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The Imminent Demise of Interim Occupation Certificates?

On 1 September 2018 there is expected to be a significant change to how occupation certificates (OCs) are issued. Both “interim” and “final” OCs will no longer be issued, and only “OCs” will be issued.

The Department of Planning has stated that its intention is that staging of construction and staged occupation of developments, previously achieved by means of interim OCs, should continue. There are, however, some potential complications with the new scheme:

1. For projects which do not have clearly identified stages, there is an obvious risk that no OCs will be issued until the entire project is completed (i.e. all stages).
2. Even if there are well defined project stages in the DA application and conditions, it may still (depending on how the conditions are worded) be necessary to comply with all preconditions in the DA conditions before obtaining the first OC.

3. As yet there are no known transitional provisions giving effect after 1 September 2018 to Interim OCs issued before 1 September 2018.

Recommendations

EPM Planning will lobby the Department of Planning to introduce further amendments which will ensure a smoother transition to the new scheme. Meanwhile, developers should consider the following measures to prepare for the commencement of the new OC scheme.

1. In the case of projects where development consents and construction certificates have already been obtained, it may be advisable to obtain interim OCs as soon as possible (if that is feasible) given the uncertainty.
2. If the development consent conditions are expressed in such a way that staging is not possible (to be discussed with the relevant certifier), or the preconditions are too onerous, it may be necessary to lodge a Section 4.55 (equivalent to old s96) modification

application, to modify the conditions accordingly.

3. In the case of DAs already lodged but not yet determined, it is possible that the draft conditions of the DA may provide less flexibility for staged occupation and this should (if possible) be addressed prior to final approval of the DA.
4. In the case of DAs to be lodged in the future, staging needs to be clearly set out in the DA application.

EPM Planning will continue to monitor legislative amendments affecting OCs. Please contact the undersigned if you would like to discuss the implications of the upcoming changes to OCs on your development.

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