

Issuing of building permits prior to registration of plans of subdivision

This updates the previous Practice Note 2006-33 issued June 2006.

1. SUMMARY

This Practice note describes when a building permit can be issued on an allotment on a plan of subdivision, prior to the registration of the plan of subdivision.

2. SUBDIVISION STEPS

When a parcel of land is proposed for subdivision, several steps must occur. They include:

- A planning permit must be issued for the proposed subdivision; and
- The plan of subdivision must be certified by the relevant council; and
- The plan of subdivision must be registered by the Registrar of Titles.

3. ALLOTMENT UNDER THE BUILDING REGULATIONS 2006

The issue of a building permit is predicated on there being an identifiable allotment on which the building work will take place.

'Allotment' is defined in regulation 105 of the Building Regulations 2006 (the Regulations) as 'land that can be disposed of separately under section 8A of the Sale of Land Act 1962 (SLA) without being subdivided'.

Section 8A of the SLA sets out various categories of land that can be dealt with without being subdivided including 'any land under the operation of the Transfer of Land Act 1958 which is a lot on a plan of subdivision certified or registered under the Subdivision Act 1988 and which is not the subject of a later registered plan' (section 8A(1)(a)(i).)

Certified plans and registered plans are defined in section 3 of the Subdivision Act 1988. A certified plan is 'a plan certified by a Council for lodging in the Office of Titles for registration'. A registered plan includes a plan registered or approved by the Registrar of Titles.

An allotment for the purposes of the Regulations therefore includes a lot on a plan of subdivision that has been certified by a Council, even though it has not yet been registered at the Titles Office.

3. ISSUE OF BUILDING PERMIT

A building permit may be issued to build on an allotment on a plan of subdivision once the relevant council has certified the plan, even though it has not yet been registered by the Registrar of Titles. However, all other requirements of the Building Act 1993 and the Regulations must be satisfied. A building permit cannot be issued prior to certification of the plan of subdivision by the council.

4. EVIDENCE OF OWNERSHIP

A certificate of title for individual allotments will not be issued until the plan of subdivision has been approved or registered by the Registrar of Titles. Therefore, a relevant building surveyor should request some other form of evidence of ownership of the allotment or evidence that a contract has been entered into pursuant to section 9AA of the SLA in respect of the allotment. Regulation 305(e) of the Regulations permits a contract of sale for the allotment to be submitted with an application for a building permit where other evidence of ownership is not available.

If you have a technical enquiry please email: technicalenquiry@vba.vic.gov.au or phone 1300 815 127

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