

## Building Practice Note BP-09: Issuing of an Occupancy Permit

This Practice Note provides guidance on the requirements for issuing Occupancy Permits in compliance with the Building Act 1993 (the Act) and the Building Regulations 2018 (the Regulations). Before issuing an occupancy permit, the relevant building surveyor must ensure that a building is safe for occupation.

The context below provides guidance on:

- The occupancy permit process
- Conditions on occupancy permits
- Duty of care when issuing an occupancy permit
- Conducting the final inspection
- Additional requirements
- Exemptions

### Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993 (the Act) or the Building Regulations 2018 (the Regulations).

- **Act** – Building Act 1993
- **BAB** – Building Appeals Board
- **CFA** – Country Fire Authority
- **ESM** – Essential Safety Measures
- **RBS** – Relevant Building Surveyor
- **Regulations** – Building Regulations 2018
- **OP** - Occupancy Permit
- **Chief Officer** – in relation to the Fire Rescue Victoria fire district, the Fire Rescue Commissioner, outside that district, the Chief Officer of the CFA.

### The occupancy permit process

If a building permit states an OP is required for the whole or part of a building, a person must not occupy that building unless the OP has been issued in accordance with Part 5 of the Act.

An application for an OP must be made to the RBS using Form 15. The application must be made by, or on behalf of, the owner of the building.

Once the OP application is received by the RBS, section 43 of the Act requires the RBS to:

- issue the permit in the form of Form 16; or
- issue the permit with conditions; or
- refuse the permit.

In accordance with regulation 193, the RBS must give a copy of the OP to the applicant within 7 days after issuing the permit.

Section 44 provides that the RBS must not issue an OP—

- Unless the building, or the part of the building to which the permit applies, is suitable for occupation; and
- If plumbing work, for which section 221ZH required the issue of a compliance certificate, was carried out in conjunction with the building work on the building or part of the building in respect of which the permit is sought, unless the building surveyor has seen a copy of the compliance certificate.

Regulation 190(1) provides the prescribed timeframes within which the RBS must decide an application for an OP. In the case of a Class 1a building, the RBS must decide the application within two (2) business days and for all other building Classes, within five (5) business days.

Where the RBS decides to refuse the application, the RBS must notify the applicant of the refusal and the reasons for refusal in writing within the prescribed timeframes. If the RBS does not decide the application within the prescribed timeframe, the RBS is taken to have refused the application under section 43(3) of the Act. The RBS must ensure that any known non-compliances are resolved prior to issuing an OP.

## Effect of the OP

Section 46 of the Act provides that an OP is evidence that the building, or part of a building to which it applies, is suitable for occupation. It is not evidence that the building, or part of a building to which it applies, complies with this Act or the Regulations.

## Requests for further information

Where insufficient information has been provided by the applicant, the RBS may request the applicant to provide additional information.

If the applicant does not provide the required information in the prescribed timeframe, the RBS may refuse the application. In this instance, prior to refusing the application, the RBS must give the applicant 30 days' notice in writing of their decision.

## Appealing refusal of occupancy permit

Section 138 of the Act provides the right of appeal to the BAB if the applicant is dissatisfied by the RBS's decision to refuse to issue an OP.

The appeal application must be accompanied by the application form, supporting information and the relevant fee lodged to the BAB within the prescribed time frames.

For further information, visit [www.buildingappeals.vic.gov.au](http://www.buildingappeals.vic.gov.au).

## Conditions on occupancy permits

The RBS may include conditions on an OP. Where conditions are included by the RBS, the conditions should specify:

- the building works required to be carried out to bring the building to a state that satisfies the requirements of an occupancy permit without conditions,
- the date by which the conditions must be met or satisfied, and
- the actions to be taken in the case of non-compliance.

It is recommended the RBS keeps record of any matters to be followed up with the OP, including key dates for compliance, site inspections, directions, or meetings to finalise the status of the conditions. The RBS is responsible for ensuring that enforcement action is taken to satisfy any conditions provided on the OP.

Reg 194 requires the RBS to specify essential safety measures on the OP for Class 1b, 2, 3, 5, 6, 7, 8 or 9 buildings and a Class 4 part of a building. This regulation does not apply in relation to a smoke alarm installed in a sole-occupancy unit in a Class 1b or 2 building or a Class 4 part of a building.

The RBS must include conditions on the permit which specify:

- a) all the ESMs required to be provided for the building or place of public entertainment as part of the building work carried out under the building permit; and
- b) the level of performance determined by the RBS that each ESM must achieve to fulfil its purpose; and
- c) the frequency and type of inspection, testing and maintenance period required for each ESM determined by the RBS and include the Building Regulations that reference each ESM.

For the purposes of regulation 197, a copy of the OP must be displayed in a prominent position and be accessible to the occupants of the building.

## Duty of care when issuing an occupancy permit

Prior to the issuing of an OP, the RBS must ensure that:

- all relevant items of compliance are resolved;
- the building is suitable for occupation;
- the building is safe for occupation; and
- any required item that can affect an occupant's safety and amenity must be in place and fully operational.

The RBS issuing an OP has a duty of care to ensure the building is safe and is suitable for occupation. Failure to attend to these matters before an OP is issued may have serious implications. An investigation of breach of duty of care may lead to suspension or cancellation of registration and awarded penalties. In the event of loss of life or injury or damage to property, it may lead to potential civil action and or criminal prosecution.

## Conducting the final inspection

The person authorised to undertake the final mandatory inspection must ensure the provisions and conditions of the building permit are satisfied. These include, but are not limited to the following:

### **Class 1a 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 required 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.

## Other classes of building

For all other classes of building, the requirements applicable to a Class 1a building apply, in addition to 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,
- Mechanical ventilation systems
- Fire engineering report requirements have been met
- Fire brigade compliance requirements (if any).

## Additional requirements

### Report and consent

Regulation 187 requires the report and consent from the chief officer must be obtained in relation to an application for an OP where either the:

- chief officer was a reporting authority for the building permit application; or
- building or building work involves the transmission signal of alarms or to be connected to a fire station or other alarm monitoring service.

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

Refer to Practice Note BP-11: Report and Consent for further information regarding report and consent requirements.

### Plumbing work

Regulation 186 (2)(b)(i) requires an application for an OP to include any compliance certificate within the meaning of Part 12A of the Act given for plumbing work carried out in conjunction with the building work in the building to which the application applies.

Section 44(b) of the Act provides that the RBS must not issue an OP if plumbing work, for which section 221ZH required the issue of a compliance certificate, was carried out in conjunction with the building, unless the RBS has seen a copy of the compliance certificate.

## Electrical work

Regulation 186 (2)(b)(ii) requires an application for an OP to include any certificate of compliance within the meaning of section 3 of the Electricity Safety Act 1998, for electrical work carried out in conjunction with the building work to which the application applies.

### Connection of power

Connection of power to required systems should be completed before or concurrently with the issuing of the OP. Alternatively, the OP may be issued with a condition stating it is subject to the power being connected.

## Exemptions

Regulation 185 provides that an OP is not required in respect of building work relating to:

- a Class 10 building; or
- an alteration to a Class 1a building; or
- an alteration within a sole-occupancy unit in a Class 2 or 3 building; or
- (b) in respect of building work specified in column 2 of the Table in Schedule 3.

Column 2 of the Table in Schedule 3 of the Regulations specifies buildings that are exempted from the requirement for an OP in relation to building work carried out on those buildings.

## Related Documentation

- Building Act 1993 (VIC)
- Building Regulations 2018 (VIC)
- Electricity Safety Act 1998

## Contact Us

If you have a technical enquiry, please email [technicalenquiry@vba.vic.gov.au](mailto:technicalenquiry@vba.vic.gov.au) or call 1300 815 127.

### **Victorian Building Authority**

Goods Shed North  
733 Bourke Street  
Docklands VIC 3008

[www.vba.vic.gov.au](http://www.vba.vic.gov.au)

## Version History

- Version 2.0, published 28 June 2021, superseded Practice Note 24: Issuing of an Occupancy Permit

## Copyright

© June 2021 Victorian Building Authority (VBA).

This Practice Note has been prepared and published by the VBA for general educational and information purposes only. This publication must not be copied, reproduced, published, adapted, or communicated by any person without the VBA's prior written consent or as permitted by the Copyright Act 1968 (Cth). The VBA makes no warranties or representations whatsoever about the accuracy, reliability, suitability, completeness or authenticity of any information or material contained in this resource. Any use or reliance on such information is at a person's own risk. The VBA accepts no liability whatsoever for any direct, indirect, or consequential loss or damage any person may suffer arising out of or in connection with the access or use of this resource (including any third-party material included in this resource).