

Building Practice Note GE-07: Fire related performance solutions

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, Building Regulations 2018 or National Construction Code 2019.

- **Act** – Building Act 1993
- **DtS** – Deemed-to-Satisfy
- **Fire performance requirements** – NCC performance requirements related to fire safety, as defined in regulation 5 of the Building Regulations 2018
- **NCC** – National Construction Code 2019
- **Performance solution** – a method of complying with performance requirements under Part A2.2 of the NCC
- **Performance requirement** – a requirement under the NCC which states a level of performance that must be met
- **RBS** – Relevant Building Surveyor
- **Regulations** – Building Regulations 2018



Performance solution process and documentation

Part A2.2.(4) of the National Construction Code 2019 (NCC), took effect on 1 July 2021. It 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 except when relying on a CodeMark Certificate:

- Prepare a performance-based design brief;
- Carry out analysis;
- Evaluate results against the acceptance criteria in the performance-based design brief; and
- Prepare a final report.

To determine whether a performance solution complies with the performance requirements, the Relevant Building Surveyor (RBS) should 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 Building Regulations 2018 (Regulations) states that an RBS must not determine that a performance solution complies with a fire performance requirement unless the RBS:

- (a) holds a Graduate Certificate in Performance-Based Building & Fire Codes from Victoria University; or
- (b) holds qualification that the Victorian Building Authority considers is equivalent to that Certificate; or
- (c) 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
- (d) 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
- (e) 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 to in paragraph (a) or (b), that states that the performance solution complies with that performance requirement; or
- (f) 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
- (g) 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
- (h) 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.

The RBS must also carefully review any conditions or limitations and consider their effect on compliance of the building work.



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 in the course of providing building surveying services and reasons for decisions made. This includes recording the reasons, why the RBS accepted certification as 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 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 directed 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 building of this type.

Prohibited external wall cladding products are 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 2019 Amendment 1
- Building Code of Australia 2019, Volume One and Volume Two
- Code of Conduct for Building Surveyors in Victoria



List of Amendments

- Format update
- Minor amendments to improve readability

Version History

- Version 2.0, published 10 August 2022, supersedes PN - 37 Fire Related Performance Solutions Fire performance requirement of Vol One and Two of the NCC, (version 1.0, published June 2018)

Contact Us

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