

Guiding Development — Practice Notes

Construction certificates for building work

The purpose of this practice note is to outline the legislative requirements for construction certificates for building work. Separate practice notes detail construction certificates and the Building Code of Australia (BCA), and construction certificates for subdivision.

What is a construction certificate?

A construction certificate is a certificate verifying that relevant matters specified in the Environmental Planning and Assessment Regulation 1994 (the Regulation) have been satisfied. For building work it cannot be issued unless:

- the proposed building will comply with the relevant provisions of the BCA
- the design and construction of the building as depicted in the plans and specifications, are not inconsistent with the development consent
- the conditions of development consent that must be complied with before a construction certificate is issued, have been met
- conditions requiring the provision of security before work is carried out, have been met
- conditions requiring the payment of a monetary contribution before work is carried out, have been met
- a fire safety schedule is issued with the certificate (not applicable in the case of a class 1a or 10 building)
- structural strength and fire protection matters have been satisfied in the case of a change of building use or alterations (and the like) to an existing building
- the application has been referred to the NSW Fire Brigades (applies to specific buildings only) and the matters raised by the Brigades have been taken into consideration.

The definition of a construction certificate is found in section 109C(1)(b) of the *Environmental Planning and Assessment Act 1979* (the Act) and the above-mentioned requirements are in the Regulation, clauses 79E–79H and 80C.

Who can issue a construction certificate?

A construction certificate can be issued by either a consent authority or an accredited certifier. A consent authority can be a council or the Minister for Urban Affairs and Planning.

When is a construction certificate required?

A construction certificate is required after development consent is issued and before any building work is carried out. Building work means any physical activity involved in the erection of a building, including alterations and additions. This requirement is found in section 81A of the Act.

A construction certificate is not required for complying development, where building details are covered by the complying development certificate (see Practice Note: *Complying development*). In addition there is an exception for Crown building work (see Practice Note: *Development applications by the Crown*).

Council or a certifier can request additional information that is essential to the proper consideration of the application. For the council, this must be done within 14 days of lodgement (clause 79B of the Regulation).

Fees for construction certificates

Fees are unregulated. For councils the fee must be an approved fee adopted in accordance with the management plan process in the *Local Government Act 1993*.

What is meant by 'not inconsistent with the development consent'?

A construction certificate cannot be issued if the design details are inconsistent with the development consent. However, the following points should be noted:

- plans and specifications relied upon for the purpose of obtaining a construction certificate will invariably contain a greater level of detail than that submitted with the development application (DA)
- some variations to the design, siting and construction of the building may have occurred either to comply with a specified condition of development consent or with the BCA, or to improve the efficiency and functionality of the building — compliance with the BCA is a prescribed condition of development consent and a prerequisite to the issue of a construction certificate
- the regulations recognise the fact that variations may occur when proceeding to this level of detail, by not requiring that the design and construction of the building be strictly in accordance with the development consent.

In all cases this judgement will depend on the terms of the development consent — the detail on the plans and the requirements imposed as conditions of the consent. They should be carefully considered. As an example, changes to plans such as the following would be consistent with the development consent:

- changes to comply with conditions of development consent
- additional details to show compliance with the BCA, generally within the external envelope of the building — such as kitchen detail, moving doors or partitions.

The following would be inconsistent with the development consent:

- altering the external envelope — relocating windows, altering heights, adding plant rooms where not shown
- moving rooms around — changing location of bedrooms and living rooms, increasing number of rooms
- designs not satisfying the conditions of development consent, for instance, conditions requiring modification to plan drawings such as reducing heights or increasing setbacks.

In these circumstances a section 96 modification, to vary the development consent, would be required (see Practice Note: *When is a section 96 modification required?*). If there is some doubt about the extent of changes, it should be discussed with the council. This could save time and energy for all parties.

What is meant by 'will comply with the relevant provisions of the BCA'?

Clause 79G(1)(b) of the Regulation requires a certifying authority to be satisfied that the relevant requirements of the BCA will be met, rather than being satisfied that they have been met. A certifying authority cannot impose conditions to satisfy this provision. It can rely upon the plans and the specifications to be satisfied as to the matters prescribed.

In this regard relevant Australian standards and/or requirements of the BCA can be referred to on the plans or specifications to satisfy the certifying authority that the relevant requirements of the BCA will be met.

Practice Note: *Construction certificates and the BCA* discusses the level of detail required.

Can you have conditions on construction certificates?

Site-management conditions will now be included on the development consent. For instance, setting limits on construction hours, requiring erosion/sediment control measures to be in place and the protection of public places. Conditions on construction certificates are only possible in specific circumstances relating to fire brigade referrals and departures from the BCA (see clauses 79F(6), 80H(6), 80H(13) and 80I(6) of the Regulation) and where details of the variation cannot be handled by plan amendment. In these limited circumstances, reasons for the conditions must also be provided.

Fire safety schedule attached

A fire safety schedule is to be attached to all construction certificates (except for class 1a or 10 buildings) identifying the fire safety measures that must be subject to the maintenance and certification requirements in Part 7B of the Regulation. An occupation certificate cannot be issued until all the fire safety measures have been installed, inspected and certified by a fire safety certificate.

Becomes part of the consent

Under section 80(12) of the Act, once a construction certificate is issued it becomes part of the development consent. As a result, notices and orders can be issued at any time if the building works do not meet the standards identified in the specifications to the construction certificate.

When will a construction certificate lapse?

A construction certificate lapses with the development consent.

Appeal rights only against the council's decision

Applicants may appeal (within 12 months) against the council's (or Minister's) decision to refuse to issue a construction certificate (or, in the limited circumstances outlined above, against any conditions). There is no appeal right against an accredited certifier's decision. Further, there is a deemed refusal period of 28 days (or to coincide with the deemed refusal for a DA if they are lodged together) applying to the council.

Modification of a construction certificate

Clause 79IA of the Regulation permits the person who made an application for a construction certificate to apply to modify the construction certificate — including the issue of a new construction certificate. The modification is applied for and assessed in the same way as the original application.

The council or certifier will need to consider whether the nature and extent of the modification is inconsistent with the development consent. If so, a section 96 modification to the consent would be required.

It should be noted that the Regulation allows the construction certificate to be a stamp on the approved plans (clause 79D(3)).

Can construction certificates be staged?

It is possible to issue construction certificates for various stages of the development. For example, a construction certificate could be issued for works up to the ground floor slab and a second construction certificate could be issued for the remaining floors of the development.

Can a DA and construction certificate application be lodged together?

Yes. An applicant for a development consent may submit an application for a construction certificate at the same time as the application for the development consent is made. Greater details with respect to the plans and specification may be required particularly for more complex building work to permit a consent authority to issue the construction certificate at the same time that it issues a development consent.

For further information please contact:

Policy and Reform Branch

Department of Urban Affairs and Planning

GPO Box 3927 Sydney NSW 2001

Phone 02 9391 2355

Fax 02 9391 2337

Email reform@duap.nsw.gov.au

