

A message from the Construction Occupations Registrar

Construction Note: 2022/16

Performance Solution Requirements

The Construction Occupations Registrar (the Registrar) is seeing regular occurrences where rectification work does not comply with the original building approval and is being completed without the required approved amended documentation demonstrating compliance with the National Construction Code (NCC).

Where a building solution (building work) departs from a Deemed-To-Satisfy (DTS) provision/s of NCC, under the NCC that the rectification/building work must be approved prior to construction.

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

Building Act 2004

- Section 42 Requirements for carrying out building work
- Section 49 Complying with building code

Building Code of Australia – National Construction Code (NCC) 2025

The NCC 2025 is a performance-based code that establishes the minimum required standards for the design, construction, performance, and liveability of buildings to ensure safety, health, amenity, accessibility, sustainability, and structural adequacy for occupants and the community.

NCC 2025 Part A2 – Compliance with NCC, explains the possible methods of demonstrating compliance with the NCC. It explains the compliance pathways within the NCC and the appropriate steps that must be taken for each of these pathways.

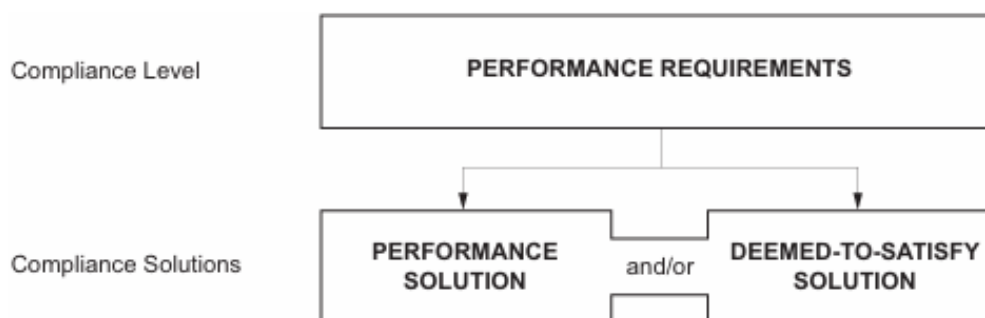
Compliance with NCC 2025 performance requirements

Part A2G1 describes the ways in which compliance with the performance requirements can be demonstrated.

A2G1 Compliance

- (1) Compliance with the NCC is achieved by complying with—
 - (a) the Governing Requirements of the NCC; and
 - (b) the *Performance Requirements*.
- (2) *Performance Requirements* are satisfied by one of the following, as shown in Figure A2G1:
 - (a) *Performance Solution*.
 - (b) *Deemed-to-Satisfy Solution*.
 - (c) A combination of (a) and (b).

Figure A2G1: NCC compliance structure



Source: Building Code of Australia – NCC Volume 1 & 2 - 2025

Performance Solution Provisions

NCC 2025 Volume 1 & 2 - A2G2 sets out the provisions for using a performance solution to satisfy the performance requirements.

- (1) Subject to (5), a **Performance solution** is achieved by demonstrating -
 - (a) compliance with all the relevant performance requirements; or
 - (b) the solution is at least equivalent to the Deemed to satisfy provisions.
- (2) Subject to (5), a **Performance Solution** must be shown to comply with the relevant Performance Requirements through one or a combination of the following Assessment Methods:
 - (a) Evidence of suitability in accordance with Part A5 that shows the use of a material, product, plumbing and drainage product, form of construction or design meets the relevant Performance Requirements.
 - (b) A Verification Method including the following:
 - (i) The Verification Methods provided in the NCC.
 - (ii) Other Verification Methods, accepted by the appropriate authority that show compliance with the relevant Performance Requirements.
 - (c) Expert Judgement
 - (d) Comparison with the Deemed-to-Satisfy Provisions.

Performance Solution Process

A performance solution must be shown to comply with the relevant performance requirements through one or a combination of the following assessment methods.

A2G2(4) requires project stakeholders to collaborate and develop an agreed pathway for the design process to follow, in order to produce an acceptable outcome. The documentation to support a Performance Solution needs to be sufficient to reflect the complexity of the Performance Solution.

A process to assist in the development of a Performance Solution is outlined below:

- 1. Performance based design brief**

A Performance Based Design Brief (PBDB) is the report that defines the scope of work for the performance-based analysis, the technical basis for analysis, and the criteria for acceptance of any relevant Performance Solution as agreed by stakeholders.

- 2. Carry out Analysis**

Each Performance Solution is unique; it must be assessed using appropriate NCC Assessment Methods relevant to the complexity of the proposal. The assessment process, including any analytical methods such as calculations, testing, modelling, or comparative analysis, should be agreed upon and documented in the PBDB before assessment begins.

- 3. Evaluate Results**

During the assessment process, multiple design options or scenarios may be analysed. The results must then be reviewed against the agreed acceptance criteria outlined in the PBDB to determine compliance. Where outcomes do not satisfy the agreed criteria, additional analysis, modelling, or testing may be required.

- 4. Prepare Final Report**

Final report must clearly demonstrate that the Performance Solution compliance to relevant NCC 2025 Performance Requirements agreed within the PBDB. The report should include the project scope, applicable NCC provisions, assessment methods, analysis undertaken, assumptions made, results obtained, evaluation against the agreed acceptance criteria, and confirmation that the proposed design satisfies the NCC requirements, including any limitations or conditions of use.

Recommendation

It is recommended that builders and/or certifiers regularly inspect building work and immediately stop work where there is non-compliance to Deemed-to-Satisfy (DTS) provisions of the NCC 2025.

For any performance requirement, builders and certifiers should provide a site inspection report outlining recommendations for a performance requirement. This requires building work to cease until a performance solution and amended building approval have been submitted to the building certifier for assessment and approval.

In addition, building certifiers are required to notify the Registrar of any non-compliant work in accordance with section 50A of the *Building Act 2004*.

Enforcement Action

Where identified, building work that does not meet the DTS requirements of the BCA may result in the issuance of a Stop Work Notice in accordance with section 53 of the *Building Act 2004*, and formal licencing action including loss of demerit points in accordance with section 55 of the *Construction Occupations (Licensing) Act 2004*.

Construction notes have been developed to raise awareness and educate the building and construction industry about common issues identified on building sites and best practice approaches to address them. The issues outlined in these notes have been identified through compliance assessment by Access Canberra or following a complaint from owners. Importantly, we welcome your input, if you have come across an issue that needs clarification or to provide feedback email us: BBS@act.gov.au or call 02 6205 2244.