

31 July 2017

The Hon. Richard Wynne MP  
Minister for Planning  
Level 16  
8 Nicholson Street  
East Melbourne VIC 3002

By email: [building.submission@delwp.vic.gov.au](mailto:building.submission@delwp.vic.gov.au)

Dear Minister Wynne,

### **Building Regulations Sunset Review - Regulatory Impact Statement and Proposed Regulations**

The Victorian Urban Development Institute of Australia (UDIA) would like to thank the Department of Environment, Land, Water and Planning for the opportunity to provide comment on the Regulatory Impact Statement and Proposed Regulations which have been prepared as part of the Building Regulations Sunset Review.

UDIA is the peak industry body for the urban development sector. In Victoria, we provide over 320 member companies with the benefits of policy and advocacy, industry intelligence, networking and business building tools and insight.

The UDIA welcomes the review of the Building Regulations 2006, especially the intention to address the current levels of information asymmetry in the building industry. We broadly support the suite of changes proposed, however we wish to provide comment on two of the proposed regulations.

### **Proposed Regulation 85 Daylight to habitable room windows**

We believe the proposed Regulation 85 should be strengthened. The proposed regulation is outlined below with our recommended changes shown in italics:

- (1) A habitable room window of a building on an allotment must face—
  - (a) an outdoor space or *maximum three-sided* light court with a minimum area of 3m<sup>2</sup> and a minimum dimension of 1m clear to the sky, not including land on an adjoining allotment; or
  - (b) *where the light court has four sides and there is one or more floors above, a minimum area of 9m<sup>2</sup> with minimum dimension of 3m.*

We have proposed the changes noted above on the basis that daylight is regularly mentioned as one of the most important features required in apartments by potential occupants. The current regulation sub-section (a) appears to have been written for detached housing, specifically windows in dwelling facades that are set one metre off the boundary. The current regulation provides inadequate minimum light court dimensions for

habitable room windows on lower levels of multi-storey developments such as apartments, which commonly rise two or more storeys above the lowest level facing the light court.

A light court of nine square metres is the minimum size stipulated in the standard currently applied by many Melbourne councils (the Built Environment Sustainability Scorecard – BESS – tool). The BESS tool requires a minimum light court area of nine square metres for up to four levels, then 29 square metres for five to eight levels and 51 square metres for levels nine and above.

### **Proposed Regulation 169 – Prescribed mandatory notification stages for construction or alteration of building.**

We believe the proposed changes to the current Regulation 901(1) (proposed Regulation 169) are unnecessary and will detrimentally affect Registered Building Surveyors.

The proposed changes specify when the builder must notify the relevant building surveyor (RBS) in relation to a completed stage of work. It also requires the following three additional mandatory inspections with the aim of reducing the high level of defects in some current building work:

1. Prior to covering walls, floors or ceilings – to check fire resistance and the structural integrity of the framework;
2. Prior to covering waterproofing in wet areas to ensure adequate waterproofing prior to tiling; and
3. After completing the stormwater drainage system.

While we support the aim of reducing defects in building work, we believe the proposed approach is unworkable and will not actually improve the quality of the work. We foresee the following issues:

- Insufficient resources: 110,000 building permits were issued last year. On this basis, we estimate that the three new inspections will create approximately 150,000 new inspections in Victoria annually. There are not enough resources to meet this additional workload.
- Additional cost: Three additional inspections are likely to triple the cost of engaging a building surveyor. This will increase the overall cost of individual projects which is likely to be passed on to the end purchaser.
- Time required: Large scale projects such as apartment towers are likely to require an RBS on site full time to carry out all the required inspections for each dwelling.
- Lack of expert knowledge: A building surveyor is not an expert in waterproofing techniques nor the hundreds of different products available for this purpose. Given it is unreasonable to expect the RBS to become an expert in the waterproofing system being used on a particular site, it is likely the RBS will become familiar with a handful of techniques and products and restrict approval to these only which will stifle innovation in the field.
- Lack of control over the building site: The RBS has no control over the building site once the inspection is complete. Poorly performing waterproofing membranes may have been damaged by building trades walking on the membrane after it has been laid. The RBS has no power to prevent this from occurring after the inspection.

- Transferring responsibility: The additional inspections effectively transfer responsibility for the quality of the work to the RBS. It is likely that future professional indemnity claims will be made against the RBS rather than the relevant trade or building practitioner as the RBS will be viewed as being responsible for the work.
- Project delays: The additional inspections are likely to slow down the completion of projects and, in particular, delay the delivery of housing to market.

The approach proposed does not address with the real issue which is builders (commercial and domestic), and plumbers (licensed and registered), or contractors carrying out sub-standard work. The RIS Part B2.3 notes that potential buyers and occupants are at a disadvantage when managing potential noncompliance with the Act and Regulations. A better method for addressing this issue is for the Victorian Building Authority to better regulate builders and plumbers and make it easier to lodge complaints and seek recourse against those who carry out sub-standard work. Further, the cost-benefit analysis of the proposed regulation revealed no net benefit, rather it is a break-even scenario based on uncertain data.

There is a more efficient method for achieving the objectives of the regulations. The responsibility for certifying the building work that is the subject of proposed Regulation 169 should remain with the builder, plumber or contractor who is either carrying out the work themselves or supervising another builder, plumber or contractor to carry out the work. The registered builder, licensed plumber or contractor should be required to provide written certification to the RBS that the work has been completed satisfactorily rather than requiring the RBS to physically inspect the work.

This proposal aligns with the reforms introduced into parliament in the Building Amendment (Enforcement and Other Measures) Bill 2016. Specifically, it supports the reform that the builder named on the building permit is responsible for compliance.

This approach should also be used to ensure two other key stages of work are completed to a satisfactory standard. These are:

1. Completion, prior to covering, of any insulation installation in building envelope walls, ceilings and floors (where insulation is installed); and
2. Completion of installation of windows, including a requirement to provide documentation verifying that windows installed meet the designed window requirements.

These two stages should be added on the basis that it has been demonstrated in many studies that constructed buildings often do not perform to the level expected at the design stage due to poor insulation installation practices, poor gap sealing, or designed windows not being installed, but instead substituted. These elements are cornerstone elements that affect the energy efficiency of a building.

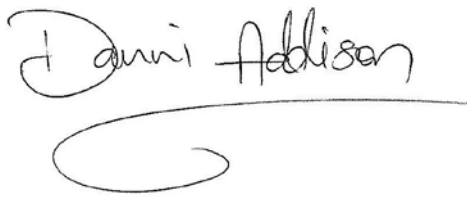
This approach has the following benefits:

- The registered builder or licensed plumber is required to take responsibility for the work and will be compelled to ensure the work remains in satisfactory condition until it is covered (tiled, plastered etc). For example, the responsibility for ensuring waterproofing is not damaged prior to tiling lies with the registered builder who is more frequently on site and has control over how it is managed.

- It is clear that the builder or plumber is responsible for the quality of the work. Should there be any issues in the future, recourse can be sought from the party actually responsible for carrying out the work.

If you have any queries, please do not hesitate to contact Hyatt Nidam, Advocacy and Communications Manager at [hyatt@udiavic.com.au](mailto:hyatt@udiavic.com.au) or Olivia O'Connor, Policy Advisor at [olivia@udiavic.com.au](mailto:olivia@udiavic.com.au) for further information.

Yours sincerely,

A handwritten signature in black ink that reads 'Danni Addison'. The signature is written in a cursive style with a long, sweeping underline that loops around the bottom of the name.

**Danni Addison**  
Chief Executive Officer  
Urban Development Institute of Australia (Victoria)