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30 July 2026

Mr Clay Preshaw
Executive Director, Planning System Reform
Department of Planning, Housing and Infrastructure
Locked Bag 5022
PARRAMATTA NSW 2124

By email: planningsystemreform@dphi.nsw.gov.au

Dear Clay,

EIE – Standard and model conditions of consent

Introduction

Thank you for the opportunity to comment on the Explanation of Intended Effect for Standard and model conditions of consent (the EIE). It is understood that the EIE explains the proposed amendments to State Environmental Planning Policy (Planning Systems) 2021 that will give effect to consistent conditions of consent for residential development across the state.

HIA supports opportunities to simplify the NSW Planning System through greater levels of consistency and streamlined assessment processes. This support includes any reform to planning conditions that will eliminate inconsistent requirements across councils and reduce the number and complexity of conditions of consent which have both increased over time.

The comments below focus on issues raised in the EIE which HIA has identified in consultation with members who deliver both low-rise and mid to high-rise housing across the state.

Current issues with conditions of consent

HIA fully endorses the issues with conditions of consent listed in the EIE as follows:

- the number and complexity of conditions have increased over time without creating proportional benefits;
- conditions applying before the issue of a construction certificate often require subsequent preparation of documentation that should have been addressed at DA stage;
- conditions containing errors, conflict with other requirements, and are irrelevant or inapplicable to the development; and
- different approaches by councils to regulate common elements of development – for example erosion and sediment control and tree protection measures.

HIA agrees that these issues can lead to significant delays for applicants, increased costs, uncertainty, and in some cases reduce project feasibility.

A new framework for standard and model conditions

The new framework for standard and model conditions provides a clear and logical structure for the placement of planning conditions on a development approval. However, HIA notes that there will still be scope for a consent authority to modify certain conditions. This could lead to unintended consequences if there is no oversight or monitoring. More information on this is provided in the following paragraphs.

In the case of the model conditions for both low-rise and mid to high-rise, there is scope for the consent authority to add additional requirements to various conditions, including construction environmental management measures, erosion and sediment control, and tree protection measures. This is because the condition includes [*insert consent authority's additional requirements*]. This will create inconsistent requirements between consent authorities and add uncertainty and potentially extra costs for the applicant. If every consent authority is allowed to insert their own conditions, the opportunity for reform to create more consistency and certainty for applicants will be missed.

One of the biggest frustrations for applicants currently is knowing that the outcome will be different every time you cross a Local Government Authority (LGA) boundary. If they are genuine model conditions, then there should be a clear trigger before LGAs can depart from them, otherwise, the consistency the government is seeking to achieve will not happen.

HIA understands that bespoke conditions can be developed by the consent authority for site-specific issues that are **not inconsistent** with a standard or model condition. However, there is nothing preventing a consent authority from adding the type of unworkable conditions that have held up the delivery of new homes in the past. A good example of this would be a consent authority inserting a condition requiring the completion of landscaping works prior to the issue of an occupation certificate. This specific matter was raised by HIA in a letter to the Secretary dated 22 January 2024 and was subsequently resolved. A copy of the letter is attached.

HIA's letter referred to Planning System Circular PS 05-001 on Occupation certificates and conditions of development consents. The circular states that consent authorities should avoid unnecessarily requiring a condition be met before an occupation certificate is issued because it can lead to a delay in occupation of a building causing hardship or economic loss for both the builder and new home buyer. A copy of Planning System Circular PS 05-001 is also attached to this letter.

Proposed amendments to the Planning Systems SEPP

Model conditions – Directions relating to form and content

The model conditions must be drafted to be compatible with the terminology and references used within the *Discussion paper - Improving development assessment* also on exhibition. Currently, there is some inconsistency between Discussion paper's Attachment C: Standards for commonly required documents and EIE Attachment A. For example, the Discussion paper requires an Erosion and Sediment Control Plan (ESCP) to be prepared with reference to the department's *Guidelines for erosion and sediment control on building sites (2024)* whereas EIE Attachment A requires the ESCP to be prepared in accordance with the *Managing Urban Stormwater: Soils and Construction* (Blue Book). There are similar discrepancies for preparation and implementation of Waste Management Plans.

A further concern about the model conditions is that they may lead to duplication of requirements for reports. In HIA's experience, by the time a development application gets to the approval stage, the applicant has prepared traffic reports, stormwater reports, acoustic reports, waste management plans, structural, fire engineering, hydraulic, mechanical, and geotechnical reports. Most of those would have already been assessed by the consent authority. However, the draft conditions seem to require a number of those issues to be revisited again before a Construction Certificate is issued. Therefore, if this information has already been provided and accepted, there should be no further requirement to prepare another report that addresses the same matter, as this comes at a significant time and financial cost.

Overall, and as explained above, HIA does not support the option for the consent authority to add additional requirements to the model conditions of consent. This is because the consent authority could add extra requirements beyond the intent/scope of the model condition leading to inconsistent requirements between consent authorities. This will add extra costs and create uncertainty for the applicant. One additional condition on its own might not seem like much, but cumulatively across a project, it can become significant. Those costs ultimately flow through into the cost of delivering housing.

HIA considers that every condition should be tested against a simple question: does it genuinely improve the outcome of the approval or is it just another administrative step. If it is the latter, it should be questioned as to whether it really needs to be there.

If additional requirements on conditions are permitted, HIA would encourage the department to require that the consent authority consult with the applicant on any inclusions as well as all proposed bespoke conditions. This would require a mechanism to be put in place for consultation with the applicant on proposed low-rise, as well as the mid and high-rise conditions of consent.

Model conditions – Directions relating to circumstances: development scale

The number of dwellings is not the most appropriate method to assess development scale. It is suggested that the proposed threshold of less than 20 dwellings for the low-rise (Attachment A) model conditions, and 20 or more dwellings for the mid to high-rise (Attachment B) conditions be reconsidered.

Some of the most complex projects that apartment builders construct are mid to high-rise developments with whole floor apartments or two apartments to a floor. These apartment buildings may only have six, eight or ten apartments because they are boutique luxury buildings, but they still have deep basements, difficult excavation processes, lifts, fire engineering, mechanical ventilation, complex services and all the issues that come with any Class 2 apartment building. There are many examples of boutique style apartment buildings across Sydney that have under 20 apartments but are every bit as complex to build as much larger developments.

HIA recommends that the threshold for model conditions is based on building class, rather than the number of homes. Model conditions for low-rise (Attachment A) would be better suited to Class 1 buildings and model conditions for mid and high-rise (Attachment B) applied to Class 2 buildings. The anomaly, however, would be for Manor Homes which are low-rise Class 2 buildings.

An alternative would be to base the threshold for model conditions on building height.

HIA can provide the department with examples of developments with whole-floor apartments such as the Finn apartment building in Manly, which is a 5-storey apartment building, currently under construction with full-floor homes.

Overall, HIA supports the proportionate approach to conditions of consent to recognise that as development increases in scale and complexity, a proportionate response is needed to manage impacts on the neighbourhood and surrounding environment.

Relationship to other reform initiatives

Consultation on draft conditions of development consent

HIA fully supports the requirement for consent authorities to consult on draft conditions of consent, with applicants for mid and high-rise developments. However, as outlined above, HIA also recommends that consent authorities consult with applicants of low-rise developments when additional requirements are added for model conditions and for all bespoke conditions proposed. This will improve transparency in decision making, help prevent discrepancies and avoid unnecessary and costly modifications being required later in the process.

Furthermore, the proposed framework and ability for consent authorities to impose bespoke conditions may not address the current frustrations of the industry with consent conditions. For the reforms to be fully effective, the proposed model conditions must be supported by standardised or model development consents. This will deliver greater certainty to industry and consent authorities by providing clear direction on the scope of the consents by ensuring that consents are specific, concise and contain only the minimum conditions necessary. Standardised consents are utilised for complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* for a range of development types. These could form the basis of model consents for common developments.

Implementation

HIA supports the department's plans to decommission the condition functionality in the NSW Planning Portal if this leads to improvements in the relevance of conditions placed on development approvals by a consent authority.

HIA strongly recommends that there is an ongoing process to review the model and bespoke conditions of consent imposed on development approvals under the proposed framework. This is critical to ensuring that there is a measurable improvement in the relevance of conditions imposed by consent authorities and that there is greater consistency across the state.

Overall, HIA considers this to be an important reform if it can standardise conditions of consent across the state, reduce duplication, cut costs and give applicants more certainty.

Attachments A & B

HIA has reviewed the EIE draft model conditions for both low-rise and mid to high-rise residential as provided in EIE Attachments A & B, and our comments are provided below.

Opportunity for consent authority to insert additional requirements

There are numerous opportunities given for the consent authority to insert additional conditions of consent throughout the draft low and mid to high-rise model conditions of consent. However, HIA strongly asserts that the consent authority **should not** have the opportunity to add additional requirements. This is because the purpose of the model conditions is to achieve consistency between local government areas and ensure that the conditions are consistent across the state.

There is provision for additional requirements to be added in Attachment A Condition (C1)(f), Condition (C2)(f), Condition (C3)(d), Condition (D3)(h), Condition (D4)(f), Condition (D7)(d) and in Attachment B at Condition (B2)(f), Condition (B3)(g), Condition (C1)(l)(iv), Condition (C1)(m)(v), Condition (C1)(n)(vi), Condition (C1)(o)(v), Condition (C1)(p), Cl(C3)(e), Condition (C4)(k), Condition (C5)(d), Condition (C6)(k), Condition (C7)(e), Condition (D1)(c), Condition (D5)(f), Condition (E3)(f), and Condition (E4)(d).

HIA submits that at the very least, it should be mandatory for a consent authority to consult with the applicant if it proposes to insert additional requirements, including where permitted by the Attachment A model conditions for low-rise residential.

Construction environmental management measures – before any work

Attachment A Condition (C1) (e). It is not usual and impractical to have a domestic style garbage receptacle suitable for food scraps and papers at building sites, particularly in greenfield areas where no LGA waste bin service is operational. The trades typically use the mixed waste commercial skip bins on site for general rubbish disposal. Domestic style garbage receptacles are not delivered to site by the LGA until the house is handed over to the customer.

Erosion and sediment control measures – minor disturbance area

Attachment A Condition (C2)(d). It may be impractical to establish a washdown area for equipment and vehicles, away from stormwater drains or steep slopes on sites <250m^2. The average lot size for a greenfield site is 300m^2, and this is too small for a dedicated washdown area.

Erosion and sediment control measures – moderate disturbance area

Attachment A Condition (C3) and Attachment B Condition (C7). These conditions should reference the NSW Government's ***Guidelines for Erosion and Sediment Control on Building Sites 2024***, rather than the *Managing Urban Stormwater: Soils and Construction* (Blue Book). The NSW Government's guidelines are referenced in the government's Improving development assessment - Discussion paper as the correct reference source and for consistency should also be referenced here.

Wall dilapidation report – pre-construction

Attachment A Condition (C4). To prevent this condition being imposed unnecessarily, it is important to clarify that this condition is applicable to a wall of an adjoining habitable building. There is a concern without these limitations, the condition could be imposed on walls of minor ancillary structures or non-structural walls.

Surveys – before and during construction

Attachment A Condition (C5) and Attachment B Condition (C9). There is no reason to specify that a survey is required for the erection of a building of three or more storeys. The purpose of the survey plan and what should be included are set out in the NSW Government's *Improving development assessment – Discussion paper*.

It is reasonable to require a survey for most residential construction projects regardless of building height. Surveys should not be required for development within the footprint of an existing building or an addition to an existing building where any proposed works will be more than 900mm from a boundary.

Bush fire asset protection zone – survey

This proposed model condition should be deleted. Requiring that a survey be undertaken to establish a bushfire asset protection zone (APZ) adds to unnecessary costs. APZs can generally be established without the need for a survey.

Hours of work

Attachment A Condition (D2) and Attachment B Condition (D2). The proposed model condition should prescribe the permitted hours of construction work rather than allowing consent authorities to impose varying time periods. The hours of work could reflect the timeframes within the *Environment Protection Authority Draft Construction Noise Guideline*.

HIA also proposes that this condition be limited to 'noise generating construction work.' This will help improve productivity by allowing 'silent trades' such as painters and silicone contractors to carry out work on Sundays and Public Holidays as this is unlikely to impact amenity.

Construction environmental management measures – during works

Attachment A Condition (D3)(a). The requirement to keep construction works below LAeq (15 min) of 50dB(A) above background noise is not practical. It is not a requirement of Schedule 6 of the Codes SEPP and for consistency it should be deleted.

Safe Work Australia data[1] indicates that typical sound level for construction machinery measured in dB(A) is as follows:

Front-end loader – 85dB(A)

Chainsaw - 110dB(A)

Rock drill - 120dB(A)

Rivet hammer - 130dB(A)

The Safe Work data states that normal conversation is spoken at 60dB(A).

Attachment A Condition D3(f). This condition is unnecessary and imposes a significant administrative burden. HIA proposes the condition be amended to specify that all waste generated on site is disposed of in accordance with an approved waste management plan as detailed in the NSW Government's *Improving development assessment - Discussion paper* (refer pages 43-44).

Exporting and importing of soil

Attachment A Condition (D9)(c). This clause relates to mid and high-rise development only and should be deleted from the draft conditions relating to low-rise development.

[1] Safe Work Australia Infographic: Noise hazards and sound levels March 2022

Removal of waste

Attachment A Condition (E1)(c) and Attachment B Condition (E1)(c). This aspect of the condition should be deleted as it creates an unnecessary administrative burden. Evidence that waste has been removed from a site can be verified by the certifier as part of the critical stage inspection process.

Damage to Council property

Attachment A Condition (E4). In order to assess damage to council property before issue of an occupation certificate, there must also be a requirement for a pre-construction dilapidation report for council property.

In addition, the word 'final' should be removed from the wording of the clause as there is no longer such a document as a 'final occupation certificate.'

Bush fire asset protection zone – ongoing management

Attachment A Condition (F1) and Attachment B Condition (F1). The word 'applicant' should be changed to 'owner,' as the applicant may not have a long-term responsibility for the management of the property. The Explanation of Intended Effect (refer page 3) provides clarification about the definition of the consent holder[2] for an approval.

If you have any questions or require further information on the matters raised in this submission, please contact Michael Said, Director, Policy NSW, by telephone 9978 3390 (email m.said@hia.com.au) or Cathy Towers, Assistant Director Planning, by telephone on 9978 3387 (email c.towers@hia.com.au).

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

Brad Armitage
Executive Director NSW

[2] Consent holder means the applicant (including any person who may be carrying out development under a consent from time to time) or any other person entitled to act on a consent granted by the consent authority.

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22 January 2024

Ms Kiersten Fishburn
Secretary
Department of Planning, Housing, and Infrastructure
Locked Bag 5022,
PARRAMATTA, NSW 2124

Via email: Kiersten.Fishburn@dpie.nsw.gov.au

Dear Kiersten,

Conditions of Consent

Landscape and Driveway Conditions

HIA met with Ms Paulina Wythes, Director Planning Legislation and Economic Policy, and her team on Thursday 9 November 2023 to discuss issues relating to Occupation Certificates (OC) and conditions of development consents.

Representing HIA at the meeting were Cathy Towers, HIA NSW Assistant Director Planning; Steve Hearn, Chief Operations Officer, Mcdonald Jones/MOJO Homes; Paul Jones, Manager Eden Brae Homes; and Sam Broomfield, Managing Director, Build by the Sea.

The meeting with Paulina was arranged by HIA to discuss an emerging practice by local councils to link the issue of an OC to planning conditions relating to landscape and driveway works.

In August 2023, the NSW Department of Planning and Environment (DPE) issued the document - '*Standard Conditions of Consent – Residential*' for use by councils when issuing notices of determination via the NSW Planning Portal. It is acknowledged that the aim of the standard conditions and notices of determination templates is to reduce inconsistencies arising across councils and this is supported.

While HIA understands that the 'standard conditions' are designed to reflect best practice and are not mandatory, the standard landscape condition is now being used widely by councils and this is causing significant problems for residential home builders for the reasons explained overpage.

HIA members have provided examples of councils across NSW using the standard landscape condition including, Penrith City Council, City of Ryde, Blacktown City Council, The Hills Shire Council, Hawkesbury City Council, Georges River Council, Wollondilly Shire Council, Shoalhaven City Council, Shellharbour Council, and Singleton Council.

The standard condition for completion of landscape works is included under *Part E – Before the issue of an Occupation Certificate* of the standard condition template and reads as follows:

> *Before the issue of an occupation certificate, the principal certifier must be satisfied all landscape works have been completed in accordance with approved plans and documents and any relevant conditions of this consent.*

The problem for home builders with the landscaping linked to the OC relates to the way new homes are built and handed over to the home buyer, and how new homes are financed by lending institutions.

Typically, the new home buyer will have a contract (building contract) with the house builder, and a separate contract (landscape contract) with a landscaper for the landscape and driveway works.

The problem arises when the new home (building contract) is complete and the builder is ready to hand-over the house to the buyer, but the OC has not been issued, as the driveway and landscaping condition has not been satisfied. Due to workplace, health & safety regulations, the builder cannot allow the landscape contractor to enter the site and carryout works while the construction site is still in the builder's possession.

Without the OC the lending institution will not release the loan payment to the home buyer to pay the builder. This has serious financial impacts for both the builder and home buyer and can cause undue and immense stress, particularly during the current cost of living crisis.

Prior to legislation changes in 2019, financial institutions would release final loan payments to new home buyers if there was an Interim OC in place. However, Interim OCs were phased out as part of legislation changes from 1 December 2019 and the replacement Part OCs do not have the same effect.

Importantly however, HIA considers that the landscape condition should not be linked to the OC at all. This is because an OC authorises the occupation and use of a new building or part of a building and does not relate to the outdoor works.

Planning System Circular

The NSW Government has a Planning System Circular (PS 05-001) on *Occupation certificates and conditions of development consents*. Amongst other things, the circular provides guidance to consent authorities in deciding the conditions of consent that relate to the issue of OCs.

The circular states the following:

> *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 final occupation certificate,***
> - *there may be security issues with the building remaining unoccupied.*

Consent authorities should check any 'standard' conditions of consent that they are routinely used, to ensure they do not unreasonably prevent occupation and use of new buildings.

Further, the circular sets out the planning matters appropriate to address or finalise after an OC is issued, including:

- *provision of a paved driveway for a single lot dwelling, and*
- *full implementation of the approved landscape plan.*

The driveway and landscaping considerations addressed in the circular are highly relevant to the issues currently being experienced by the industry and its customers who are unable to get possession of their new homes.

Whilst this circular is now displayed as archived on the Department's website, it appears that at no point has it been superseded or withdrawn.

A copy of Planning System Circular (PS 05-001) is attached to this letter for information.

Recommendations

To help resolve the problems that arise from linking the issue of an OC to a landscape condition, HIA makes the following recommendations:

1. Move the landscape condition from *Part E – Before the issue of an Occupation Certificate* of the standard condition template to *Part F – Occupation and ongoing use.*
2. Rewrite the condition to specify that all landscape work, including driveways must be completed in accordance with approved plans and documents within 6 months of the OC being issued.
3. Reinstate Planning System Circular (PS 05-001) on *Occupation certificates and conditions of development consents* as a current planning system circular on the Department's website.

Please contact Cathy Towers, Assistant Director Planning, on 9978 3387 or email c.towers@hia.com.au, if you would like to discuss any of the issues raised in this letter.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION

David Bare
NSW Executive Director

Cc:

1. Ms Paulina Director, Planning Legislation and Economic Policy
2. Mr Tom Loomes, Executive Director, Stakeholder Engagement and Policy Implementation

Attachment: Planning System Circular (PS 05-001) on *Occupation certificates and conditions of development consents*

Department of
Infrastructure, Planning and Natural Resources

DIPNR circular

PLANNING SYSTEM

Development control

Circular	PS 05–001
Issued	22 April 05
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 BASIX[3] 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.

Authorised by:

Alice Spizzo
Executive Director
Office of the Director General

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.

NSW Department of Infrastructure, Planning and Natural Resources
www.dipnr.nsw.gov.au
DIPNR 05_035

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.