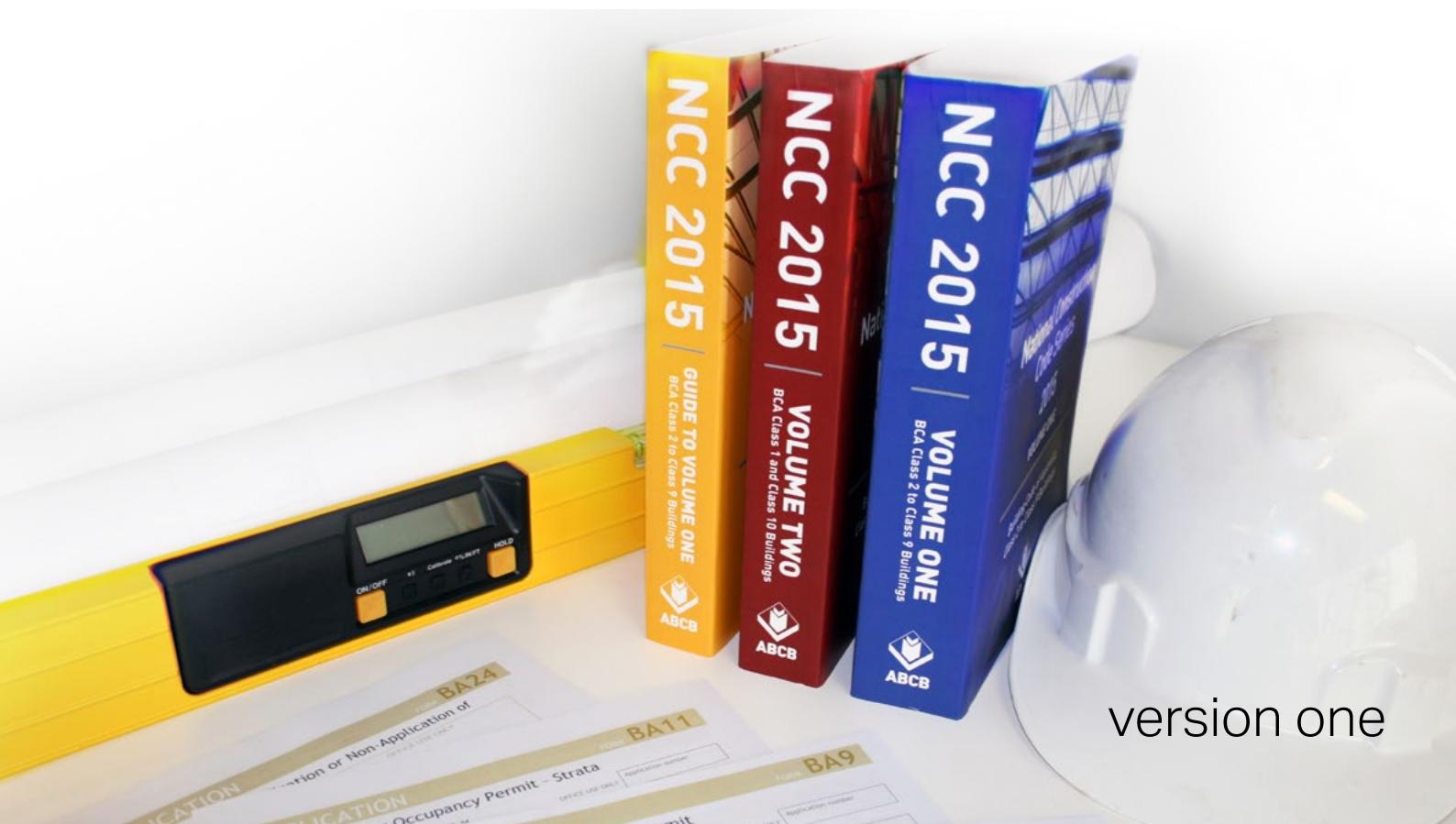




Government of **Western Australia**
Department of **Commerce**

Building
Commission

A guide to the **building** **approvals** **process** in Western Australia



version one

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Disclaimer

The material contained in this document does not represent a legal interpretation of the *Building Act 2011* and *Building Regulations 2012* and is intended for general guidance and information only. Readers should not act or omit to act solely on the basis of anything contained herein. This document should not be used for enforcement action by permit authorities and should not be relied upon as a defence against enforcement action by a permit authority. Not every provision of the *Building Act* and *Building Regulations* is covered by this document.

In relation to a particular matter, you should seek appropriate legal/professional advice. The State of Western Australia and its servants and agents expressly disclaim liability, whether in negligence or otherwise, for any act or omission resulting from reliance on this document or for any consequence of such act or omission.

This guide will help you understand the process for obtaining approval to build and occupy a building in Western Australia

The Building Commission has prepared this overview of the building approvals process to assist those in the building industry, home-owners, permit authority clients and staff, owner-builders and building industry students. The information is relevant whether you are building a house, an office tower, a swimming pool safety barrier or planning renovations that require building approval. This guide includes sections on:

- the state's building legislation;
- the various types of permits and application processes;
- exemptions from requiring a permit that may apply;
- building standards and certifying compliance;
- retrospective approval of unauthorised work;
- what to do if work will affect other land; and
- the roles and responsibilities of those involved.

The legislation

In Western Australia the building approvals process is legislated under the *Building Act 2011* (the Building Act), which works with other key legislation covering the registration of building service providers (such as builders and building surveyors) and complaint resolution. Other approvals that may apply to proposed building work include planning, health and any other approvals required by the local government under other written laws. For advice on approval requirements for a specific building project, contact the relevant permit authority.

Terms used

BA (followed by a number) – Building Act forms are identified by a specific number with a 'BA' prefix, such as BA1, BA2, BA3 which identifies that specific form (see Section 10 of this guide for a list of all approved forms).

Business day – means a day other than Saturday, Sunday or a public holiday.

Landgate – is a statutory authority that maintains the official register of land ownership and survey information for the 2,645,600km² of Western Australia. It deals with registration of strata plans and other matters relating to strata schemes under the *Strata Titles Act 1985*.

Permit authority – generally the relevant local government, but can be the State of Western Australia for certain buildings and structures.

Regulation – a reference to a regulation, for example regulation 18 or r. 18, is a reference to a regulation in the Building Regulations 2012 unless otherwise specified.

Section – a reference to a section, for example section 20 or s. 20, is a reference to a section of the Building Act unless otherwise specified.

Unauthorised work – means building or demolition work that was done without an authority under written law that was required by the written law applicable at the time the work was done or that did not comply with an authority under a written law that was in effect in respect of the work.

Section 1: Coverage, exemptions and responsibilities

What does the Building Act cover?

The Building Act applies to buildings and structures attached to or incidental to a building.

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 structure under consideration is a building. Guidance can be taken from the classification of buildings in the Building Code of Australia (BCA), being Volumes One and Two of the National Construction Code Series (note that Class 10b is not described as a building).

If there is any doubt, always check with the permit authority.

Parts of buildings

The Building Act provides that a building includes part of a building, therefore it 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 can be termed as 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 applicable 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 the applicable building standards, on relocation, are the current BCA performance requirements for life safety aspects, such as structural provisions and fire safety matters, and the building standards applicable at the time it was originally built for other requirements. However if it is being relocated for an entirely different use or classification it may need to meet the current applicable building standards for its new use and classification.

Planes, trains and automobiles

There are structures and items that are normally not considered to be buildings that can be used for building-like purposes. For example, caravans can be used as residences or railway carriages can be used for overnight accommodation (sleeping cars) or as restaurants (dining cars). Some aeroplanes can now contain bedrooms and bars. While these 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 structural provisions, access, fire safety, energy efficiency and the like.

Tents and fabric building components

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 BCA; whether the public use the facility; or whether structural, ventilation or fire safety standards should be met. The location may also be significant, for example 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 Building Act, but if it is located on an area zoned as a camping ground it may not. The permit authority will advise if it considers the nature and use of the structure requires compliance with the Building 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

Building work for a park home or annexe as defined in s. 5(1) of the *Caravan Parks and Camping Grounds Act 1995* (Caravan Parks Act,) does not require a building permit. (Please note: this may change as this Act is under review). While a building permit may not be required, owners are required under the Building Act to ensure that the park home or annexe, if it is a building or incidental structure, still complies with applicable building standards and the smoke alarm provisions of the Building Regulations that are required on the sale; transfer of ownership; hire or rent of a dwelling. If the park home is a licensed vehicle such as a caravan, then it may not be a building or incidental structure. Owners should be aware that there may be other approvals by a permit authority that apply under the Caravan Parks Act.

Structures

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

Incidental structures

Incidental structure is defined in the Building Act as a structure attached to or incidental to a building and includes a chimney, mast, swimming pool, fence, free-standing wall, retaining wall or permanent protection structure; and a part of a structure. A structure is incidental to a building if it performs a function that complements the use of the building.

Generally, 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 Building 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 Building Act. The permit authority is best placed to determine if a structure is considered an incidental structure and covered by the Building Act.

Exemptions

Part 5 of the Building Act provides for exemptions from the requirement to obtain certain permits under the building approval process for particular buildings and incidental structures based on their level of risk. However these exemptions do not remove the requirement for approvals under other legislation if required, for example planning or health. To determine whether an exemption applies for your particular circumstance, contact the permit authority.

Temporary buildings (s. 69)

Buildings that are 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 on land of a person's private residence.

Buildings incidental to certain facilities (ss. 70, 71, 72, 73, 74)

Permits are not required for buildings or incidental structures that form part of major infrastructure, mines, processing plants and the like; and buildings or incidental structures that are, or are proposed to be used in the construction, operation or maintenance of road, rail, port, harbour, airport, water, sewerage, electricity, oil or gas supply. However they must comply with the applicable building standards and the provisions in the Building Act relating to work affecting other land.

These exemptions do 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.

Areas where building permit not required for certain work (r. 41)

Schedule 4 Clause 1 of the Building Regulations sets out areas of the state (being specific regional or remote areas) where a building permit is not required for certain work.

REGARDLESS of any exemption that may apply there is **ALWAYS** a requirement under s. 37(2) of the Building Act for the **OWNER** to ensure that the building or incidental structure, when completed, **COMPLIES** with each applicable building standard.

Kinds of building work for which a building permit is not required (r. 41)

Schedule 4 Clause 2 of the Building Regulations sets out the kinds of building work for which a building permit is not required for certain work. These include small garden sheds, temporary site sheds, certain fences (other than a fence forming part of an enclosure for a private swimming pool), certain masts and antennas, small retaining walls, small pergolas and the like. The Building Regulations provides a detailed description of these exemptions.

Ministerial order (s. 67)

Occasionally the Minister may by order, exempt certain works or buildings from requiring a permit. Such orders can also extend to providing exemptions to the type of information to be provided on an application for a building or demolition permit. Any orders made, revoked or amended by the Minister will be published in the Government Gazette. Currently the only ministerial order in effect relates to the requirement for owner's signature on an application for a building permit for Class 1 and Class 10 buildings and incidental structures.

General responsibilities

The roles and responsibilities of the key players during the building approval and building process are outlined below.

Applicants

- Lodgement of permit application with all required supporting documents.
- Providing further information to the permit authority within the specified time if requested.
- Obtaining all required approvals prior to lodgement of building permit applications.

Owners

- Owners of new commercial and multi-residential buildings (Class 2 to Class 9 buildings) must ensure that they have an occupancy permit before the building is occupied and display the occupancy permit or details at the entrance to the building. Owners of houses and associated buildings (Class 1 and Class 10 buildings and incidental structures such as sheds, pools and similar) do not need an occupancy permit.
- Appointing a new builder in the event the previous builder ceases work prior to completion of building work.
- For Class 2 to Class 9 buildings, ensuring the safety measures that formed part of the building permit in each part of the building are maintained (r. 48A).
- Where an exemption applies (ie a building permit is not required under the Building Act or Building Regulations), each owner of the land must ensure that, on completion, the building or incidental structure complies with each applicable building standard.

Demolition contractors

- Ensuring demolition work complies with the demolition permit and all required policies (ie OSH, WorkSafe and local government.)
- Ensuring that no work affecting other land is undertaken without consent or a court order.

- Giving a notice of completion (form BA7) to the permit authority within seven (7) days of completion of the work or stage of the work for which the permit was granted.
- Giving a notice of cessation (form BA8) to the permit authority within seven (7) days, if the demolition contractor ceases to be responsible for the work before its completion.

Builders

- Ensuring the building or incidental structure 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.
- Ensuring that no work affecting other land is undertaken without consent or court order.
- Arranging for any inspections and tests listed on the building permit to be carried out and recorded.
- Giving a notice of completion (form BA7) to the permit authority within seven (7) days of completion of the work or stage of the work for which the permit was granted.
- Giving a notice of cessation (form BA8) to the permit authority within seven (7) days, if the builder ceases to be responsible for the work.

Where works are required to be undertaken by a registered builder, this person is required to be registered as a building contractor under the *Building Services (Registration) Act 2011* (Registration Act). Refer to "Do I need to be a registered builder" fact sheet on the Building Commission website.

Building surveyors

- Certifying the design of new building work to state it will meet the applicable building standards.
- Certifying that the building has been built in accordance with the specified plans and specifications.
- 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.
- Certifying that the building in its current form is safe to occupy and use in the way proposed.

Owners or applicants can either engage a private building surveyor or seek the services of a building surveyor employed by a local government that provides certification services.

Private building surveyor

A private building surveyor must be registered as a building surveying contractor under the Registration Act in order to contract with the public to carry out building surveying work. Registration as a building surveying contractor authorises that person to contract to carry out building surveying work which is defined in the Registration Act as:

- building surveying work level 1 — certifying compliance in respect of any building or incidental structure;
- building surveying work level 2 — certifying compliance in respect of a building or incidental structure with a floor area up to 2000m² and not more than three storeys.

A building surveying contractor (company or partnership) must at all times have a director or partner who is a registered building surveying practitioner or employ at least one building surveying practitioner to act as the nominated supervisor. In the case of a building surveying contractor (individual), that individual must always be the nominated supervisor and be registered as a building surveying practitioner.

There is a third level of building surveying practitioner technician registration under the Registration Act. Such practitioners are generally employed by a permit authority or a private building surveying contractor and are restricted to certifying buildings up to two storeys high and 500m² floor area. A technician cannot contract with members of the public to provide certification services.

Local government building surveyor

A building surveyor employed by a local government is required to be registered as a building surveying practitioner (Levels 1, 2 or technician) for the purposes of providing compliance certificates. However a local government is not required to be registered as a building services contractor.

Independent building surveyor

All certifying building surveyors must be independent - meaning that they cannot be an owner of the land, an employee of an owner, or the builder or demolition contractor or an employee of the builder or demolition contractor. This applies to both private and local government building surveyors.

Permit authorities

A permit authority controls the construction, occupation and demolition of buildings and incidental structures through the granting of building, demolition or occupancy permits and building approval certificates and the enforcement of compliance with permits. A permit authority ensures that all statutory requirements are met for the lodgement of an application and is responsible for maintaining building records, which can be made available to authorised people, such as current or subsequent owners.

As part of its enforcement role, a permit authority can inspect building work and investigate Building Act compliance matters and, where relevant, issue infringement notices, building orders or commence prosecution for non-compliance. There are three types of permit authority:

| | |
|---------------------------------|--|
| Local Government | For most buildings the permit authority will be the local government in whose area the building is located or is proposed to be located. |
| State Government | <p>The State Government of Western Australia may perform the functions of a permit authority. Currently there are three State Government permit authorities that enforce control of buildings under their management:</p> <ol style="list-style-type: none"> 1. Department of Housing; 2. Department of Finance – (Building Management and Works); and 3. The Public Transport Authority. <p>The relevant local government is the permit authority for buildings owned or occupied by the state, unless the Minister has decided that the state is to be the permit authority for that building. The Minister must inform the relevant local government of a decision that the state is to be the permit authority.</p> <p>When a State Government permit authority grants a building or demolition permit, building approval certificate or grants or modifies an occupancy permit, it must give details of the permit or certificate to the relevant local government. A State Government permit authority must also give details of each notice of completion (BA7) or notice of cessation (BA8) it has received to the relevant local government (s. 7(2)).</p> |
| Special permit authority | <p>The Building Act allows for a public body to be established as a special permit authority for specific areas or kinds of buildings such as:</p> <ul style="list-style-type: none"> • a group of regional local governments that wish to centralise building approval in one local government or regional council; • another regulator able to deal with building work of specific kinds; or • entities with building responsibilities that extend across more than one local government such as redevelopment authorities or universities. <p>Currently there are no special permit authorities designated by regulations for this purpose.</p> |

Responsibilities before, during and after building work

| Before — application and grant of building permit | | | |
|---|--|--|--|
| Applicant | Builder | Building surveyor | Permit authority |
| Ensure that all of the relevant documentation is provided and is correct ie plans and specifications, payment of fees and levies certifications, authorisations, etc. | Ensure home indemnity insurance is in place (if relevant). | Ensure the plans comply with the Building Code of Australia before signing and issuing a certificate of design compliance. | Check applications are complete and in order and that all statutory requirements and approvals are in place. |
| Obtain necessary statutory approvals. | Sign the application form as the builder. | As part of the certificate of design compliance process, liaise with the FES Commissioner if required for certain Class 2 to Class 9 commercial buildings. | Grant building permits and listing conditions, required tests and/or inspections. |
| For certain Class 2 to Class 9 buildings, lodge with the Fire and Emergency Services (FES) Commissioner copies of the plans and specifications that accompany the certificate of design compliance. | | | Record keeping. |
| Where required provide evidence of consent or court order for work that may adversely affect other land or encroaches on other land. | | | |

Responsibilities before, during and after building work (continued)

| During — when the permit has been granted | | | |
|---|--|---|---|
| Applicant | Builder | Building surveyor | Permit authority |
| | Ensure the building work complies with the applicable building standards. | | Carry out compliance and enforcement function. |
| | Ensure building work complies with the approved plans and specifications. | | If relevant, approve new responsible person. |
| | Ensure the relevant inspections and/or tests are carried out. | | |
| | Provide notifications and obtain consents where necessary prior to any work being carried out that will affect other land. | | |
| | If relevant, provide notice of cessation to the permit authority and to the owner. | | |
| After — at completion of work and prior to occupying certain buildings | | | |
| Applicant | Builder | Building surveyor | Permit authority |
| Submit an application for an occupancy permit for Class 2 to Class 9 buildings. | Submit a notice of completion for all buildings to the permit authority including any relevant test and inspection certificates. | Carry out inspections and issue certificates of construction compliance to accompany an application for an occupancy permit for Class 2 to Class 9 buildings. | Ensure notice of completion and the required inspection certificates are received. |
| | | | Provide the FES Commissioner with a copy of the occupancy permit where a referral was carried out in accordance with r. 18B(1). |
| | | | Grant occupancy permits for Class 2 to Class 9 buildings. |

Section 2: Certificates of compliance

A certificate of compliance is required before a building permit, occupancy permit or building approval certificate can be granted by a permit authority. There are two signatures on a certificate of compliance:

- 1. the signature of the building surveying practitioner** registered under the Registration Act for the appropriate practising level, ie Level 1, Level 2 or building surveying practitioner technician who has assessed compliance; and
- 2. the signature of the person issuing the certificate of compliance** on behalf of the building surveying contractor or local government. This person can be the owner, director, or any party authorised by that contractor or local government and does not necessarily have to be the nominated supervisor.

The three different types of certificates of compliance are:

Certificate of design compliance (BA3)

A certificate of design compliance (CDC) is required in order to obtain a building permit from the permit authority to construct a building or incidental structure. The Building Act requires a CDC to be in an approved form and contain a statement by the building surveyor that the building will comply with each applicable building standard if the building is completed in accordance with the specified plans and specifications. Additionally the Building Regulations prescribe each other thing the certificate must contain and what the building surveyor is required to do before signing the certificate, for example:

- state that the plans and specifications have been submitted to the FES Commissioner where required under the Building Regulations;
- state the relevant edition of the Building Code; and
- provide details about each alternative solution to a building standard for Class 2 to Class 9 buildings.

Certificate of construction compliance (BA17)

A certificate of construction compliance (CCC) is required in order to obtain an occupancy permit from the permit authority to occupy a newly completed Class 2 to Class 9 building or a newly completed part of the building eg addition to a building. A CCC amongst other things requires the building surveyor to state that:

For a completed building:

- the building has been completed in accordance with the plans and specifications that are specified in the applicable CDC for each applicable building permit;

- the building complies with each applicable building permit including each condition that applies to the permit; and
- the building in its current state is otherwise suitable to be used in the way proposed in the application.

For an incomplete building:

- the building is incomplete;
- that occupying or using the building in its current state in the way proposed in the application would not adversely affect the safety and health of its occupants or users; and
- the building in its current state is otherwise suitable to be used in the way proposed in the application.

Certificate of building compliance (BA18)

A certificate of building compliance (CBC) is required in order to obtain:

- i. an occupancy permit, other than an occupancy permit required for a completed building or an incomplete building for which a CCC would be required;
- ii. a building approval certificate;
- iii. an occupancy permit strata; or
- iv. a building approval certificate strata.

The applications that must be accompanied by a CBC include change of use, change of classification, registering a strata title, approval of unauthorised work, or replacing an existing occupancy permit or building approval certificate. A CBC amongst other things requires a building surveyor to state that:

- the building or incidental structure substantially complies with the applicable building standards;
- occupying or using the building or incidental structure in its current state in the way proposed in the application would not adversely affect the safety and health of its occupants or other users;
- the building or incidental structure complies with each authority under a written law that is prescribed in r. 36 of the Building Regulations; and
- where relevant, that the building or incidental structure substantially complies with the building permit, building licence or other approval that was granted in respect of the construction of the building or incidental structure.

Section 3: Building standards

The Building Act adopts the Building Code of Australia (BCA), being Volumes One and Two of the National Construction Code series, as the primary applicable building standard for all new building work, new buildings and incidental structures. The applicable building standards apply whether or not a building permit is required. Similarly, there are applicable building standards that all demolition work must comply with as set out in the following table.

The applicable building standards are outlined in Part 4 of the Building Regulations for various circumstances including applicable building standards for private swimming pools; relocated buildings; incidental structures and demolition work as per the following table:

| Circumstance | Applicable building standard | Reg |
|---|--|-----|
| Building standards associated with building work in respect of all kinds of buildings and incidental structures where a building permit is required. [Note: except to the extent that regulations 31C, or 31D otherwise provide] | <ul style="list-style-type: none"> • the BCA in effect at the time the application for a building permit is made; or • the BCA that was in effect 12 months prior. | 31A |
| Private swimming pools (please note: currently under review and applicable building standards may change) | For the construction of the private swimming pool: <ul style="list-style-type: none"> • the BCA, other than performance requirements GP1.2(a) and P2.5.3; and • the enclosure requirements under r. 50. | 31C |
| Relocated buildings | For safety provisions (eg structural and fire safety) set out in tables in the Building Regulations: <ul style="list-style-type: none"> • the BCA in effect at the time the application for the most recent building permit is made; or • the BCA that was in effect 12 months prior. For non-life safety provisions (eg energy efficiency and health and amenity): <ul style="list-style-type: none"> • the building standards applicable at the time the building was first assembled (ie the first application for a building permit or relevant approval/authorisation to assemble the building or incidental structure). | 31D |

| Circumstance | Applicable building standard | Reg |
|--|--|------------|
| Building work that does not require a building permit | The BCA in effect at the time construction commenced. | 31E |
| Occupancy permit for permanent change of use (s. 49(a)); or occupancy permit or building approval certificate for strata (s. 50) | The edition of the BCA listed in the certificate of design compliance, but if there is no applicable certificate of design compliance either: <ul style="list-style-type: none"> • the building licence or other approval that was granted for the construction of the building; or • the technical requirements applicable to the building at the time of its construction. | 31F |
| Occupancy permit for change of classification (s. 49(b)); or occupancy permit or building approval certificate for unauthorised works (s. 51) | The BCA at the time the application for an occupancy permit or building approval certificate is made. | 31G |
| Modification of occupancy permit for additional use of a building on a temporary basis (s. 48); or occupancy permit to replace the current occupancy permit for a building where no change of use or classification is proposed (s. 52(1)); or building approval certificate for a building with existing authorisation (s. 52(2)) | The edition of the BCA listed in the certificate of design compliance, but if there is no applicable certificate of design compliance either: <ul style="list-style-type: none"> • the building licence or other approval that was granted for the construction of the building; or • the technical requirements applicable to the building at the time of its construction. | 31H |
| Occupancy permit for a completed building or part of a building (s. 46) | The accompanying certificate of construction compliance is required to state that the building has been completed in accordance with the plans and specifications that are specified in the applicable certificate of design compliance for each applicable building permit (s. 56(2)(a)). | |
| Demolition work | The applicable building standards include requirements for the treatment or removal of materials displaced from the building or incidental structure being demolished; and ensuring that services to the building such as electrical, gas, telephone or water are disconnected by the service provider prior to completion of demolition work. | 31I |

Who is responsible for compliance?

The Building Act requires all the following parties to be responsible for ensuring compliance with the applicable building standards:

| Party | Relevant section of Building Act | Responsibility |
|------------------------------|---|--|
| Builder | ss. 29(1) & 37(1) | The person named as the builder on a building permit has to ensure that on completion of the building or incidental structure it complies with each applicable building standard, and is in accordance with the plans and specifications as specified in the applicable certificate of design compliance. |
| Demolition contractor | ss. 29(2) & 38(1) | The person named as the demolition contractor on a demolition permit has to ensure that the applicable building standards in respect of demolition work are met. |
| Owner | ss. 37(2) & 38(2) | Each owner of a building or incidental structure for which building or demolition work is done without a permit (such as works that are exempt under the Building Act and the Building Regulations), must ensure that on completion of the building or incidental structure, or demolition work, it complies with each applicable building standard. |
| Building surveyor | ss. 19, 56 & 57 | <p>The building surveyor is responsible for certifying compliance with applicable building standards by assessing plans and specifications and carrying out relevant inspections and obtaining relevant technical documents before signing the appropriate certificate of compliance.</p> <p>A building surveyor should only sign a certificate of compliance when satisfied that the building or incidental structure achieves compliance with the applicable building standards.</p> |
| Permit authority | Part 8 and Part 12 | The permit authority is responsible for enforcement and dealing with non-compliance in relation to the applicable building standards. |

An overview of the Building Code of Australia

The BCA is Volumes One and Two of the National Construction Code series and is produced by the Australian Building Codes Board on behalf of the Australian Government and state and territory governments. The BCA is currently published each year on 1 May however from 1 May 2016 it will be published every three years. The National Construction Code series is available free online at www.abcb.gov.au

Volume One generally deals with Class 2 to Class 9 buildings (commercial, public and certain multi residential buildings).

Volume Two deals with Class 1 and Class 10 buildings and incidental structures (houses, sheds, garages, carports, swimming pools, retaining walls etc.).

The BCA is a performance based document that:

- allows for the innovative use of materials, forms of construction or designs;
- permits designs to be tailored to a particular building; and
- allows the designer flexibility in the use of materials, forms of construction or design provided while still allowing acceptable existing building practices through the deemed-to-satisfy provisions.

The responsibility for determining compliance with the BCA rests with the building surveyor signing the appropriate certificate of compliance. Contact the relevant building surveyor for more information about the compliance of a building or incidental structure.

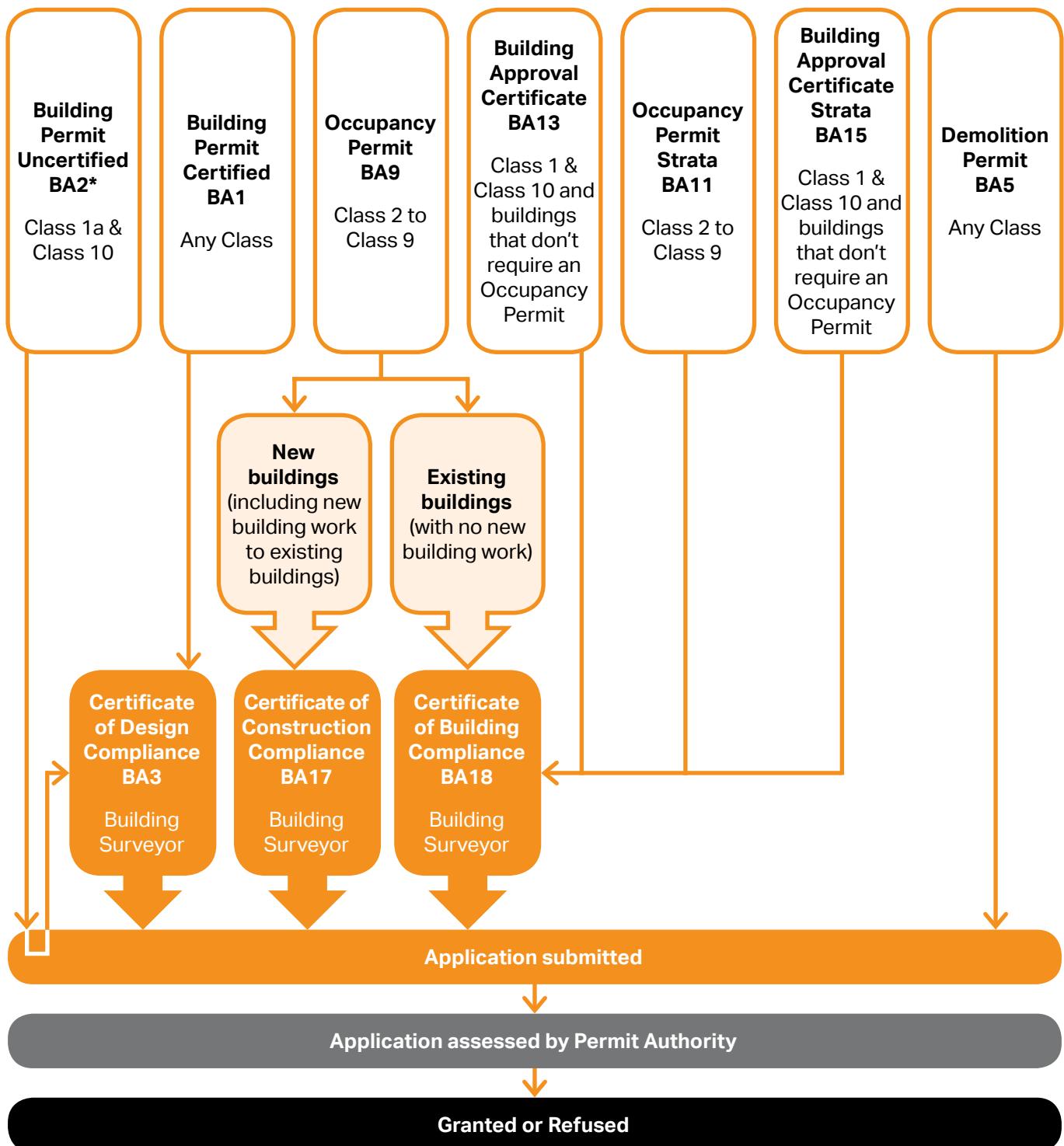
Building classifications

Buildings are classified under the BCA by the purpose for which they are designed, constructed, or adapted to be used. A building may attract a number of classes and be described as a mixed use building. It is for the relevant building surveyor to determine the classification of the building or incidental structure for the purpose of signing a certificate of compliance. The BCA identifies the following building classes:

| Building classifications | |
|---------------------------------|---|
| Class 1a | A single dwelling being a detached house or one of a group of two or more attached dwellings, each being a building separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit. |
| Class 1b | A boarding house, guest house, hostel or the like with a total area of all floors not exceeding 300m ² measured over the enclosing walls of the Class 1b and in which no more than 12 people would ordinarily be resident; or four or more single dwellings such as chalets that are located on one allotment and used for short-term holiday accommodation. |
| Class 2 | A building containing two or more sole-occupancy units each being a separate dwelling. |
| Class 3 | A residential building (other than a Class 1 or Class 2), for a number of persons such as a large scale boarding house, guest house, hostel, the residential part of a hotel, motel, school, accommodation for the aged, children or people with disabilities etc. |
| Class 4 | A dwelling that is the only dwelling in a Class 5, 6, 7, 8 or 9 building (eg a caretaker's/ manager's flat). |
| Class 5 | An office building. |
| Class 6 | A shop or other building where goods or services are retailed directly to the public including a café, restaurant, milk bar, bar area, hairdressers, public laundry, market or sale room, service station etc. |
| Class 7a | A car park building. |
| Class 7b | A storage building or building where goods are wholesaled (eg a warehouse.) |
| Class 8 | A laboratory or a building where a process takes place (eg factory, workshop.) |
| Class 9a | A health care building (eg hospital, clinic etc.) |
| Class 9b | An assembly building (eg community hall, sports hall etc.) |
| Class 9c | An aged care building. |
| Class 10a | Non-habitable buildings such as a private garage, carport or shed. |
| Class 10b | Structures such as a fence, mast, antenna, retaining or free standing wall or swimming pool. |
| Class 10c | A private bushfire shelter. |

Section 4: Typical approval sequences

General Sequence Chart



***Note:** for uncertified applications, the certificate of design compliance is obtained by the relevant permit authority after the application is submitted.

Typical building approval sequence - Class 1 & Class 10 buildings and incidental structures
eg houses, sheds, swimming pools, pool safety barriers etc

| Proof of compliance | Permit authority | Timeframes | Inspections | Completion requirements | Occupancy requirements |
|--------------------------------|---|---|--|---|------------------------|
| Uncertified application | Assesses the application, provides a CDC and either grants a <i>building permit</i> or refuses the application. | Permit authority has 25 business days to determine a complete application. If timeframe is not met application is deemed refused. | Inspections are only required for private swimming pool safety barriers. | The builder must provide a <i>notice of completion</i> to the permit authority along with an inspection certificate for a private swimming or spa pool safety barrier within 7 days of the completion of the building work. | None prescribed |
| Certified application | A CDC and sufficient plans and specifications to show compliance with applicable building standards. | Determines whether the application is in order and either grants a <i>building permit</i> or refuses the application. | | | |



Typical building approval sequence - Class 2 to Class 9 buildings
eg commercial/public, certain multi-residential etc

| Proof of compliance | Permit authority | Timeframes | Inspections | Completion requirements | Occupancy requirements |
|------------------------------|---|---|---|---|---|
| Certified application | Determines whether the application is in order and either grants a <i>building permit</i> , or refuses the application. | Permit authority has 10 business days to determine a complete application. If the timeframe is not met the application is deemed refused. | The <i>building permit</i> will detail any inspections or tests that are required on completion of the building work. | The builder must provide a <i>notice of completion</i> to the permit authority along with the relevant inspection certificate within 7 days of the completion of the building work. | An occupancy permit is required prior to occupation of the building. Details of the permit must be displayed near the entrance to the building. |

Section 5: Permits and processes

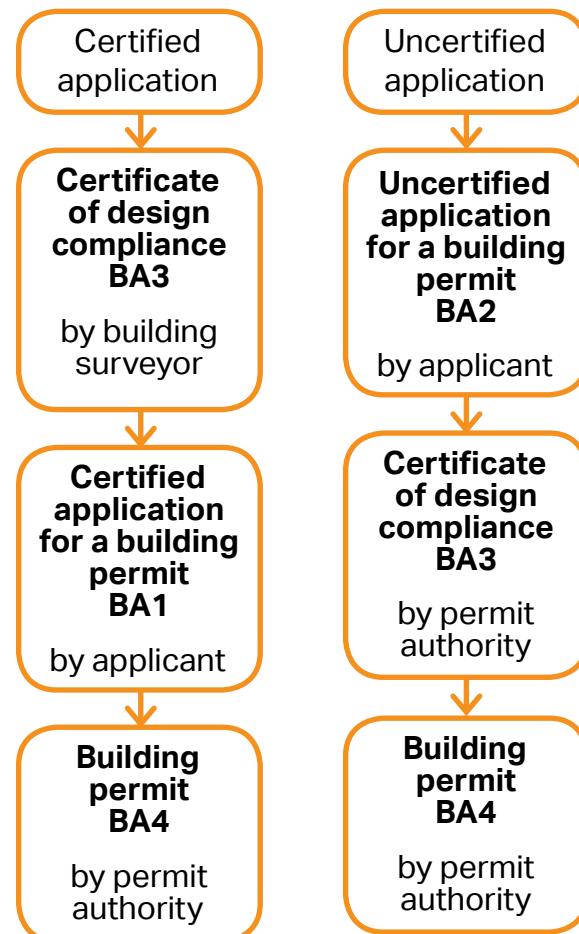
Building permit

In general a building permit, granted by a permit authority, is required before building work can be carried out.

Are there exemptions?

Part 5, Division 2 of the Building Act outlines specific exemptions for particular buildings and incidental structures (including temporary buildings). Regulation 41 Schedule 4 of the Building Regulations further outlines building work that does not require a building permit.

Where an exemption applies, the Building Act (s. 37(2)) requires owners of buildings and incidental structures to ensure that, on completion, the building or incidental structure complies with each applicable building standard as set out in Part 4 of the Building Regulations. Consult with the permit authority to determine whether an exemption applies.



Applying for a building permit

Anyone can apply for a building permit, the owner, builder, designer, building surveyor or any other person. The applicant provides details of the person responsible for the work, ie the builder, in the application form. The builder takes responsibility for ensuring the construction complies with the applicable building standards and the provisions in the building permit. An application can be made for a building or one or more stages of a building. There are two types of building permit applications, "certified" and "uncertified".

Certified application

A certified application is accompanied by a certificate of design compliance and can be made for any class of building and incidental structure. The permit authority has **10 business days** to decide on a certified application. Applications for Class 1b and Class 2 to Class 9 buildings must be made as certified applications whereas this is optional for Class 1a and 10 buildings and incidental structures.

Uncertified application

An uncertified application is submitted to the permit authority without a certificate of design compliance and can only be made for Class 1a and Class 10 buildings and incidental structures.

An independent building surveyor is appointed by the permit authority to check the proposal and provide a certificate of design compliance. The permit authority has **25 business days** to decide on an uncertified application.

A building permit application must be accompanied by:

- a certificate of design compliance (BA3) except for uncertified applications;
- copies of all relevant plans and specifications;
- evidence of the following authorities under written law as relevant to the building or incidental structure (r. 18) —
 - (a) if the building work involves the construction or installation of any apparatus for the treatment of sewage as defined in the *Health Act 1911* section 3(1), the approval required under section 107(2)(a) or (b) of that Act;
 - (b) if the building work is development as defined in the *Planning and Development Act 2005* section 4, each approval required under that Act in relation to the work such as a copy of the planning approval or its reference number;
 - (c) if the building work involves the construction, alteration or extension of an aquatic facility as defined in the *Health (Aquatic Facilities) Regulations 2007* regulation 4, the approval required under Part 2 Division 1 of those regulations;
- evidence that notification of the name, address and contact number of the applicant for a building permit and the name of the permit authority to which the application is made has been given to the Heritage Council of Western Australia if the place to which the application relates (r. 18(3)(a)) —
 - (a) is subject to a Heritage Agreement made under the *Heritage Act 1993* section 29;
 - (b) is entered in the Register of Heritage Places established under the *Heritage Act 1993* section 46;
 - (c) is subject to a Conservation Order under the *Heritage Act 1993* section 59; or
 - (d) is subject to an Order in Council made under the *Heritage Act 1993* section 80.
- appropriate consent forms or court order where work encroaches onto or adversely affects other land;
- evidence that the required insurance provisions under the *Home Building Contracts Act 1991* have been met (where applicable);

- payment of the prescribed fee and levy; and
- evidence of owner-builder approval from the Building Services Board (if applicable).

The approval process will be quicker and more effective if a complete application is submitted to the permit authority. A permit authority must not grant the building permit unless it is satisfied as to each of the matters mentioned in s. 20, which includes the information above.

The fees cover the cost of assessment, regardless of the outcome. There is no refund of fees on refusal.

Conditions (s. 27)

A permit authority may impose, add, vary or revoke conditions on a building permit. Any conditions must relate to the particular building work rather than to work of that kind generally. Importantly those conditions cannot modify the certificate of design compliance or the plans and specifications that are specified in that certificate.

Applicants may apply to the State Administrative Tribunal for a review of the decision of the permit authority in relation to a condition imposed on the grant of a building permit.

Variations during construction

During construction some circumstances may arise that require changes or variations to the plans and specifications. Some minor changes may not require any amendment to the plans and specifications. Other changes or variations may require a certificate of design compliance if the changes affect compliance with the building standards. Accordingly a new building permit may be required to reflect those changes. The new building permit may cover the changes only and the previous building permit still covers the other works.

However where there are substantial changes or variations to the design or construction of the building or incidental structure, a new building permit for all the works may be warranted. This ensures that an accurate building record is maintained for that building or incidental structure.

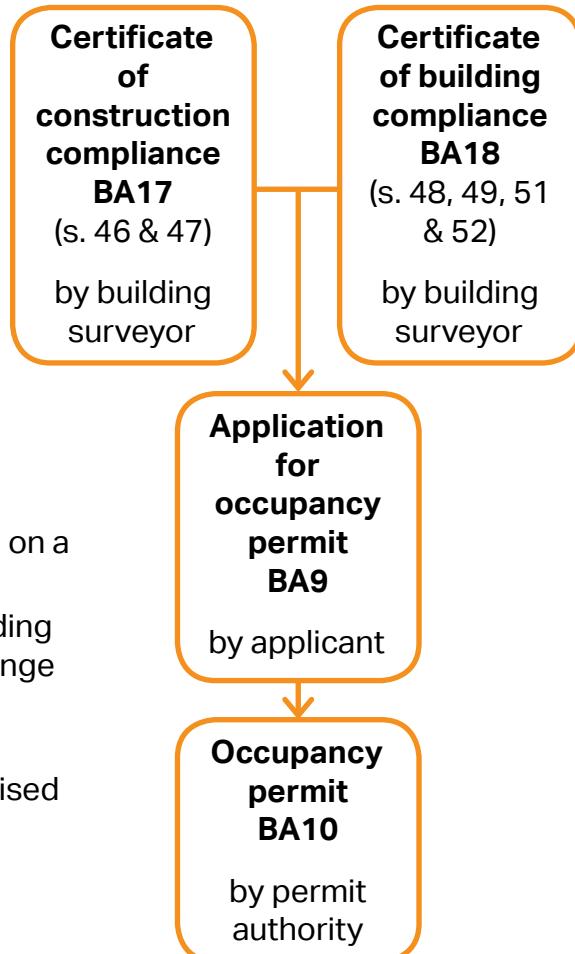
Duration of a building permit

A permit authority may set any validity period for a permit. This is usually done at the request of the applicant. Where the permit authority does not set a validity period, the default is two years. If a project takes longer than expected, an application to extend the permit (BA22) can be submitted to the relevant permit authority.

Occupancy permit

An occupancy permit must be obtained from a permit authority before a Class 2 to Class 9 building can be occupied. It covers circumstances such as:

- occupying a completed new building or a new part of an existing building (s. 46);
- occupying an incomplete building or part of a building on a temporary basis (s. 47);
- modifying the current occupancy permit for additional use of a building on a temporary basis (s. 48);
- occupying a building or part of a building that has undergone a permanent change of use or classification (s. 49);
- authorising and occupying an unauthorised building or an unauthorised part of a building (s. 51); and
- authorising a building with existing approval with a new or replacement occupancy permit (s. 52) – this demonstrates that an existing building complies with the relevant building standards and is safe to occupy.



A copy or details of the occupancy permit must be displayed at or near the principal entrance to the building so that it is clearly visible to occupiers and other people using the building.

Are there exemptions?

In Part 5, Division 2 of the Building Act, it outlines specific exemptions for particular buildings and incidental structures including temporary buildings. Further exemptions are set out in r. 43 of the Building Regulations, (ie Class 1 and Class 10 buildings do not require an occupancy permit). Consult with the permit authority to determine whether an exemption applies.

An occupancy permit application must be accompanied by:

- certificate of construction compliance (BA17) for new buildings including new additions to existing buildings or a certificate of building compliance (BA18) for existing buildings, signed by a building surveyor;
- evidence of the following authorities under written law as relevant to the building or incidental structure (r. 37) —

- (a) an approval required under the *Health Act 1911* section 107(2)(a) or (b);
 - (b) an approval required under the *Planning and Development Act 2005*;
 - (c) an approval required under the Health (Aquatic Facilities) Regulations 2007 Part 2 Division 1;
 - (d) an approval required under the Local Government (Uniform Local Provisions) Regulations 1996 regulation 12(2).
- evidence of consent(s) from each affected owner where work encroaches onto or adversely affects other land (if applicable); and
 - payment of the prescribed fee and levy (if applicable).

Occupancy permit (transitional)

Under provisions of the repealed *Local Government (Miscellaneous Provisions) Act 1960*, local governments were required to provide Class 2 to Class 9 (commercial, public and certain multi-residential buildings) with a "certificate of classification". When the Building Act commenced on 2 April 2012, Class 2 to Class 9 buildings required an occupancy permit which replaced the certificate of classification under the repealed legislation.

This means that where an occupancy permit is required for building work associated with a building licence that was issued or building licence application made under former provisions, an occupancy permit (transitional) must be granted for the building. Section 182A of the Building Act allows an occupancy permit to be granted for buildings dealt with under the repealed legislation and defines an occupancy permit application (transitional) as an application under s.46 for a completed building which:

- (a) is covered by a building licence or building licence application mentioned in s. 178(2) or (4) respectively; and
- (b) has not got a certificate of classification mentioned in s. 181(2) or (3).

An application for an occupancy permit (transitional) does not require any of the following:

- a certificate of construction compliance;
- payment of fee for an occupancy permit; and
- payment of building services levy.

While a certificate of construction compliance and technical certificates are not required, the permit authority must be satisfied that the building in its current state is suitable to be used in the way proposed in the occupancy permit application.

Building approval certificate

A building approval certificate confirms that the building has been assessed by a registered building surveyor for compliance and that a certificate of building compliance has been issued.

A person can apply for a building approval certificate:

- (a) if they choose to obtain retrospective approval for unauthorised building work associated with a Class 1 or Class 10 building or incidental structure ie work that was completed without authorisation; or
- (b) to confirm compliance with the applicable building standards for a building with any classification with existing authorisation which previously did not require an approval to occupy.

While a building approval certificate is generally used for a Class 1 and Class 10 building or incidental structure, it can also be used for any class of building where appropriate

A building approval certificate application must be accompanied by:

- a certificate of building compliance (BA18) signed by a building surveyor;
- copies of all plans and specifications specified on the certificate of building compliance;
- evidence of the following authorities under written laws, as relevant to the building or incidental structure (r. 37)—
 - (a) an approval required under the *Health Act 1911* section 107(2)(a) or (b);
 - (b) an approval required under the *Planning and Development Act 2005*;
 - (c) an approval required under the Health (Aquatic Facilities) Regulations 2007 Part 2 Division 1;
 - (d) an approval required under the Local Government (Uniform Local Provisions) Regulations 1996 regulation 12(2).
- where applicable, evidence of consent(s) from each affected owner where work encroaches onto or adversely affects other land; and
- payment of the prescribed fee and levy (if applicable).

The permit authority may request additional information as required to determine the application.



Occupancy permit strata

If you wish to lodge a strata plan for registration or re-subdivide a lot in a strata scheme under the *Strata Titles Act 1985*, you will require an occupancy permit strata from the relevant permit authority. The appropriate application form is a BA11.

An occupancy permit strata does not act as an occupancy permit to authorise a person to occupy a building. A separate occupancy permit will be required for such purposes.

For buildings that do not require an occupancy permit (generally Class 1 and Class 10 buildings), see the following section on "Building approval certificate strata".

An occupancy permit strata application must be accompanied by:

- a certificate of building compliance signed by a building surveyor;
- evidence of any prescribed authorities' approval;
- evidence of the following authorities under written laws, as relevant to the building or incidental structure (r. 37) —
 - (a) an approval required under the *Health Act 1911* section 107(2)(a) or (b);
 - (b) an approval required under the *Planning and Development Act 2005*;
 - (c) an approval required under the *Health (Aquatic Facilities) Regulations 2007* Part 2 Division 1;
 - (d) an approval required under the *Local Government (Uniform Local Provisions) Regulations 1996* regulation 12(2).
- survey plan identifying proposed lots and encroachments;
- where applicable, evidence of consent(s) from each affected owner where work encroaches onto or adversely affects other land; and
- payment of the prescribed fee and levy (if applicable).

**Certificate
of building
compliance
BA18**

by building
surveyor

**Application
for
occupancy
permit strata
BA11**

by applicant

**Occupancy
permit strata
BA12**

by permit
authority

Building approval certificate strata

If you wish to lodge a strata plan for registration or re-subdivide a lot in a strata scheme under the *Strata Titles Act 1985*, and the building does not require an occupancy permit, you will require a building approval certificate strata from the relevant permit authority. The appropriate application form is a BA15.

Generally a building approval certificate strata is used for Class 1 and Class 10 buildings and incidental structures, however it may be used for any class of building that doesn't require an occupancy permit.

A building approval certificate strata application must be accompanied by:

- a certificate of building compliance signed by a building surveyor;
- evidence of any prescribed authorities' approval;
- evidence of the following authorities under written laws, as relevant to the building or incidental structure (r. 37) —
 - (a) an approval required under the *Health Act 1911* section 107(2)(a) or (b);
 - (b) an approval required under the *Planning and Development Act 2005*;
 - (c) an approval required under the Health (Aquatic Facilities) Regulations 2007 Part 2 Division 1;
 - (d) an approval required under the Local Government (Uniform Local Provisions) Regulations 1996 regulation 12(2).
- survey plan identifying proposed lots and encroachments;
- where applicable, evidence of consent(s) from each affected owner where work encroaches onto or adversely affects other land; and
- payment of the prescribed fee and levy (if applicable).



Demolition permit

A demolition permit is required for the demolition, dismantling or removal of a building or incidental structure.

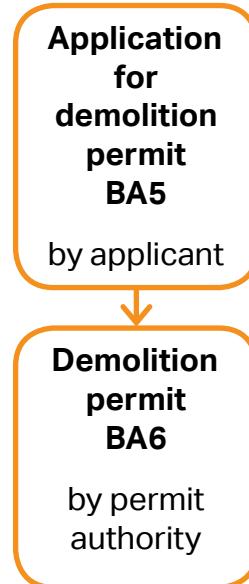
Are there exemptions?

In Part 5, Division 2 of the Building Act, it outlines specific exemptions for particular buildings and incidental structures (including temporary buildings). Regulation 42 of the Building Regulations further outlines demolition work for which a demolition permit is not required. Consult with the permit authority to determine whether an exemption applies.

Where an exemption applies, the Building Act (s. 38(2)) requires owners of buildings and incidental structures to ensure that the demolition work complies with each applicable building standard as set out in Part 4 of the Building Regulations.

A demolition permit application must be accompanied by:

- relevant information as required, eg site plans indicating building to be demolished. Please note: applicants may need to provide more details for commercial or complex buildings;
- copy of any planning approvals under the *Planning and Development Act 2005* where required;
- evidence of prescribed notifications (r. 19(2)):
 - (a) notification of the name, address and contact number of the applicant for a demolition permit and the name of the permit authority to which the application is made to be given to the Heritage Council of Western Australia if the place to which the application relates —
 - (i) is subject to a Heritage Agreement made under the Heritage Act section 29; or
 - (ii) is entered in the Register of Heritage Places established under the Heritage Act section 46; or
 - (iii) is subject to a Conservation Order under the Heritage Act section 59; or
 - (iv) is subject to an Order in Council made under the Heritage Act section 80;
 - (b) the notification required under the Occupational Safety and Health Regulations 1996 regulation 3.119;
 - (c) notification of the intended demolition work to each person who provides electricity, gas, telephone or water services to the place that is the subject of the application.



- evidence that the building or incidental structure to be demolished has been treated to ensure that it is not infested by rodents at the time of the demolition;
- appropriate consent forms or court orders where work adversely affects other land;
- where asbestos is present, details of the contractor; and
- payment of the prescribed fee and levy (if applicable).

The person named as demolition contractor may be required to be appropriately licensed by WorkSafe to carry out demolition work and may also require an asbestos removal licence.

Section 6: Notices of completion and cessation

The Building Act requires the responsible person (ie builder or demolition contractor) to provide certain notices for the completion or suspension of work under a building or demolition permit.

Notice of cessation (s. 34)

The person named as the builder or demolition contractor on a building or demolition permit may, before completion of the works or stage of work for which the permit was granted, formally advise the relevant permit authority that they are no longer the responsible person for the project. This is done by submitting a notice of cessation (BA8) in accordance with s. 34. This protects a person whose contract is terminated or who is unable to complete the building or demolition work.

Within seven (7) days of giving a notice of cessation to the permit authority, the responsible person must provide a copy of the notice to the owner of the building or incidental structure. This alerts the owner to the cessation of work and suspension of the permit.

The person named as builder or demolition contractor remains liable for the building or demolition complying with the Building Act until a notice of cessation or a notice of completion is issued.

Approving a new responsible person

Where the responsible person submits a notice of cessation, or the builder's registration or authority under the Registration Act or demolition contractor's licence ceases to have effect, the owner of the building or incidental structure can apply to the permit authority for approval of a new responsible person for the work to which a permit applies. A permit does not have effect between the time in which a notice of cessation is received by the permit authority and the day the permit authority approves a new responsible person.

There is no specific application form for a change of responsible person. The request to the permit authority can be by way of a letter from the owner which must name and be signed by the new builder or demolition contractor. To assist the permit authority, the letter should also include the:

- property details (address);
- building or demolition permit number;
- owner details;
- contact details of the new responsible person
- new builder's registration number (if applicable) or demolition contractor's Worksafe licence number;
- owner-builder approval number (if applicable).

There is no prescribed fee under the Building Regulations to amend the details of the responsible person on a permit.

In Western Australia, Home Indemnity Insurance is required for residential building work exceeding \$20,000 in value. The new builder named on the building permit should obtain Home Indemnity Insurance for the proposed building work or the stage of building work required. Owners are encouraged to ensure that the new builder has a valid policy of insurance in place.

Notice of completion (s. 33)

The responsible person (builder or demolition contractor named on a permit) must issue a notice of completion (BA7) in accordance with s. 33 to the permit authority within seven (7) days of completion of the work or stage of work for which the permit was granted. This establishes the end date of the permit for compliance and record keeping purposes.

The notice of completion must also be accompanied by each relevant inspection or test certificate as listed on the building permit.

The person named as builder or demolition contractor remains liable for the building or demolition complying with the Building Act until a notice of cessation or a notice of completion is issued.

Inspections and tests

The Building Act requires certain inspections and tests to be conducted during or at completion of building work before a notice of completion is provided to the permit authority. The Building Regulations set out what those inspections and tests are.

Class 2 to Class 9 buildings (r. 27)

Regulation 27 Schedule 3 of the Building Regulations sets out the inspections and tests required for Class 2 to Class 9 buildings (refer table below).

| System to be tested | When test is to be conducted |
|--|---|
| <i>'EP', followed by a number, means the performance requirement of that description set out in the BCA.</i> | |
| Fire hose reel system required under EP1.1 and EP1.5 | |
| Fire hydrant system required under EP1.3 and EP1.5 | |
| Automatic fire suppression system required under EP1.4 | |
| Fire detection, warning, control and intercom systems required under EP2.1 and EP2.2 | On completion of the installation of the system |
| Smoke/heat venting systems required under EP2.2 | |
| Sound systems and intercom systems for emergency purposes required under EP4.3 | |
| Air handling systems that incorporate smoke control provisions required under EP2.2 | On completion of the building work |

Private swimming and spa pool safety barriers (r. 28)

At the completion of building work for a private swimming and spa pool safety barrier, an inspection certificate is required to confirm that the safety barrier complies with the requirements under the Building Regulations. Typically an inspection certificate is required for a safety barrier for a private swimming or spa pool associated with a Class 1a house. The requirement to provide this inspection certificate as part of the notice of completion is separate to the requirement for a local government to inspect existing pools in its district at least once every four years.

Inspection certificates (r. 29)

Inspection certificates are required for the inspections and tests mentioned in r. 27 and r. 28.

The builder must ensure that each inspection certificate that accompanies a notice of completion contains the following information:

- (a) The number of the building permit for the building work inspected or tested.
- (b) A description of the purpose, extent and outcome of the inspection or test.
- (c) The date and time the inspection or test was conducted.
- (d) The name, contact details and qualifications of the person conducting the inspection or test.
- (e) Any other document or evidence of the outcome of the inspection or test that the person conducting the inspection or test considers relevant.

Who can provide an inspection certificate?

There is no prescribed class of persons for undertaking inspections or tests, therefore it is up to the builder to be satisfied that the person doing the inspection has the relevant qualifications and experience.

For tests in relation to fire services, the relevant Australian Standards provides further information on testing and commission of services.

Section 7: Providing information to the FES Commissioner

The Building Act contains certain provisions requiring prescribed information to be provided to the Fire and Emergency Services (FES) Commissioner.

Building surveyor requirements (r. 18B)

For certain Class 2 to Class 9 buildings, the building surveyor responsible for signing the certificate of design compliance (CDC) must provide to the FES Commissioner plans and specifications for the building in sufficient detail to allow assessment of compliance with the FES Commissioner's operational requirements. The building surveyor must provide the plans and specifications to the FES Commissioner at least 15 business days before signing a CDC.

A copy of the FES Commissioner's advice (if any) must be provided to the permit authority with the CDC as part of the building permit application.

Within 10 days of receiving the FES Commissioner's advice, the building surveyor must notify the FES Commissioner in writing of any part of the advice that is not incorporated in the plans and specifications that are specified in the CDC and the reasons for not incorporating that advice. Details of this notification must be included in the completed CDC.

Building permit requirements

A building permit cannot be granted unless the applicant for the permit has deposited with the FES Commissioner a copy of the plans and specifications specified in the CDC in respect of prescribed Class 2 to Class 9 buildings.

Occupancy permit requirements

The permit authority which grants an occupancy permit in relation to the building surveyor requirements above must give a copy of the occupancy permit to the FES Commissioner. Details of any modification of that occupancy permit must also be provided to the FES Commissioner.

Class 2 to Class 9 buildings that do not need to meet the above requirements

Regulation 18B outlines some exceptions to the need to submit plans and specifications to the FES Commissioner.

These are where the CDC is in respect of:

A stand-alone, single storey Class 5,6,7 or 8 building having a total floor area of 500m² or less and no Building Code alternative solution is proposed relating to fire safety (r. 18B(2))

Example

A proposed building or an addition to an existing building where the total floor area of the entire completed building is 500m² or less and is a single storey of Class 5,6,7 or 8.

A Class 2 to Class 9 building that is being renovated, altered, improved or repaired and no Building Code alternative solution is proposed relating to fire safety (r. 18B(3))

Example

Fit out works to an existing building with no fire safety alternative solution proposed. Please note an extension or addition to an existing building does not fall under this exception.

A stage of building work to a Class 2 to Class 9 building where Building Code section C, Part E1 or Part E2 do not apply to that stage (r. 18B(4))

Example

Forward works for structural works only up to and including ground level slab that does not affect compliance with BCA Section C, Part E1 or E2.

Section 8: Change of classification or use of a building

Sometimes a building owner or occupier may wish to use the building for a purpose contrary to the approved use or classification of the building detailed on the current occupancy permit. The Building Act sets out the process for obtaining approval for either a change of classification or a change of use within the same classification.

Change of classification (ss. 43, 49(b) and r. 47)

This is when it is proposed to change the existing BCA classification of a building or incidental structure to a completely different classification. For example, a Class 5 office building is proposed to be used as a Class 9b assembly building. The proposed classification of the building will determine which approval pathway is required under the Building Act. In Section 5 of this guide it sets out the process for applying for an occupancy permit where one is required.

Changing the classification of a Class 2 to Class 9 building (ss. 43, 49(b))

A person may apply for a new occupancy permit to replace the current occupancy permit when it is proposed that an existing building's classification is to be different from that set out in the current occupancy permit. A change of classification requires the building to comply with the current building standards relevant for the new classification. In most cases this will entail building work to be carried out to meet the requirements for the new classification. In which case, a building permit may be required before works can start and it may be then more appropriate to apply for an occupancy permit under s.46 for the new classification as a completed building.

Notifications for a Class 1 building (r. 47)

Where it is proposed to change to a Class 1 classification from an existing Class 2 to a Class 10 classification or to change from a Class 1a to a Class 1b classification, the owner must give written notice to the relevant permit authority at least 10 business days before the proposed change. The notification must include or be accompanied by evidence that the existing building or incidental structure complies with the applicable building standards for the proposed new classification. If building work is required to comply with the applicable building standards then a building permit may be required to undertake this work.

Change of use (ss. 43, 49(a))

This is where a building is proposed to be used in a way that is different from the use authorised by the current occupancy permit, either permanently or on a temporary basis, but the classification remains unchanged.

Permanent change of use (ss. 43, 49(a))

A person can apply for an occupancy permit to allow for a permanent change of use without building work that would normally require a building permit.

For example, a Class 6 building that was originally used for the purpose of a café, and is now proposed to be used as a hairdressing salon. In this example the building still retains a Class 6 classification despite the change of use. A permanent change of use may also require planning or other prior approvals even though building work may not be required.

Temporary additional use (ss. 43, 48)

A person can apply to modify the current occupancy permit of an existing building to allow for a short-term additional use not currently provided for under the permanent occupancy permit

The permit authority can modify the occupancy permit for a period of up to one year, providing the additional use does not require building work of a kind for which a building permit would be required.

Section 9: Unauthorised building work

In general a person must not carry out building work without a building permit where one is required. However the Building Act allows a person to make an application to the relevant permit authority to approve unauthorised building work in relation to a building and/or incidental structure. This retrospective approval process may assist those who are buying or selling a property that has an unauthorised structure on it.

Even though a person may seek retrospective approval for unauthorised building work, this does not remove the offence and a local government may still take legal action under the Building Act to ensure that the unauthorised building work is approved or removed.

Applying for retrospective approval

Residential Properties - Class 1 and Class 10 buildings and incidental structures

A person may apply under s. 51(3) of the Building Act for a 'building approval certificate' for a building or an incidental structure in respect of which unauthorised work has been done. Applicants should use a BA13 form - *Application for Building Approval Certificate*. This type of application would also apply to a Class 2 to Class 9 building that does not require an occupancy permit.

Commercial Properties - Class 2 to Class 9 buildings

A person may apply under s. 51(2) of the Building Act for an 'occupancy permit' for a building in respect of which unauthorised work has been done. Applicants should use a BA9 form - *Application for Occupancy Permit*.

Other approvals administered by the permit authority (such as planning and health) may also be required. Applicants should contact the relevant permit authority on these matters before lodging their applications.

Seeking approval

When seeking retrospective approval for residential or commercial building work, a registered building surveyor must be engaged to issue a 'certificate of building compliance' (BA18) before an *Application for a Building Approval Certificate* (BA13) or an *Application for an Occupancy Permit* (BA9) can be made to the permit authority.

The retrospective approval process is not a mechanism to circumvent the need for a building permit.

The building surveyor must be satisfied that the unauthorised works comply with the building standards applicable at the time of applying for retrospective approval. The building surveyor will need to gather relevant information to be satisfied compliance with applicable building standards has been met. This will usually entail an inspection by the building surveyor, obtaining engineering certification where relevant and all other details to ascertain compliance with applicable building standards. The building surveyor will require plans and specifications that show how the as-constructed building or incidental structure complies with each building standard in accordance with r. 36.

It should be noted that the engagement of a building surveyor for certification services does not guarantee automatic certification. If the building surveyor is not satisfied that compliance has been met, the owner has the option of either:

- removing the unauthorised structure;
- carrying out further remedial works that may be required; or
- face the risk of enforcement action by the permit authority.

Any demolition or remedial work may require a permit and should be referred to the relevant permit authority for advice.

What enforcement action can a permit authority take?

Whilst time limits apply under s. 133 of the Building Act in relation to when a prosecution can commence for an offence such as doing building work without a building permit, this does not prevent a permit authority serving a building order at any time to an owner in relation to unauthorised building work.

A building order may specify what needs to be done about a building or incidental structure, such as remedial works or removal of unauthorised works. This is a matter the permit authority will consider on a case by case basis.

If you are concerned that a building or incidental structure on a property you own or are thinking about purchasing may not have the necessary approval contact the relevant permit authority to confirm what building approvals have been granted.

Section 10: Processing applications

Choosing the correct form

To provide for consistency in building approvals throughout the state, all the relevant application forms, notices and compliance certificates are approved by the Building Commissioner and available on the Building Commission website. Providing the correct application form together with all the required information will assist the permit authority to process the application quickly.

| Application forms | | | |
|--------------------------|--|---|--|
| Form no. | Type | Relevant BCA Class | Relevant compliance certificate |
| BA1 | Building permit certified | All building classes | CDC |
| BA2 | Building permit uncertified | Class 1a and Class 10 buildings and incidental structures | CDC |
| BA5 | Demolition permit | All building classes | N/A |
| BA9 | Occupancy permit | Class 2 to Class 9 buildings (for which an occupancy permit is required under s. 41) | CCC (ss. 46, 47) CBC (ss. 48, 49, 51, 52) |
| BA11 | Occupancy permit strata | Class 2 to Class 9 buildings for which an occupancy permit is required under s. 41 | CBC |
| BA13 | Building approval certificate | Class 1 and Class 10 buildings and incidental structures and other buildings that don't require an occupancy permit | CBC |
| BA15 | Building approval certificate strata | Class 1 and Class 10 buildings and incidental structures and other buildings that don't require an occupancy permit | CBC |
| BA22 | To extend a building or demolition permit | All building classes | N/A |
| BA23 | To extend time – occupancy permit or building approval certificate | Class 2 to Class 9 buildings (OP) Class 1 and Class 10 buildings and incidental structures (BAC) | N/A |
| BA24 | Modification or non-application of building standards | All building classes (submitted directly to the Building Commissioner) | N/A |

The following forms are relevant to the builder or demolition contractor (notices) and building surveyor (certificates of compliance).

| Notices | |
|--------------------------------|--|
| Form no. | Type |
| BA7 | Notice of completion |
| BA8 | Notice of cessation |
| BA20 | Notice and request for consent to encroach or adversely affect other land |
| BA20A | Notice and request for consent (response notice) – protection structures, party walls, removal of fences, access to land |
| Compliance certificates | |
| Form no. | Type |
| BA3 | Certificate of design compliance |
| BA17 | Certificate of construction compliance |
| BA18 | Certificate of building compliance |

Lodging the application

Applications for building, demolition or occupancy permits or for building approval certificates can be submitted in a variety of ways, including in person, by post or electronic lodgement depending on the systems the relevant permit authority has in place. Under the Building Act, permit authorities have a fixed amount of time to grant or refuse a permit application. The point at which a permit authority's timeframe for assessing an application starts is referred to as 'starting the clock'. The point at which the clock starts depends on the method of application.

| Method of application | When the clock starts | Example |
|-------------------------------|---|--|
| Post | At 12.00 am the day after the application is received at the permit authority's office. The timing of this will depend on the delivery service paid for by the applicant. | The applicant posts the application at 3.00 pm on Tuesday. The post box is located in the same city as the permit authority. As the application should be received by the permit authority on the Wednesday, the clock will start at 12.00 am on Thursday. Applicants should check with Australia Post for delivery times which may vary for 'Regular' and 'Priority' mail. |
| In person | At 12.00 am the day after the application has been accepted by the permit authority's front counter staff. | The applicant enters a local government authority office on a Thursday to hand over their application. The counter staff may discuss the application with the applicant to ensure it is complete, but are obliged to accept the application if it is the wish of the applicant. The clock starts ticking at 12.00 am on the Friday. |
| Electronically (email/online) | At 12.00 am the day after the application has been received by the permit authority's information technology system. | The applicant lodges the application to the local government authority online. The application is automatically recorded and enters the local government authority's online system at 3.46 pm on a Monday. The clock starts at 12.00 am on the Tuesday. |

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. If an application is incomplete, or the required approvals have not been obtained, 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. The length of time the permit authority has to consider the application from when the clock starts is detailed in the table below:

| Type of application | Time a permit authority has to decide |
|---|---------------------------------------|
| Building permit certified (BA1) | 10 business days |
| Demolition permit (BA5) | |
| Occupancy permit (BA9) | |
| Occupancy permit strata (BA11) | |
| Building approval certificate (BA13) | |
| Building approval certificate strata (BA15) | |
| Building permit uncertified (BA2) (Class 1a and Class 10 buildings and incidental structures only) | 25 business days |

Requests for missing information

Informal requests

Through an informal request, the permit authority can ask for missing information, for example via phone or email, without stopping the clock.

Formal requests

When the permit authority wishes to stop the clock a formal request must be given in writing to the applicant. When this is sent, the clock is stopped. Once the information is received, the clock restarts and the permit authority has what was left of the 10 business days (or 25 business days for an uncertified application) to decide on the application. The permit authority will prescribe the time by when the missing information is to be provided. This time cannot exceed 21 days.

The application assessment time may be extended through an agreement between the applicant and permit authority.

If the application is **not determined** within the specified timeframe and an extension has not been agreed to by the applicant and permit authority, the permit authority must refund the application fee. If the application is **refused**, or 'deemed refused' because the application was not determined on time, the applicant may lodge an appeal against the decision by a permit authority with the State Administrative Tribunal in accordance with the provisions under the Building Act. To avoid unnecessary delays in processing applications, applicants are encouraged to obtain planning and other approvals where required prior to applications being submitted.

Fees and levies

Application fees

Schedule 2 of the Building Regulations prescribes fees for applications submitted to permit authorities for building, demolition and occupancy permits and building approval certificates. The fees are a combination of fixed and percentage rate fees. The percentage rate fees do not normally change, as natural increases are incorporated by the value of the building work to which the percentage rate is applied. For example, 'building permit application' fees are based on a percentage of the estimated value of building work. Other fees, such as the minimum building permit and occupancy permit application fee, are fixed rate fees. These fixed rate fees are increased in line with inflation on 1 July each year.

The relevant components when estimating the value of building work are:

- all goods, including manufactured goods, forming part of the construction work
- labour
- fees payable
- profit margin
- GST
- services necessary
- overheads

Building Services Levy

In addition to the fees, a Building Services Levy is payable to the permit authority at the time an application for a building, demolition or occupancy permit or building approval certificate is made. The permit authority should only remit the levy to the Building Commissioner when it grants or issues a permit or building approval certificate. If the permit authority refuses to grant a permit or building approval certificate, the permit authority must refund the Building Services Levy to the applicant. The Building Services Levy is prescribed in regulation 12 of the Building

Services (Complaint Resolution and Administration) Regulations 2011.

Building and Construction Industry Training Fund

The Building and Construction Industry Training Fund is a levy paid on building permit applications where the estimated construction value is \$20,000 or more. The levy is currently calculated at 0.2 per cent of the total value of construction for all works valued at more than \$20,000. Payment is required to be made prior to the commencement of the building work. The value of construction work includes the same relevant components listed above for building permit applications. A permit authority may collect the levy on behalf of the Construction Training Fund, or pre-payment can be made directly to the Construction Training Fund in person, by post or online.

The levy calculation rate is current at time of publication of this document. For further information visit www.bcitf.org or contact the Construction Training Fund directly on 08 9244 0100 or email inquiries@bcitf.org.

Other fees

With the exception of uncertified building permit applications, certification fees for obtaining a certificate of design compliance or other certificates are not regulated and are set by the registered building surveying contractor or the local government that provides a certification service.

Section 11: Work affecting other land

A person responsible for building or demolition work must ensure that the work does not affect land beyond the boundaries of the works land. However there may be the potential for this to occur in certain circumstances, for example where work is on small sized lots or where construction is close to boundaries.

The Building Act ensures communication occurs between adjoining owners by requiring persons responsible for work to obtain adjoining owners' consent, or a court order, before commencing any building or demolition work that will likely affect other land. Part 6 of the Building Act sets out the circumstances ("notifiable events") that require such consent. These are outlined in 1 to 6 below and summarised in the "snapshot" table toward the end of this section.

Notifiable events 1 and 2 require consent or court order before a demolition or building permit is granted.

If the work does not require a demolition or building permit, consent or court order is still required before carrying out work that may affect other land.

1. Encroachment (s. 76)

The person responsible for work cannot extend a building or incidental structure onto adjoining land without consent or court order unless the encroachment is:

- a minor encroachment (as prescribed in r. 45A); or
- is exempt (as prescribed in r. 45B).

Any encroachment relating to Crown land that is not prescribed in r. 45A requires the consent of the Minister for Lands.

2. Adversely affecting other land (s. 77)

It is an offence for a person responsible for work to adversely affect land beyond the boundaries without consent or court order. Adversely affecting land includes:

- reducing the stability, bearing capacity of the land or a building or structure on the land;
- damaging a building or structure on the adjoining land; or
- changing the natural site drainage that reduces the effectiveness of the drainage on the land or existing or future buildings or structures on the land.

Notifiable events 3 to 6 may require consent or court order before carrying out work that may affect other land (these requirements are not tied to the permit process)

3. Placing a protection structure beyond the boundary (s. 78)

The person responsible for the work cannot extend a temporary or permanent protection structure beyond the boundaries into adjoining land without consent or court order. If the protection structure is required to prevent imminent collapse, or damage to, any land or building, consent or a court order is not required.

Further to obtaining consent or court order, the person responsible for the work must notify each affected owner as soon as possible, even if the protection structure is temporary. The permit authority must be notified of the placement of a permanent protection structure for their building records.

4. Affecting party walls etc. (s. 79)

The person responsible for this work cannot affect the structural, waterproofing or noise insulation capacity of a party wall; a substantial dividing fence or boundary retaining wall that protects land beyond the boundaries without consent or court order.

5. Removing fences or gates (s. 80)

The person responsible for work cannot remove a fence, gate or other barrier on or beyond the boundaries of the works land without consent or court order. The person responsible for the work must ensure that where necessary a temporary barrier is erected, which is adequate and suitable having regard to the use of that other land.

Consent is not required if a building permit is in effect for construction of a close wall (zero lot wall) that requires the removal of a fence – this does not prevent a person exercising rights under other laws.

Further to obtaining consent or court order, the person responsible for constructing the close wall should, before removing a fence, give at least seven business days' notice of the proposed removal to the affected adjoining owners and to at least one adult occupier of the land if the land is not occupied by any of its owners.

The permit authority must be notified where the work is demolition work that would require a demolition permit.

6. Accessing other land (s. 81)

The person responsible for work must ensure that in doing the work a person does not go on other land without the consent of the owner of the land or a court order; except where it is necessary to prevent imminent collapse, or damage to, any land or building or structure. For the purposes of the Building Act, consent is not required if the other land is vacant land, or any building on that land is vacant – this does not prevent a person exercising rights under other laws.

Further to obtaining consent or court order, the person responsible for the work must ensure that each owner of the affected adjoining land and at least one adult occupier of the land (if the land is not occupied by any of its owners), is given reasonable notice of each 24 hour period during which the land will be accessed.

In certain circumstances where the work needs to be done as a matter of urgency, to prevent imminent collapse of any land, building or structure on the land, consent or a court order is not needed before that work is carried out. However, the person responsible for the work must notify the affected adjoining land owners of the work and the reasons for it, as soon as practicable after it is done. You may need to also notify the permit authority.

How to obtain or give consent

A person responsible for work seeks the consent of each affected owner by giving them an approved Building Commission form, available at www.commerce.wa.gov.au/building-commission

There are two different consent forms depending on the notifiable event:

| Notifiable event nos. | Form number | Form name |
|------------------------------|--------------------|--|
| 1 and 2 | BA20 | Notice and Request for Consent to Encroach or Adversely Affect |
| 3 to 6 | BA20A | Notice and Request for Consent (Response Notice)-Protection Structures, Party Walls, Removal of Fences, Access to Land |

The notice and request for consent form should be completed by the person responsible for the work and have:

- a clear description of the works proposed;
- a clear description of how other land will be affected and when;
- details of the person responsible for the work; and
- copies of plans and specifications and any technical certificates that show how the work will affect other land.

There are clear timeframes for decisions to be made.

Each affected owner of other land has 28 days after the notice is given in which to respond or request further information from the person responsible for work. Where it is not clear how other land will be affected, an owner can ask the person responsible for the work for clarification and further information within the 28 day period. This may include time to discuss the proposed works in order to reach agreement. After the further information or clarification is provided, the affected owner has an additional 14 days to respond.

What if consent is not given?

If consent is not given, the person responsible for the work can seek a court order through the Magistrates Court. If a court order is issued, both the affected adjoining owner and the person responsible for the work must adhere to the provisions of the court order. If neither consent is given nor a court order issued, the work cannot proceed in a way that affects the other land.

The person responsible for the work can then consider whether the work can be done in a way that does not affect other land. This may mean a change to the design and is likely to require the approval of the permit authority.

A snapshot of notifiable event requirements

| No. | Notifiable event | Notice and Request for Consent Form No. | Consent/court order required | |
|-----|---|---|------------------------------|-------------|
| | | | before permit | before work |
| 1* | Encroachment (s.76) | BA20 | • | • |
| 2* | Adversely affecting other land (s. 77) | BA20 | • | • |
| 3 | Protection structure on other land (s.78) | BA20A | | • |
| 4** | Affecting party walls (s. 79) | BA20A | | • |
| 5 | Removing fences etc (s. 80) | BA20A | | • |
| 6 | Accessing other land (s. 81) | BA20A | | • |

*Nos. 1 and 2

Where it is proposed for a part of a building or incidental structure to be placed (encroach) beyond the boundaries of the work land or if the building work may adversely affect other land evidence of consent or court order must be submitted as part of the relevant building or demolition permit application.

Where it may have been unlikely at the permit stage for the building or incidental structure to encroach on other land or building work to adversely affect other land but comes to light during construction then consent or court order must be obtained before carrying out that work. NB: This may also require amendments to the building permit record.

**No 4

Consent or court order is not required if a building permit is in effect for the construction of a close wall that requires the removal of a fence or gate etc. However, notification requirements apply. Please note: This does not prevent an affected owner exercising their rights under other laws.

Work affecting other land provisions apply

Even if a building or demolition permit is not required

Application for court order

The person responsible for the works who gives a notice to the adjoining owner/s of the affected land may apply to the Magistrates Court for an order as follows:

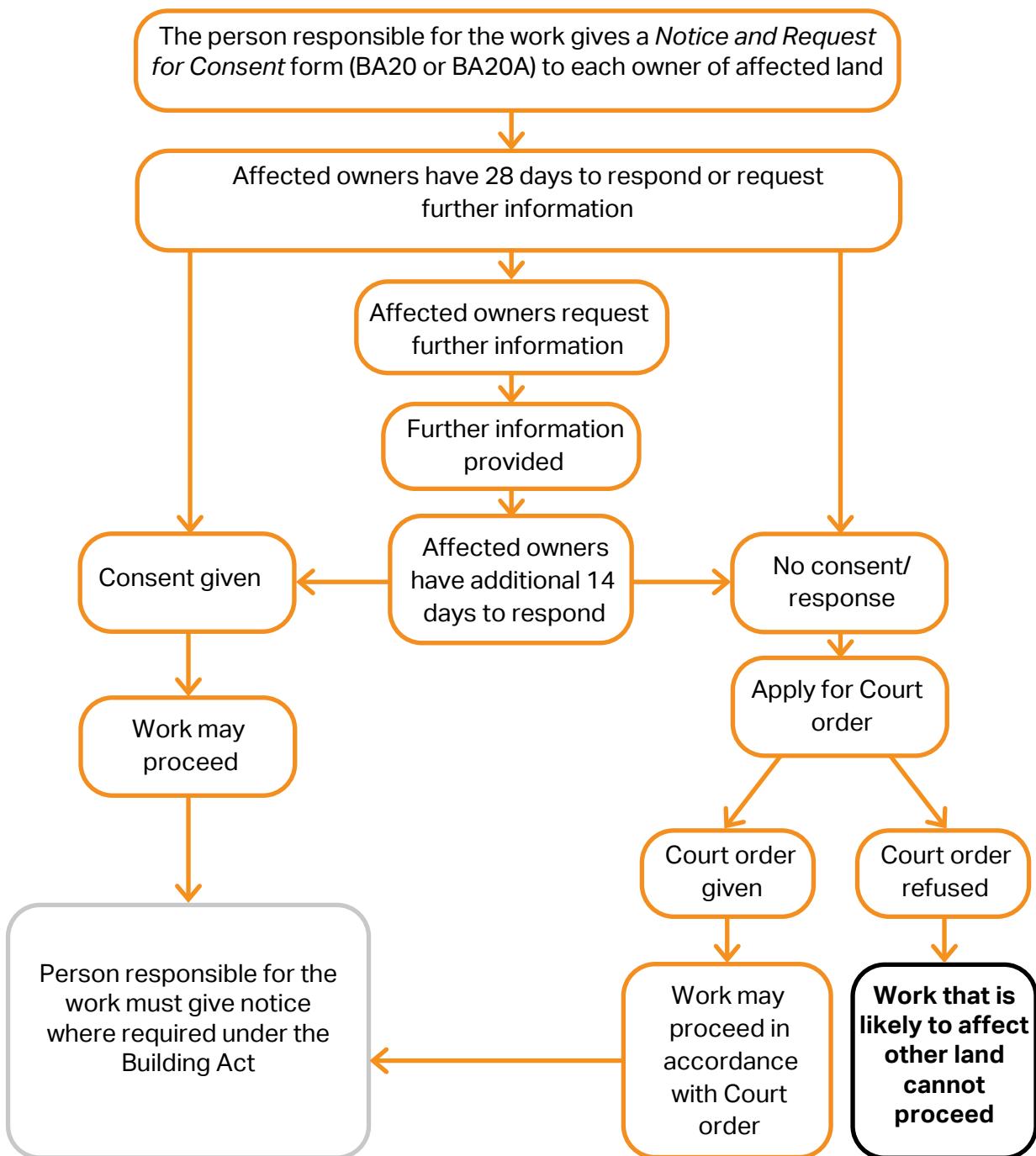
| Reason for seeking a court order | Timeframe |
|---|--|
| The consent sought in the notice is refused | Any time after the refusal is given |
| If the consent sought in the notice is neither refused nor given, and no request for further information is made within the 28 day period after the notice is given | After that period has expired |
| If the person responsible for the works provides further information in response to a request from the adjoining owner/s of the affected land | 14 days after the information is provided |

Court orders are administered by the relevant Magistrates Court
visit www.magistratescourt.wa.gov.au

What if a builder starts work prior to obtaining consent?

If consent is not obtained and the person responsible for the work starts work that may affect adjoining land, the owners of that land should discuss the matters with the person responsible for the work to identify the extent of works and whether or not the works are notifiable events. The permit authority can be contacted to consider any enforcement matters that they may wish to investigate. If it was found that the builder did not obtain consent or a court order for a notifiable event, the affected owner may wish to consider lodging a disciplinary complaint with the Building Commission where the builder is registered under the *Building Services (Registration) Act 2011*.

Steps to follow if building or demolition work is likely to affect other land



Section 12: Keep up to date

Subscribe to the Building Commission's industry bulletins and newsletters to stay informed of:

- general industry trends;
- legislative changes;
- updates about registration and licensing;
- upcoming events and seminars;
- public consultations; and
- much more.

You can subscribe by clicking on **Subscribe now** or visit our website at:

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Web: www.commerce.wa.gov.au/building-commission

Facsimile: 08 6251 1501

Address: **Post:**

Building Commission

Locked Bag 14, Cloisters Square WA 6850

In person:

Level 1, Customer Service Centre

Mason Bird Building, 303 Sevenoaks Street, Cannington

Useful links

Australian Building Codes Board

www.abcb.gov.au

Landgate

www.landgate.wa.gov.au

State Law Publisher

www.slp.wa.gov.au

Department of Fire and Emergency Services (DFES)

www.dfes.wa.gov.au

Owner-builder application

www.commerce.wa.gov.au/building-commission/owner-builder-application