



Fact Sheet

Certificates of Occupancy for Class 1a buildings – addressing non-conformances

Background

The Chief Executive's [Statement of Building Occupancy Requirements for Class 1a buildings](#) outlines the mandatory requirements that must be met before a Certificate of Occupancy can be issued. These requirements include:

- that the Statement of Compliance has been appropriately completed (signed by appropriate parties and all aspects completed)
- **any concerns identified through council inspections during construction have been resolved (non-conformances)**
- where the Statement of Compliance indicates smoke alarms and bushfire protection requirements are '*To be completed by owner*', the owner provides a statutory declaration and/or other evidence to the satisfaction of the relevant authority to confirm those works have been completed.

Smoke alarms must be installed prior to issuing a Certificate of Occupancy in all circumstances, but bushfire protection requirements are only mandated where the building is in the *Hazards (Bushfire – High Risk) Overlay* of the Code.

This fact sheet provides guidance on consideration that should be given to whether a Class 1a building is suitable for occupation for the purpose of section 152 of the [Planning, Development and Infrastructure Act 2016](#) (the PDI Act) when non-conformances have been identified during the inspection process and remain unresolved.

General approach to matters that may impact on the suitability of the building for occupation

The Relevant Authority (council or private certifier) issuing a Certificate of Occupancy is responsible for determining whether a building is suitable for occupation and complies with the requirements of the [Planning, Development and Infrastructure \(General\) Regulations 2017](#) (the Regulations), including whether any unresolved non-conformances are relevant for the purpose of section 152 of the Act.

Further Information

- [Statement of Building Occupancy Requirements for Class 1a Buildings](#)
- [Statement of Compliance](#)
- [Certificate of Occupancy Form](#)

In general terms, when considering the impact of non-conformances on the suitability of a building for occupation, consideration should be given to the following:

- Is there an **immediate** risk to the occupants of the building due to structural or fire safety issues with the building?
- Are there seasonal, environmental or site-specific hazards that may pose health or safety risks to the occupants of the building?
- Would the occupancy of the building assist with the resolution of the non-conformances?
- Should the non-conformances be addressed through other compliance and enforcement provisions provided by the PDI Act and Regulations?
- Could the non-conformances be addressed by using conditions placed on the Certificate of Occupancy?

Resolution of non-conformances resulting from inspections

Councils are responsible for undertaking statutory inspections in accordance with [Practice Direction 9 – Council Inspections 2020](#). This process may highlight non-conformances, which are aspects of the building work that don't meet the approved documentation and require rectification.

A Certificate of Occupancy can be issued by either the council who undertook an inspection, or a private certifier. Where a private certifier is responsible for issuing the Certificate of Occupancy, the role of the council is to satisfy themselves that the outstanding non-conformances that would result in the building being unsuitable for occupation have been addressed.

This **does not** require an inspection unless the Council believe this is necessary to satisfy itself that non-conformances relating to suitability have been addressed. Other forms of evidence may include the Statement of Compliance, which must be signed by the builder and submitted to the Council or the private certifier at the completion of the building work; or certificates from electrical, plumbing or gas installers in the case of services.

The use of conditions to resolve non-conformances

Where non-conformances do not pose an immediate risk to the occupants of the building, consideration should be given to placing conditions on the Certificate of Occupancy to resolve or manage outstanding issues. This may involve stating a period in which the condition must be satisfied.

Councils also have a range of compliance and enforcement powers under the PDI Act and Regulations they can exercise to address outstanding non-conformances that don't impact on the suitability of occupation, failure to comply with conditions of approval, and non-compliance with conditions imposed on the Certificate of Occupancy.

Occupation of a building **should not** be prevented unless they result in the building be unsuitable for occupation.

Matters to consider for the suitability of occupation

The following table has been prepared to assist with determining matters that may impact on the suitability of a building for occupation and may also assist where Part A, Clause 1 of the Statement of Compliance indicates completion by the building owner as part of the contractual agreement with the builder.

The following matters will generally impact on the suitability of a building for occupation

Note: Some of the matters noted below may not apply to additions or ancillary dwellings.

- Fire safety matters including fire separating construction.
- Structural safety matters including tie-downs, bracing and balustrading.
- The completion of weatherproofing requirements including the installation of flashings, gutters and downpipes (to direct water away from the building), and the installation of secure and watertight roof and wall coverings.
- The completion of suitable facilities for:
 - personal hygiene, including hot and cold-water services, and sanitary compartment/s (water closet/s) with sufficient space to enable an unconscious occupant to be removed from the compartment,
 - laundering purposes,
 - food preparation, including means for preparation and cooking of food, and means for washing and wastewater disposal.
- Service connections for power, water, and waste disposal, which should be in place and operational.
Note: Service connections for stand-alone services such as off-grid power systems may need special consideration.

The following matters should not impact on the suitability of a building for occupation

Note: Consideration should be given to using conditions on the Certificate of Occupancy to ensure these and other similar matters are addressed in a timely manner in circumstances where the owner has agreed contractually to complete the works themselves

- Installation of obscure glazing in upper-level windows and the installation of shower screens.
- Completion of landscaping including paving, tree and other planting, driveway access, lighting and footpaths.
- Installation of air conditioning systems (including combustion heaters) and solar panels.
- Termite treatment notices.
- Completion of pergolas, verandahs, decks and other staged works.

The following matters may or may not impact on the suitability of a building for occupation

Note: Consideration should be given to using conditions on the Certificate of Occupancy to ensure these matters are addressed in a timely manner in circumstances where the owner has agreed contractually to complete the works themselves

- Completion of the bushfire fighting system (including tanks) in areas other than High-Risk bushfire risk areas.
- Completion of the stormwater disposal system (including rainwater tanks), unless it can be clearly demonstrated that the incompleteness will result in stormwater rendering the building unsuitable for occupation.
- In the case of elevated buildings, the completion of steps for the purposes of accessing the building.
- The completion of toilet facilities. Should more than one toilet facility be provided, it may be acceptable to occupy a home when only one facility has been completed.

Case studies to assist with determining suitability of occupation

A dwelling has completed construction in June. The site is located in a low bushfire risk area. All other matters relevant to occupancy have been addressed but the owner is waiting on the bushfire tank to be delivered to site and installed. Can the certificate of occupancy be issued?

The installation of bushfire tanks (other than in high-risk areas) is not a mandatory requirement for the purpose of occupation. Given the time of year there may not be an immediate risk to the safety of the occupancy of the building. The relevant authority may choose to issue the Certificate of Occupancy on the condition that the bushfire tank is installed within a specified time frame.

An alteration and addition to an existing dwelling has been undertaken. The notification of completion has been submitted, and the council has chosen to inspect. There is a working bathroom (including toilet, shower and bath) in the existing part of the house. The toilet has not been installed in the second bathroom within the addition. Can the certificate of occupancy be issued?

In the case of a dwelling with multiple bathrooms, it may be considered unreasonable to prevent occupation where there is access to alternative working facilities. The relevant authority may choose to allow occupation with a condition that works to the bathroom are completed within a specified time frame.

A dwelling has completed construction in February, but the downpipes have not yet been installed. The topography of the site allows for water to drain away from the property into surrounding garden beds. Can the certificate of occupancy be issued?

The installation of downpipes is required to ensure appropriate disposal of stormwater. Given the time of year and the sites topography, the stormwater discharge may not pose an immediate risk to the safety of the occupants or building. The relevant authority may choose to issue the certificate of occupancy on the condition that downpipes be installed within a specified time frame.