

PRACTICE NOTE 24-2018

This updates the previous Practice Note-2006-24 issued March 2014

Purpose

One of the main objectives of the Building Act 1993 (the Act) is “to protect the safety and health of people who use those buildings and to enhance the amenity of buildings”. The relevant building surveyor (RBS) issuing an occupancy permit, has a duty of care to ensure that buildings are safe and habitable.

Duty of Care

Building practitioners have a legal obligation to ensure that no harm to people or damage to property results from their actions. Liability for negligence extends to the issue of occupancy permits for building work under Part 5, Division 1 of the Act. Failure to attend to these matters before an occupancy permit is issued can have serious results. An investigation may lead to de-registration, litigation and even criminal prosecution, in the event that a person is killed or injured or a building is damaged.

The RBS is obliged to ensure that all relevant items of compliance are resolved and the building is suitable for occupation, before issuing the occupancy permit. The building must therefore be safe and habitable. Any required item that can affect people’s safety and habitation must be in place and fully operational.

The RBS may require an applicant for an occupancy permit to provide additional information. The RBS must notify an applicant for an occupancy permit in writing without delay of the refusal of the permit and the reasons for refusal. An applicant may

appeal the RBS decision to refuse to issue an occupancy permit.

A municipal building surveyor, regardless of whether they are the RBS, are empowered under the Act to ensure compliance with the Building Regulations 2018 (the Regulations). Proceeds from fines are retained by the municipality in these cases.

Action may also be taken by the Victorian Building Authority against the building practitioners involved where non-compliance is found.

Occupancy Permit Process

Issuing occupancy permits in accordance with section 46 of the Act is evidence that the building or part of the building is suitable for occupation. An occupancy permit is not evidence that the building or part of the building complies with the provisions of the Act and the Regulations). Mandatory notification stages for inspections have no bearing on the responsibilities that apply under the occupancy permit process.

In issuing an occupancy permit for a Class 1b, and Class 2 to 9 buildings, regulation 194 of the Regulations requires the RBS to include conditions on the permit which

- a) lists all the essential safety measures¹ pertaining to that building or place of public entertainment; and
- b) specifies for each essential safety measure listed, the level of performance determined by the relevant building surveyor to enable the essential safety measure to fulfil its purpose, and
- c) the frequency and type of inspection, testing and maintenance period required for each essential safety

measure determined by the RBS.
Including the Building Regulations that reference each essential safety measure

The person authorised to undertake the final inspection must ensure that the provisions and conditions of the Building Permit are satisfied.

These can be described, however they are not limited to the following:

Class 1 buildings

- roof drainage connected to an approved point of discharge;
- required safety systems (such as handrails and balustrades) completed and compliant;
- stair construction;
- glazing meets human impact, structural and weather resistance provisions;
- provision of relevant sanitary and other facilities
- the building is constructed to prevent the penetration of water and dampness to the internal areas of the building;
- waterproofing of wet areas completed to the satisfaction of the RBS;
- smoke detection and alarm systems installed and fully operational;
- energy efficiency provisions have been met;
- power connected to the satisfaction of the electricity supply authority, where electricity is required for mechanical ventilation, artificial lighting or hard-wired smoke alarms;
- if gas cooking is to be provided, the pipework is connected to the unit and completed to a stage ready for connection to the gas supply;
- water supply connected to the building;
- swimming pool and spa safety barriers;

- for buildings constructed in bushfire prone areas – required construction provisions are in place.

All other buildings

The same requirements as for Class 1 buildings, plus the following:

- exits;
- firefighting equipment, such as hydrants, hose reels and portable fire extinguishers;
- sprinkler systems;
- smoke hazard management systems;
- fire resisting construction;
- fire dampers;
- fire rating of penetrations of walls and floors; fire doors and door sets;
- fire windows;
- fire hazard properties;
- emergency lighting and exit signs;
- structural stability;
- disabled access and facilities; and
- mechanical ventilation systems.

The report and consent from the Chief Officer must also be obtained where

- a) the Chief Officer was a reporting authority for the building permit application or
- b) the building or building work involves the transmission signal of alarms or to be connected to a fire station or other alarm monitoring service.

All commissioning documentation in accordance with the relevant Australian/New Zealand Standards must be obtained.

In accordance with section 44 of the Act, the RBS must not issue an occupancy permit if plumbing work for which section 221ZH required the issue of a compliance certificate, unless the RBS has seen a copy of that compliance certificate.

Before an occupancy permit is issued, power for required systems should be connected and completed to a stage ready for connection to the supply authority. In practice, most occupancy permits are issued with the power at a stage ready for connection. However, the occupancy permit may be issued concurrently with connection of the power, or with a condition stating that it is subject to the power being connected.

Notes:

Essential Safety Measure is defined in regulation 214 of the Building Regulations 2018

Further information

Want to know more?

If you have a technical enquiry, please email technicalenquiry@vba.vic.gov.au or call 1300 815 127.

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