

Building Practice Note EA-01: Temporary accommodation - existing buildings

This Practice Note provides guidance for the Municipal Building Surveyor and Private Building Surveyor when assessing the appropriateness of temporary occupation of pre-existing buildings used as shelters for short-term emergency accommodation. It clarifies the legislative requirements and conditions that may be imposed to ensure the existing buildings, when used for short term emergency accommodation, are safe for occupants.

The context below provides guidance on:

- Legislative requirements
- Fire, health, safety and access requirements
- Change of use of a building

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), Building Regulations 2018 (the Regulations) or the National Construction Code (NCC).

- **Act** – Building Act 1993
- **BCA** – Building Code of Australia Volumes One and Two
- **MBS** – Municipal Building Surveyor
- **PBS** – Private Building Surveyor
- **NCC** – National Construction Code 2019
- **Regulations** – Building Regulations 2018
- **RBS** – Relevant Building Surveyor
- **Section** – of the Building Act 1993

Legislative requirements

The term temporary is not defined in the Building Act 1993 (Act), the Building Regulations 2018 (Regulations), or the National Construction Code (NCC), however various dictionaries define the term as ‘not lasting or needing for very long’. The appropriate duration for temporary approval would be determined by a Private Building Surveyor (PBS) or Municipal Building Surveyor (MBS) appointed under Part 6 of the Act.

If it is intended to occupy a building on a regular basis, the building should be permanently adapted for the proposed use. In the case where it is proposed to occupy a building on a temporary basis for a calendar period but on an ongoing basis over a period of years, a change of use should be considered under regulation 229 and an occupancy permit issued or amended for the residential use. This would eliminate the need for repetitive applications for approvals for temporary occupation.

In view of the above the legislation pathway to allow short term emergency accommodation can be utilised via Section 64(1) of the Act. This provides a discretionary power for an MBS or PBS to issue an approval to allow the occupancy, on a temporary basis, for which there is no occupancy permit appropriate to the use of the building.

Notwithstanding the above, Section 64(2) however does not permit an approval to be given under Section 64(1) of the Act if a building permit has been issued that requires an occupancy permit to be issued for that use of the building or part of the building.

In order to comply with the legislation, an application for approval may be made by or on behalf of the owner of the building concerned and must be in a form approved by the MBS or PBS.

Section 67 of the Act provides that the RBS must decide the application for approval to occupy a building on a temporary basis by:

- Issuing the approval, or
- Issuing the approval with conditions, or
- Refusing the approval.

The approval must be in writing, must specify any conditions to which it is subject and must specify the period for which it applies.

The RBS must notify the applicant in writing of the decision to refuse the approval to occupy a building on a temporary basis and the reasons for the refusal. In the event of a refusal, section 139 allows an owner a right of appeal to the Building Appeals Board.

Where an approval is issued by either an MBS or PBS, section 70(1) of the Act, only allows the MBS to amend a temporary approval, allowing temporary use of a building if it was necessary in the public interest.

Fire, health, safety and access requirements

The objectives of the Act include protecting the safety and health of people who use buildings and places of public entertainment. To meet the objectives and taking into account the BCA provisions including the size of the building, nature of the use, and occupant profile, the MBS or PBS must consider the following relevant matters when deciding an application for temporary occupation for short term emergency accommodation.

Fire safety

- The sleeping area of the short-term emergency accommodation is contained in an area of the building that is of suitable size to accommodate the occupants, and has direct egress to a road or open space;
- The furthest part of the sleeping area is not more than 20m from an exit providing direct egress to a road or open space;
- Clear paths of travel to exits, illuminated exit signage, including directional signage where required, are provided.
- Smoke alarm or detection system coverage to the sleeping area, including interconnection to detectors or alarms in main egress paths;
- ABE type portable fire extinguishers, a minimum of 2.5kg are provided. Either type 4F portable fire extinguishers, a minimum size of 2.5kg or fire blankets to be provided in kitchen areas;
- At all times the building is occupied, the building is supervised by staff with appropriate qualifications and training in the role of fire warden.

Safety and Health

- A suitable number of sanitary facilities and drinking water facilities are provided or available;
- Limited access to areas where risks associated with slips, trips and falls may occur.

Disability access

- Requirements under the Disability Discrimination Act 1992 and Access to Premises (Buildings) Standards 2010; are to be met and;

- A suitable number of sanitary facilities for persons with disabilities, including those with ambulant disabilities;
- Access to the sleeping accommodation for people with non- ambulant disabilities, including the use of ramps.

The installation of fire safety systems, sanitary facilities and disability ramps will require a building permit to be issued.

Change of use of a building

In certain circumstances the MBS or PBS may consider that an approval for temporary occupation is not appropriate. This may be where the temporary occupation is proposed on a repetitive annual basis. A change of use of the building may be an appropriate option and will eliminate the need for ongoing applications for approval for temporary use.

Regulation 229 provides a mechanism for a building owner to change the use of an existing building and ordinarily, full compliance with the current Regulations applicable to the new use would be required. However, regulation 229 provides discretion to an MBS or PBS to exempt the building from full compliance.

In deciding a change of use application, the MBS or PBS must give consideration to the structural adequacy of the building. Any decisions must be well documented and must not negate the need to make reasonable provision for fire safety, amenity and the health and safety of people using the building. Any exemptions granted by the MBS or a PBS must be in the form of a Form 18 (Schedule 4 of the Building Regulations).

If the building use is changed, a new or amended occupancy permit must be issued inclusive of that new use. Any essential safety measures must be updated and consolidated in accordance with Part 13 of the Act to ensure that the building is safe for use and occupation.

In view of the above guidance, it is appropriate to consider each scenario on its own merits. It should be noted that in accordance with section 212 of the Act, a council is ultimately responsible for the administration and enforcement of Parts 3, 4, 5, 7 and 8 the Act and the Regulations for buildings within its municipal district. The responsibility for determining compliance of the buildings in question lies with the municipal council.

Therefore, in determining the matter, the MBS should document their decision and have regard to the following when assessing the use of a building:

- Statement of use
- Evidence in writing that confirms the start and end date for the use of the building in question. In some instances, specific length of time may not be suitable.

Overall the sensible use of available buildings to alleviate hardship should be facilitated where possible with the high level of consideration given to the occupant's safety and meeting the required legislative objectives and building standards.

Related Documentation

- Practice Note – Maintenance of Essential Safety Measures
- Practice Note – When is a building Permit required

Version History

- Version 2.0, published 28 June 2021, supersedes Practice Note 75: Short term emergency accommodation

Contact Us

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