

Performance Solutions PS-01 | Documentation and Assessment

Audience

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

- | | |
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| <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

The purpose of this Practice Note is to provide guidance on documenting and assessing performance solutions.

The content a below provides guidance on:

- Documenting determination of performance solution
- RBS relying on certificate of compliance
- Certificate of Final Inspection and Occupancy Permits



Building surveyors must not participate in the development of performance solutions when appointed to issue a building permit. Refer to the building surveyor's code of conduct.

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 or the Building/Plumbing Regulations 2018 or the National Construction Code.

- **Act** – Building Act 1993
- **Assessment Methods** – a method that can be used for a Performance Solution or Deemed-to-Satisfy Solution
- **BAB** – Building Appeals Board
- **DtS** – Deemed-to-Satisfy Solution
- **NCC** – National Construction Code 2022
- **RBS** – Relevant Building Surveyor
- **Regulations** – Building Regulations 2018



Documenting determination of performance solution

When determining if a performance solution meets the performance requirements of the NCC, the RBS must record the determination in writing in accordance with regulation 38 of the Regulations.

The written determination must include:

- (a) the performance requirement with which the performance solution complies; and
- (b) details of the assessment method the RBS used or relied on in making the determination.

Regulation 38 requires that the RBS must document their decision making when determining compliance of a performance solution. This applies despite reliance on a certificate from another registered practitioner, as it is not the practitioner that is making the decision to accept the performance solution, it is the RBS. The RBS is only relying on the certificate from the registered practitioner and must still make the determination, which is based on the practitioner's advice and certification.

The performance solution determination must be provided to council as part of the building permit lodgement requirements under section 30 of the Act.

The building permit (Form 2) must also contain details of the performance solution.



There is no prescribed or approved form to comply with regulation 38. RBS must ensure their written determination contains enough information to comply with regulation 38.

RBS relying on Certificate of Compliance

Under Section 238 of the Act, the RBS can rely on a certificate of compliance by registered building practitioners prescribed under regulation 122 and 123 of the Regulations. Before relying on a section 238 certificate, the RBS must satisfy themselves that it is appropriate to rely on the certificate of compliance by ensuring that:

- the certificate of compliance is issued by a registered building practitioner prescribed by regulation 122 and 123; and
- for fire performance requirements, the certificate of compliance has been issued by a registered fire safety engineer or registered building surveyor (holding relevant qualification) who did not do the design pursuant to regulation 121(d) and (e)
- the practitioner has adequate experience and knowledge to develop the performance solution; and
- the certificate certifies the correct performance requirements and has not left out any relevant performance requirements.

In accordance with Regulation 124, a registered building practitioner who issues a section 238 certificate for a performance solution must document in writing:

- (a) the performance requirement with which the performance solution complies; and
- (b) details of the assessment method the registered building practitioner used or relied on in determining if the performance solution complies with the performance requirement.

Upon request from the RBS, the registered building practitioners must provide a copy of the regulation 124 record within 7 days.



Minister's Guidelines MG-04 states the RBS must have regard to the complexity of the design when relying on a certificate of compliance by an engineer and may determine that the certificate of compliance be issued by an engineer, other than the one who prepared the design.

Certificates of final inspection & occupancy permits

The prescribed form for an occupancy permit (Form 16) and the certificate of final inspection (Form 17) requires that the RBS includes the relevant performance requirements of the NCC and details of the performance solution.

Related Documentation

- Building Act 1993
- Building Regulations 2018
- Minister's Guidelines MG-04 Certification of Engineering Designs
- National Construction Code 2022

List of Amendments

- Changes to reference new NCC 2022 version
- Further clarification on documenting determinations under Regulation 38
- Update format and content review

Document history

Sector	Building
Category	Performance Solutions
Topic	Documentation and Assessment
Document number	01
Version	3.0
Superseded	<ul style="list-style-type: none"> • Version 2.0, published 28 June 2021, supersedes Practice Note 63: Documentation and Assessment
Published	18 April 2023

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UNDER REVIEW
28 February 2024