

Building Consent Practice Note

Section 363 and Certificate for Public Use

Purpose:

Section 363 of the Building Act 2004 (the Act) was introduced to safeguard the health and safety of the public where the building, in part or in whole, provides access for the public.

This practice note sets out the provisions of s.363 of the Act and the matters considered by Council before issuing a “Certificate for Public Use” (CPU).

Legislation:

Sections 362A to 363A

These sections of the Act were introduced to protect the public during the reconstruction or alteration of an existing building and only relate to buildings to which the public has access.

Section 363A was introduced and allows both public access and the occupation of buildings, during construction and prior to the issue of a code compliance certificate (CCC), subject to a CPU being issued by Council.

Section 363:

A person who owns, occupies, or controls premises to which section 362A applies must not use, or permit the use of, any part of the premises that is affected by building work if-

- The building work requires a building consent, but none has been granted; or
- A building consent has been granted but does not have a CCC or CPU issued
- A CPU has been issued but has not been complied with

Sections 363 (3-4):

Allowing a building to be occupied or open to the public without a CCC or CPU is an offence with a maximum fine of \$200,000. Council can also issue an infringement notice for this offence.

Staged building consents

Staged building consents, if issued after the 31 March 2005, may overcome the issue of occupancy before the completion of construction but the staging process does not prevail over the need for a CCC or a CPU to ensure the safety of the public.

Certificate for Public Use

A CPU may be applied for at the same time as the building consent if the proposed work involves alterations or additions to an existing building and this work affects public access to the premises. Work cannot commence until such time as a CPU is in place.

A CPU inspection is required prior to construction commencing on any existing building where public will continue using the building during the construction phase. The CPU inspection can also occur during construction prior to public being approved to use the building.

After the CPU inspection has passed, the CPU document can be issued to site.

In the case of a new building, if a CCC has not been issued, the premises cannot be occupied unless a CPU is in place.

A CPU must be issued with due care and consideration, in order to ensure public safety.

Building consent applicants must provide information about how the public will be protected whilst building work is underway, including but not limited to the following issues:

- What parts of the building are occupied and or will the public have access too?
- What access / egress routes will be compromised by the building work (walking near or through building work)?
- What hazards will the public potentially face as a result of the building work?
- What protection measures can be put in place to protect the public?
- What safety systems are in place to protect the public or building occupants (i.e. will specified systems be operational during construction)?
- What mitigation measures can be implemented to ensure the safety of the users where life safety features have been disconnected / decommissioned?
- What alternative safety features can be utilised to provide the same or better security in terms of the health and safety of the public, where safety features are not operational?
- What protection measures are in place?
 - Paving and ramps
 - Fencing off the construction area
 - Hoardings - protection from falling objects

Council must be, *satisfied on reasonable grounds that members of the public can use the premises or part of the premises (as the case may be) safely.* (See section 363A of the Building Act 2004)

A CPU must not be used as a de facto CCC and will be time bound; building work must be completed within a reasonable time frame (agreed at time of application).

References:

- Building Act 2004, section 362A and 363A