

Occupation Certificates

Legislative background

Commencing 1 December 2019 and under Part 6 of the EP&A Act, the term 'interim' and 'final' Occupation Certificates (OC) ceased to exist. Instead, an OC will be issued for either 'part of' or 'a whole building', including parts of partially completed new buildings. An OC will continue to certify that a building (or the part) is safe to occupy, including parts of a partially completed building.

To ensure that a building is not occupied indefinitely under a partial OC (issued for part of a partially completed new building) the Regulation requires that a further OC for the whole building be obtained within five years of a partial OC being issued.

The purpose of the five year timeframe is to ensure that buildings are not occupied indefinitely without complying with all Development Consent conditions.

Key components of these provisions to note are:

- These OC provisions only apply to Development Consents granted from 1 December 2019. Development consents granted prior to this date, including deferred commencement consents, will remain subject to Part 4A of the EP&A Act (as in force immediately before the repeal of that Part).
- When issuing a Notice of Determination, from 1 December 2019 councils will need to note this change in terminology for OCs when drafting consent conditions.
- When issuing an OC for part of a building, that OC will need to clearly identify the part of the building/development that the OC applies to.

When is an OC required?

Generally, a building cannot be occupied or used (or the use changed) without an OC. Section 6.9 of the EPA&A Act sets out the circumstances in which an OC is required, it includes:

- the occupancy of a whole new building
- the occupancy of a new part of an existing building (such as an alteration) where the existing building already has a final or whole OC
- the occupancy of a partially completed new building (such as staged occupation)
- changing the use of a whole building or part of an existing building which has been reclassified under the Building Code of Australia
- changing the use of a part of a partially completed new building which has been reclassified under the Building Code of Australia (such as for shop fit outs in a staged release building).

Staged occupation of a building is permitted. As a new development is constructed, parts may be completed and become suitable for occupancy before the overall development is finished.

To accommodate this, the EP&A Act allows for an OC to be issued for a part of a partially completed building.

An OC for part of a partially completed building can only be issued for occupiable parts of a building or development. For this OC to be issued, the incomplete building works must not pose a health and safety risk to the occupants and any preconditions to the issue of an OC for that part specified in the Development Consent must be met.

Multiple OCs may be issued for different parts of a building as they are completed. This enables the staged release and occupation of multi-stage projects. An OC for part of the partially completed building only authorises the occupation and use of the portion of the building to which the certificate relates.

The certifier must clearly identify in the partial OC the portion of the development which is covered by the partial OC.

Once the development and all associated building work is complete, an OC for the remaining parts of the building must be obtained. This OC is required to demonstrate that the building and/or change of use complies with the associated Development Consent, and the remaining conditions of that consent have been met. The completed development must also be suitable for the approved occupation or use and comply with the Building Code of Australia. Whether this OC certifies a whole building or part of a building will depend on what was approved under the respective Development Consent.

Under the new framework, an OC issued for the first completed stage of a partially completed building will now be subject to a condition that a further OC must be obtained for the whole building within 5 years after the issue of that partial Occupation Certificate. This is to ensure that a building is not occupied indefinitely under a partial OC and all conditions of the relevant Development Consent are satisfied in a timely manner.

How this applies to you

An Occupation Certificate issued pursuant to Section 6 of the *Environmental Planning and Assessment Act 1979* must be issued for specific reasons and must cover one of the following circumstances:

1. Whole of a new building
2. Part of an existing building
3. Partial – a component part/section of a new building

The terminology is confusing so in an effort to clarify the issues regarding Occupation Certificates the following explanations are offered:

- A Whole or Part Occupation Certificate may be considered the same as both are issued for the same thing and under the same criteria and considerations – completion of building works comprising a whole building or the completion of alterations/ additions to an existing building.
- An application for alterations and additions to a dwelling together with a detached garage will receive an OC (Part) for the additions and alterations and an OC (Whole) for the garage.

Note: It should be noted that, in the above example, two OC applications will be required one for the Part and one for the Whole.

- A Partial Occupation Certificate is quite different as it may be issued on only part of an incomplete new building.

Partial Occupation Certificates permit the staging of development as the Occupation Certificate may be issued as each stage is completed and becomes suitable for occupation before the overall development is finished.

More than one Occupation Certificate (Partial) can be issued however “Partials” are issued conditional on the whole development being completed within 5 years of the first “Partial” being issued.

It is important to note that the usage and occupation of the building will be restricted until the entire building is complete and subject to an Occupation Certificate (Whole) and this will add costs to the construction of staged builds as a number of Occupation Certificates will need to be applied for and determined.

Partial Occupation Certificates

1. Certify that the completed building work for the respective part of the building accords with the Development Consent, including prerequisites and conditions.
2. Certify that all BCA matters related to the safe occupancy or use of the part of the building have been satisfied.
3. Certify the design and construction of building work is consistent with the Development Consent and Construction Certificate or Complying Development Certificate.
4. Multiple partial OCs can be issued for parts of a development as they are completed, to enable the staged release and occupancy of multistage projects.
5. 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.
6. For strata units bought off the plan, a partial OC must be issued at least 14 days before completion of the sale 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).
7. For house and land packages, a partial OC must be issued at least 14 days before completion of the sale in relation to the dwelling-house.
8. 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.

Further information/ reading

For more information about these changes, you can view the following resources:

- [Occupation Certificates](#) (PDF, 242 KB)
- [Frequently Asked Questions: Occupation Certificates](#) (PDF, 44 KB)
- [Legislation](#)