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Driving business success for consulting firms in the built and natural environment

30 April 2021

Building and Construction Policy Team
Better Regulation Division
Department of Customer Service
NSW Government

Via email: BCR@customerservice.nsw.gov.au

Dear Policy Team,

Submission on Regulated Designs – Guidelines and Ministerial Order

Thank you for the opportunity to comment on the NSW Government's Regulated Designs Guidelines and Ministerial Order. I am writing on behalf of Consult Australia member businesses. As you know from our previous submissions on the *Design and Building Practitioners Act 2020* and regulations, the key concerns for our members are certainty, consistency, and the impacts on professional indemnity insurance. In general, we strongly support the use of guidelines and explanatory material in plain English to help practitioners understand and comply with the various elements that make up the building and construction legislative framework.

As you know, Consult Australia is the industry association representing consulting businesses in design, advisory and engineering. Our industry comprises some 55,000 businesses across Australia, with around 97% being small businesses (less than 20 employees) and some of Australia's top 500 companies. Our industry is a job creator for the Australian economy, directly employing 240,000 people. The services we provide unlock many more jobs across the construction industry and the broader community.

The feedback of our members covers several key areas; content of the declarations, coordination/integration, fire safety, mixed-use buildings, overlapping disciplines, product specifications, the roles of various practitioners and use of the title block.

- **Content of the declarations.** Members have many questions about the declarations:
 - Do the design compliance declarations for structural regulated designs need to include building services (penetrations), stormwater (OSD), waterproofing, and fire services, etc?
 - Should design compliance declarations reference drawings numbers and revision dates (which changes regularly) or only disciplines in general?
 - Is a design compliance declaration basically a pro-forma design certificate? If so, shouldn't the declarations replace the certificates to avoid unnecessary duplication?
- **Coordination and integration.** Many members advise that coordination between practitioners and the integration of designs will be the major issue. It is agreed that it is not practical to impose strict rules on how and when different practitioners coordinate their work. However, we suggest the following:
 - The Guideline to provides some examples on how to consider the integration of design. It should be noted that integration is not only a design activity, but also relates to testing, commissioning, operations and maintenance.

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The Guideline could consider highlighting the key in design is to consider the lifecycle of the building. A suggestion for design integration could include IDR (interdisciplinary design review).

- The NSW government should actively foster positive relationships and culture in the industry. For example, we are aware that the government will be conducting design reviews/audits and we see this as a key avenue where the focus should be encouraging improved behaviours, rather than imposing penalties – especially in the first year of the reforms being in place.
- The Guidelines refer to ‘evidencing cross-checking’ (see Appendix 1) but there is no information on the level of cross-checking that is required and perhaps clarification on the expectation. Guidance on what is meant by cross-checking, with an example given to clarify expectations would be helpful.
- **Fire safety.** Our members provided a range of comments on the fire safety aspects of the Guideline:
 - Members request that the Guideline, especially at section 5.2, clarify clearly the circumstances where a designer has to be registered under both pieces of legislation. This also relates to the consideration around a mixed-use building with residential and non-residential components. The phrase “...involving certain fire safety systems may require registration...” is too uncertain to be helpful.
 - In respect of penetration plans, the minimum requirements should cover all penetrations requiring fire safety consideration in addition to those in the corridor ceiling only. Otherwise designers may be led to think *only* these penetrations need to be declared.
 - Members request that 4.2 of the Guidelines is clarified as it is unclear whether this is talking about how the fire resistance of the building element will be maintained in the final condition (e.g. maintaining a performance of 60 minutes FRL where you are changing out a fire stop product) or whether this is related to an interim fire safety strategy (e.g. maintaining the compartmentation whilst the work is undertaken). If it is the latter, then there currently is a lack of guidance and it is recommended it be provided on what is expected and how this might be achieved.
 - In respect of Appendix 1 table for fire safety systems it is advised that:
 - the scale of a masterplan may be at a scale other than 1:500 depending on the size of the project
 - automatic smoke and heat vents should be listed under mechanical services as these are normally not documented by fire service designers
 - the term ‘SSISEP’ should be replaced with ‘emergency warning and intercom systems (EWIS)’ to align with the definition used in AS 1670.4-2018
 - special hazards plans should be included under Fire Safety Services masterplans.
- **Mixed-use buildings.** Members advise that it would be useful if the Guideline clarified whether, in a mixed-use building which contains a Class 2 part, the systems that serve the building are segregated. That is, if a system only serves the Class 2 part, is the regulated design required to include the design for *all* of the building or only be provided for the Class 2 part.
- **Overlapping disciplines.** Members request that the Guidelines provide more clarity on the disciplines that overlap as it remains unclear how disciplines that overlap, not just façade but electrical / mechanical and fire systems for example are dealt with.

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For example, a modern façade system includes structural and mechanical elements. While the example in section 7.7 of the Guideline notes an architect can declare a façade system it should explain that the process for determining who makes the design compliance declaration for a complex façade system involving structure, architecture and mechanical.

- **Product specifications in regulated designs.** Our members had concerns about the level of detail about products needed in the regulated designs:
 - In general, members advise that the requirement to provide information of every building product is unnecessary and burdensome. There could be hundreds of building products relevant to a design. Further, the role of a design practitioner is to select compliant products, not to individually justify the selection of every product individually and how each complies.
 - In respect of vertical transportation, the procurement of the vertical transportation product normally only occurs when trade packages are let. As regulated designs are required to be submitted prior to construction work commencing this requirement may not be able to be met when the design is submitted. It would be useful for the Guidelines to recognise this process otherwise it causes additional delays to the construction schedule.
 - The declaration forms at Appendix 2 to the Guide require a design practitioner to declare that a building product referred to in the regulated design, if used in a manner consistent with the design will achieve compliance with the Building Code of Australia. A description or attachment is then required to provide information as to how compliance would be achieved. Typically, this is the purpose of the specification that would accompany documentation if further clarification on the use of a building product is required. It is expected that reference to this document would be sufficient to satisfy this aspect of the form. We request that this is expressly stated in the Guideline.
- **Role of registered design practitioners.** Members remain confused about the role of a registered design practitioner vs other design practitioners, especially those providing 'specialist advice'. Small business members are concerned about how their sub-consultancy work fits into the scheme, for example whether their work will be regulated designs and therefore whether their business/practitioners will need to be registered. Additional clarity in the Guidelines is recommended to address these issues.
 - Members ask that the Guidelines express a preferences for all design variations to be signed off or at least sighted by the original design practitioner where it is possible to locate that original practitioner. This will ensure that the practitioner doing the variation has considered the original design thinking, constraints and intent before progressing the variation.
 - Members ask how should a design compliance declaration be completed where there are no applicable requirements under the Building Code of Australia?
 - Members ask for more guidance on the definition of 'specialist advice'. For example, would a report prepared by a geotechnical engineer which is then used by a structural engineer to produce designs require a design compliance declaration from the geotechnical engineer? Or would that report be '*specialist advice*' for the purpose of the structural engineer's regulated design? It would be problematic for geotechnical engineers to make compliance declarations as geotechnical engineers do not generally have obligations with respect to the Building Code of Australia.
 - Members advise that the Guidelines at 7.8 are confusing:

'It is recognised that regulated designs will at times be prepared by design practitioners from disciplines who are not required to be registered under the

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scheme...the scheme has not sought to register every discipline involved in designing a building.'

This seems to be at odds with the Act, regulations and rest of the guidelines. It would make more sense if it referred to 'designs' in general sense rather than 'regulated design' and made clear that a range of design practitioners may provide advice (including on performance solutions) that are used by another design practitioner to develop a regulated design.

Members point out that the example provided in this part of the Guideline is a different situation to that opening paragraph. The example is where a performance solution is provided by a practitioner who is not required to be registered and then this information is incorporated into a regulated design by a registered practitioner who is then required to provide a declaration of that design. The responsibility resides with the registered practitioner who incorporates the information into their design to provide the declaration for the regulated design that they subsequently produce.

- **Role of principal design practitioners.** Our members continue to ask for greater clarity on the role of the principal design practitioner, asking:
 - How do you become a principal design practitioner? What are the registration requirements?
 - In what situations are principal design practitioners required?
 - What are the responsibilities of the principal design practitioner exactly? The role sounds somewhat like a contracts administrator on top of being a design practitioner.
 - Is there only one principal design practitioner per project? Is there a principal structural design practitioner as well as a principal architectural design practitioner etc?
- **Title block.** Our members have a number of concerns about the title block.
 - We propose that the *content* of the title block be mandated as the minimum requirement in the Ministerial Order, but not the actual title block supplied by government. This is because most engineering practices have well established title block regimes which include their own information necessary for quality assurance (QA) processes and incorporating additional information into these existing company standard title blocks is preferable. Small business members advise that the title block suggested by the government does not work with their internal processes and procedures and will require significant extra work to use that block for designs submitted to ePlanning. These small businesses are willing to update their existing title blocks to ensure accountability and traceability.
 - Members also suggest that on the standard block template 'Full Name' be replaced with 'Design Practitioner' – this ensures there is a direct correlation from the title block to the *Design and Building Practitioners Act 2020*. It also allows for the body corporate registration of design practitioners as per the regulations.
 - The Guidelines at 3.5 note that regulated designs may also include specifications and reports (not just drawings). However, the explanations of the title block in the Guidelines seems to specify drawings, not reports or specifications.
 - Members ask if it is necessary to show the Construction Certificate (CC) number on the title block as well as or instead of the DA number?
 - Members note that the language used in the Ministerial Order is prescriptive and could potentially lead to compliance issues:

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- North Points are applicable to site and layout drawings but are not applicable to legend and details sheets.
- For clarity, abbreviations used in the title block should be defined in the Ministerial Order: eg "DA" = Development Approval.
- 'Body Corporate Registration Number' should be defined and clarified in the Ministerial Order as there are two reasonable interpretations. Either it means the registration number of the company that the practitioner works for, or its the registration number of the Body Corporate applicable to the Class 2 building. It is noted that this is clarified within the Guidelines.

We hope this information assists the government to revise the Guidelines and/or provide additional material to assist design practitioners and engineers comply with the scheme. Consult Australia remains committed to assisting the government distribute such material to our members and providing feedback on the practical implementation of the reforms.

If you have further questions on this submission, please contact me at kristy@consultaaustralia.com.au or on 0405 195 830.

Yours sincerely,

A handwritten signature in black ink, appearing to read "K. Eulenstein".

Kristy Eulenstein
NSW Manager & Policy Lead (Procurement & Practice)