

Information for Applicants

FIRST OCCUPATION OR CHANGE OF USE

Retail, Commercial or Industrial Premises within the City of Shoalhaven

1.0 OBJECTIVE

This document has been prepared to provide information for the occupation of retail, commercial or industrial premises, whether such occupation be a first occupation or a change of use.

2.0 OVERVIEW

If you are about to occupy an existing building (or a unit within an existing building), for the purpose of operating a business, your proposal may require development consent and, in some cases, a construction certificate. Alternatively, a complying development certificate may be appropriate. Unless your proposal is exempt development, an occupation certificate will also be required. Depending on the circumstances, some form of approval/lease from Council may also be required.

3.0 IS MY PROPOSAL EXEMPT OR COMPLYING DEVELOPMENT?

3.1 General

Development Control Plan No. 89 – Exempt & Complying Development (DCP 89) came into effect 22 November 1999. This DCP sets out the relevant criteria for those developments that Council has identified as either exempt or complying.

Exempt development is development that must comply with relevant legislation, regulations and standards but is development for which no approval is required.

Complying development is routine development that requires an approval, either from Council or an accredited certifier by way of a Complying Development Certificate

(CDC). Complying development must meet the predetermined standards set out in DCP 89.

For further information regarding exempt and complying development, see below, or refer to DCP 89.

Generally, if building works are proposed a Construction Certificate and therefore, Development Consent will be required. A simple internal fit-out may not constitute “building works” requiring consent, however if in doubt, you may check DCP 89 and/or verify this with Council.

3.2 Exempt Development

3.2.1 Change of Use – Shop to Shop, Office to Office – may include food shop to non-food shop (excluding shop to food shop)

A proposed change of use from one shop to another shop (or office to office), may be exempt development, if the following criteria are met:

- The existing use must be a legal use
- No extension to trading hours outside that already approved
- No building work
- No change of BCA classification of the building
- Shoalhaven Water has issued a Certificate of Compliance for the Change of Use
- Must not attract additional car parking requirements (see DCP 18 – Car Parking)
- No other approvals are required
- Does not include adult shops nor adult products, sexual services premises (see section 7)



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3.2 Industrial and Warehouse Buildings A change of use of either:

- a) one type of light industry to another type of light industry (this does not include a car repair station or bulky goods retailing); or,
- b) internal alterations to an industrial building which do not alter the load-bearing capacity of load-bearing components.

May be exempt development if:

- there is no increase to the total floor area of the building
- no more than 500m² of floor area is involved
- the new use must replace a former use carried out in accordance with a development consent
- Shoalhaven Water has issued a Certificate of Compliance for the change of use.

Does not include adult shops, adult products nor sexual services premises (see section 7).

3.3 Complying Development

A change of use including:

- a) a change of use from shop to an office or from an office to a shop at ground floor level in CBD areas; (as defined in DCP 89) and/or
- b) internal alterations to a shop or an office which do not alter the load-bearing capacity of load-bearing components.

May be complying development if the following criteria are met:

- the subject building has been constructed and occupied since 4 September 1996
- a Certificate of Compliance has been issued from Shoalhaven Water
- no increase to the total floor area of the building
- no more than 5000m² of floor area is involved
- the proposed use must replace a former legal use
- sanitary facilities are provided in accordance with Clause F2.3 of the Building Code of Australia.
- does not include adult shops, adult products nor sexual services premises (see section 7)

In some cases, minor building works may also be complying development, please refer to DCP 89. In this regard, you should consult with the relevant Area Building Surveyor to clarify the extent of works proposed.

Once you have received your CDC you must also comply with the conditions of development consent

listed in part 3 of DCP 89 when you carry out your development.

Any change of use will be subject to the conditions of any previous development consent relating to the use of the building or land, or the original development of the land and the conditions prescribed by the Act.

4.0 WHEN IS DEVELOPMENT CONSENT REQUIRED?

4.1 General

Development, which is neither exempt nor complying, will require Development Consent to be obtained, prior to occupation of the subject premises.

This includes a proposed use of a building or unit, which is different to its previous use (eg. retail shop to restaurant or office to a retail shop).

Development approval will be required if the use involves demolition work; building work which does not meet the criteria as exempt or complying development, or food premises including building works.

4.2 First Occupation

If you are about to occupy newly completed premises you may have to apply for Development Consent before you do so.

If actual use of the individual units has been specified in the original development consent, no further consent will be required.

Council will require compliance with all conditions of Development Consent and an Occupation Certificate must be applied for and issued prior to occupation of the premises.

4.3 Application Procedure

A development application should be accompanied by the following:

- Plans drawn to scale (1:100) showing the area to be occupied, carparking, driveways etc.
- If an outdoor eating area is proposed, the application should include:
 - the location and number of chairs and tables, the area maintained for public access and relationship to existing restaurant (see sketch). The plan should also show the location of existing fixed street furniture including bins, seats, lighting poles etc.
 - Pictures of furniture to be provided.
 - Details of the menu board.

- Details of any screening, plants, fencing, etc.
- Details of trading hours.

Note:

- *Public footpaths are owned/controlled by the Council. Accordingly, any outdoor dining application requires the signature of the General Manager in the section headed “Owner’s Consent” on the Development Application form.*
- *If a licence application is required, it may be made concurrently with a development application (see section 5.10)*

4.4 Development Consent

The period of approval may vary. It is the applicant’s responsibility to ensure that development consent is current and valid. In the event that an extension is sought, there may be scope to extend this period for a further period pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979. Such an application should be made well in advance of the expiry date to enable Council sufficient processing time.

5.0 OTHER APPROVALS

5.1 General

In some instances, approvals and/or licenses in addition to development consent may be required. This is particularly relevant where the use involves food premises, beauticians, hairdressers, disposal of wastes, an increase in demand on services and/or building work.

5.2 Fire Safety Considerations for a Change of Building Use – (Clause 66A of EPA Regulations)

All applications for a change of building use must be accompanied by:

- a) a list of any fire safety measures that are proposed to be implemented in the building or on the land on which the building is situated in connection with the proposed change of building use;
- b) a separate list of such of those measures as are currently implemented in the building or on the land on which the building is situated.

The list must describe the extent, capability and basis of design of each of those measures concerned.

In addition, Council may require the building to be upgraded to satisfy fire safety requirements. Such work will require a construction certificate to be obtained.

5.3 Health Requirements

5.3.1 Food Premises

All food premises must comply with the Food Act 1989, Food (General) Regulation 1997 and Council’s General Standards for the Construction and Alteration of Food Premises. Food premises must apply to Council for an approval to operate prior to occupation. All food premises are inspected yearly and a fee is charged.

5.3.2 Skin Penetration

Hairdressers, beauticians, body piercers, ear piercers, tattooists and acupuncturists must register with Council prior to operation of the business. Council may also inspect the premises and charge a fee.

All skin penetration premises must comply with the Public Health Act and Regulation and NSW Health Skin Penetration Guidelines. Hairdressers and Beauticians must also comply with the Local Government (Orders) Regulation.

5.4 Compliance Certificate – Shoalhaven Water

A Compliance Certificate from Shoalhaven Water is also required for all proposed changes of use.

If the new use is a food shop, a Compliance Certificate from Shoalhaven Water is required, whether or not development consent is also required.

5.5 Section 68 of Local Government Act Approval

Application for approval under section 68 of the LGA is required for water supply, sewerage and stormwater drainage.

5.6 Trade Waste

5.6.1 Liquid Waste

Any development or business activity that has a potential to discharge liquid trade waste to Council’s sewer is required to have a liquid trade waste discharge approval from Shoalhaven Water. As a guide, some of the types of businesses that require a liquid trade waste approval include restaurants and food preparation, motor trades and most manufacturing facilities. Also some retail outlets such as:

- Paint and building material sales

- Photographic and graphic art
- Hairdressing salons
- Plant nurseries
- Tyre outlets

Application for approval to discharge liquid trade waste to sewer must be made to Shoalhaven Water on the appropriate form and be accompanied by the relevant fee.

To ensure the safety and integrity of the town water supply is maintained some businesses may also require the installation of backflow prevention devices to ensure that cross-contamination and/or backflow of contaminants and pollutants does not occur.

Further assistance regarding this matter may be obtained from Shoalhaven Water.

If an occupation or change of use to an industry has a potential to pollute waters then you should contact Environmental Services about measures to be taken to prevent pollution occurring, and/or licensing requirements.

5.6.2 Solid Waste

In accordance with the Regional Waste Plan, new commercial and industrial operations should have waste minimisation and management strategies in place for their businesses before commencing operations.

Where a Development Application is required, applicants should have regard to the preparation and submission of a waste management plan specifying waste by type and volume and to nominate recycling potential. Consideration should also be given as to the appropriate storage location of waste and recycling collection containers. In all cases, collection containers must be stored on the applicants' premises so as not to create a nuisance and/or detract from the visual amenity of the area.

Further information may be obtained by reviewing Draft DCP 93 – “Controls for Site Waste Management and Minimisation” or by contacting Council's Waste Management Unit.

5.7 Use of Footpath Area

If a use is proposed on a footpath, (such as an outdoor eating area, sign or display), in addition to development consent, a licence is required for the use of the footpaths or other public land.

The applicant may make application for a licence in conjunction with the Development Application.

If your proposal does involve an outdoor eating area – you should consult both the area Development Planner and Property Services.

Note: Council has a separate interim policy for signs and displays on public footpaths.

Where a development application involves use of a footpath (outdoor eating area, display or sign) adjacent to a highway or main road (classified road) then prior to issuing any approval Council is required under Section 138 of the Roads Act, 1993 to obtain the concurrence of the RTA.

6.0 ADVERTISING SIGNS

Some advertising signs and structures do not need an approval, provided that the criteria for exemption are satisfied. Details can be found in DCP 89. Any other advertising structures or signs, which do not satisfy the criteria for exemption, will require development consent. This may be sought concurrently with the proposed change of use or first occupation, or may be sought separately. Details of the proposed sign shall be forwarded with such application. Details shall include dimensions, location, colours, design, wording, height, and the like.

7.0 ADULT SHOPS OR ADULT PRODUCTS

Development Consent is required for **all** proposed changes of use which involve:

- the exhibition or sale of material (whether literature, video, film, goods or articles) used or intended for use in connection with sexual behaviour and classified Categories 1 and/or 2 restricted or RC or refused classification under the Classification (Publications, Films and Computer Games) Act, 1995;
- places of prostitution; and/or,
- any premises for mail order operation, selling, leasing or renting of pornographic books, magazines or sex aids.

Please refer to Council's Draft Development Guidelines for Adult Shops.

8.0 FURTHER INFORMATION

Further information can be obtained by contacting Council's Development and Environmental Services Group on telephone (02) 4429 3111 (Nowra) or (02) 4429 8999 (Ulladulla) during normal business hours.