

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

Purpose

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.

Subdivision process

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;
- the plan of subdivision must be certified by the relevant council; and
- the plan of subdivision must be registered by the Registrar of Titles.

Allotment under the Building Regulations 2018

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 5 of the Building Regulations 2018 (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.

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.

Evidence of ownership

A certificate of title for individual allotments will not be issued until the plan of subdivision has been approved or registered. 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 29(e) 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.

Further information

Want to know more?

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

Victorian Building Authority
733 Bourke Street Docklands VIC 3008

www.vba.vic.gov.au