

18 March 2025

Attn: Michael Sawyer

Building Codes Team
Building Commission
NSW Department of Customer Service

By email: michael.sawyer@customerservice.nsw.gov.au

Dear Mr Sawyer,

RE: NCC 2025 NSW variations involving bushfire protection provisions

Thank you for the opportunity to comment on the NSW government's proposed variations to the National Construction Code (NCC) 2025 involving bushfire protection provisions. Consult Australia members are strongly against the proposal to allow the NSW Rural Fire Service (RFS) to apply deemed-to-satisfy (DtS) provisions at its discretion and therefore limit the use of either a performance-based approach or a combination of DtS and performance-based approaches. This sets a worrying precedent that goes against the structure and intent of the NCC and fails to recognise the innovation that can come from having three legitimate pathways for building code compliance.

As a reminder, Consult Australia is the industry association representing businesses in design, advisory and engineering consulting, an industry comprised of over 58,600 businesses across Australia. This includes some of Australia's top 500 companies and many small businesses (97%). Our members provide solutions for individual consumers through major companies in the private sector and across all tiers of government. Our industry directly employs over 285,000 people in architectural, engineering, technical services and many more in advisory and business support. It is a job creator for the Australian economy. The services we provide unlock many more jobs across the construction industry and the broader community

Relevantly, Consult Australia member businesses employ practitioners with a particular interest in this proposal, including Accredited Certifiers – Fire Safety Engineering (formerly C10 Fire Safety Engineers) and Registered Fire Safety Engineers.

The three pathways under the NCC provide flexibility and innovation that should be maintained

Under the NCC there are three legitimate pathways for building code compliance:

- Prescriptive DtS
- Performance-based solution
- Combination of DtS and performance-based approaches.

Compliance with the prescriptive DtS pathway is not always feasible, especially as building complexity increases. The DtS approach cannot practically cover every scenario that may arise. Practitioners have observed that the DtS pathway does not always provide an acceptable level of safety. Therefore, the option of a performance-based solution (or combination) plays a critical role within the NCC framework. The three pathways provide flexibility in building design allowing innovation and cost-effective solutions to be found – for the benefit of consumers and businesses.

Consult Australia members warn against the assumption that performance-based solutions are less safe or less effective than DtS solutions. A performance-based approach can often result in evidence-based analysis that demonstrates compliance with the relevant performance requirements of the NCC, rather than simple reliance on DtS that are ‘deemed’ to meet the relevant performance requirements.

Projects with performance-based solutions require careful assessment and documentation, an appropriate level of involvement from engineers and qualified professionals, and thorough checking and controls from the certifier during construction.

The proposed ability for RFS to stipulate the application of DtS is not supported

Consult Australia recognises the expertise that the RFS brings regarding bushfire protection, especially to local areas and conditions. Further, the application of suitable protections to relevant buildings in bushfire-prone areas is important. However, the RFS’ input should not override the principles of the NCC. Feedback from any fire brigade, including the RFS, should prioritise ensuring adequate firefighter safety rather than focusing on the compliance pathway.

There could be cost increases for applying the DtS measures to certain structures, especially where it does not provide a tangible benefit to occupant safety. It should be noted that there are cases where DtS provisions are not practically achievable for a particular development creating the need for a variation to the development consent and increasing the time, cost and uncertainty associated with development approvals. It would be unreasonable to apply DtS requirements where it results in additional time, effort and cost to the development with no demonstrable benefit to the safety of occupants and/or responders in a bushfire event.

Flow on impacts

Limiting the use of performance-based solutions will stifle (if not eliminate) innovation in building design in this context. Consult Australia members are concerned that it could also interfere with the adoption of building products, systems and construction methods that could have better performance and better building than a DtS solution. Many new products and systems meet the NCC performance requirements and have a CodeMark Certificate supporting that. The CodeMark Scheme rules provide confidence of compliance for a building with the NCC DtS and/or performance requirements, and its status as an instrument to demonstrate compliance requires certifiers to accept it. This proposal could interfere with the functionality of the CodeMark Certification Scheme and lead to conflicts between certificate holders, councils and RFS.

Some Consult Australia members are also concerned about the flow on impacts of the proposal to building occupancy requirements, for example to the Fire Safety Measures typically set out in an existing building’s Annual Fire Safety Statement (AFSS) and requirements of a Fire Safety Certificate in new buildings.

In conclusion, Consult Australia is concerned that the proposed change will pose a risk to project delivery and the flexibility currently available in building design. This approach could unfairly add costs to consumers and fundamentally undermine the intent of the NCC, which is a performance-based building code.

Consult Australia members would welcome the opportunity to discuss these critical issues further in a targeted consultation with your office and I would welcome your consideration and contact.

Regards,

Alison Kirk

NSW & ACT Manager

