

Advisory Notices are issued to assist in the interpretation of the *Planning, Development and Infrastructure Act 2016*

PROFESSIONAL PRACTICE:

Certificates of Occupancy for Class 1a buildings

Background

This Advisory Notice provides guidance on the reintroduction of Certificates of Occupancy for Class 1a buildings under the *Planning, Development and Infrastructure Act 2016* (PDI Act).

Due to the phased introduction of the PDI Act, the requirements for Certificates of Occupancy for Class 1a buildings are already in effect in outback and rural council areas (introduced as of 31 July 2020). These requirements will apply to large regional towns and metropolitan councils in 2021 when the PDI Act is 'switched on' for these areas. This notice will be updated prior to the 2021 implementation date.

The process for issuing a Certificate of Occupancy will now take place via the new ePlanning platform for outback and rural councils. This notice provides advice about the legislative process, rather than guidance about the use of this ePlanning platform. Practitioners will need to familiarise themselves with the new ePlanning platform in order to undertake key development functions, including the issuing of Certificates of Occupancy.

PDI Act Certificate of Occupancy requirements

Under the PDI Act, Class 1a buildings are now required to have a Certificate of Occupancy prior to occupancy. These requirements can be found in section 152 of the Act and regulation 103 of the *Planning, Development and Infrastructure (General) Regulations 2017* (Regulations). Occupation of a Class 1a building without a Certificate of Occupancy will attract a penalty of up to \$10 000.

The purpose of reintroducing the requirement for a Certificate of Occupancy is to ensure that all new Class 1a buildings (homes and additions) in South Australia are built in a safe manner and are suitable for occupation. This requirement mirrors the requirement already in place for all other classes of buildings, excluding Class 10, which are defined as sheds, carports and the like.

Importantly, the provision of a Statement of Compliance for a Class 1a building will no longer represent the completion of the building process for the parties involved (builder, owner, council and building certifier for the council, building certifier if present). A house will only be considered complete when a Certificate of Occupancy has been issued.

Discussion

Practitioners already familiar with the process for issuing Certificates of Occupancy will recognise the key steps below, with only minor changes under the PDI Act. For those working exclusively in the domestic building sector with a focus on Class 1a buildings, the following steps will be new.

Step 1: Determining who will be issuing the Certificate of Occupancy and issuing the Decision Notification Form (DNF)

The ePlanning platform requires the applicant to nominate who will be issuing the Certificate of Occupancy. Under the PDI Act a Certificate of Occupancy may be issued by either council or a building certifier.

If a building certifier is undertaking the assessment and they have been engaged to issue the Certificate of Occupancy following receipt of the Statement of Compliance, they should indicate they will be doing so on the ePlanning platform. If the building certifier has not been engaged to undertake this function, the responsibility will default to the council (section 152 of the PDI Act).

The authority responsible for issuing the Certificate of Occupancy (building certifier or council) will appear on the DNF so that all parties are aware of who is responsible for this function prior to construction commencing.

The DNF will also state if any additional certificates, reports or other documents will need to be provided at the same time the Statement of Compliance is submitted. This information may be necessary for a Certificate of Occupancy to be issued.

The DNF will also identify the notifications that must be made to the council, noting that commencement and completion notifications are mandatory (regulation 93) with others (e.g. footings, framing, pool fencing) are discretionary.

Step 2: Receiving notifications to monitor the progress of construction

While not strictly part of the Certificate of Occupancy process, receipt of notifications allows the progress of construction to be traced. Two key notifications are mandatory; a commencement notification and a completion notification. Mandatory notifications also apply for the use of a designated building product.

Step 3: Receiving the Statement of Compliance

The completion notification must be accompanied by the Statement of Compliance. Part A of the Statement must be completed by the licensed building work contractor engaged by the applicant. Part B must be completed by the owner or a person acting on the owner's behalf.

The person who signs Part A of the Statement must provide the Statement, along with a copy of any other documentation requested on the DNF, to the council and the owner, within 5 days of its completion. This process can occur via the ePlanning platform.

The PDI Act Statement requires the builder to list the aspects of the approved building work that the builder has not been contracted to complete. These aspects may need to be completed by others (including the owner) before a Certificate of Occupancy can be issued.

Step 4: Issuing the Certificate of Occupancy

Whilst a final inspection is not a mandatory precondition for issuing a Certificate of Occupancy, council may decide to conduct an inspection, giving rise to two scenarios.

Scenario A: Issuing of the Certificate of Occupancy without a final inspection

If council decide not to conduct a final inspection and the completed Statement of Compliance (including any required documentation) has been received, council or the building certifier five business days in which to issue the Certificate of Occupancy.

If a building certifier issues the Certificate of Occupancy they are required to provide a copy to the council, together with a copy of any other relevant documentation, within five business days. The Certificate of Occupancy may be generated and issued via the ePlanning platform. The form is also available in hard-copy format on the [PlanSA portal](#) but must be uploaded to the ePlanning platform for appropriate record keeping.

Scenario B: Issuing of the Certificate of Occupancy with a final inspection

The process becomes more complex when a council intends to undertake a final inspection in accordance with **Practice Direction 9 – Council Inspections 2020** and/or **Practice Direction 8 – Council Swimming Pool Inspections 2019**.

Scenario B.1 Council undertaking a completion inspection and building certifier issuing the Certificate of Occupancy

When a council intends to undertake a final inspection, the Certificate of Occupancy must not be granted until the inspection has been carried out and any required actions have been undertaken. To avoid situations where the Class 1a is inadvertently issued with a Certificate of Occupancy and occupied prior to the final inspection, council should:

- a) advise the building certifier of council's intention to carry out a final inspection (prior to the inspection occurring); and
- b) advise the building certifier when the inspection and any subsequent actions have been completed.

The building certifier then has five days to issue the Certificate of Occupancy. It's important to note that the 'five day clock' for the certifier to issue the Certificate of Occupancy does not start until the final inspection has been completed. The final inspection must be undertaken within the timeframes set out within the relevant Practice Direction.

Scenario B.2 Council undertaking a final inspection and council issuing the Certificate of Occupancy

The process is simpler when the council is issuing the Certificate of Occupancy after undertaking a final inspection.

Once the final inspection and any required actions have been undertaken, the council has five days to issue the Certificate of Occupancy. The final inspection must be undertaken within the timeframes set out within the relevant Practice Direction.

Additional Information

- [PDI Act Statement of Compliance](#)
- [PDI Act Certificate of Occupancy](#)
- [Practice Direction 8 – Council Swimming Pool Inspections 2020](#)
- [Practice Direction 9 – Council Inspections 2020](#)
- [Planning, Development and Infrastructure \(General Regulations\) 2017](#)

Further Information:

Attorney-General's Department
Planning and Land Use Services
Building Policy and Compliance
Level 2, 101 Grenfell Street
ADELAIDE SA 5000
Telephone: 1800 752 664

This Advisory Notice is for general information only and should not be relied upon as legal advice or an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations you should obtain independent legal advice.