

Frequently Asked Questions

Limitations on the issue of building permits

(Sections 24A & 24B of the *Building Act 1993*)

Summary

The following **Frequently Asked Questions (FAQs)** identify the queries building practitioners may be reasonably expected to ask in relation to the limitations on the issue of building permits under sections 24A and 24B of the *Building Act 1993* (Act).

1. What documentation should a building surveyor obtain to be satisfied that a builder proposed to be named on a building permit is registered in the appropriate category, and that their registration authorises them to carry out the proposed work?

An applicant for a building permit should provide evidence to confirm that their proposed builder is suitably registered (if required), and that their registration allows them to carry out all proposed work. Regulations 29(f), (fa) and (fb) of the *Building Regulations 2018 (Regulations)* list information that a Relevant Building Surveyor (**RBS**) may require as evidence to prove that the proposed builder will comply with section 24B of the Act in relation to an application for a building permit. Regulation 36A also specifies the manner in which the RBS may be satisfied that the builder named on a major domestic building contract is the same as the builder named on any relevant insurance certificate.

Other evidence may include, but is not limited to:

- current copies of the building practitioner's registration certificates;
- an architect's registration certificate under the *Architecture Act 1991*;
- evidence they are an insured architect;
- a copy of a title confirming ownership; and/or
- a certificate of consent for the work.

2. Can a building permit be issued when a registered building practitioner is to be named on a building permit, but their registration only allows them to carry out a portion of the proposed domestic building work?

Where the cost of the building work to be carried out by the builder exceeds the prescribed amount (\$10,000), the Act specifies that the work must be carried out by a builder whose registration authorises the carrying out of that work. Therefore, if the scope of the nominated builder's registration class does not cover the building work they are proposing to carry out, a building permit cannot be issued.

3. Can a building permit name a Domestic Builder (Limited) as the builder for proposed building work?

Yes, provided the scope of the registration held by the Domestic Builder (Limited) allows for all of the proposed building work under the building permit. Confirmation of what domestic building work is authorised to be carried out by which domestic builders may be obtained in Schedule 12 of the Regulations. Alternatively, a practitioner search may be conducted on the VBA website or contact made with the VBA's Building Registrations team for further clarification.

4. I currently carry out building work for owners where the cost of work is less than \$10,000. Can I still be named as the builder on the building permit and be responsible for the building work, even though I'm not a registered building practitioner?

Yes, building practitioner registration is not required for a builder carrying out building work costing less than \$10,000.

5. Who should be named on a building permit as the builder for domestic building work (with a total cost greater than \$16,000), when there will be a builder involved and the owner is also proposing to carry out part of the work?

If the owner is proposing to carry out part of the building work, they must be named as a builder on the building permit. If the cost of work is greater than \$16,000 and the owner is not:

- a registered builder (whose registration authorises the carrying out of that work), or
- an architect, or
- the Director of Housing, or
- carrying out work in accordance with an order;

the owner must obtain an owner-builder certificate of consent from the VBA. Where any part of the building work is being carried out by another builder with a cost greater than \$10,000, a major domestic building contract must be entered into, that builder's registration must authorise the carrying out of the work, and the builder must be named on the building permit.

6. Can a building permit be issued when the owner of the building or land is nominated as the builder for building work that is not domestic building work?

Yes, where the building work to be carried out is not domestic building work, a building permit may be issued when the owner of a building or land is nominated as the builder, irrespective of cost. The owner must then accept all responsibilities and obligations as a builder under the Act. However, if a registered builder is engaged by the owner to carry out the work, the registered builder must be nominated as the builder on the building permit.

7. Can a building permit be issued to the owner of a building or land to carry out demolition work?

Under the definitions of the Act, "building work means work for or in connection with the construction, demolition or removal of a building" and, in section 24B "Specification of builders in relation to specific building work", the building work that an owner of a building or land may carry out is not specifically restricted.

However, when applying for a building permit to demolish a building, the application must be accompanied by evidence that the demolisher has the necessary knowledge, experience, equipment and storage facilities to properly conduct the demolition operations. Ministerial Guideline MG-09, "Issuing of building permits (demolitions/removal) and the owner builder", also provides further guidance on this matter and may be accessed on the VBA website at http://www.vba.vic.gov.au/data/assets/pdf_file/0003/18786/Ministers-Guidelines-MG-09.pdf.

8. Where the proposed domestic building work is to be carried out by multiple registered builders under major domestic building contracts, which builder should be named as the responsible builder on the building permit?

The Act requires that building work must be carried out by a builder who is both specified under section 24B and named on the building permit. If one builder is not willing to accept responsibility for the building work being carried out under the building permit, as well as the ongoing requirements (such as site safety etc.), then each builder must be named on the permit, and they will all be considered as being jointly responsible. Alternatively, naming a single builder as part of a staged permit arrangement may be considered. If multiple builders are named, the permit should detail the work that each is responsible for, and the combined cost of the contracts should match the total cost of work.

9. If an owner is not intending to carry out any domestic building work, but is supplying products and materials for a builder to use, does the owner require a certificate of consent as an owner-builder?

No. If the owner is just supplying materials to a builder named on the building permit, and is not managing, arranging or carrying out any portion of the building work, then a certificate of consent is not required. This scenario will result in the declared cost of work being more than the contracted value, and sufficient information regarding material costs should be supplied to the RBS to enable them to estimate the cost of the building work.

10. Is the building surveyor required to retain a copy of the major domestic building contract, or is just viewing the relevant details acceptable?

Where the building surveyor is required to ensure the person named on the contract as the builder is identical to the name of the person specified on the related certificate of insurance, regulation 29(fa) and 29(fb) facilitates the requisition of both an extract of the major domestic building contract and a copy of the certificate of insurance. The building surveyor will need to ensure that these documents coincide with each other and relate to the proposed building work. Pending the nature and scope of the building work to be carried out under the contract, the building surveyor may be satisfied by only viewing relevant details. However, given the building surveyor relies upon the contract to issue the building permit, a copy should be kept for evidentiary purposes and also submitted to Council, pursuant to regulation 44(1)(o).

11. How do I determine the total cost of a building project?

The cost of building work under section 24B is the cost of work estimated under Subdivision 4 of Division 2 of Part 12 of the Act. The cost of building work carried out under a building permit must include the cost of all relevant labour and materials. The building surveyor must refuse to issue a building permit if the application:

- specifies a contract price that is substantially lower than the price normally payable for that work;
- does not contain sufficient information to enable the surveyor to estimate the cost of the building work; or
- contains a statement about the cost of the building work which is false or misleading.

12. If second-hand materials are proposed to be used and/or low-priced purchases made, should the cost of work be based on the true retail value?

All materials to be used in domestic building work must be “good and suitable for the purpose for which they are to be used”, whether the work is carried out by a registered building practitioner or an owner-builder (refer to section 8 of the *Domestic Building Contracts Act 1995* and section 137C of the Act). If the cost of the materials is substantially lower than acceptable market value, then it is recommended that evidence be provided to the building surveyor to avoid them refusing to issue a building permit. Where the actual cost of the whole or part of the work cannot be reliably determined, the amount can be calculated on a reasonable market rate for work of that kind.