

## Occupancy Permits

This updates previous *Practice Note 2005-24* issued June 2005.

### 1. Summary

One of the Building Act's main objectives 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.

### 2. 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 *Building Act 1993* (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 items of non-compliance are rectified, before issuing the occupancy permit. Failing this, municipal building surveyors, regardless of whether they are the RBS, are empowered under the Act to ensure full compliance with the Regulations. Proceeds from fines are retained by the municipality in these cases.

### 3. Occupancy permit processes

Issuing occupancy permits in accordance with section 46 of the Act is evidence that the building is suitable for occupation. An occupancy permit is not evidence that the building complies with the provisions of the Act and *Building Regulations 2006* (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, regulation 1203 (1) of the Regulations requires the RBS to include on the permit

- a) *lists all the essential safety measures<sup>1</sup> 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.*

To issue an occupancy permit, the RBS must be satisfied that the building is suitable for occupation. The building must therefore be safe and habitable. Any required item that can affect people's safety and habitability must be in place and fully operational. These can be described, but 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) in place
- ▶ Provision of sanitary and other facilities (for residential buildings)<sup>2</sup>
- ▶ The building is constructed to prevent the penetration of water and dampness to the inner parts
- ▶ Waterproofing of wet areas completed to the satisfaction of the RBS
- ▶ Smoke detection and alarm systems installed and fully operational
- ▶ 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 fencing/barriers

<sup>1</sup> Essential Safety Measure is defined in regulation 1202 of the Building Regulations 2006

<sup>2</sup> As per Part 3.8.3, Building Code of Australia – Volume Two, OR Clause F2.1 (Class 2,3,4 & 9c) and Clause F2.3 (Class 3 to 9 buildings) Building Code of Australia – Volume One.

#### **All other buildings**

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

- ▶ Exits
- ▶ Sprinkler systems
- ▶ Smoke hazard management systems\*
- ▶ Fire dampers
- ▶ Fire rating of penetrations of walls and floors
- ▶ Fire doors and door sets
- ▶ Emergency lighting and exit signs\*
- ▶ Structural stability
- ▶ Disabled access and facilities
- ▶ Mechanical ventilation systems\*

**NOTE:** - 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.