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Building and Subdivision Certification

Occupation Certificates

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Preamble

These Guidelines are published under section 6.5(6) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) and apply to principal certifiers.

The Guidelines provide information on the mandatory requirements and processes to follow in relation to issuing an occupation certificate under section 6.4(c) of the EP&A Act.

Legislative requirements are subject to change and are to prevail to the extent of any inconsistency with the Guidelines.

In these Guidelines, any reference to Part 6 or a section is a reference to the EP&A Act and any reference to Part 8 or a clause is a reference to the *Environmental Planning and Assessment Regulation 2000* (**EP&A Regulation**) (unless otherwise stated).

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1. Definition of an Occupation Certificate (OC)

- 1.1. An OC is a certificate issued under Part 6 of the EP&A Act which authorises:
- a. the occupation and use of a new building in accordance with a development consent, or
 - b. a change of building use for an existing building in accordance with a development consent.¹

2. Purpose of an OC

- 2.1. An OC confirms that the completed building work accords with the development consent, including prerequisites and conditions. The OC also confirms that the building (or part of the building) is suitable for occupation or use in accordance with its classification under the *Building Code of Australia (BCA)*.²
- 2.2. An OC must be issued before commencing the following activities:
- a. the occupation or use of a whole or any part of a new building, including parts of partially completed new buildings;
 - b. the change of building use of the whole or any part of an existing building.
- 2.3. Prior to issuing an OC, a development consent, construction certificate, or a complying development certificate, must have been issued for the development.³
- 2.4. When issued, an OC is taken to be part of the development consent.⁴
- 2.5. An OC for a part or whole of a building may be issued under the provisions of Part 6 of the Act but in respect of development consents granted from 1 December 2019. The former provisions in Part 4A of the EP&A Act (including the interim and final OC regime) will continue to apply to development consents granted prior to this time.⁵

3. Who may apply for an OC?

- 3.1. An application may only be made by a person who is eligible to appoint a principal certifier for the development, generally the beneficiary of the development consent or a person with the approval of the beneficiary.⁶
- 3.2. The application must be delivered by hand, sent by post or transmitted electronically to the principal office of the certifying authority, but may not be sent by facsimile transmission.⁷

¹ Section 6.4(c)

² Section 6.5(5) and clause 161B(e)

³ Section 6.10(2)(a) and (b)

⁴ Section 6.4(c)

⁵ Schedule 2 of the *Environmental Planning and Assessment Amendment (Building and Subdivision Certification) Regulation 2019*

⁶ Clause 149(2B)

⁷ Clause 149(3)

4. Contents of an OC application

- 4.1. The following information must be included in an OC application⁸: Name and address of the applicant.
- b. A description of the building or structure, including the existing and new classifications of the building under the BCA.
 - c. The address, and formal particulars of title, of the land on which the building to which the application relates is situated.
 - d. The type of OC applied for, i.e. an OC for a part or whole building, or an OC for part of a partially completed building.
 - e. A list of documents accompanying the application.
 - f. If the OC is for a part of a building, a description of the part of the building.
 - g. A certifier may require the applicant for an OC to give the certifier any additional information concerning the building to which the application relates (including any work that may have been carried out on the building) or a planning agreement that is essential to the authority's proper consideration of the application.⁹
- 4.2. If required, an application must be in a form approved by a principal certifier. If a principal certifier requires an application to be made in a form, they must provide blank copies to the applicant.¹⁰
- 4.3. The application must be accompanied by the following documents:¹¹
- a. a copy of any relevant construction certificate.
 - b. a copy of any relevant fire safety certificate.
 - c. a copy of any relevant compliance certificate.
 - d. a BASIX completion receipt (if the development is the subject of a condition requiring commitments listed in a BASIX completion receipt), except if the application is for a part of a partially completed building.¹²
- 4.4. A principal certifier must, immediately after receiving an application for an OC, endorse it with the date of its receipt.

5. Who may issue an OC?

- 5.1. An OC may only be issued by the certifier who has been appointed as the principal certifier for that development.¹³

⁸ Clause 149(1)

⁹ Clause 149A

¹⁰ Clauses 149(1) and 150

¹¹ Clause 149(2)

¹² clause 154C(1AA)

¹³ Section 6.5(1)(c)

6. Determining an OC application

- 6.1. When determining an application for an OC, a principal certifier may consider the following questions: Has the part or whole of the building that the certificate has been applied for been adequately described in the application?¹⁴
- a. Is the part or the whole of the building that the application relates to suitable for occupation or use in accordance with its building classification under the BCA?¹⁵
 - b. Is the design and construction of the part or whole of the building that the applications relates to consistent with the development consent?¹⁶
 - c. Have the preconditions to the issue an OC that are specified in a development consent been complied with?¹⁷
 - d. If a report has been issued by the Fire Commissioner, how does it impact on the occupancy or use of the building to which the OC relates?¹⁸
 - e. Whether the application relates to a building which requires a final safety report, and there is a need to request that the Fire Commissioner provide that report.¹⁹
 - f. Whether the application relates to a building which contains certain fire safety systems, and if so whether there is a need to request that the Fire Commissioner provide a fire safety system report.²⁰
 - g. Whether there are any other types of fire safety certificate that are required?²¹
 - h. Whether the principal certifier applied to the Planning Secretary for a BASIX completion receipt, if required for that building or part²²
 - i. Does any relevant planning agreement include any requirements to be complied with before the issue of an OC and if so, have they been complied with?²³
 - j. Whether any performance solution reports are required.²⁴ An OC must not be issued for a building for which building work that involves a performance solution under the BCA in respect of a fire safety requirement that was carried out unless:
 - i. the certifier is satisfied the relevant building work was constructed or installed in accordance with the performance solution report that accompanied the complying development certificate or construction certificate, if such a certificate was required by clause 130 or 144A, and
 - ii. if a fire safety engineer was required by clause 130 or 144A to be involved in the preparation of the performance solution report - the certifier has obtained a compliance certificate or written report prepared by a fire safety

¹⁴ Clause 149(1)(d1)

¹⁵ Section 6.10(2)(c)

¹⁶ Section 6.4(c) and clause 154(1B)

¹⁷ Section 6.10(1)

¹⁸ clause 155(1)(e)(vi)

¹⁹ Clause 152

²⁰ Clause 152A

²¹ Clauses 152 to 153.

²² Clause 154C(1A)

²³ Clause 154E

²⁴ Clauses 151(2)(e) and 149(2)(d)

engineer that includes a statement that the building work relating to the performance solution that was the subject of the first certificate or report has been completed and is consistent with that performance solution.

- k. Have copies of required reports, documents and inspections been provided, including:
 - i. critical stage inspections and any other inspections carried out because they were required by the principal certifier under section 109E (3) (d)
 - ii. any inspection carried out under clause 162A (4A) (a),
 - iii. any missed inspection to which clause 162C applies.²⁵

6.2. Where the application is to be refused, the applicant must be advised in writing of the reasons for refusal and, if the certifier is a council, of the applicant's right of appeal under section 8.16(1)(a) against the refusal.²⁶

7. Characteristics and requirements of an OC

7.1. Table 1 lists the characteristics and requirements of OCs issued for the whole, part or part of partially completed buildings:

²⁵ Clause 162A

²⁶ Clause 151(1)(c)(i)

Table 1: Characteristics and requirements of OCs

| OC for the whole of a building (whole) | OC for part of a new building (partial) | OC for part of an existing building (part) |
|---|---|---|
| Allows commencement of the occupancy or use of a whole new building, or the commencement of the changed occupancy or use of the whole of an existing building. | Allows commencement of the occupancy or use of a part of a partially completed new building (ie a building where a whole OC has not yet been issued). | Allows the commencement of changed occupancy or use of an existing building or a new part to an existing building (ie a building where a whole OC has been issued previously or a final OC issued for buildings approved prior to 1 December 2019). |
| Cannot be issued unless a development consent and construction certificate or complying development certificate have been issued. | Cannot be issued unless a development consent and construction certificate or complying development certificate have been issued. | Cannot be issued unless a development consent and construction certificate or complying development certificate have been issued. |
| When issued the OC forms part of the development consent. | When issued the OC forms part of the development consent. | When issued the OC forms part of the development consent. |
| Certifies that all building work has been completed and all conditions attached to the relevant planning approval have been complied with. ²⁷ | Certifies that the completed building work for the respective part of the building accords with the development consent, including prerequisites and conditions. ²⁸ | Certifies that all building work for the new use or new part to the building has been completed and all conditions attached to the relevant planning approval have been complied with. ²⁹ |
| Certifies that all BCA matters related to the safe occupancy or use of the building have been satisfied. ³⁰ | Certifies that all BCA matters related to the safe occupancy or use of the part of the building have been satisfied. ³¹ | Certifies that all BCA matters related to the safe occupancy or use of the changed or new part of the building have been satisfied. ³² |
| Certifies the design and construction of building work is consistent with the development consent and construction certificate or complying development certificate. ³³ | Certifies the design and construction of building work is consistent with the development consent and construction certificate or complying development consent. ³⁴ | Certifies the design and construction of building work is consistent with the development consent and construction certificate or complying development certificate. ³⁵ |
| Certifies that, where a partial OC has previously been issued, all building works have now been completed and all planning conditions have now been complied with. ³⁶ | Certifies that any incomplete building work does not pose a risk to health and safety of the occupants and users of the building, to which the partial OC relates. | If the new part or changed use of an existing part only is to be occupied or used (without staged occupancy or use occurring for that part), a part OC may be issued for the new or change part provided all building work has been completed and all planning approvals have been complied with. ³⁷ |
| Certifies that a temporary structure occupied and used as an entertainment venue has been inspected and is suitable for the proposed use and intended number of users. ³⁸ | Multiple partial OCs can be issued for parts of a development as they are completed, to enable the staged release and occupancy of multi stage projects. | A part OC for a new part of an existing building must not be issued until all Building Code of Australia (BCA) matters related to the safe occupancy or use of the building have been satisfied. ³⁹ |
| A whole OC may be issued without first issuing a part OC or partial OC provided all building work has been completed and all planning approvals have been complied with. ⁴⁰ | A partial OC authorises occupancy or use only of the part of the building to which it relates. The remaining parts of a development not described in the partial OC cannot be occupied or used unless they are covered by a different partial OC. ⁴¹ | A part OC issued for part of an existing building revokes any whole OC that had previously been issued for that building, but only to the extent to which it applies to that part of the building. |
| A whole OC cannot be issued for a building that has been occupied in stages through partial OCs until all building work has been completed and all conditions of the planning approval have been complied with. | If a partial OC is issued, a whole OC must be obtained for the whole new building within five years of the first stage being completed. ⁴² | |

²⁷ Section 6.9(1)²⁸ Section 6.19²⁹ *ibid*³⁰ *ibid*³¹ Sections 6.10(2)(c) and 6.10(3)(b)³² *ibid*³³ *ibid*³⁴ Clause 164(1B)³⁵ *ibid*³⁶ Section 6.10(1)³⁷ Section 6.9(1)³⁸ *ibid*³⁹ Sections 6.10(2)(b)⁴⁰ Section 6.9(1)⁴¹ Clause 149(1)(d1)⁴² Clause 156A

| OC for the whole of a building (whole) | OC for part of a new building (partial) | OC for part of an existing building (part) |
|---|--|--|
| A whole OC issued replaces any part and partial OCs previously issued for that building. | For strata units bought off the plan, a partial OC must be issued at least 14 days before completion in relation to the building or part of the building (including any part of the building reasonably necessary for access to the building or part of the building). ⁴³ | |
| A whole OC must be obtained within 5 years after a partial occupation certificate was issued for the first completed stage of a partially completed building. The person with the benefit of the development consent is responsible for obtaining the whole OC, including the owners corporation for strata titled buildings. | For house and land packages, a partial OC must be issued at least 14 days before completion in relation to the dwelling-house. ⁴⁴ | |

⁴³ Sch 2, Clause 4, Conveyancing (Sale of Land) Regulation 2017

⁴⁴ Sch 2, Clause 5, Conveyancing (Sale of Land) Regulation 2017

8. Contents of an OC

- 8.1. Clause 155 prescribes that the following information must be included in an OC: Whether the certificate relates to the occupation or use of a new building or a change of building use for an existing building (and whether it is for the whole building or part of the building or for a partially completed building).
- b. The identity of the principal certifier that issued it, including, in a case where the principal certifier is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate.
 - c. If the principal certifier is an accredited certifier, the accreditation number of the principal certifier, including, in a case where the principal certifier is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate.
 - d. If the principal certifier is an accredited certifier who is an individual, the signature of the accredited certifier.
 - e. If an individual issued the certificate on behalf of the principal certifier, the signature of the individual who issued the certificate.
 - f. The date of the certificate.
 - g. Indicate the type of certificate being issued (that is, partial or whole or part).
- 8.2. Clause 155 also prescribes that the OC must contain a statement to the effect that:
- a. The health and safety of the occupants of the building have been taken into consideration, and
 - b. A current development consent or complying development certificate is in force for the building, and
 - c. If any building work has been carried out, a current construction certificate (or complying development certificate) has been issued with respect to the plans and specifications for the building, and
 - d. The building is suitable for occupation or use in accordance with its classification under the BCA, and
 - e. A fire safety certificate has been issued for the building (if a fire safety schedule is required under Part 9), and
 - f. A report from the Fire Commissioner has been considered (if required).
 - g. Details of any performance solution report about the building work involved that is required for the purposes of either clause 130(2A) or 144A(1), including:
 - i. The title of the report.
 - ii. The date on which the report was made.
 - iii. The reference number and version number of the report.

- iv. The name of the competent fire safety practitioner who prepared the report or on whose behalf the report was prepared.
 - v. If the practitioner who prepared the report or on whose behalf the report was prepared is a principal certifier, the accreditation number of the competent fire safety practitioner.
- 8.3. The OC must be accompanied by a fire safety certificate and a fire safety schedule for the building (if a fire safety schedule is required under Part 9).

9. Responsibility to notify applicant

- 9.1. The determination of an application for an OC must be in writing and must contain the following information:
- a. The date the application was determined, and
 - b. Whether the outcome was by approval, or refusal, and
 - c. The reasons if by refusal, and
 - d. If the certifier is a consent authority and the application relates to a part or whole OC, of the applicant's right of appeal under the Act.⁴⁵

10. Responsibility to notify a consent authority

- 10.1. The principal certifier must notify the relevant consent authority of the determination of an OC application within two days after the determination date by forwarding a copy of the following documents⁴⁶:
- a. a copy of the determination,
 - b. copies of any documents that were lodged with the application for the certificate,
 - c. if an occupation certificate was issued, a copy of the certificate,
 - d. a copy of the record for all critical stage inspections, any other inspections carried out and any missed inspection to which clause 162C applies,
 - e. a copy of any compliance certificate and of any other documentary evidence relied on in issuing the occupation certificate.

⁴⁵ Clause 151(1)

⁴⁶ Clause 151(2)

11. When is an OC not required?

11.1. Section 6.9(2) provides that an OC is not required:

- a. For the commencement of the occupation or use of a new building in the following circumstances:
 - i. For any purpose if the erection of the building is or forms part of exempt development or development that does not otherwise require development consent, or
 - ii. That is the subject of a compliance certificate in circumstances in which that certificate is an authorised alternative to an occupation certificate (such as a swimming pool or altered part of an existing building), or
 - iii. That has been erected by or on behalf of the Crown or by or on behalf of a person prescribed by the regulations, or
- b. For the commencement of a change of building use for the whole or any part of an existing building:
 - i. If the change of building use is or forms part of exempt development or development that does not otherwise require development consent, or
 - ii. By such persons or in such circumstances as may be prescribed by the regulations at clause 156, or
 - iii. If the existing building has been erected by or on behalf of the Crown or by or on behalf of a person prescribed by the regulations.

12. When must an OC not be issued?

12.1. Section 6.10 provides that an OC must not be issued: Unless any preconditions to the issue of the certificate that are specified in a development consent have been complied with.

- b. To authorise a person to commence occupation or use of a new building (or part of a new building) unless:
 - i. A development consent is in force with respect to the building (or part of the building), and
 - ii. In the case of a building erected pursuant to a development consent (other than a complying development certificate), a construction certificate has been issued with respect to the plans and specifications for the building (or part of the building), and
 - iii. The completed building (or part of the building) is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - iv. Such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

- c. To authorise a person to commence a new use of a building (or of part of a building) resulting from a change of building use for an existing building unless:
 - i. A development consent is in force with respect to the change of building use, and
 - ii. the building (or part of the building) is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - iii. Such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

13. Owners Building Manual

13.1. The EP&A Act provides for the EP&A Regulation to prescribe the class of building to which an Owners Building Manual must be prepared and provided to the owner of the building.⁴⁷ The EP&A Regulation currently does not prescribe the class of building for which an Owners Building Manual is required. Therefore, an OC can be issued if an Owners Building Manual has not been prepared and provided to the owner of the building, until the EP&A Regulation prescribes otherwise.

Find out more

To find out more about the updated EP&A Act, the new building provisions and transitional arrangements, please:

- visit our building webpage, which also provides details about transitional arrangements for building certification
- visit our EP&A Act Guide for information on other aspects of the updated EP&A Act
- email us at legislativeupdates@planning.nsw.gov.au
- call us on 1300 305 695.

⁴⁷ Section 6.27