

Changes to the *Building Act 2011* (WA)

Construction Update

On 2 November 2012, the *Building Amendment Bill 2012* became an Act and on the 5th and 6th of November, 2012 various sections of that Act became operational. The amendments to the *Building Act* are the first real changes since the Act became operational in July 2011. These changes have been necessary to minimise time delays regarding permit authority decisions, provide greater flexibility for builders accessing vacant land and clarify the powers of permit authorities and public authorities. Some of the key amendments are described below.

Stopping the clock – time limits for deciding applications for building permits (s23)

The time limit in which a permit authority must decide whether it will grant an applicant a building permit is currently nominated as 25 business days for uncertified applications and 10 business days for certified applications. Where an application is missing relevant information, the permit authority may request further information under s18(1) (as opposed to having to reject the application in the first instance).

Initially, the *Building Act* allowed a permit authority to restart the processing time upon receipt of that further information. For example, where an uncertified application had been submitted on day 24 the permit authority could, pursuant to s18(1) request additional information and upon receipt of that information, then had a further 25 days to consider the application. The legislation did not prescribe any limit on the number of time requests for further information that could be made.

The amendments to the *Building Act* will effectively “stop the clock” so that where the permit authority requests further information, it will only have the balance of the nominated period within which to make the determination.

Who does this affect?

- Builders
- Building Surveyors
- Land Owners
- Public Authorities

Article Highlights

- Builders can now minimise time delays regarding permit authority decisions
- Builder now have greater flexibility in accessing vacant land.



The situation has not changed in that come day 25 of the above example, the permit authority may still elect to issue the building permit after the nominated period, but pursuant to s23(4), the application fees will be refunded in such circumstances.

Work affecting other Land

Part 6 of the *Building Act* deals with work affecting other land and whether (and from whom) consent is required, the regulations have been amended to address particular circumstances for which consent may not be required including:

1. where buildings encroach into adjoining land (new s76(1)(e));
2. where adjoining land is adversely affected (new s77(c));
3. where protection structures are placed on adjoining land (new s78(1)(d)); and
4. where party walls are adversely affected (new s79(1)(d)).

A number of other provisions affecting other land have been amended.

Access to adjacent land (s81)

Previously, under the *Building Act* it was an offence to enter onto land beyond the boundaries of the works land to carry out construction work or a survey without:

1. the consent of the owner of the land, or
2. a Court order.

This was the case even where the land was vacant or the owners could not be readily contacted.

The changes to the *Building Act* through the *Building Amendment Act 2011* (WA) permit consent to be obtained from an adult occupier of the neighbouring land (as opposed to just the owner). Further, where the adjoining land is vacant, there is no longer a requirement to obtain consent before entering the land (s81(2)(d)). However, it is important to note that although the owner's consent will not be required in some circumstances, the owner of neighbouring land will still have the right to require the builder to leave the land if the owner objects to the access (s 81(8)). Of course, the builder must not cause damage to the neighbouring land.

Removal of fences

Prior to the amendments, the Act required the owner to obtain neighbour's consent for a fence to be removed to allow construction of a "zero lot wall" directly up to the boundary, even in circumstances where a building permit authorised the wall to be constructed. A zero lot wall is a wall that sits at the boundary of a block of land where the structure of the building extends to, or is very close to, the edge of the property line.



The amendments to the *Building Act* remove the need for consent where a fence must be removed to allow construction of a close wall where a building permit is in effect and where the person responsible for the work has given at least 7 days notice prior to removal (s80(1)(e)).

Public authorities and building permits

Until the amendments, it was not clear whether local governments and State government agencies may be named as “builders” on building permit applications or whether they may issue certificates of design compliance. The changes to the *Building Act* now allow a “public authority” to be named as a builder on a building permit (s20(1)(b)(iiia)), and to issue certificates of design compliance (s20(1)(e)(ii)) and certificates of construction and building compliance (s58(1)(c)).

The definitions of “Public authority” matches that in the *Building Services (Registration) Act 2011* (WA), which includes local governments and State government agencies.

Compliance with Building Standards

Building Surveyors had been required to sign certificates of building compliance that stated unequivocally that a building or structure complied with each building standard that applied to it. Issues have been raised about whether that certification implied some degree of responsibility for such compliance (as opposed to such responsibility lying with the builder). As a result, a certificate of building compliance is required to state that a building or incidental structure “substantially” complies with each building standard at the time the application is made (see amended section 57(3)).

If you require further clarification or assistance with issues arising out of the *Building Act*, please contact our Isla McRobbie.

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