

Owner-builder Certificate of Consent

This updates the previous *Practice Note 2005-56* issued June 2005.

1. Summary

From 14 June 2005, amendments to the *Building Act 2004* have introduced new requirements relating to the activities of owner-builders. The legislation requires an owner-builder who is undertaking domestic building work to obtain a Certificate of Consent from the Building Practitioners Board prior to obtaining a building permit.

This Practice Note explains the effect of the new legislation on owner builders and on other building practitioners.

2. Background

The new owner-builder requirements provide greater protection for consumers, genuine owner-builders and registered building practitioners. They reinforce the building practitioner registration system as they mean that unregistered builders can no longer avoid registration fees and insurance by operating as a surrogate owner or by persuading owners to be the builder.

3. Definitions

For the purposes of this Practice Note *Owner-builder*: is a person who carries out domestic building work on his or her own land, who is not in the business of building. If the land is owned by a body corporate or is the subject of a trust, the owner-builder must be a body corporate director or a trust beneficiary.

Domestic building work: is building work as defined in the *Domestic Building Contracts Act 1995* and *Domestic Building Contracts and Tribunal (General) Regulations 1996* and includes:

- the erection or construction of a home;
- the renovation, alteration, extension, improvement or repair of a home (including associated works);
- the demolition or removal of a home.

Certificate of Consent: is written approval from the Building Practitioners Board (BPB) that enables an owner-builder to obtain a building permit and carry out domestic building work valued at more than \$12,000, on his or her own land.

The certificate:

- expires three years after date of issue;
- does not guarantee the issue of a building permit;
- specifies details of the land on which the work is to be undertaken;
- details the type of building work to be undertaken;
- details all the owners of the property.

Further information is available from the Building Commission and the *Owner-builder Information and Education Kit*, which provides details about the Certificate of Consent application and approval process.

4. Relating a Certificate of Consent to a building permit application

When considering a building permit application for domestic building work that has a value more than \$12,000 the relevant building surveyor (RBS) must be satisfied that:

- the work is to be carried out by a builder who is registered and can provide a major domestic building contract and insurance to the owner; or
- the work is to be carried out by a registered builder or architect on land he or she owns; or
- the work is to be carried out by an owner-builder who has been issued with a Certificate of Consent; or
- the applicant is the Director of Housing within the meaning of the Housing Act 1983.

The RBS should check for consistency between the information provided in the application and the Certificate of Consent including:

- the address of the land on which the domestic building work is to be carried out;
- the name(s) of the property owner and the person issued with the Certificate of Consent;
- the description of the domestic building work proposed.

If the information is inconsistent, the owner is responsible for clarifying any inconsistency, which may include obtaining a suitable Certificate of Consent.

File notes and documents provided in support of the application should be retained in case of any subsequent appeal or dispute concerning the issue of (or refusal to issue) a building permit.

5. Responsibilities of the owner-builder

An owner-builder making application for a building permit for domestic building work must provide the RBS with a related Certificate of Consent.

Owner-builders must carry out domestic building work in compliance with all relevant standards. They effectively assume the responsibilities, risks and liabilities of a registered building practitioner.

When an owner-builder engages a building practitioner to undertake any building work valued over \$5,000, the practitioner must comply with the *Domestic Building Contracts Act 1995*. That is, the practitioner must be registered and provide a major domestic building contract.

The owner-builder should retain the names and insurance details of all registered building practitioners engaged on the work. If a change of builder occurs after the issue of the building permit, both the owner-builder and the registered builder must give written notice to the RBS.

6. Relevant building surveyor responsibilities

The RBS should:

- record the names provided by the owner-builder of all registered building practitioners engaged in relation to the work, on the building and occupancy permits or certificate of final inspection, prior to issue;
- confirm that a valid Certificate of Consent has been issued when notified of a change of the person to carry out the building work from a registered builder to an owner-builder eg at lock-up stage.

7. Builder and trade contractor responsibilities

A builder who is a registered building practitioner or an architect registered under the *Architects Act* who is speculatively building a dwelling on land he or she owns, is not an owner-builder for the purposes of the new legislation but *is* carrying on the business of building.

A builder or trade contractor undertaking work for an owner-builder must:

- be a registered building practitioner if the work is over \$5,000 unless the single trade is exempt under section 6 of the *Domestic Building Contracts Act 1995*.
- enter into a major domestic building contract for building work over \$5,000. The contract must meet the requirements of the *Domestic Building Contracts Act 1995*.
- provide domestic building insurance for building work over \$12,000.

After the issue of a building permit, if the builder takes over from or passes responsibility for the work to an owner-builder, the RBS must be notified within 14 days.

Practice Notes

Trade contractors who require registration (for work over \$5,000) and insurance (for work over \$12,000) include:

- carpenters
- bricklayers
- concreters
- roof tilers
- swimming pool installers
- cabinet makers and kitchen contractors
- re-stumpers
- re-roofers
- bathroom renovators
- house re-locators and demolishers.

Trades that are exempt from registration under the *Domestic Building Contracts and Tribunal (General) Regulations 1996*, include:

- awnings, screens etc
- floor coverings
- drainage
- insulation
- painting
- wall and floor tiling
- glazing
- plastering
- tennis court fencing
- erection of masts, antennas, etc,

provided that only one item of work listed is being done by the contractor. In the case where a contractor does or arranges more than one of these exempted trades (and the value of the combined work exceeds \$5,000), the exemption does not apply.

Further information can be obtained on the Building Commission web site at www.buildingcommission.com.au or by telephone on 9285 6400.