



# Work affecting other land

Building work, including construction, erection, assembly or placement of buildings or incidental structures, site work or demolition work, may adversely affect neighbouring properties and adjoining land.

If not managed correctly, building or associated work that adversely affects adjoining land can result in ongoing disputes between neighbours.

*The Building Act 2011* (the Building Act) sets out the circumstances in which a person who is proposing to do building work that is reasonably likely to affect adjoining land must notify and/or obtain the consent of the affected land owner before commencing the proposed work. These circumstances set out in points 1 to 6 of this fact sheet are known as 'notifiable events'. See the 'Notification' section.

In most instances when consent is required, it can be obtained during the course of the building process when relevant work is to be undertaken and is outside of the building permit process. See points 3 to 6 below. The exceptions are when work is likely to either encroach or adversely affect other land. See points 1 and 2 below.

## Consent required before a permit is issued

The first two circumstances listed below will require the adjoining land owners' consent prior to a building permit being granted by a permit authority. In most cases, the permit authority is the relevant local government.

### 1. Encroachment

This is where an application for a building permit indicates that the proposed building or incidental structure will encroach onto adjoining land. This also applies to an existing encroachment onto adjoining land that is included in an application

for a building approval certificate or occupancy permit associated with unauthorised works. In this circumstance, the consent of the adjoining owner/s will be required prior to granting the building approval certificate or occupancy permit.

### 2. Adversely affecting an adjoining property

This is where the proposed design indicates that the building, when completed, will:

- (a). reduce the stability, bearing capacity of the land or a building or structure on the land;
- (b). damage a building or structure on the adjoining land; or
- (c). change the natural site drainage in a way that reduces the effectiveness of the drainage on the land or existing or future buildings or structures on the land.

The landowners will also be required if a triggering event occurs after the permit has been granted.

## Consent required outside of the permit process

The following circumstances (points 3 to 6) may require the adjoining land owners' consent, however this consent is not required as part of the permit process.

### 3. Protection structures

This is where a temporary or permanent protection structure is placed beyond the boundaries of the land on which work is being carried out.

### 4. Party walls, dividing fences and boundary retaining walls

This is where the structural, water-proofing or noise insulation capacity of a party wall, a substantial dividing fence, or a boundary retaining wall that protects adjoining land is affected.

## 5. Removal of fences or gate

This is where a boundary structure such as a fence or gate is removed.

While notification is always required, consent is not required in point 5 if a building permit is in effect for construction of a close (or zero lot) wall that requires the removal of a fence. The builder is permitted to remove the portion of the fence necessary to build what has been approved without consent. The person responsible for constructing the close wall should give at least seven business days notice to the affected adjoining owners before removing the fence.

## 6. Access to adjoining land

This is where building workers need to access adjoining land to carry out work or to conduct a survey in relation to the work.

**Note:** In points 5 or 6 above, consent is not required if the land, or any building on that land, is vacant.

## Notification

In certain circumstances where the work needs to be done as a matter of urgency, consent or a court order is not needed before the 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.

## Forms

There are two forms for giving notice and requesting consent:

- BA20 – to be used when points 1 and 2 of this fact sheet apply and to be provided to the permit authority as part of a permit application. This form can also be used when a triggering event occurs after a permit is issued.
- BA20A – to be used when points 3 to 6 of this fact sheet apply and when consent is required after the building permit is granted.

While not ideal, consent can also be in the form of an exchange of letters or emails, however this must contain all the information prescribed on the relevant form, including a clear description of the works proposed, how the land will be affected and when, and details of the person responsible for the work.

## How to obtain or give consent

The builder, owner or other worker proposing works on adjoining property must first give the affected owner an official Building Commission BA20 or BA20A form. The owner has a 28 day period in which to give written consent.

## What if consent is refused?

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 you as the 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 affecting other land cannot proceed.

## What if the builder starts work prior to obtaining consent?

Local governments can enforce non-compliance with these requirements. If consent is not obtained where it is required, affected owners should contact their local government. A penalty of up to \$25,000 applies under the Building Act.

## Further information

Contact the Building Commission for further information by phoning **1300 489 099**, emailing **bcinfo@commerce.wa.gov.au** or in person at Level 1, 303 Sevenoaks Street, Cannington.

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