

This updates the previous Practice Note-2014-56 issued November 2015

Purpose

The purpose of this Practice Note is to provide guidance on the requirements that apply to persons wanting to undertake domestic building work on their own land or building as builders.

Background

The Building Act 1993 (the Act) regulates the carrying out a building work in Victoria. To ensure that building work is carried out in accordance with minimum safety and amenity standards, the Act regulates who can design and construct building work. The Act also provides for a building permit process which requires proposed building work to be documented and approved by a registered building surveyor. The work must be inspected at certain stages and signed off as completed and/or suitable to occupy.

Under the Act, specified people involved in the design, construction and oversight of building works must be registered. However, if the owner of a building or land wishes to undertake domestic building work on a single dwelling or ancillary building as a builder they may do so. However, if the value of that work is more than \$16,000 they must obtain a certificate of consent from the VBA prior to commencing the work.

The requirements relating to owner-builders are designed to ensure that:

- the owner-builder has sufficient knowledge to undertake the work;
- people who are in the business of building are prevented from avoiding the requirements of registration by undertaking projects as owner-builders; and
- to provide protection for purchasers of buildings which have been built or altered by owner-builders.

Definitions

Owner-builder is a person who carries out domestic building work 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 director of the body corporate or a beneficiary of the trust.

Domestic building work is defined in the Domestic Building Contracts Act 1995 (DBC Act) and includes (but is not limited to):

- the erection or construction of a home;
- the renovation, alteration, extension, improvement or repair of a home (including associated works); and
- any work associated with the construction or erection of a building on land zoned for residential purposes of which a building permit is required.

Certificate of consent is written approval from the VBA that must be obtained by owner-builder before they can be issued with a building permit and carry out domestic building work where the total value of work is more than \$16,000 (or another prescribed amount). The certificate of consent:

- can only be obtained to build or alter a single dwelling or ancillary building on an allotment;
- expires if its holder has not obtained a building permit within 12 months (or a longer prescribed period) or the building permit lapses;
- 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.
- details the estimated cost of building work.

Relating a Certificate of Consent to a building permit application

When considering a building permit application for domestic building work that has a total value more than \$16,000 (or other prescribed amount) section 24A of the Act provides that the relevant building surveyor (RBS) must be satisfied that:

- the work is to be carried out by a builder who is registered in the appropriate category and can provide a major domestic building contract to the owner; or
- the work is to be carried out by a registered builder in the appropriate category or architect on land that they own; 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 building permit 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 seeking an amendment to their certificate of consent.

Prior to applying for an owner builder certificate of consent, consult RBS to confirm the correct cost of work and description of work that is to appear on the Certificate of Consent. Once a certificate of consent is issued, it will not be amended in order to reflect a building permit.

Responsibilities of the owner builder

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

In order to be issued with a certificate of consent, an owner must satisfy the VBA that they have the prescribed knowledge of the duties and responsibilities of an owner-builder. Schedule 2 to the Building Regulations 2018 (Regulations) sets out the prescribed duties and responsibilities of an owner-builder.

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

When an owner-builder engages a person to undertake any domestic building work, that person must comply with the Act, Regulations and the DBC Act. Generally, if the value of their work is over \$10,000 the person must be registered and provide the owner-builder with a major domestic building contract complying with the DBC Act. If the value of their work is over \$16,000 the contractor must also carry required domestic builder warranty insurance for their work.

When an owner-builder enters into a major domestic building contract with a person who is not registered in an appropriate category and class, does not use a complying contract or is not insured

The owner-builder must not carry out plumbing or electrical work, unless they are licensed to carry out the work. They must engage registered or licensed plumbers and electricians for that work.

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.

The owner-builder is responsible for displaying their contact details and building permit details in a conspicuous position on the building site that is accessible to the public (see regulation 41).

An owner-builder who constructs a building must not enter into a contract to sell that building within the prescribed period (usually 6 years and 6 months) without the required report and/or insurance (see section 137B).

Domestic building work undertaken by an owner-builder may be subject to inspection or investigation by a VBA Inspector.

Relevant Building Surveyor Responsibilities

The RBS must:

- confirm who is going to be nominated on the building permit as the builder for the works and the total cost of works so that they can establish if an owner-builder certificate of consent is required;
- record the details of all registered building practitioners engaged by an owner-builder on the building permit, occupancy permit or certificate of final inspection;
- where notified that an owner will be taking over building work that was being carried out by a registered builder, confirm that a valid certificate of consent has been issued to the owner-builder for the remaining work e.g. at lock-up stage.

Builder and trade contractor responsibilities

Where a builder or trade contractor agrees to undertake work for an owner-builder and the value of the work that they will undertake is over \$10,000, the contractor must:

- be a registered building practitioner (Note some trades are exempt from the requirements of the DBC Act by section 6 of that Act);
- enter into a major domestic building contract that complies with the requirements of section 31 of the DBC Act.

If the value of the work to be undertaken by the contractor is over \$16,000, the contractor must also provide required domestic building warranty insurance for their part of the building work.

If a builder is appointed by an owner-builder or stops working for an owner-builder after a building permit has been issued, the builder must notify the RBS within 14 days of the appointment or termination of appointment.

Trade contractors that are required to comply with the DBC Act (for work over \$10,000) and insurance (for work over \$16,000) 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 the requirements of the DBC Act include trades that are providing only one of the following types of work:

- attaching external fixtures (including awnings, security screens, insect screens and balustrades).
- electrical work;
- installing floor coverings
- plumbing work;
- insulating
- painting
- wall and floor tiling
- glazing
- plastering
- erection of a chain wire fence to an enclosed tennis court
- erection of a mast, antennas, aerial or similar structure.

In the case where a contractor does or arranges more than one of the above types of work (and the value of the combined work exceeds \$10,000), the exemption does not apply.

Electricians and plumbers must be appropriately registered or licensed and insured under the Act or Electrical Safety Act 1998.

Further information

Want to know more?

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

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