



PRACTICE NOTE 15: LETTERS OF ASSURANCE FOR PHASED (OR PARTIAL) OCCUPANCIES

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Purpose

This Practice Note is a guide to the acceptable use by Registered Professionals (RPs) of the Letters of Assurance (LOA) Schedules C-A / C-B for the purposes of achieving “occupancy” of a portion of a building or project that, as-built, substantially complies with the plans and supporting documents submitted in support of a single building permit. Letters of Assurance are required by the British Columbia Building Code / Vancouver Building Bylaw (the Codes). Schedules C-A / C-B are typically required by the local authority or Authority Having Jurisdiction (AHJ) as a prerequisite to its authorizing occupancy.

Parallel Considerations

While this Practice Note is a guide to the acceptable use of Schedules C-A / C-B for the purposes of attaining occupancy, it is worthwhile to remind the reader of AIBC Practice Note 12: “Qualified Letters of Assurance”, first published October 2005, representing long-standing AIBC policy regarding standards of professional practice.

“Letters of Assurance, when issued, are not to be qualified as to their being (e.g.) “interim” or “partial” or “conditional” or “pending resolution of deficiencies” or “to expire by a given date should the deficiencies remain outstanding by that date”. That applies equally to schedules of types ‘A’ and ‘B’ for owner’s undertaking and design, respectively, as well as for types ‘C’ and AIBC Model Schedules ‘D’ for enhanced building envelope services (see Bulletin 34). The state of the design or of the construction in relation to the building code and the permit being sought either merits the architect’s assurance, in keeping with the language of the schedules and the RP’s professional judgment, or it does not.”

Matters beyond those related to Code compliance, such as determination of substantial performance or deficiencies arising from non-performance of contractual obligations, are not to be confused with the appropriate use of the Schedules C-A/ C-B.

Occupancy

Building (or Project) occupancy typically happens in one of three situations:

a) Unconditional Occupancy

Unconditional Occupancy is the traditional, expected situation when the scope of work associated with a building permit and substantial Code compliance is complete and accepted. The AHJ formally issues an Occupancy Permit or Occupancy Certificate or simply a Notice of Final Inspection.

b) Conditional Occupancy

Conditional Occupancy sometimes occurs when a building or project, or portion thereof, may be considered safe but is incomplete with respect to the scope of work shown on the drawings and supporting documents submitted in support of the application for the building permit, the permit conditions or substantial Code compliance. The issuance of conditional LOAs represents unacceptable professional practice.

c) Phased (or Partial) Occupancy

Phased (or Partial) Occupancy sometimes occurs when a discrete, or stand-alone, portion of a building or project is complete with respect to the scope of work shown (for that portion) on the drawings and supporting documents submitted in support of the application for the building permit, the permit conditions or substantial Code compliance.

In all three situations noted above, the final issuance of an Occupancy Permit (or local equivalent) or the authorization of a conditional or phased (or partial) occupancy is the role of the AHJ, only.

Precedent conditions for issuing an Occupancy Permit (or local equivalent) are typically set out in a local building bylaw or by procedures defined through local experience and past practice. The Registered Professionals play key roles through the field review process and, ultimately, through the appropriate issuance of the Letters of Assurance – Schedules C-A / C-B.

Conditional or Phased (or partial) Occupancy (each category expanded upon below) are typically authorized by the AHJ on a case-by-case basis through discussions and experience among the AHJ, owner, Coordinating Registered Professional (CRP), Registered Professionals (RPs) and builder.

Conditional Occupancy

It is during a ‘Conditional Occupancy’ process that the CRP/RP is most often pressured by the AHJ, contractor or owner, to issue the Schedules C-A / C-B prior to the construction’s substantial compliance with the drawings and supporting documents submitted in support of the building permit application. There may be temptation by the CRP/RP to ‘qualify’ the Schedules C-A / C-B. Such pressure and temptation must be resisted.

It is not acceptable to ‘qualify’ the Schedules C-A / C-B, in order to redefine either the permit documents or Code compliance, simply to facilitate an occupancy. The inclusion of deficiency lists, expiry dates or best-before-times on the Schedules C-A / C-B does not equate to substantial compliance with the plans and supporting documents submitted in support of the building permit application. AIBC Practice Note 12 is required reading in these regards.

The granting of a Conditional Occupancy is at the discretion of the AHJ only, and occurs on a project-by-project basis. The AHJ typically bases its decision on advice, field reports, or “comfort” letters with respect to work-in-progress received from the Registered Professionals and commitments respecting safety from Owners. For example, the temporary suitability of a fire watch in place of sprinklers or a fire alarm system; or on-site traffic control to maintain fire department access; or the acceptability of an incomplete building envelope should be left to the AHJ and its suitable agreements with the Owner and not by professional assurance.

Phased (or partial) Occupancy

Phased construction completion is common in the industry. Phased Occupancy is a functional result of this. There are several types of projects, including multiple-tower developments, multiple buildings on a common underground parking slab and complex, mixed-use projects which are likely to require Phased Occupancy Permits. Similarly, multiple block townhouse projects are likely to be completed and occupied on a phased approach. Projects may also seek Phased Occupancy due to unforeseeable construction delays or other circumstances.

For the purposes of this Practice Note, Phased (or partial) Occupancy is differentiated from Conditional Occupancy when the CRP/ RPs can confidently and responsibly issue unqualified Schedules C-A / C-B for a discrete, or stand-alone, portion of a building or project, characterized by its own integrity respecting safe occupancy.

It is recommended that the CRP/RPs discuss with their clients and the AHJ early in the design process the potential for project phasing. While not necessarily mandatory for Phased (or partial) Occupancy, planning during the construction documentation and building permit stages is likely to yield clarity of process and expectations for occupancy; avoid unattainable objectives and unnecessary and potentially costly delays later.

[The AHJ itself, in an effort to forestall the necessity to authorize Phased (or partial) Occupancy, may require (and the Owner and CRP may request) appropriately scoped multiple building permits for segments of complex multi-structure projects. While this approach may complicate the building permit process documentation and administration, the ability of the CRP/ RPs to issue Schedules C-A / C-B thereafter for discrete project segments with their corresponding building permits under such a regime can simplify the original permit submission package, avoid needless administrative process, enable coherent occupancy with permission, and is strongly recommended.]

The following sets out a guideline as to the appropriate and acceptable use of Schedules C-A / C-B, and annotation thereof, issued to support a phased (or partial) occupancy of a building or project, under a single building permit.

1. The scope of the Phase must be **clearly defined** and annotated on, or adjacent to, the *Address Of Project* line of the Schedules C-A / C-B. This can be done either through **exclusion** or **inclusion**, as appropriate to the project, but must be absolutely clear. It is recommended that a phasing plan, or other clarifying documentation, be referenced on and submitted along with the Schedules C-A / C-B.

Ex.1.1 Exclusion

Address: 1234 Acme Street, excluding 982 – 1st Avenue (Amenity Building), and 986 – 1st Avenue (Tower B) and associated Tower B parkade areas (see attached drawings for scope excluded).

Ex. 1.2 Exclusion

Address: 1234 Acme Street, excluding Suites PH1, PH2 and Townhouses 1 – 4 (see attached drawings for scope excluded).

Ex. 1.3 Inclusion

Address: 1234 Acme Street, including Levels 1 – 5 (Lobby, Elevators 1 and 2 and Office Component) and associated parkade only (see attached drawings for scope included).

2. Each phase must be sufficiently complete as to allow the Schedules C-A / C-B to be issued, without qualification, that the work performed in that phase substantially complies in all material respects with the Code and the drawings and supporting documents submitted in support of the application for the building permit.

3. For any phase to be occupied, (a) it must have its own clearly defined/ described scope with inherent integrity as to fire and life safety; (b) its deficiencies (if any) must be minor, not affecting fire and life safety; and (c) other parts/ phases not so ready are (i) distinctly protected from premature use; and (ii) do not, in their own ongoing construction towards their own occupancy, adversely affect the safe occupancy of the earlier part/ phase.
4. Upon completion of a phased project constructed under a single building permit, final Schedules C-A / C-B, without exclusions or inclusions, must be submitted for the entire project and its related building permit.

Professional Services and Fees

Industry standard client/ architect contracts and the AIBC's Tariff of Fees for Architectural Services contemplate (on a single project) one set of letters of assurance, one building permit and one unconditional occupancy. Phased projects entail multiple assurances and correlated field reviews, coordination, services, risk and expenses, all requiring acknowledgment and higher professional compensation.

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