

15 July 2021

The Hon Kevin Anderson MP
Minister for Better Regulation and Innovation
GPO Box 5341
SYDNEY NSW 2001

Via email: office@anderson.minister.nsw.gov.au

Dear Minister

I write regarding a recently published [position statement](#) from Fire and Rescue NSW (FRNSW) concerning relevant stakeholders to be consulted in the performance-based design brief (PBDB).

According to the position statement released by FRNSW:

“Clause A2.2(4) of the *National Construction Code* applies from 1 July 2021. With regards to A2.2(4)(a) which requires consultation with relevant stakeholders during the PBDB, FRNSW consider that for developments within NSW the relevant fire service / brigade is a relevant stakeholder in all Performance Solutions relating to fire safety.”

Despite this position statement, we note that the criteria for FRNSW Referrals are legislated under Clause 144 of the *Environmental Planning and Assessment Regulation 2000* (The Regulation).

Our view is that from a statutory perspective, FRNSW are not a **relevant stakeholder** under Clause A2.2(4)(a) of the BCA other than for matters identified in Clause 144 of the Regulation.

This new interpretation would dramatically increase the number of referrals to FRNSW, beyond what is already listed in Clause 144, adding significant regulatory and financial impacts on the construction industry and the general public.

After consulting with fire engineering experts in the industry, it is estimated this new interpretation could result in up to 10 times the number of referrals in the first instance, which if it occurred in practice would add significant delays and costs to projects.

We also note:

- The NSW government has already considered and decided the types of projects for which FRNSW involvement is appropriate, via Clause 144 of the Regulation as it currently reads.
- If this interpretation was to be enforced, there would need to be far greater resources within FRNSW devoted to the issue for it to be workable.
- Despite the process identified in the International Fire Engineering Guidelines (IFEG) regarding the FEB process, FRNSW have historically refused to look at projects that have not been captured under Clause 144 of the regulation (eg Crown work etc.)
- The sorts of projects that typically fall outside the Clause 144 criteria are generally minor in nature, and the types of Performance Solutions that are associated with those approvals also tend to be minor and repetitive in nature.
- In our view it is not in the public interest to delay the approval of simple projects, that typically fall outside the Clause 144.

We would greatly appreciate a response to this issue, in order to provide assurances to our members. Some of these issues may need to be addressed by your department or by FRNSW. We have therefore included the Office of the Building Commissioner, the department and FRNSW in this correspondence.

It may be useful to organise a group discussion with relevant stakeholders to discuss further.

I look forward to hearing from your office.

Yours sincerely



Jill Brookfield
Chief Executive Officer



Home > Fire safety > Building fire safety > Engineers and consultants >

Performance-based design brief / fire engineering brief consultation

An applicant, usually an accredited practitioner (fire safety), should consult with Fire and Rescue NSW (FRNSW) as a stakeholder in the performance-based design brief (PBDB) or fire engineering brief (FEB) process.

When a development proposes to incorporate a fire engineered solution, whether a building design having a performance solution in accordance with the *National Construction Code (NCC)* or other infrastructure where building codes are not applicable, FRNSW should be engaged in the PBDB process at the preliminary design phase and after development consent is granted.

The PBDB is developed to outline the fire safety strategy and design for the proposed works, and allows stakeholders to provide input into the assessment methods and acceptance criteria that is agreed to be used for the performance solution. Guidance on the development of a PBDB is presented in the *International Fire Engineering Guidelines (2005)* and referred to as a Fire Engineering Brief (FEB). When the PBDB process is done thoroughly and accurately, the assessment of the detailed design by a certifier and FRNSW (i.e. when an initial fire safety report is provided) should be streamlined.

Note: Clause A2.2(4) of the *National Construction Code* applies to development from 1 July 2021. An overview of the PBDB is given in section 1.3 of schedule 7 of the *National Construction Code*.

If the PBDB relates to a building intended to meet the performance requirements of the *NCC*, especially when that building will be referred to FRNSW under clause 144 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg.), then the *Fire engineering brief questionnaire* (FEBQ) should be used for the consultation process. The FEBQ allows FRNSW to provide specific advice on the proposed performance solution, which if followed, may result in the initial fire safety report not being provided and both time and money being saved.

Note: On 1 December 2019 the *EP&A Reg.* was amended to use the term ‘performance solution’ as used within the *National Construction Code*.

If an FEB relates to infrastructure or building works not intended to meet the *NCC* then the FRNSW report (other) application form should be used for the consultation process. Examples include State significant infrastructure as per section 5.12 of the *Environmental Planning and Assessment Act 1979* or Crown building work as per section 6.28 of the *Environmental Planning and Assessment Act 1979*.

Note: If the State significant infrastructure or Crown building work does involve a building intended to meet the *NCC*, the FEBQ should be used for consultation.

If the development is likely to be subject to *State Environmental Planning Policy No.33 Hazardous and Offensive Development* or a condition of consent requiring a fire safety study be done, then these should

be finalised in conjunction with the performance solution. Recommendations from a fire safety study will override advice given in the FEB consultation process.

The application is to include all relevant information necessary for the consultation to occur. The CFD/zone modelling inputs form should be provided when modelling is proposed in the assessment method.

Forms

Fire engineering brief questionnaire (MS Word, 275 kb dotm)

CFD/zone modelling inputs form (MS Word, 256 kb docx)

What do I get?

The applicant will receive a written report, such as formal comments in the FEBQ response, and the option of having a telephone meeting, face-to-face meeting or no meeting to discuss aspects of advice given by FRNSW.

Note: The meeting will be at the discretion of FRNSW, and the time allocated to any meeting will be based on the advice given.

Costs

The charge applicable is \$2,600 for each day (or part of a day) spent by the Commissioner or a fire brigade member providing advisory, assessment or consultancy services.

For a full description of the charges applicable including terms, payment options, applying for a waiver or reduction of the charges, please refer to the fees and charges for services page.

Further information

About FRNSW forms

Submitting plans and specifications to FRNSW