

Property Development And the Local Council

If you are involved in the building industry whether it be developing large blocks of residential and commercial units or a single storey house you must deal with the Local Council. This article looks at some of the steps involved in getting your development approved by Council.

Choosing your Building Site

It is not a simple matter to just choose a location on which you would like to build. A Council is entitled to designate certain locations within the shire or municipality for different types of developments or zoning.

There are six main types of zones - residential, commercial, industrial, non-urban (farm lands), special uses and open spaces. The Council can if it chooses, combine these zones in mixed developments. Even within a particular zone the Council can still impose further restraints, for example, certain residential zones only allow dwelling houses and not residential flat buildings. To ascertain the zoning of the site which you would like to develop, you can apply to the Local Council for a certificate under Section 149 of the *Environmental Planning & Assessment Act 1979*.

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If you intend to demolish a building prior to development, you must first ascertain whether you are entitled to do so. For some sites, prior to demolishing a building, you will need Council consent before doing so. Some older buildings or buildings with possible historic or intrinsic value are protected by the Australian Heritage Commission or the NSW Heritage Council. In other words, you will not be allowed to demolish the building and any renovations are governed by very strict guidelines. It is prudent to enquire with both the Heritage organisations prior to any re-development.

Obtaining Development Consent

Development is defined under Section 4 of the *Environment Planning & Assessment Act 1979* as:

- (a) The erection of a building on the land;
- (b) The carrying out of work in, on, over or under the land;
- (c) The use of the land or of a building or work on the land;
- (d) The demolition of a building on the land; or
- (e) The subdivision of the land.

Not all developments require consent from Council. You should always enquire with the Council prior to undertaking a development project. If a development application is required to be lodged then the Council may also require, amongst others, the following to be lodged:

- 1. Environmental Impact Studies on the effects of the development on the environment and ways in which any adverse effects to the environment can be overcome.
- 2. Certificates stating availability of essential services.
- 3. Surveyor's and engineer's report.
- 4. A detailed description and analysis of the proposed development and how it complies with Council codes and policies.

The amount of extra reports and studies required by Council depends on the complexity and location of the development. The application must be in writing and made by the owner or made with the consent of the owner.

The cost of lodging a development application may vary between the different councils but essentially it is worked out as a scale of the total estimated cost of the development.

If you need to subdivide land as part of your development you will need to consult your local council before doing so to ascertain council requirements, for example whether the lots must be of a minimum size.

Obtaining a Construction Certificate

After you have been granted development consent, a Construction Certificate must be obtained before building work or subdivision work can commence.

A Construction Certificate certifies that building plans comply with the Building Code of Australia (BCA); are consistent with the development consent; and comply with other conditions of the development consent.

Either accredited certifiers (also known as private certifiers) or the Council can issue a Construction Certificate (for building approval). An accredited certifier is a person who is accredited by the Building Professionals Board.

The Council can require further information to satisfy that the building complies with Council requirements. When drawing up the plans for the building the applicant must be conscious of the *Council Ordinances* in relation to buildings including fire safety, building line and building set back, distance between the building and the property boundaries and overhang of eaves and guttering. *Council Ordinances* for buildings are numerous and it is necessary to study these while the plans for the building are being drawn up.

Obtaining an Occupation Certificate

An Occupation Certificate certifies that complete building work is capable of being occupied or used in accordance with its building classification under the BCA.

Before an Occupation Certificate can be issued, a Principal Certifying Authority (PCA) (ie either a Council building inspector or an accredited certifier) must be satisfied that the Development Consent and the Construction Certificate requirements have been fulfilled.

Council building inspectors or accredited certifiers will make periodic visits to the building site to ensure that the building is built in accordance with the approved plans.

Once all Council requirements are fulfilled, the Council or accredited certifier, upon application, will issue an Occupation Certificate.

Generally upon receipt of the Final Occupation Certificate or upon Interim Occupation Certificate, the building can be occupied. However the developer can also apply for earlier occupation by application to the Council.

A Building Certificate under Section 149E of the *Environmental Planning and Assessment Act* states that the Council has no objections to the building and will not issue any notices against the building for a period of seven years, provided no alterations are made to the building.

Land and Environment Court of New South Wales

If at any stage of development you are unhappy with the decision of the Council in rejecting your application or imposing onerous conditions, you can appeal the decision in the Land and Environment Court. However application for an appeal is an expensive exercise - aimed at deterring frivolous claims. The evidence required by the court is substantial and accordingly only legitimate claims are successful.

Comasters accepts instructions from clients in Property Law matters.

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Important: This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

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