



PLANNING SYSTEM

Development control

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Related	

Occupation certificates and conditions of development consent

This circular provides councils and other consent authorities, accredited certifiers and applicants with advice on occupation certificates for buildings. It outlines the responsibilities of the principal certifying authority in issuing occupation certificates. It also provides guidance to consent authorities in deciding on the conditions of consent that relate to the issue of occupation certificates.

What is an occupation certificate?

An occupation certificate, issued under the Environmental Planning and Assessment Act 1979 (EP&A Act) allows a person to occupy and use a new building or change the use of an existing building.¹

An occupation certificate verifies that the principal certifying authority is satisfied that the building is suitable to occupy or use in terms of the requirements of the Building Code of Australia (BCA). That Code sets required standards for the design and construction of various classes of building to protect health, safety and amenity.

What types of occupation certificate are there?

There are two types of occupation certificate:

- A *final* occupation certificate allows commencement of either the occupation or use of a new building (including alterations or extensions), or the new use of an existing building resulting from a change of its use
- An *interim* occupation certificate allows the commencement of either the occupation or use of a partially completed building, or of a new use of part of an existing building resulting from a change of use for the building.

If an interim certificate is issued, a final occupation certificate is still required when all building work or the change of use is complete. A final occupation certificate revokes any occupation certificates issued earlier.

Are occupation certificates required for all buildings and building work?

An occupation certificate is required for any new building work, or change of use of a building, that has a development consent or a complying development certificate under the EP&A Act.²

Occupation certificates are not required for buildings which are exempt development or development which does not require development consent, the occupation or use of a new building after 12 months from the date on which the building was first occupied or used, and buildings erected by or on behalf of the Crown or a person prescribed by the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) to be the Crown.

Who can issue a certificate?

An occupation certificate is issued by a principal certifying authority (PCA). The PCA can be the council/consent authority or a suitably accredited private certifier (section 109E(1) of the EP&A Act).

¹ This means a change of use resulting in a change of Building Code of Australia classification.

² An exception is that an occupation certificate is not required for a single dwelling house (Class 1a building) or non-habitable building or structure, eg a private garage, retaining wall or swimming pool (Class 10 building) if the construction certificate (or complying development certificate) for that building was issued before 1 March 2004. See clause 156(1) of EP&A Regulation.

Who can apply for a certificate?

The applicant for an occupation certificate is usually a person entitled to act on the development consent or complying development certificate.

What are the responsibilities of a PCA?

The planning legislation sets out what a PCA needs to check before issuing an interim or final occupation certificate. In summary, in issuing an occupation certificate the PCA must be satisfied that:

- the development consent or complying development certificate is in force
- the building is suitable to use or occupy under its BCA classification
- any preconditions set by the development consent or the complying development certificate to the issue of an occupation certificate have been met
- if the building is erected pursuant to a development consent, that a construction certificate has been issued with respect to the plans and specifications for the building
- other matters required by the regulations to be complied with before the certificate is issued have also been met

Conditions of a development consent (or complying development certificate) could require certain matters, such as those relating to site safety and preventing adverse impacts on adjoining land uses or sites, to be met before the issue of an occupation certificate.

Attachment A provides a detailed summary of the matters the PCA must be satisfied of before the PCA may issue an occupation certificate.

Setting preconditions to the issue of occupation certificates – good practice for consent authorities

It is important that consent authorities carefully consider when various conditions of consent they intend to impose need to be met. Consent authorities should avoid unnecessarily requiring a condition be met before an occupation certificate can be issued if that condition could reasonably be met later. This is because:

- delay in occupation of a building can cause hardship or economic loss, eg preventing families moving into their new home
- payment of the builder may be withheld, eg sometimes builder payment is contingent on issue of the final occupation certificate
- there may be security issues with the building remaining unoccupied.

Consent authorities should check any 'standard' conditions of consent that are routinely used, to ensure they do not unreasonably prevent occupation and use of new buildings. Consent authorities need to decide, according to the individual circumstances, which conditions might reasonably be satisfied after an occupation certificate is issued.

In setting conditions of consent it is essential to remember that they may only be imposed if it is for one or more of the purposes referred to in section 80A of the EP&A Act.

What might be appropriate to require before an occupation certificate is issued?

The following are some matters that (as applicable) need to be completed before an occupation certificate can be issued:

- availability of safe access (pedestrian and vehicular) to and within the site
- completion of on-site car parking accommodation and driveways. (This may not be necessary for a single lot dwelling)
- line-marking of on-site parking spaces and loading bays
- creation of rights-of-way or easements
- provision of privacy screens where required
- removal of builders' signs and any materials or waste associated with the building work
- removal of any temporary toilet facilities
- removal of temporary soil erosion controls
- provision of any required permanent measures to prevent soil erosion
- any required site drainage system/works satisfactorily in place, including, where applicable, on-site detention systems
- registration of relevant lots and associated common property in the case of strata development
- submission of final dilapidation report for adjoining properties, if required
- commitments specified in a BASIX³ certificate. The PCA may rely on the advice of a properly qualified person that the BASIX commitments have been fulfilled.

What might be appropriate to address or finalise after an occupation certificate is issued?

Matters that may be appropriate to allow completion of after an occupation certificate has been issued include:

- erection of garage or carport for a single lot dwelling (subsequent occupation certificate issued for the garage/carport)
- provision of a paved driveway for a single lot dwelling
- full implementation of the approved landscape plan

³ BASIX is a web-based tool that has been incorporated in the development application system to assess the potential performance of residential developments against a range of sustainability indices, eg for reducing potable water consumption and greenhouse gas emissions. For more information see www.basix.nsw.gov.au.

- minor public footpath or kerb and guttering works required in connection with the consent. (Council can require the applicant to provide security for this)
- completion of fences, if security issues do not arise
- completion of all painting
- positive covenants, if required, regarding ongoing inspection and maintenance requirements, eg on-site detention facilities
- permanent display of street number on the property.

Strata development

Sometimes one or more units in a strata development (residential or other) may be completed and suitable to occupy before the overall development is finished. If so, it may be appropriate for the PCA to issue an interim occupation certificate for the completed unit/s, if the relevant lot/s and associated common property in the strata plan have been registered.

However, if the PCA considers the building will constitute a hazard to the health and safety of the new occupants (eg because of noise or dust from ongoing construction work or outstanding fire safety issues) an interim occupation certificate must not be issued.

Applicants proposing to phase construction and occupancy of a strata development should discuss this with the council prior to lodging their development application.

If the development consent provides for or allows the possibility of the occupation of some of the completed dwellings/units before the whole strata development (or particular stage) is complete, council needs to clearly specify which of the conditions of consent need to be met before any dwelling/unit is occupied. Councils might require, for example, the installation of privacy screening in certain locations, or the installation of lighting for the on-site car parking area.

Monitoring and compliance

Up until issuing the final occupation certificate, the PCA is responsible for monitoring compliance with consent conditions relating to the building and site.

While private certifiers do not have a consent authority's power to issue an Order, they can initiate this action by issuing the owner with a notice, in which case they must send the council a copy within two working days.

Under section 121B of the EP&A Act there are 17 different orders a council may issue depending on the circumstances. A number of those orders relate to unauthorised or non-complying work.

Further information

For further information about the Environmental Planning and Assessment Act and Regulation, contact:

Planning Reform Unit, DIPNR
 P: GPO Box 39, Sydney NSW 2001
 F: (02) 9228 6544
 E: planningreform@dipnr.nsw.gov.au
 T: Act and Regulation Enquiry Line on (02) 9228 6435, 9.30am to 11.30am, Tuesday to Thursday.

For further information about accreditation, accredited certifiers, complaints and auditing, contact:

Building Professionals Board, DIPNR
 P: PO Box 3720, Parramatta NSW 3720
 F: (02) 9895 5934
 E: bpb@dipnr.nsw.gov.au
 T: BPB Enquiry Line on (02) 9895 5950.

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Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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Attachment A

Prerequisites to issuing an occupation certificate

The EP&A Act and Regulation set the prerequisites to issuing interim and final occupation certificates. These are summarised below. (Note sections refer to the Act and clauses to the Regulation.)

Interim Occupation Certificates

a) Occupation or use of partly completed new building

Before issuing an interim occupation certificate to allow a person to commence occupation or use of a partially completed new building, the PCA must be satisfied that:

- there is a current development consent or complying development certificate for the building (section 109H(1C)(a))
- unless the building has been erected under a complying development certificate that a construction certificate has been issued for the building (section 109H(1C)(b))
- the partially completed building is suitable for use or occupation in accordance with its BCA classification (section 109H(1C)(c)).

b) Change of building use of part of existing building

Before issuing an interim occupation certificate to allow a person to commence a new use in part of an existing building resulting from a change of building use, the certifying authority must be satisfied that:

- there is a current development consent or complying development certificate for the change of building use (section 109H(1D)(a))
- that the part of the building the subject of the occupation certificate is suitable for occupation or use in accordance with its BCA classification (section 109H(1D)(b)).

c) Generally

In addition to the matters set out above for the issue of interim occupation certificates, the PCA must be satisfied that:

- the building work has been inspected by the PCA after completion of that work (section 109E(3)(d) and clause 162A)
- the building work has also been inspected by the PCA, or another certifying authority,⁴ on other occasions as required by the regulations and further occasions as the PCA may require

Note: If any of these other inspections required by the regulations or the PCA is not done, this prevents the PCA from issuing the occupation certificate unless the PCA considers the inspection was unavoidably missed, is satisfied that the work that would have been the subject of the missed inspection was satisfactory and has as soon as practicable made a record of the missed inspection in accordance with the regulations (sections 109E(3)(d) and 109H(1C)(d) and clauses 162A and 162C)

- any preconditions required by the development consent (or complying development certificate), to be met before the issue of an interim occupation certificate, have been met (sections 109E(3)(e) and 109H(1B))
- the building will not constitute a hazard to the health and safety of its occupants (section 109H(1C)(d) and clause 154)
- a fire safety certificate has been issued (clause 153(2) and 155(1)(e)(v))

Note: Not applicable to Class 1a and 10 buildings – see clause 153(3) and clause 167(2)

- any report (if required) provided by the Fire Commissioner has been considered by the PCA (clause 152(5) and clause 155(1)(e)(vi))
- in respect to a residential flat development for which the development application was required to be accompanied by a design verification from a qualified designer under clause 50(1A) of the EP&A Regulation, that a design verification has been received by the PCA.

⁴ From 9 July 2004 to 30 June 2005 inclusive in the case of a Class 1 or 10 building only, any inspection described in subclause 162A(4)((a)–(f) of the EP&A Regulation) may be carried out by a person considered by the PCA to be suitably qualified to do so and employed, or nominated for the purpose of carrying out the inspection, by the PCA.

Final Occupation Certificates

a) Occupation or use of new building

Before issuing a final occupation certificate to allow a person to commence occupation or use of a new building the PCA must be satisfied that:

- there is a current development consent or complying development certificate for the building (section 109H(1)(a))
- unless the building has been erected under a complying development certificate, that a construction certificate has been issued for the building (section 109H(1)(b))
- the building is suitable for use or occupation in accordance with its BCA classification (section 109H(1)(c)).

b) Change of building use of existing building

Before issuing a final occupation certificate to allow a person to commence a new use of an existing building as a result of a change of building use, the PCA must be satisfied that:

- there is a current development consent or complying development certificate for the change of building use (section 109H(2)(a))
- that the building is suitable for occupation or use in accordance with its BCA classification (section 109H(2)(b)).

c) Generally

In addition to the matters set out above for the issue of final occupation certificates, the PCA must be satisfied that:

- the building work has been inspected by the PCA after completion of that work (section 109E(3)(d) and clause 162A)

- the building work has also been inspected by the PCA, or another certifying authority, ⁴ on other occasions as required by the regulations and further occasions as the PCA may require

Note: If any of these other inspections required by the regulations or the PCA is not done, this prevents the PCA from issuing the occupation certificate, unless the PCA considers the inspection was unavoidably missed, is satisfied that the work that would have been the subject of the missed inspection was satisfactory and has as soon as practicable made a record of the missed inspection in accordance with the regulations (sections 109E(3)(d) and 109H(1C)(d) and clauses 162A and 162C)

- any preconditions required by the development consent (or complying development certificate) to be met before the issue of a final occupation certificate, have been met (sections 109E(3)(e) and 109H(1B))
- if the building is a residential building to which BASIX applies, that each of the commitments listed in the relevant BASIX certificate whose fulfilment the PCA is required to monitor, has been fulfilled (section 109H(1)(d) and clauses 97A and 154B(2))
- a fire safety certificate has been issued (clause 153(2) and 155(1)(e)(v))
Note: Not applicable to Class 1a and 10 buildings – see clause 153(3) and clause 167(2)
- any report (if required) provided by the Fire Commissioner has been considered by the PCA (clause 152(5) and clause 155(1)(e)(vi))
- in respect to a residential flat development for which the development application was required to be accompanied by a design verification from a qualified designer under clause 50(1A) of the EP&A Regulation, that a design verification has been received by the PCA.