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Commencement of Part 6 (building and subdivision certification provisions)

This circular advises certifiers, councils and the building industry of the commencement of certain amendments to Part 6 of the *Environmental Planning and Assessment Act 1979*. These changes commence on 1 December 2019.

Overview of the amendments

The reforms to the *Environmental Planning and Assessment Act 1979* (the EP&A Act) in 2018 consolidated building and subdivision certification provisions in Part 6. [The Environmental Planning and Assessment Amendment \(Building and Subdivision Certification\) Regulation 2019](#) was made on 30 August 2019 and provides the operational requirements for Part 6.

Part 6 of the EP&A Act is due to commence on 1 December 2019.

This circular summarises the following three key changes to Part 6 and provides broad guidance on:

- new compliance powers for private principal certifiers,
- new occupation certificate (OC) provisions, and
- new subdivision works certificate (SWC) provisions.

These changes will be accompanied by detailed guidance prior to commencement.

New compliance powers

From 1 December 2019, private principal certifiers will no longer be able to issue a *notice of intention to give an order*. Only councils (and other relevant enforcement authorities) will be able to issue these notices. Instead principal certifiers can address non-compliance matters using a **written directions notice**.

On becoming aware of any non-compliance with a development consent or complying development certificate, a private principal certifier **must** issue a written directions notice within 2 business days to the person responsible for the non-compliance.

Written direction notices allow for a principal certifier to direct the person responsible for carrying out the non-compliance to take specific action to remedy the matter within a prescribed timeframe.

Should the notice not be complied with in the timeframe specified, the non-compliance matter is then forwarded to council for further compliance action.

Key components of these provisions to note are:

- Non-compliances include the carrying out of works that are not in accordance with the relevant approval, including any approved plans and development consent. It does not include matters identified during a critical stage inspection.
- The *notice of intention to give an order* and *order* provisions still exist for use by relevant enforcement authorities, including councils.
- A template for a *written direction notice* (with all required content/information) is available on the Department's website.

New Occupation Certificate provisions

Under Part 6 of the EP&A Act, the term 'interim' and 'final' occupation certificates no longer exist. Instead, an OC will be able to be issued for either 'part of' or 'a whole building', including parts of partially completed new buildings. The OCs will continue to certify that the building (or the part) is safe to occupy, including parts of partially completed buildings.

To ensure that a building is not occupied indefinitely under a partial OC issued for part of a partially completed new building, the Regulation now requires that a further OC for the whole building be obtained within five years of a partial OC being issued.

The purpose of the five year timeframe is to ensure that buildings are not occupied indefinitely without complying with all development consent conditions.

Key components of these provisions to note are:

- These OC provisions only apply to development consents granted from 1 December 2019. Development consents granted prior to this date, including uncommenced deferred commencement consents, will remain subject to Part 4A of the EP&A Act (as in force immediately before the repeal of that Part).
- When issuing a Notice of Determination, from 1 December 2019 councils will need to note this change in terminology for OCs when drafting consent conditions.
- When issuing an OC for part of a building, that OC will need to clearly identify the part of the building/development that the OC applies to.

New subdivision works certificate provisions

Under Part 6 of the EP&A Act, a construction certificate can no longer be used to certify 'subdivision work'. A construction certificate will still be required to certify building work.

After the commencement of the changes to Part 6, a *subdivision works certificate* will be required to be issued by the Certifier prior to any subdivision work occurring.

The subdivision works certificate operates similarly to a construction certificate, but is issued for subdivision works.

Subdivision works means any physical activity authorised to be carried out in connection with a subdivision under the conditions of a development consent for the subdivision of land.

Key components of these provisions to note are:

- These subdivision works certificate provisions will only apply to development consents granted from 1 December 2019. Development consents granted prior to this date, including uncommenced deferred commencement consents, will remain subject to Part 4A of the EP&A Act (as in force immediately before the repeal of that Part).
- When issuing a Notice of Determination that includes subdivision, from 1 December 2019 councils will need to note this additional subdivision works certificate process and the subdivision works that are included when drafting development consent conditions.
- A *subdivision works certificate* is different to a 'subdivision certificate' that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.
- Subdivision works certificates do not apply to complying development certificates and some Crown developments.

Further Information

Visit the Department of Planning, Industry and Environment [EP&A Act Part 6 web page](#).

Department of Planning, Industry and Environment circulars are available at:
planning.nsw.gov.au/circulars

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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