Association Australia; Insurance Council of Australia; Society of Fire Safety, Engineers Australia; Alan Harriman; Jonathan Barnett.

Audit cost

The total cost of the audit is \$565,000.

Appendix three – Performance auditing

What are performance audits?

Performance audits determine whether State or local government entities carry out their activities effectively, and do so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in section 38B of the *Government Sector Audit Act 1983* for State government entities, and in section 421B of the *Local Government Act 1993* for local government entities.

Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, State and local government entities, other interested stakeholders and Audit Office research.

How are performance audits selected?

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three-year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the head of the audited entity who is invited to formally respond to the report. The report presented to the NSW Parliament includes any response from the head of the audited entity. The relevant minister and the Treasurer are also provided with a copy of the final report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

Who checks to see if recommendations have been implemented?

After the report is presented to the NSW Parliament, it is usual for the entity's Audit and Risk Committee / Audit Risk and Improvement Committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

Who pays for performance audits?

No fee is charged to entities for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help Parliament hold government accountable for its use of public resources.

OUR VALUES

Pride in purpose

Curious and open-minded

Valuing people

Contagious integrity

Courage (even when it's uncomfortable)

Level 19, Darling Park Tower 2
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