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CodeMark Certificates and Building Product Use Bans

The purpose of this circular is to inform product manufacturers, builders, developers and certifiers of a clarification relating to the status of CodeMark certificates for products subject to a building product use ban under the *Building Products (Safety) Act 2017*.

Introduction

In late 2017, the NSW Government introduced the *Building Products (Safety) Act 2017* (BPS Act). The BPS Act formed part of a package of reforms to address the use of potentially dangerous cladding on buildings in NSW.

This circular informs stakeholders of changes to the *Environmental Planning and Assessment Regulation 2000* (the Regulation). The purpose of these changes is to clarify the status of CodeMark certificates that have been issued for products or systems that are the subject of a building product use ban under the BPS Act.

The *Building Products (Safety) Act 2017*

The BPS Act is intended to prevent the use of unsafe building products in building and construction. The Commissioner of NSW Fair Trading can prohibit the use of a building product by imposing a ban on any or all of a product's uses.

On 15 August 2018, a building product use ban came into force under section 9(1) of the BPS Act. The ban prohibits the use of certain aluminium composite panels on certain multi-storey buildings unless specific criteria are met.

Under section 85 of the BPS Act, a building product use ban applies even if the banned building product complies with requirements of the National Construction Code.

Status of CodeMark Certificates

Under the *Environmental Planning and Assessment Act 1979* (EP&A Act), a consent or certifying authority must not refuse a development consent, complying development certificate or construction certificate on the grounds that any accredited building product or system relating to the development does not comply

with a requirement of the Building Code of Australia. Clause 224 of the Regulation specifies the requirements for products or systems accredited under the CodeMark scheme.

To ensure consistency with the BPS Act, and to clarify the status of CodeMark certificates issued for building products or systems that are the subject of a building product use ban under the BPS Act, clause 224 of the Regulation has consequently been amended.

The amendment clarifies that a building product or system is accredited for the purposes of the relevant provisions of the EP&A Act only if:

- (a) the building product or system has been issued with a certificate of conformity under the CodeMark scheme (a CodeMark certificate); and
- (b) use of the building product or system is not prohibited under the *Building Products (Safety) Act 2017*.

The amendment to the Regulation is effective from 1 September 2018.

Further Information

For further information please contact Service NSW on 13 77 18.

Department of Planning and Environment circulars are available at:

planning.nsw.gov.au/circulars

Authorised by:

Liz Develin
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