

General GE-07 | Fire related performance solutions

Audience

The audience/s for this Practice Note include/s:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Architects / Designers | <input type="checkbox"/> Owner Builders |
| <input checked="" type="checkbox"/> Builders | <input type="checkbox"/> Plumbers |
| <input checked="" type="checkbox"/> Building Surveyors / Inspectors | <input type="checkbox"/> Real estate management agents |
| <input checked="" type="checkbox"/> Engineers | <input type="checkbox"/> Trades and Maintenance (inc. Electricians) |
| <input type="checkbox"/> Home Owners / Residential Tenants | |

Purpose

This Practice Note provides guidance on the requirements pertaining to fire related performance solutions. The content below provides guidance on:

- Performance solution process and documentation
- Criteria for determining compliance
- Relying on a section 238 certificate
- Report and consent of the chief officer
- Prohibition of high-risk cladding products

Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993, the Building Regulations 2018 or the National Construction Code.

- **Act** – Building Act 1993
- **Assessment Method** - A method that can be used for determining that a performance solution or Deemed-to-Satisfy solution complies with the performance requirements
- **DtS** – Deemed-to-Satisfy provision of the NCC which are deemed to satisfy the performance requirements
- **Fire performance requirements** – NCC performance requirements related to fire safety, as defined in regulation 5 of the Building Regulations 2018
- **NCC** – National Construction Code 2022
- **Performance requirement** – A requirement under the NCC which states the minimum level of performance that must be met
- **Performance solution** – A method of complying with the performance requirements other than by a Deemed-to-Satisfy solution of the NCC
- **Regulations** – Building Regulations 2018
- **RBS** – Relevant Building Surveyor



- **PBDB** – Performance Based Design Brief

Performance solution process and documentation

Part A2 of the National Construction Code 2022 (NCC) explains the possible methods of demonstrating compliance with the NCC. One of those potential methods describes the process for developing a performance solution.

Where the NCC performance requirement is proposed to be satisfied by a performance solution, the following steps must be undertaken:

- Prepare a performance-based design brief (PBDB);
- Carry out analysis, as proposed by the PBDB;
- Evaluate results against the acceptance criteria in the PBDB; and
- Prepare a final report that includes-
 1. All Performance Requirements and/or Deemed-to-Satisfy Provisions identified through A2G2(3) or A2G4(3) as applicable; and
 2. identification of all Assessment Methods used; and
 3. details of steps and
 4. confirmation that the Performance Requirement has been met; and
 5. details of conditions or limitations, if any exist, regarding the Performance Solution.

To determine whether a performance solution complies with the performance requirements, the Relevant Building Surveyor (RBS) must follow the process as set out in the NCC and have a copy of both, the performance-based design brief and the final report for their assessment.

Criteria for determining compliance

Due to risks associated with fire related performance solutions, regulation 121 of the Regulations states that an RBS must not determine that a performance solution complies with a fire performance requirement unless the RBS:

- holds a Graduate Certificate in Performance-Based Building & Fire Codes from Victoria University; or
- holds qualification that the Victorian Building Authority considers is equivalent to that Certificate; or
- relies on a report of the chief officer under regulation 129, that states the chief officer is satisfied that a satisfactory degree of fire safety is achieved by that performance solution; or
- relies on a certificate under section 238 of the Act by a fire safety engineer, who did not design the building work, that states that the performance solution complies with the performance requirement; or
- relies on a certificate under section 238 of the Act by a registered building surveyor, who did not design the building work, and who holds a qualification referred within regulation 121, that states that the performance solution complies with that performance requirement; or
- relies on a determination of the Building Appeals Board under section 160A of the Act that the performance solution complies with that performance requirement; or
- relies on a certificate of accreditation issued by the Building Regulations Advisory Committee that states that the performance solution complies with that performance requirement; or
- relies on a Certificate of Conformity issued by a person or body duly authorised by the Australian Building Codes Board, that states that the performance solution complies with the performance requirement.



In addition, the RBS must also carefully review any conditions or limitations applicable and consider their effect on whether building work will meet compliance.

Relying on a section 238 certificate

When relying on a certificate of compliance issued under section 238 of the Act, the RBS must be satisfied that the person issuing the certificate is an endorsed fire safety engineer or registered building surveyor who did not design the building work and has adequate experience relevant to the building work and performance solution.

In Victoria, building surveyors must abide by the Code of Conduct for Building Surveyors. One of the principles in the Code of Conduct relates to documenting and maintaining records. This principle requires a building surveyor to document and keep records of all relevant information collected while providing building surveying services and the reasons for the decisions made. This includes recording the reasons, why the RBS accepted certification as being compliant and why the person providing certification is considered competent to do so.

Under regulation 124 of the Regulations, a registered building practitioner or endorsed building engineer issuing a certificate under section 238 of the Act is required to record information about their assessment of any performance solution. A copy of the record must be provided to the RBS within 7 days of it being requested under regulation 124(2). A copy of the record must also be lodged by the RBS as part of a section 30 lodgement with council (refer to regulation 44(1)(m)).

Report and consent of the chief officer

Under regulation 129, the report and consent of the chief officer (Fire Safety Victoria) must be obtained to an application for a building permit which involves certain fire safety matters, if those matters do not meet the DtS provisions of the NCC. This requirement is not affected by and applies in addition to any requirements of regulation 121. Schedule 5 of the Regulations lists prescribed matters to be reported on by chief officer.

Prohibition of high-risk cladding products

Under section 192B(1) of the Act, certain high-risk external wall cladding products are prohibited from use by any person in carrying out building work in Victoria in connection with a Class 2 to 9 building of Type A or B construction. This means that an RBS cannot issue a building permit that involves a performance solution to use a prohibited external wall cladding product on a Type A or Type B building.

Prohibited external wall cladding products consist mostly of aluminium composite panels with a core of less than 93 per cent inert mineral filler by mass, and expanded polystyrene products used in an external insulation and finish (rendered) wall system.



For information on prohibition of high-risk cladding products, refer to the VBA's Advisory Note – Prohibition of High Risk Cladding Products.



Related Documentation

- Building Act 1993
- Building Regulations 2018
- National Construction Code
- Code of Conduct for Building Surveyors in Victoria

List of Amendments

- Update of NCC references to align with the new 2022 referencing system
- Update format and content review

Document history

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