The New Building and Subdivision Certification Provisions (Part 6) of Environmental Planning and Assessment Act 1979


2. The principal changes between the old Part 4A and the new Part 6 can be summarised as follows:
   - A change to terminology: “principal certifying authority” now “principal certifier”; “certifying authority” is now “certifier”.
   - An interim occupation certificate is no longer a type of certificate that can be issued to authorise the occupation of a new building (s6.9(1)(a)).
   - It is now an offence to occupy a new building without an occupation certificate, regardless of how long the new building has been occupied (s6.9).
   - A construction certificate and occupation certificate must now be “consistent with” rather than “not inconsistent with” the associated development consent, (for CC see EP&A Regs cl 145(1) and for OC see EP&A Regs cl 154(1B)).
   - A principal certifier has a mandatory obligation to issue a notice for specified breaches of the EP&A Act (s 6.31 and cl 161A EP&A Regs)).
   - A principal certifier must not issue an occupation certificate until a building manual has been provided to the owner of the building (s 6.27).
   - The definition of subdivision of land is now part of the building and subdivision certification part of the Act (s 6.2).
   - A subdivision works certificate is a new type of certificate that can be issued by an accredited certifier (s 6.4(b)).

3. There is no change to the following requirements of the former Part 4A, which have been carried forward to the new Part 6:
   - The definition of building work (s 6.1).
   - The requirement to obtain a construction certificate before commencing any new building work (s 6.3(1)).
   - The requirement to obtain an occupation certificate before occupying a new building (s 6.9).
   - The definition of “subdivision of land” (s 6.2).
   - The prohibition on issuing a construction certificate for building work if the work has commenced (s6.8(2)).
• Functions of a certifier (s 6.5).
• Functions of a principal certifier (cl 161B EP&A Regs).
• Exemptions for building work by or on behalf of the Crown (s 6.6(5) and s 6.7(2)(b)).
• Liability for defective building work (s 6.20(2)).

4. Building work that is carried out under a development consent or complying development certificate issued prior to 1 December 2019 will continue to be inspected and certified under the old Part 4A of the EP&A Act.¹

5. A CC and OC must be “consistent” with the related development consent (clauses 145(1) and 154(1B) of the EP&A Act Regulations) meaning that the CC/OC must be “agreeing or accordant, compatible; not self-opposed or self-contradictory” (Macquarie Dictionary) with the development consent.

6. Changes to DA approved plans at the CC stage that are designed to address compliance with conditions of a development consent are not likely to be seen as being consistent with the development consent. If changes are required in order to satisfy conditions, the appropriate course is a modification application to either amend the approved plans or to alter the condition requiring the plans to be amended.

7. The scope and object of the EP&A Act manifests an intention that the appropriate remedy for determining disputes about the validity of a construction certificate is the accreditation and disciplinary regime for certifiers.

8. A principal certifier must issue a notice under section 6.31 of the EP&A Act to a builder or owner if the certifier becomes aware of works otherwise than in accordance with a development consent or complying development certificate, including any approved plans and development consent conditions” other than any “non-compliance identified during a critical stage inspection or during an inspection under this clause”.

A more detailed outline of the changes and their implications is available on our website www.planninglawsolutions.com.au under the publications tab.

Planning Law Solutions
1 April 2020

¹ clause 18A of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017