

Practice Note

2014-43

Issued April 2014

Demolition of Buildings

Note: This updates the previous Practice Note 2011-43 issued May 2011.

1. BACKGROUND

Sections 29A and 29B of the *Building Act 1993* (the Act) specify the requirements that need to be considered in relation to the demolition of buildings.

The provisions:

- require the report and consent of the relevant responsible authority in relation to certain applications for a building permit for demolition; and
- enable the suspension of certain applications for a building permit for demolition, pending amendment of planning schemes.

The Building Regulations 2006 (the Regulations) also include the following:

- prescribe a time limit for a responsible authority to respond; and
- prescribe a fee for applications for report and consent

This Practice Note describes how a building surveyor should:

- decide whether an application needs to be referred to the responsible authority for report and consent;
- refer applications which require referral; and
- deal with applications if the responsible authority advises that:

- the planning authority has asked the Minister for exemption from certain notice requirements in preparing a planning scheme amendment which would require that a permit be obtained for that demolition; or
- a request has been made to the Minister to prepare such an amendment without notice.

2. HOW TO DETERMINE WHETHER A REPORT AND CONSENT IS REQUIRED

The report and consent of the relevant responsible authority¹ (usually the relevant council) will be required for an application for a building permit for demolition, if:

- the proposed demolition, together with any other demolition completed or permitted within the period of 3 years immediately preceding the date of the application would together amount to the demolition of more than half the volume of the building as it existed at the date of the first building permit to be issued within that period for the demolition of any part of the building;² or
- the demolition is of any part of a facade of a building if that facade faces the street.

1. As defined under section 13 of the Planning and Environment Act 1987.

2. Parts of a building that are covered by a roof should be included in calculation of the volume, and unroofed areas should not be included. Internal demolition not reducing the volume of a building should not be included in calculation of the volume.

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Both the 'volume test' and the 'facade test' should be applied when considering whether report and consent of the relevant responsible authority is required.

For the purposes of this requirement, 'facade' and 'street' are given special meanings by section 29A(3) the Act.

'Facade' means -

- a. an external wall, including any veranda, balcony, balustrade or architectural feature attached to or forming part of an external wall; or
- b. a part of a roof; or
- c. a chimney – that faces a street and at least part of which is visible from the street it faces;

'Street' includes road, highway, carriageway, square and court."

Lanes, footways, rights of way and driveways are not included.³ This ensures, for example, that the demolition of part of a building facing a side or rear lane is not subject to report and consent (unless of course it meets the "volume" test).

Where a building faces two streets (such as a corner block), the demolition of any part of either facade facing either street is subject to report and consent.

While vegetation, fences and other structures may partially obscure a building from the street, as long as part of the facade can be seen from the street, demolition will require report and consent. If a building is totally obscured from the street, demolition of its facade will not require report and consent. It is intended that a relevant building surveyor should consider reasonable vantage points in the facing street to

³ It should be noted that the definition of 'street' for the purposes of section 29A is more restrictive than the definition provided under Building Regulation 105.

determine 'visibility'. These may include, but are not limited to, the view from a driveway where it meets the street, or the footpath on the opposite side of the street.

'Demolition' is not defined in the Act or the Regulations. For the purpose of sections 29A and 29B of the Act, 'demolition' is to be widely interpreted to include any work involving permanently removing part of an existing building. Some alterations may involve some form of demolition – for example:

- removing a redundant chimney;
- removing part of a building to make way for an addition.

These forms of 'demolition' are to be referred to the responsible authority only if they meet the tests set out in section 29A of the Act, as described above.

However, any application for a building permit where proposed alterations entail demolition work will require report and consent of the relevant responsible authority, if the proposal triggers this requirement as a result of either test.

Schedule 8 of the Regulations exempts certain building work from the need for a building permit.

- Removing old materials and replacing them with materials commonly used for the same purpose such as non-structural repair of roof cladding, wall cladding, or windows are examples.

3. WHAT IF A PLANNING PERMIT IS REQUIRED FOR THE PROPOSED DEMOLITION?

To comply with the requirements of section 24 of the Act, the building surveyor will need to establish whether a planning permit is required

for demolition. The Heritage overlay generally provides that a planning permit is required for demolition.

If the planning scheme provides that a planning permit is required to demolish a building or part of a building, and that permit has not been obtained, then in accordance with section 29A(2) of the Act, the responsible authority must refuse its consent to the building permit application. Further, to issue a building permit would be in breach of section 24. The building surveyor should explain the situation to the applicant, and suggest that the application for the building permit be withdrawn to allow the applicant to seek a planning permit for the proposed demolition – this will save the applicant from the delay and cost of an application for a report and consent that cannot be granted.

The same procedure should be adopted where a planning permit is required for demolition work but has not been obtained even if a planning permit has been obtained to use and develop the site.

The Act requires that even if a planning permit has been granted for demolition, the building surveyor must refer an application for demolition to the responsible authority for its report and consent. This is to allow the responsible authority to ensure that demolition proposed in an application for a building permit is exactly the same as that permitted by the planning permit. In this case, the responsible authority must not refuse its consent to the application.

Further information about compliance with section 24 of the Act is provided in Minister's Guideline No. MG/11 and Practice Note 44.

4. WHAT SHOULD BE INCLUDED IN AN APPLICATION TO THE RESPONSIBLE AUTHORITY FOR REPORT AND CONSENT?

An application for report and consent should be made on the recommended form (Form A attached to this Practice Note), accompanied by a copy of the full application for a building permit. It is helpful to include any plans and photographs which enable the responsible authority to readily appreciate the nature of the demolition work. If only part of a building is being demolished, a plan which clearly indicates the extent of the proposed demolition, together with a plan indicating the extent of demolition which has taken place within the previous three years, will also assist the responsible authority.

5. HOW LONG DO RESPONSIBLE AUTHORITIES HAVE TO PROVIDE REPORT AND CONSENT?

Responsible authorities are required under Schedule 3 of the Regulations to provide the report and consent within 15 business days. The 15 business days start from receipt of a copy of the application by the responsible authority from either the relevant building surveyor or the applicant. The day the request is lodged is not included in the 15 business days.⁴

6. WHAT IF A RESPONSIBLE AUTHORITY FAILS TO RESPOND WITHIN 15 DAYS?

In accordance with Clause 6A of Schedule 2 to the Act, the building surveyor may proceed to decide an application without a report from the responsible authority if the report is not supplied within the prescribed time of 15 business days.

⁴ The *Interpretation of Legislation Act 1984* provides: "44(1) Where in an Act or subordinate instrument a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall not be included in the period."

After this time, a reporting authority is deemed to have consented to the application, except in the circumstances of section 29A(2) of the Act, where a planning permit is required for the demolition but has not been obtained. In that case, the reporting authority has deemed to have refused its consent.

If a responsible authority does not respond within the prescribed time, it is therefore essential to establish whether a planning permit is required for the demolition and if so, whether it has been obtained. The building surveyor should normally have already established the situation before applying for report and consent. The application can then be determined in accordance with the deemed response.

The relevant building surveyor may seek advice as he/she deems necessary to satisfy him/herself whether a planning permit is required for the proposed demolition. Refer to the Minister's Guideline No. MG/11 and Practice Note 44, on the operation of section 24 of the Act.

Note that section 24 of the Act also covers a situation where a planning permit is required for the proposed demolition and has not been obtained, or a planning permit has been obtained but the proposed building permit would not be consistent with that permit.

7. SUSPENSION OF APPLICATIONS FOR A BUILDING PERMIT FOR DEMOLITION

If during the prescribed time for report and consent:

- The relevant planning authority applies to the Minister for Planning for an exemption from the requirement to give notice (section 20(1) of the Planning and Environment Act 1987) about an amendment to the planning scheme to the effect that the relevant

building may not be demolished or externally altered except in accordance with a permit under the planning scheme; or

- the Minister for Planning is asked to make an amendment to the effect that the relevant building may not be demolished or externally altered except in accordance with a permit under the planning scheme –

The responsible authority must notify the relevant building surveyor without delay. The building surveyor must then suspend the application for a demolition permit. At this point the prescribed time within which the relevant building surveyor must decide the application for a permit ceases to run (that is, the 'application time clock' is stopped).

If the Minister agrees to – exempt a planning authority from the notice requirements of the Planning and Environment Act 1987 in accordance with these provisions; or amend the planning scheme as requested the Minister will advise the relevant planning authority / responsible authority of this decision. The responsible authority must advise the relevant building surveyor if any of the following occur:

- withdrawal of the request by the planning authority for exemption from notice, or of the application for an amendment by the responsible authority to the Minister
- refusal by the Minister of the request by the planning authority for exemption, or the Minister's refusing an application for an amendment to the planning scheme
- coming into operation of an amendment to the planning scheme having the effect of requiring that a planning permit be obtained to demolish or alter the building
- lapsing of an application for an amendment to the planning scheme.

On receipt of any of these notices, the time within which the relevant building surveyor

must decide an application for a permit recommences.

If the planning scheme is amended so as to require that a planning permit must be obtained for demolition in relation to the land on which the building is located, the responsible authority must refuse consent to the application, and a building permit for demolition may not be issued until such planning permit is issued and subsequently report and consent is obtained. Refer to item 3 above.

8. PLACES INCLUDED ON THE VICTORIAN HERITAGE REGISTER

Section 28 (4) of the Act requires that the report and consent of the Executive Director under the Heritage Act 1995 must be obtained for an application to demolish or alter a building which is on the Victorian Heritage Register. No fee is to be prescribed for this report and consent.

Generally, places which are on the Victorian Heritage Register are included in the Heritage overlay of the planning scheme. No planning permit is required under this overlay to develop a heritage place which is included on the Register if either:

- a permit for the development has been granted under the Heritage Act 1995; or
- the development is exempt under section 66 of the Heritage Act 1995.

A planning permit may still be needed under other provisions of the planning scheme – for example, to carry out development for a use in section 2 of the zone table – but these other controls do not usually control demolition.

Even if an application relates to a place on the Victorian Heritage Register, the requirements of section 29A of the Building Act to refer certain

applications involving demolition work to the responsible authority must still be complied with.

9. FEES FOR REPORT AND CONSENT

The Act requires that when a copy of the application for report and consent is forwarded to the responsible authority under section 29A, it be accompanied by the prescribed fee. The prescribed fee will also apply where an applicant applies directly for the report and consent. The fee is prescribed under Regulation 312.

There is no fee for an application for report and consent made to the Executive Director under the Heritage Act 1993 in relation to places included on the Victorian Heritage Register.

10. FORMS

In order to facilitate responses from responsible authorities, it is recommended that relevant building surveyors and relevant responsible authorities use the attached forms:

Form A: 'Request under section 29A of the Act for report and consent on proposed demolition' (for building surveyors to refer a matter for report and consent)

Form B: 'Response under section 29B(1) of the Act to a request for report and consent to proposed demolition (for responsible authorities to use when notifying a building surveyor of the result of a referral for report and consent)

Form C: 'Notification of result of proposed amendment to planning scheme section 29B(3) of the Act (for responsible authorities to use when notifying building surveyor of outcome of application to the

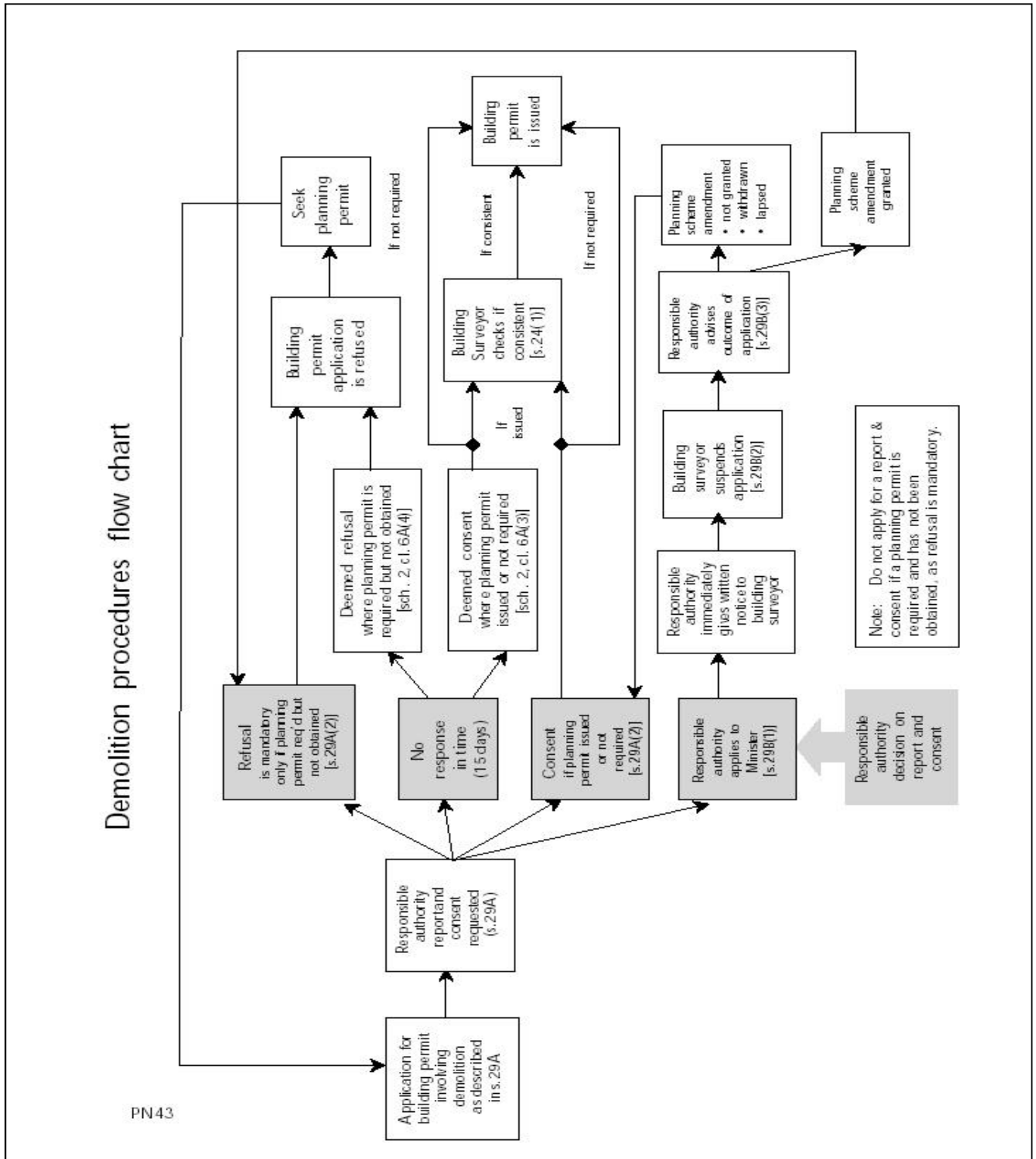
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Minister for an amendment to the planning scheme).

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

Victorian Building Authority
733 Bourke Street Docklands VIC 3008

Demolition procedures flow chart



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FORM A

REQUEST UNDER SECTION 29A OF THE BUILDING ACT 1993 FOR REPORT AND CONSENT ON PROPOSED DEMOLITION

To: _____
(Relevant Responsible Authority)

From: Name: _____

Building Surveyor registration number (if applicable): _____

Address: _____

Telephone No.: _____ Facsimile: _____

E-mail: _____

Property address: _____

Proposal: _____

(Brief written description of proposal to be provided.)

(Copy of application and plans must be attached)

Building Permit Application Reference No.: _____

**The attached application for building permit is referred in accordance
with section 29A of the Building Act 1993 for report and consent.**

A: The consent of the relevant responsible authority is required because:

(a) The proposed demolition meets the 50% volume test under section 29A(1)(a)
of the Act **Yes/No**

AND/OR

(b) The proposed demolition meets the facade test under section 29A(1)(b)
of the Act **Yes/No**

B: Relevant Planning Permit:

Planning permit number _____ has been obtained for the proposed demolition.*

(*Delete if not relevant)

Signed: _____ Dated: _____

FORM B

RESPONSE TO REQUEST FOR REPORT AND CONSENT TO PROPOSED DEMOLITION UNDER SECTION 29A OF THE BUILDING ACT 1993

To: Name: _____

Building Surveyor registration number (if applicable): _____

Address: _____

Telephone No.: _____ Facsimile: _____

E-mail: _____

From: _____

(Relevant Responsible Authority)

Property address: _____

Proposal: _____

(Brief written description of proposal to be provided.)

(Copy of application and plans must be attached)

Building Permit Application Reference No.: _____

A: CONSENT TO PROPOSED DEMOLITION GIVEN

This is to advise that —

- (a) A planning permit is not required for demolition of the building detailed below and consent to the proposed demolition is given

OR

- (b) A planning permit is required for demolition of the building detailed above and planning permit no. _____ has been granted for this demolition. Consent to the proposed demolition is given. All work must be in accordance with the planning permit.

B: CONSENT TO PROPOSED DEMOLITION REFUSED

This is to advise that —

A planning permit is required for the demolition work applied for and has not been obtained. Consent to the proposed demolition is refused.

C: SUSPENSION OF APPLICATION FOR BUILDING PERMIT FOR DEMOLITION

This is to advise that—

An application has been made to the Minister for Planning under section 20 of the Planning and Environment Act 1987 for an amendment to the planning scheme in relation to the land on which the building detailed below is located. *

OR

The Planning Authority has applied to the Minister for Planning for an exemption from the requirement to give notice of an amendment under section 20(1) of the Planning and Environment Act 1987. *

(* Delete as appropriate)

Consideration of the application for the building permit for the proposed demolition is suspended pending further notification from the responsible authority.

Authorised signatory for the Responsible Authority _____

Dated: _____

FORM C

NOTIFICATION OF RESULT OF PROPOSED AMENDMENT TO PLANNING SCHEME SECTION 29B(3) OF THE BUILDING ACT 1993

To: Name: _____
Building Surveyor registration number (if applicable): _____
Address: _____

Telephone No.: _____ Facsimile: _____
E-mail: _____

From: _____
(Relevant Responsible Authority)

Property address: _____

Proposal: _____

(Brief written description of proposal to be provided.)
(Copy of application and plans must be attached)

Building Permit Application Reference No.: _____

This is to advise that¹—

- (a) The application made to the Minister for Planning under section 20 of the **Planning and Environment Act 1987** for an amendment to the planning scheme or by the Planning Authority for exemption from giving notice of an amendment in relation to the land on which the building detailed below is located has been withdrawn.
Consent to the proposed demolition is given
- (b) The application made to the Minister for Planning under section 20 of the **Planning and Environment Act 1987** for an amendment to the planning scheme or by the Planning Authority for exemption from giving notice of an amendment in relation to the land on which the building detailed below is located has been refused.
Consent to the proposed demolition is given.
- (c) The proposed amendment to the planning scheme has lapsed.
Consent to the proposed demolition is given.
- (d) An amendment to the planning scheme in relation to the land on which the building detailed below is located has come into operation. A planning permit is now required for demolition of the above building.
Consent to the proposed demolition is refused

Authorised signatory for the Responsible Authority: _____

Dated: _____

¹ Please tick appropriate box.