

Parkview Constructions Pty Ltd v Futuroscop Enterprises Pty Ltd [2023] NSWSC 178**FACTS**

The case of *Parkview Constructions Pty Ltd v Futuroscop Enterprises Pty Ltd [2023] NSWSC 178* involved a dispute between the builder (**Parkview**) and principal (**Futuroscop**), over the date of practical completion under an AS 4902-2000 contract, for works including a hotel building and carpark.

Work began on 1 March 2016 and in September 2017, the superintendent issued a ‘*Conditional Notice of Practical Completion*’, noting a number of additional works to be completed, before ‘final’ practical completion and stating:

There are many items outstanding to achieve full completion for Building A and the external Areas. However, as the Tenants for Building A have taken occupation (excluding the roof terrace due to noncompliance by the Contractor) and the Interim Occupation Certificate has been received from Council (received 12th September 2017), this Practical Completion Notice will be issued Conditionally.

A similar conditional notice was later issued for the other works under the contract. On 16 October 2017, a request for partial return of security was made by Parkview on the basis that the two conditional notices constituted practical completion under the contract, but was refused by Futuroscop, who cited a number of alleged defects.

ISSUE

Whether the ‘conditional’ notice of practical completion was certification of practical completion? And if not, how should practical completion be determined?

FINDING

The court allowed the application, with Her Honour, Rees J stating:

211. *I do not consider either “conditional” notice to be “written reasons” for not giving a certificate of practical completion as requested by the Contractor.*
218. *I do not consider that the two notices can be construed together in order to arrive at a ‘composite’ certificate of practical completion within the meaning of clause 34.6 the Contract.*
230. *The evidence does not suggest that rectification of the defects prejudiced the convenient use of the hotel or car park. The requirements of subparagraphs (b), (c), (e) and (f) were satisfied by 25 September 2017. As to subparagraph (d), the Contractor was required to have done all that it was required to do under the Contract to enable the Principal to obtain a certificate of occupation from the Council. When the Principal obtained an interim occupation certificate which permitted maintenance staff to use the rooftop terrace, this discharged the Contractor’s obligation where development approval did not then permit use of the terrace by the public. In the result, I determine that practical completion was reached on 25 September 2017.*

IMPACT

This judgment shows the importance of proper documentation and certification of practical completion. The court can step in to decide a date for practical completion and leaving it to the Court is an expensive and protracted option.