



Government of **Western Australia**
Department of **Commerce**

Building
Commission

Building Act 2011 **Users' Guide**

A guide for
users of the *Building Act 2011*
in Western Australia

Building Commission

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November 2011

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Introduction

The *Building Act 2011* and the Building Regulations 2011 set building standards, require approvals to build, demolish or occupy buildings and set out special processes for work on boundaries with other land. They replace and update processes that were previously prescribed under the *Local Government (Miscellaneous Provisions) Act 1960* and the Building Regulations 1989.

The Act and Regulations can be downloaded from the State Law Publisher's website www.slp.wa.gov.au or the Building Commission's website www.buildingcommission.wa.gov.au.

This ***User's Guide*** provides general information for users of the Act and Regulations. The information reflects the intention of the Western Australian Government in drafting the legislation but is not intended to replace the need for professional advice on applying the legislation to specific buildings or circumstances.

Other Information

The ***New Building Approvals System: Guide to the Building Act 2011*** provides detailed information on the *Building Act*.

The ***Local Government Guide*** provides general information to local governments about the changes to their roles and responsibilities under the *Building Act*.

The ***Builders' Guide*** provides detailed information for builders on submitting applications and discharging their obligations under the *Building Act*.

Coverage and Responsibilities

Coverage

The *Building Act* and the Building Regulations apply to buildings and structures attached to or incidental to a building. If you are not sure whether the Act or Regulations apply to something you should discuss it with the relevant permit authority. The permit authority for most buildings will be the local government in whose area the building is to be constructed. The permit authority may prosecute you if you do not comply with the Act or Regulations.

Owner Responsibilities

Owners of land on which building work takes place must ensure that a building permit is obtained or building work that does not need a building permit meets the applicable building standards. Where the building work is covered by a building permit the person named as builder on the permit is responsible for ensuring the building work meets the applicable building standards. Owners of new commercial and multi-residential buildings must ensure that they have an occupancy permit before the buildings are occupied. Owners of houses and associated buildings (such as sheds, pools and similar) do not need an occupancy permit. A permit authority may issue building orders to an owner requiring the owner to demolish unauthorised work, bring building work into compliance with the building standards or to deal with dangerous or dilapidated buildings.

Builder Responsibilities

The person named as builder on a building permit is responsible for ensuring the building work is completed in accordance with the plans and specifications detailed in the certificate of design compliance and that the building complies with each applicable building standard. Building in accordance with the specified plans and specifications should ensure that the applicable building standards are met. The builder must arrange for any mandatory inspections to be carried out and recorded. The builder must use a notice of completion to notify the permit authority when the building work is finished.

Certificates of Inspection

Certificates of inspection record that mandatory inspections have been carried out by an appropriately qualified person. The builder must ensure that inspections or tests listed on the building permit are carried out, and must keep the certificates and submit them to the permit authority when the builder submits a notice of completion or a notice of cessation.

Notice of Completion

When the builder has completed the building work covered by a building permit the builder must give the permit authority a **notice of completion**. The notice of completion brings the building permit to an end, and records that the builder is no longer responsible for building work carried out on the land. The builder must attach to a notice of completion any certificates of inspection required by the building permit.

Notice of Cessation

If a builder has not completed all the building work covered by a building permit, but is no longer responsible for the work, the builder may give the permit authority a **notice of cessation**. This may occur when an owner or builder terminates a building contract, or where a builder becomes insolvent or otherwise unable to complete the building work. The builder must attach to a notice of cessation to any certificates of inspection required by the building permit for work carried out up to that point. The building permit is suspended by a notice of cessation until a new builder is appointed to complete the work.

Building Surveyor Responsibilities

A registered building surveyor is responsible for certifying the design of a new building to state it will meet the applicable building standards and for confirming that the building has been built in accordance with the specified plans and specifications. A registered building surveyor is also responsible for certifying that existing buildings meet the applicable building standards for temporary or permanent changes of use or classification, or when a building is being strata titled or retrospectively approved.

Certificate of Design Compliance

A **certificate of design compliance** is signed by a registered building surveyor to state that the building will comply with each applicable building standard if the building is completed in accordance with the specified plans and specifications. The certificate also states that the building will comply with any prescribed authorities (such as planning, health, construction over sewers, etc.) that have issued for the building.

Certificate of Construction Compliance

A **certificate of construction compliance** is signed by a registered building surveyor to state that building work has been completed in accordance with the specified plans and specifications and the building is suitable to be used.

Certificate of Building Compliance

A **certificate of building compliance** is signed by a registered building surveyor to state that an existing building complies with the applicable building standards and is suitable to be used.

Permit Authorities

A permit authority is responsible for ensuring compliance with the *Building Act* and the Building Regulations. Permit authorities process applications for building, demolition and occupancy permits and for building approval certificates. Permit authorities store building records and can make them available to authorised people, such as subsequent owners. Permit authorities also can inspect building work and issue building orders to rectify non-compliance with the building permit, for unauthorised building work and for buildings that are unsafe.

Local Governments

For most buildings the permit authority will be the local government in whose area the building is located. In the first instance you should approach the relevant local government to confirm that it is the permit authority and that the permit is needed. It is important to keep the local government informed about your building plans and to get its advice on approvals that you may need. The *Building Act* uses the term **permit authority** when dealing with processes that can also be done by the State or a special permit authority, and **local government** when it deals with processes that must be done by the relevant local government regardless of who is the permit authority.

The State Government

The state government [“the State of Western Australia”] is also a permit authority able to deal with any building anywhere in the state. In most cases the state government will only agree to be the permit authority at the request of a local government, where the building is of state significance, or where the building is owned, occupied or controlled by the state government.

Special Permit Authorities

The *Building Act* make provision for special permit authorities to be created for specific circumstances, but no special permit authorities have been created for commencement of the Act.

What is Covered?—Buildings and Incidental Structures

Buildings

What is a Building?

There is no formal definition of a **building** in the *Building Act*—it takes its normal meaning, such as in a dictionary or in normal conversation. In the vast majority of cases, there is no doubt when the particular thing under consideration is a building. Guidance can be taken from the classification of buildings in the **National Construction Code** (but note that class 10(b) does not describe buildings). If you are not sure whether something is a building you should check with the relevant permit authority or local government. If the permit authority thinks it is a building it can prosecute you for building it without a building permit, or for occupying it without an occupancy permit.

Parts of Buildings

The Act provides that a building includes part of a building. The Act therefore applies to work on just part of a building, such as an extension or renovation.

Building Components

A distinction must be made between a part of a building and a building component. Buildings are made up of many components, most of which are manufactured elsewhere and brought together to assemble the building on its site. A building component does not form part of a building until it is attached to the building or the land on which the building is sited. Building components range in size from nails or screws to substantial assemblies that may seem like a building in their own right. Manufacture of building components is not regulated by the *Building Act*, but the finished building that contains the components is.

Transportable Building Components

Transportable buildings are manufactured off-site and then transported to their desired location and fixed to the land. These are not considered to be buildings while they are being built in the factory, and are termed **transportable building components**. They become a building when they are first fixed to a site. Fixing a transportable building component to a site for the first time will create a new building, and this will normally require a building permit. The building thus created must comply with the building standards that apply to a new building, so that each of the transportable building components should comply with those standards.

Relocated Buildings

Buildings can be relocated from one site to another. Transportable buildings are designed for this type of use, but it is also possible to move a building constructed normally on a site to another site. An example is to move an old timber-framed house from an inner-city suburb to a farm to provide a farm house and to allow the original site to be redeveloped. If a relocated building retains its original use and classification it may only be required to meet the building standards that applied when it was originally built. However if it is being relocated for an entirely different use or classification it may need to meet the current building standards for its new use and classification.

Planes, Trains and Automobiles

Things that are normally not considered to be buildings can be used for building-like purposes. Caravans can be used as residences. Railway carriages can be used for overnight accommodation (sleeping cars) or as restaurants (dining cars). Some aeroplanes now contain bedrooms and bars.

While these things are being used for their original purpose, and regulated as planes, trains or automobiles they are clearly not buildings and are not covered by the *Building Act*. However if they are de-commissioned and converted for residential or commercial use on a site then they will be covered by the *Building Act*—the process of fixing them to the site and connecting services will require a building permit and using them may also require an occupancy permit.

For example, a space shuttle is clearly not a building. However if a club buys a disused shuttle and converts it for use as a club room then it is being used as a building and must meet the performance standards that apply to a new building of the same type. This means that the relocated space shuttle must be added to or modified to ensure that it meets the requirements for access, fire safety, energy efficiency and the like. Where meeting the current building standards would destroy the heritage values or unique character of the space shuttle, the club could ask the Building Commissioner to declare that one or more of the building standards does not apply to the space shuttle.

Tents and Fabric Building Components

Things such as tents, marquees and fabric building components may be considered as buildings if their use and length of time in place give them the character of a building or incidental structure. Considerations include whether it can be categorised under the ***National Construction Code***, whether the public use the facility, or whether structural, ventilation or fire safety standards should be met. The location may also be significant—if it is located on land zoned for building purposes and it is being used for a building-like purpose it may be covered by the Act, but if it is located on an area zoned as a camping ground it may not. The relevant permit authority will advise if it considers the nature and use require compliance with the Act. Tents and marquees used for private purposes are exempt from the need for a building permit if they are erected for less than one month.

Park Homes

Special provisions apply to park homes under the *Caravan Parks and Camping Grounds Act 1995*, and the *Building Act* does not cover these. It is intended that the special provisions will be removed from the *Caravan Parks and Camping Grounds Act* in due course and then park homes will be regulated in the same way as other transportable building components and relocated buildings.

Structures

What is a structure?

There is no formal definition of structure in the *Building Act*—again it takes its normal or dictionary meaning. Structures are things that are built, such as bridges, jetties, masts, towers, retaining walls and the like and include things that are clearly not buildings. The Act does not regulate structures, except when they are incidental to a building.

Incidental Structures

A structure is incidental to a building if it performs a function that complements the use of the building. Examples would include an entrance ramp that bridges a driveway or stream, an observation deck over water that can only be accessed through a building, a mast holding the aerial for a police or fire station or retaining walls in the landscaping around a building.

As a general principle, if the structure is attached to, supported by or forms part of the building it should be regulated as part of the building and is covered by the *Building Act*. If the structure is on land zoned for building purposes it is likely to be incidental to a building and is covered by the Act, even if a building has not yet been constructed on the same site. A freestanding advertising sign on the same site as a building would be an incidental structure, even if the advertisement is not for the building, but the same sign on a road verge or in a farm paddock may not be an incidental structure and may not be covered by the Act. The permit authority is best placed to determine if a structure is considered an incidental structure and covered by the Act.

Building and Demolition Standards

Building Standards

The building standards set out in the Building Regulations apply to all buildings that are covered by the *Building Act*, regardless of whether work on the building needs a building permit. Where a building does not require a building permit a registered building surveyor can still check the building and issue a certificate of design compliance for assurance that the building will meet the building standards.

National Construction Code

The primary building standard prescribed in the Building Regulations is volume 1 and volume 2 of the **National Construction Code**. Copies of the **National Construction Code** can be purchased on the Australian Building Codes Board website www.abcb.gov.au. The **National Construction Code** is published annually to take effect from 1 May each year and is typically referred to by its abbreviation and date—for example **NCC 2011** has effect from 1 May 2011.

The Building Regulations require compliance with the performance requirements set out in the **National Construction Code**. The performance requirements can be met by adopting the deemed-to-satisfy provisions in the **National Construction Code**, or by any other building solution that can be demonstrated to meet the performance requirements. The Western Australian Government is obliged under an inter-governmental agreement to minimise variations to the **National Construction Code**, and tries to limit the number of additional building standards.

Standards for New Buildings

New buildings, and new building work on an existing building must comply with the edition of the **National Construction Code** applicable at the time a building permit application is lodged, plus any additional Western Australian building standards for new buildings that are set out in the Regulations. Where a building permit is not required the building must comply with the building standards that apply during the period of construction. If it is anticipated that standards may change during the construction period the owner can apply for a building permit in order to fix the standards to the date of application.

Once a building has been constructed to the current building standards there is normally no obligation to upgrade the building to meet later building standards prescribed for new buildings so long as it does not have a change in use or classification.

Standards for Renovations

New building work done as part of a renovation of an existing building is required to meet the current building standards. Parts of a building that are not changed must continue to meet the building standards that applied at the time they were constructed. Unlike in some other states, there is no “50% rule” that requires old parts of a building to be upgraded if more than 50% of the building is being changed but care should be taken to ensure the whole building will work safely and efficiently.

Before an occupancy permit can be granted for a renovated commercial or multi-residential building a building surveyor must sign a certificate of building compliance that states that the building or incidental structure in its current (that is, renovated) state is suitable to be used as proposed in the application. If the existing parts of the building are not suitable for the proposed use in conjunction with the new parts (even though the use and classification have not changed) then the building surveyor may require some upgrading of the existing parts.

Standards for Changes of Use or Classification

If a change in use does not result in a change in classification under the National Construction Code then the building standards that apply are the building standards at the time it was constructed. However if the classification of a building is to be changed, whether or not any new building work is proposed the building must meet the current building standards for the new classification. Note that this requirement is to meet the performance standards, not the deemed-to-satisfy provisions.

Standards for Existing Buildings

The *Building Act* allows for the Building Regulations to prescribe building standards for existing buildings. The owner of an existing building covered by such a standard must upgrade the building at the time or in the circumstances set out in the regulations. On commencement the Building Regulations will carry over the requirements for swimming pool barriers for private swimming pools and for hard-wired smoke alarms for residences when they are rented or hired.

Demolition Standards

Demolition standards are set out in the Building Regulations. They apply to the process of demolition. The demolition standards apply to demolition work, regardless of whether a demolition permit is required for the work.

Where only part of a building is demolished, the remaining parts of the building must meet the relevant building standards for an existing building. Where demolition of parts of a building are required as part of a larger building project, such as an extension or renovation, the demolition work may be included in the relevant building permit, but the demolition work must still meet the applicable demolition standards.

Permits

Building Permits

Most building work requires a building permit. The building permit is obtained from the relevant permit authority—usually the local government in whose area the building is located. A building permit application is made when building work is ready to start, and the building permit ceases to have effect on the expiry date shown on the permit, or when the builder submits a notice of completion. The process of obtaining a building permit provides assurance before building work starts that the completed building will comply with the applicable building standards, as well as planning and local government requirements.

Applications for Building Permits

A formal application for a building permit is made when you are ready to start construction. The application must be signed by each owner, so that they consent to the work being done on their land, and by the builder who will be responsible for the work. The application must also include details about the proposed building or incidental structure, evidence that prescribed approvals have been complied with, and must be accompanied by payment of the Building Services Levy and the building permit fee paid to the permit authority.

There are two sorts of applications for a building permit—

1. A **certified application**, where the application contains a certificate of design compliance signed by a registered building surveyor that the building will meet the applicable building standards;
2. An **uncertified application**, where the permit authority is required to obtain a certificate of design compliance.

Certified Applications

You can make a certified application for any class of building or incidental structure. You need to get a registered building surveyor to check the proposed design and sign a certificate of design compliance. Registered building surveyors are employed by local governments and by private-sector consultants and they are free to set their own fees for checking and certifying.

A local government will usually provide a certifying service for buildings that will be built in that local government's area, and may offer a service for buildings that will be located anywhere in the state. Private sector building surveyors will usually provide a certifying service any building located anywhere in the state.

When the building surveyor has signed the certificate of design compliance and you have all the information, approvals and fees needed you can submit a certified application for processing by the relevant permit authority (usually the local government where the building is to be located). The permit authority has 10 business days to process the application and there is a prescribed fee based on the value of the building work.

Uncertified Applications

You can make an uncertified application for a class 1 (single residential) or class 10 (shed) building or incidental structure. The permit authority must get a registered building surveyor to check the proposed design and sign a certificate of design compliance. The permit authority will then process the application. There is a prescribed fee based on the value of the building work, and the permit authority must check, certify and process the application within 25 working days.

Before you make an uncertified application you must still provide all the necessary information to allow the application to be processed.

Which Process Should I Use?

The *Building Act* de-regulates some of the processes needed under the *Local Government (Miscellaneous Provisions) Act* and provides owners and builders with more choice on how to get a building approved. Your key choice is whether you use the local government to certify compliance and help you with other approvals, or whether you go to a building surveyor in private practice.

All buildings can be processed as certified applications. Regardless of whether you use the local government or a private sector building surveyor you will need to provide the building surveyor with the information needed to process a complete application. This information can be fed to the building surveyor as it becomes available so that the building surveyor can progressively get the application ready to process. When all the information is available, a formal certified application is lodged and the permit authority has a maximum of 10 business days to process it.

Whether you use the local government or a private sector building surveyor will depend on the service that you want. Going to a private sector building surveyor lets you choose someone who specialises in your type of building project and to integrate the building surveyor into the design team. A local government building surveyor will find it easy to coordinate planning and other requirements of the local government and you have a high level of certainty that when the application is formally lodged it will be processed very quickly.

For class 1 and 10 buildings you can require the local government to certify and process your application for a fixed fee in 25 business days. However you must have all the information needed to process the application, or the local government will be entitled ask for missing information and reset the clock on the 25 days. This process is well suited to simple applications where all the information is available early in the process.

Mandatory Inspections

A building permit may prescribe mandatory inspections. The builder must arrange for mandatory inspections to be done and must collect the necessary certificates of inspection to submit to the permit authority.

On commencement the Building Regulations will not prescribe mandatory inspections to be carried out during construction.

The building surveyor signing the certificate of design compliance may require some parts of the work to be inspected or tested during the construction phase to confirm or to demonstrate compliance with the building standards. This will most commonly be linked to alternative solutions where design assumptions may need to be verified in practice.

A building surveyor is less likely to prescribe inspections on a certificate of design compliance if the building surveyor is confident that there will be a comprehensive quality control and inspection regime on the project. Where an owner has engaged the building surveyor, the owner can engage the building surveyor and the other consultants on the project to carry out inspections without then needing to be prescribed. Where a builder has engaged the building surveyor the builder can provide a quality assurance process to demonstrate that separate inspections are not required, or can engage the building surveyor to carry out inspections without needing them to be prescribed.

A permit authority has separate enforcement powers that allow it to inspect building work at any stage and to issue building orders if the building work does not comply with the specified plans and specifications or the building standards. These powers can be exercised regardless of whether the building permit prescribes mandatory inspections.

Conditions

A permit authority may place conditions on a building permit. Any conditions must relate to the specific building project and may not modify the certificate of design compliance. This means permit authorities should not put “standard conditions” on permits, or attempt to modify the way the building complies with the building standards. Permit authorities can issue a conditional building permit as an alternative to asking for missing information and slowing down the approval process.

Variations During Construction

A building that has been properly designed, documented and certified before application is made for a building permit should not need significant modification during construction in order to meet the applicable building standards. However owner sometimes request changes, or variations are needed because of documentation errors or latent conditions.

Any variation that affects the way the building complies with the building standards may require a new certificate of design compliance and a new building permit to cover the change. Normally the building surveyor will only need to check the change, as the rest of

the building should be unaffected, and the new certificate of design compliance and permit application will cover just the parts that are changed. However substantial changes or additions may be more easily handled by a completely new building permit for the changed building, with a new certificate of design compliance to confirm that the whole building will comply with the building standards if it is constructed in accordance with the amended plans and specifications.

The new application for a building permit will only need to highlight any changes that have occurred to the things that a permit authority must check. This will allow rapid processing for payment of the minimum fee and levy. However if an owner asks for major changes to a building under construction the new permit application may take longer to process, and any increase in the value of the building may attract additional fees and levies.

Building Permit Checklist

Requirement	Comment
Correct form	There is a standard building permit application form that can be downloaded from the Building Commission Website. The form must be properly filled in and contain the necessary attachments.
Name, contact details and signature of each owner	This protects against fraud and unauthorised building. The form can be signed at any stage prior to lodgement, and can be signed by authorised agents or officers of corporations.
Name, contact details and signature of the builder.	This ensures the builder is prepared to take the responsibilities of the builder under the Act.
Certificate of design compliance [certified applications only]	This must be on the approved form, signed by an appropriately registered building surveyor practitioner and issued by a registered building surveyor contractor or a local government.
Technical certificates relied on by the building surveyor [certified applications only]	These include things like engineers certificates. The building surveyor signing the certificate of design compliance can choose to rely on technical certificates.
Plans and specifications	A set of the plans and specifications that are specified in the certificate of design compliance or that are required to be certified in an uncertified application. These must show how the building complies with the building standards.
Evidence of home indemnity insurance [only applicable to home building work covered under the <i>Home Building Contracts Act</i>]	A copy of the policy or brokers certificate is sufficient.
Building Services Levy	Payment is made to the permit authority and either forwarded to the Building Commission when the permit is granted or refunded if the permit is refused.
Building Permit Fee	Payment is made to the permit authority. It is kept by the permit authority if the permit is issued or refused within the prescribed time. It must be refunded if the application is not processed within the prescribed time.

Demolition Permits

Any significant demolition work requires a demolition permit. The demolition permit is obtained from the relevant permit authority. An application for a demolition permit is made when demolition work is ready to start. The process of obtaining a demolition permit provides assurance that heritage buildings are not to be damaged, the demolition will not cause a local nuisance from rodents, dust, noise, etc. and that services such as electricity, gas and water have been disconnected.

Applications for Demolition Permits

Applications for demolition permits follow a similar process to that for building permits, except that there is no need for a certificate of design compliance. The demolition contractor named on the application is responsible for ensuring the demolition work meets the applicable standards.

Mandatory Inspections

A demolition permit may prescribe mandatory inspections. The demolition contractor must arrange for mandatory inspections and collecting the necessary certificates of inspection to submit to the permit authority.

On commencement the Building Regulations will not prescribe mandatory inspections to be carried out during demolition.

Conditions

A permit authority may place conditions on a demolition permit. Any conditions must relate to the specific demolition project.

Demolition Permit Checklist

Requirement	Comment
Correct form	There is a standard demolition permit application form that can be downloaded from the Building Commission Website. The form must be properly filled in and contain the necessary attachments.
Name, contact details and signature of each owner	This protects against fraud and unauthorised demolition. The form can be signed at any stage prior to lodgement, and can be signed by authorised agents or officers of corporations.
Name, contact details and signature of the demolition contractor.	This ensures the demolition contractor is prepared to take the responsibilities of the demolition contractor under the Act.
Plans and specifications	A set of the plans and specifications showing the demolition work.
Building Services Levy	Payment is made to the permit authority and either forwarded to the Building Commission when the permit is granted or refunded if the permit is refused.
Demolition Permit Fee	Payment is made to the permit authority. It is kept by the permit authority if the permit is issued or refused within the prescribed time. It must be refunded if the application is not processed within the prescribed time.

Occupancy Permits

It is an offence under the *Building Act* to occupy a commercial or multi-residential building without an occupancy permit. An occupancy permit ensures the building has been completed properly and meets the applicable building standards for the proposed use. An occupancy permit can be used to authorise temporary occupancy of a building that is not yet complete, temporary change of use, strata titling or retrospective approval of a building that was constructed without approval.

Occupancy Permit for a Completed Building

This is the normal occupancy permit for a new building that has just been completed. You would normally apply for this permit at the end of the construction period when the building is substantially completed. An application can be made before a builder issues a notice of completion, but the building must be sufficiently complete for a building surveyor to issue a certificate of construction compliance.

Temporary Occupancy of an Incomplete Building

You may apply for a temporary occupancy permit if the building work is not completed, and the building does not meet all of the building standards needed to get an occupancy permit for a completed building. A building surveyor must certify that the building is safe and suitable for temporary use.

Modification of an Occupancy Permit for an Additional Use on a Temporary Basis

You may apply to have an existing occupancy permit modified to allow for an additional use on a temporary basis. This covers circumstances such as holding a public function in an office building, using a school for short-term accommodation during a holiday period etc. The certificate of building compliance must state that the building meets the applicable standards and is suitable for the temporary use.

Occupancy Permit for Permanent Change of a Building's Classification or Use

This is the normal permit for when an existing building is adapted for a use not covered by the existing occupancy permit, whether or not the classification of the building under the National Construction Code changes as well. The application must be accompanied by a certificate of building compliance to confirm that the building meets the applicable standards and is suitable for the new use.

Occupancy Permit for Registration of a Strata Scheme

An occupancy permit is required by Landgate before it will issue titles under a strata scheme for a building. The occupancy permit demonstrates that the building meets the standards for strata titling current at the time of the application and is suitable for strata titling.

Occupancy Permit to Retrospectively Approve Unauthorised Work

The occupancy permit process can be used to confirm that an existing building that was built without authorisation meets the current building standards and is suitable for its current use. The certificate of building compliance must confirm that the building meets the standards for a new building current at the time of the application. You must pay double the fees and levies for a retrospective approval, and if you carried out the unauthorised building work you may also be prosecuted.

Occupancy Permit for an Existing Building

All buildings completed before the *Building Act* will not have an occupancy permit. If you wish to bring an existing building into the new approvals process you may apply for an occupancy permit for a building with existing authorisation. The certificate of building compliance confirms the building complies with the standards that applied at the time it was built, and there is only a nominal fee and levy to be paid.

Applications for Occupancy Permits

Applications for occupancy permits follow a similar process to that for building permits. The certificate of design compliance for a building that is yet to be built is replaced by a **certificate of construction compliance** (for a new building just completed) or a **certificate of building compliance** (for an existing building).

Mandatory Inspections or Tests

An occupancy permit may prescribe mandatory inspections or tests to be carried out during the life of the building. The owner must arrange for mandatory inspections and collecting the necessary certificates of inspection to submit to the permit authority.

On commencement the Building Regulations will not prescribe mandatory inspections to be carried out during occupancy.

The building surveyor signing the certificate of design compliance, construction compliance or building compliance may require inspections or testing during occupancy to confirm or to demonstrate compliance with the building standards. This will most commonly be linked to life-safety and emergency services equipment.

A permit authority has separate enforcement powers that allow it to inspect an existing building and to issue building orders if the building is unsafe or does not comply with the specified plans and specifications or the building standards. These powers can be exercised regardless of whether the occupancy permit prescribes mandatory inspections.

Conditions

A permit authority may place conditions on an occupancy permit. Permit authorities can issue a conditional building permit as an alternative to asking for missing information and slowing down the approval process.

Occupancy Permit Checklist

Requirement	Comment
Correct form	There is a standard occupancy permit application form that can be downloaded from the Building Commission Website. The form must be properly filled in and contain the necessary attachments.
Name, contact details and signature of each owner	This protects against fraud and unauthorised occupation and use. The form can be signed at any stage prior to lodgement, and can be signed by authorised agents or officers of corporations.
Certificate of construction compliance [application to occupy a completed building or to temporarily occupy an unfinished building] Certificate of building compliance [other applications]	This must be on the approved form, signed by an appropriately registered building surveyor practitioner and issued by a registered building surveyor contractor or a local government.
Technical certificates relied on by the building surveyor	These include things like engineers certificates. The building surveyor signing the certificate of construction compliance or certificate of building compliance can choose to rely on technical certificates.
Building Services Levy	Payment is made to the permit authority and either forwarded to the Building Commission when the permit is granted or refunded if the permit is refused.
Building Permit Fee	Payment is made to the permit authority. It is kept by the permit authority if the permit is issued or refused within the prescribed time. It must be refunded if the application is not processed within the prescribed time.

Building Approval Certificates

It is not an offence to occupy a single residential building or a shed without an occupancy permit. Building approval certificates are available for such buildings when it is needed to demonstrate that they are properly authorised and meet the applicable building standards. Building approval certificates can be used for strata titling applications and retrospective approvals.

Permits Not Required

Building, demolition and occupancy permits are not required where the risk of non-compliance with the building standards is low. The *Building Act* and Building Regulations set out when a permit is not required. If you are not sure whether a permit is required you should check with the permit authority.

Minor Buildings and Building Work

The Regulations exempt buildings and building work such as small sheds, renovations that do not change the structure of the building, temporary site sheds, relocatable swimming pools, fences, small masts and aerials, small retaining walls and small pergolas.

Temporary Buildings

Buildings not normally used by the public and erected for less than one month do not require permits. This covers things like marquees and lightweight enclosures used for private functions, as well as more substantial transportable buildings used for short periods before being removed.

Building Incidental to Certain Facilities

Buildings that are incidental to infrastructure, shipping and boating facilities, mining operations, exploiting petroleum and other resources or industrial processing plants do not require permits. They must, however, comply with the building standards and the provisions on work affecting other land. This exemption does not apply to residential or recreational facilities or buildings that members of the public normally use or to which members of the public are permitted access.

What is Incidental?

The *Building Act* exempts buildings used in the construction, operation or maintenance of infrastructure or specified facilities. To determine whether a building is used for construction, operation or maintenance, the starting point is to consider the facility itself. The building must be part of infrastructure or a facility of the type set out in the Act. That is, the dominant impression should be that of a road or railway, a mine, an oil refinery, a steelworks or the like. The building should not have an independent purpose, but should exist because it is needed to construct, operate or maintain the facility. Typical examples would include a shed protecting motors or pumps, a control room only accessed by facility employees, toilets for the exclusive use of employees, or stores for raw materials that are used in the facility.

If the facility is self-contained, but housed within a building, then that building would not be used for the construction, operation or maintenance of the facility and the building would require a building permit.

Recreational or Residential Facilities

Some mining, petroleum and processing facilities in remote locations provide accommodation and recreational facilities for fly-in, fly-out workers. Even when these are located within the facility, and access to them is controlled, accommodation and recreational facilities require a building permit.

What is Public Access?

Some buildings associated with exempt facilities are normally used or accessed by members of the public. Examples would include railway stations and airport terminals, visitor centres and general office buildings where visitors may come to meet staff or transact business. These buildings are not exempt from the need for permits. Where a facility has controlled access so that the only people allowed in to the facility are employees or contractors, or visitors with specific business at the facility then buildings that are incidental to the operation of the facility would be exempt.

Processing Permit Applications

General

Processing Requirements

The *Building Act* sets out the things that a permit authority must be satisfied about before it can issue a permit. You are expected to make sure that an application contains all the information needed for the permit authority to process the application. If you are in any doubt about what is required you should contact the permit authority to confirm what it needs to process the application.

Processing Timeframes

To help permit authorities process applications within the strict timeframes they are given it is important to make sure the application is complete when it is submitted. Because applications are made when you are ready to start building or to occupy a completed building, there should be no difficulty in obtaining the necessary approvals and providing the required information.

If an application is incomplete, or you have not got all the required approvals, the permit authority is entitled to reject the application and keep the application fee. The permit authority can ask for missing information, and set a time by when it must be provided. Once all the information is provided, the permit authority then has the full processing time to grant the permit. If it rejects the application you may ask the State Administrative Tribunal to review the decision.

If the permit authority fails to process the application within the prescribed time it must refund the application fee to you. If you do not hear from the permit authority on time, you should contact it to find out what is happening. The permit authority can finish processing the application and grant the permit late, but it still must refund the fee. Because the application is “deemed refused” at the end of the prescribed period you also have the right to by-pass the permit authority and ask the State Administrative Tribunal to review the application.

Work Affecting Other Land

Introduction

The *Building Act* provides comprehensive provisions for work that affects other land. This includes—

- Encroachments—parts of buildings or incidental structures that encroach over the boundary of adjoining land;
- Adverse affects—reducing the bearing capacity of adjoining land or interfering with the site drainage of adjoining land;
- Protection structures—sheet piling, ground anchors, underpinning or other work needed to protect existing structures that are placed on adjoining land;
- Party walls—affecting the structural, waterproofing or noise insulation capacity of party walls, substantial dividing fences or boundary retaining walls;
- Fences—removal of fences or other barriers;
- Access—using adjoining land for construction purposes.

These provisions apply to all building and demolition work, regardless of whether a building or demolition permit is required.

These provisions in the *Building Act* provide a balance between the needs of builders when working close to a boundary, and the rights of adjoining owners. To work effectively they will require the common sense and cooperation of all the parties affected by building work. Both builders and adjoining owners can use these provisions to ensure the building process runs smoothly with minimal impact on neighbours.

Building on Boundaries

In most urban areas land owners will want to maximise the effective use of their land by building as close to the boundary as possible. It is also in the community's interest to get efficient use of land and not leave narrow gaps between buildings. Planning schemes can allow construction right up to the boundary for buildings in commercial or industrial areas and for residential areas in city locations or on small lots. Even where there is a required set-back, construction work may inevitably affect land on the other side of the boundary.

Construction work inevitably causes some disruption to neighbours, whether it is noise, dust, vibration or the impacts of construction traffic. Builders have a special obligation to minimise disruption, and most try very hard to make the building process as smooth and trouble-free as possible. Builders must be tolerant of neighbours and understanding of their needs. Most neighbours will understand that the disruption is temporary, and that they too may cause disruption in their turn when undertaking new building work or renovations. Tolerant and cooperative neighbours are an important contributor to efficient building processes.

The *Building Act* requires owners or builders to get consent from adjoining landowners before doing specified work that may affect the adjoining land. If consent cannot be obtained, either because it is refused or the relevant landowner cannot be found, an owner or builder can seek a court order to allow the work to proceed. In some cases the consent or court order will be confirmed by the permit authority before issuing a building or demolition permit.

Encroachments

Encroachments are when part of a building extends over the boundary line into the adjoining property or road reserve.

Private Property

It is rare to need a permanent encroachment into neighbouring private property as building work above ground will remain within the lot boundaries. It is more common to have encroachments below ground related to retaining walls and similar structures. A boundary retaining wall may work much more efficiently if part of its footing encroaches under the ground into the neighbour's land. This may cause little or no inconvenience to the neighbour. Such permanent encroachments are shown on the plans and specifications and consent will be checked as part of the building or demolition permit process.

Although not required by the *Building Act*, an owner who has obtained consent for an encroachment onto adjoining land may wish to record the agreement on the land title to protect future owners and reduce disputes over whether consent was given.

Crown Land

Encroachments onto road reserves and other Crown land are more common, and include things such as awnings and signs, as well as decorative features on the façade of buildings. Consent is most commonly given where there is a public benefit in the encroachment, such as an awning over the footpath. Where the owner may obtain a private or commercial benefit, such as balconies for multi-storey apartments, consent may be contingent on obtaining a lease of air space or paying some other compensation.

Users should consult **Government Land Bulletins** numbers 5 and 6 issued by the Department of Regional Development and Lands for more information on encroachments onto Crown land. Bulletin No 5 gives a standing consent for minor encroachments and public benefit structures including plinths, awnings, flowerpots, light fittings, banner signs and minor building encroachments at road level, which are of an ornamental nature.

Consent for encroachment onto a road is also needed from the relevant local government or the Commissioner for Main Roads.

Adverse Affect

Adversely affecting land is defined in the *Building Act* to mean reducing the stability or bearing capacity of the land or of a building or structure on the land, damaging the structural adequacy of a building on the land or changing the natural site drainage of the land in an adverse way. Adverse affects are most likely to occur as a result of excavation close to a boundary line, or the construction of retaining walls along a boundary line to support the adjoining land.

Excavation close to a boundary can undermine adjoining structures, or cause land movement that damages adjoining buildings. It is unlikely that a neighbour will give consent to this sort of damage so damaging a building in this way may result in prosecution by the permit authority and claims for restitution from affected owners.

Retaining walls along a boundary that hold back the neighbour's land must be strong enough not to adversely affect the bearing capacity of the land behind the wall. It is strongly recommended that an engineer's advice is obtained for boundary retaining walls. As a guide, a surcharge should be allowed equivalent to the nominal bearing capacity of the soil, commencing at the closest set-back to the boundary allowed by the relevant town planning scheme. In areas subject to new development an adjoining owner may consent to a reduced bearing capacity at the surface because that owner also intends to excavate the land for a new building whose footings will be set below the zone that will affect the retaining wall. Alternatively an adjoining owner may consent to a reduced bearing capacity if other protection work is done to support existing buildings.

With some soil types or underlying geologies, retaining walls along boundaries may act as a dam to hold back the flow of groundwater. This may cause saturation of soil under adjoining buildings with related dampness or reduction in bearing capacity, or adversely affect existing sub-soil drains. It is strongly recommended that an engineer's advice is obtained for boundary retaining wall.

Protection Structures

Protection structures may be temporary, such as sheet piling to protect an excavation while building work takes place, or may be permanent, such as underpinning the footings of an adjacent building. Protection structures cannot be placed on adjoining land without consent. Any work on adjoining land is likely to be an inconvenience to the neighbour, and careful planning of the construction work is important to minimise impact if consent is to be obtained. If consent or a court order cannot be obtained the owner or builder may need to modify the proposed building or construction technique to remove the need for protection structures on adjoining land.

An exemption from the need for consent is if work is needed in an emergency or to comply with a building order issued by the permit authority. However if work is done in an emergency the person doing the work must notify the affected landowner as soon as practicable.

Party Walls

Party walls are jointly-owned walls that straddle a boundary and provide separation and support to adjoining dwellings. The provisions that apply to party walls also apply to boundary retaining walls and substantial dividing fences (that is, a fence that was constructed under a building permit). A person doing building work must not affect the structural stability, waterproofing or noise-insulation capacity of such walls or structures without consent. This includes changing the way the wall or structure works, even though there may not be an adverse affect.

An exemption from the need for consent is if work is needed in an emergency or to comply with a building order issued by the permit authority. However if work is done in an emergency the person doing the work must notify the affected landowner as soon as practicable.

Removal of Fences

An owner or builder must not remove dividing fences or other barriers to adjoining land without consent. This is important because fences may be used to prevent children or animals from escaping, or may form a security barrier to hazards such as swimming pools, dangerous goods or machinery. Where necessary a temporary barrier must be erected to replace the fence while work is being done.

An exemption from the need for consent is if the fence needs to be removed in an emergency or to comply with a building order issued by the permit authority. However a fence is removed in an emergency the person doing the work must notify the affected landowner as soon as practicable.

Note that these provisions complement the *Dividing Fences Act 1961* that provides a mechanism for compelling contributions for the construction or maintenance of a dividing fence. Removal of an existing, satisfactory fence for construction purposes does not allow an owner or builder to compel a contribution from the neighbour for the construction of a replacement fence.

Access to Adjoining Land

In many cases construction work will be made very much easier and more efficient if access is available to adjoining land. This may be short-term access for the delivery of materials or the placement of concrete pumps or mobile cranes, or it may be longer-term access to allow for scaffolding, lifts or storage of materials. An owner or builder must obtain consent before accessing adjoining land for construction purposes.

An exemption from the need for consent is if access is needed in an emergency or to comply with a building order issued by the permit authority. However if work is done in an emergency the person doing the work must notify the affected landowner as soon as practicable.

An owner or builder will normally seek consent at the beginning of the building process in case some adjustment to the design or construction process is needed where consent is not obtained. Regardless of when consent has been obtained, the owner or builder requiring access must also give 24 hours notice before actually accessing the adjoining land.

Removal of Unauthorised Encroachments

Because encroachments or protection structures can adversely affect the adjoining landowner, that land owner is permitted to remove any encroachments or protection structures that have been placed on the adjoining land without consent or a court order. The adjoining landowner does not need to seek approval or a permit to remove unauthorised encroachments or protection structures, so long as any damage caused is made good.

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Enforcement

Permit Authority

The permit authority is responsible for ensuring that buildings within its area of responsibility are constructed, occupied or demolished in accordance with the *Building Act* and Building Regulations. The permit authority may authorise its staff to inspect building work and buildings and to issue building orders where work is needed to bring the building into line with the provisions of a permit or the Act. The permit authority may also prosecute people who breach the Act.

Building Commission

The Building Commission has powers to audit Building Act processes and the work of registered building service providers. The Building Commissioner can authorise officers to inspect building work and buildings and to prosecute people who breach building services legislation. In addition the Building Commissioner can investigate complaints about building work and issue remedy orders, or pass the matter to the State Administrative Tribunal for formal hearings.

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