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Australian Society of Building Consultants

Construction Certificates & Occupational Certificates -

*what's the connection and
why does it matter*

(Bartier Perry Lawyers)

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Construction Certificates and Occupation Certificates – what's the connection and why does it matter

Construction certificates: an overview

Occupation certificates: an overview

What's the connection?

Why does it matter?

Construction certificates: an overview



- A construction certificate will need to be obtained before any building or construction work starts.
- Construction certificates confirm construction plans and development specifications are consistent with the development consent, as well as complying with the BCA and council requirements.
- A CC must be issued by a certifying authority, being either a council or a registered certifier.

Construction certificates: the application process



From 1 July 2021, all CC applications must be lodged through the NSW Planning Portal to the council or a registered certifier.



The application should include detailed building plans, engineering details and specifications.



These plans will be far more detailed than the approved development application plans to allow the builder to work directly from them.



The building must be consistent with both the CC documents and the development consent.




Any changes to the plans that are inconsistent with the DA plans will need to be assessed and a subsequent application to modify the development consent may be required.

Construction certificates: the application process cont.

Applicant may need to provide additional reports and pay refundable bonds or development contributions to the council.



A CC is **NOT** required for building work that is exempt development, subject to a complying development certificate, or for Crown building work that is certified to comply with the BCA.



A design compliance declaration and the related regulated designs must be submitted before a CC or CDC is issued for regulated buildings.

Construction certificates: the application process cont.



Class 2, 3 and 9c buildings are currently regulated in NSW

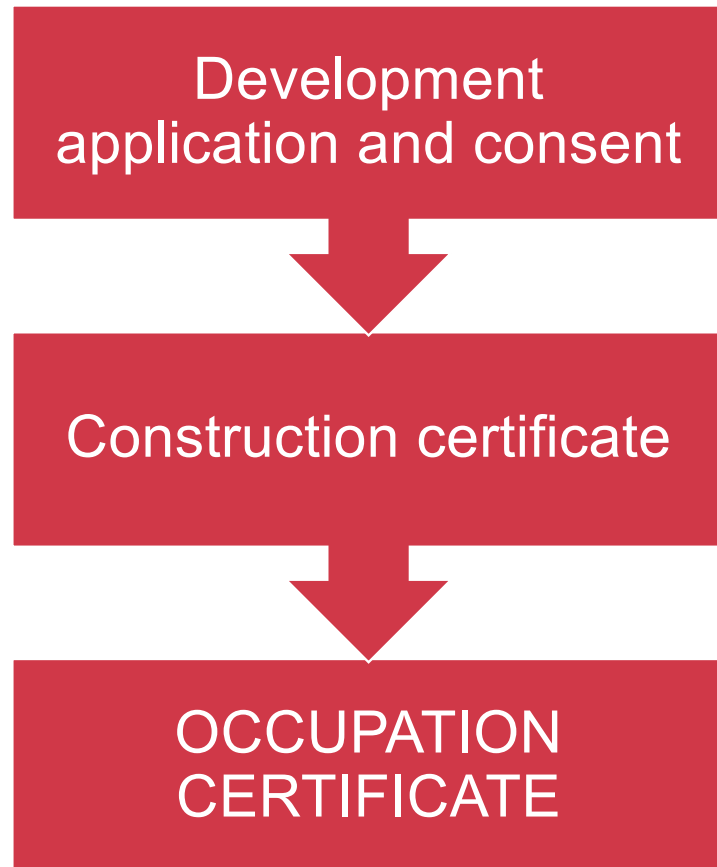


For applications relating to these building classes, there are additional requirements under the *Design and Building Practitioners Act 2020* and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.



For example, a set of declared regulated designs for these developments will need to be provided before building work starts.

Occupation certificates: an overview



- The Occupation Certificate authorises the occupation and use of a new building or part of a building.
- An Occupation certificate is required for the use, occupation or change of use of a new building subject to a Complying Development Certificate or Construction Certificate.
- Must be issued by a certifying authority, being either a council or a registered certifier.
- From 1 December 2019 new developments cannot apply for Interim Occupation Certificates

Occupation certificates: the process

To enable the certifier to issue an OC, they must inspect the development at various points in the build and ultimately ensure that the building is safe and fit to occupy and in accordance with the development consent and CC.



Generally, must be satisfied that:

- A development consent is in force.
- The design and construction of the building is not inconsistent with the development consent.
- Any pre-conditions set out in the consent or requirements of planning agreements have been satisfied.
- A Construction Certificate has been issued.
- That the building is suitable for occupation (in accordance with its BCA classification).

Occupation certificates: the process (regulated buildings)



For regulated buildings, a Building Compliance Declaration and other prescribed documents must be submitted into the NSW planning portal before an application is made for an OC.



When an application for an OC is lodged, the certifier will access the completed compliance declarations and declared regulated designs on the NSW Planning Portal.



A certifier will only issue Occupation Certificate if they have all compliance declarations.



Intention to seek an Occupation Certificate must be lodged 6 - 12 months before the application for an OC is made.

CC and OC - What's the connection?

No occupation certificate without a construction certificate

A copy of the construction certificate must be submitted as part of the application for an occupation certificate

Staged construction can be carried out under multiple construction certificates

Staged occupation of a building is permitted under multiple occupation certificates issued for different parts of a building as they are completed.



Why does it matter?



The commencement of limitation periods for various actions for building defects can be defined by the date of issue of an occupation certificate.



The issue of multiple occupation certificates can mean there are multiple limitation periods for a single building project.

Why does it matter?



Section 6.20 of the *Environmental Planning and Assessment Act* – no action for defective building work more than 10 years after completion of the work



In contract – 6 years after the breach causes loss. Must happen by the time the OC issues.



Building work is taken to be completed on the date on which an OC is issued that authorises the occupation of the building or part of the building for which the work was carried out.



Home Building Act warranties – 6/2 years from date of issue of OC for the work for strata building, and otherwise unless another presumption of practical completion applies .

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