

## Building Practice Note BP-04: Issuing building permits prior to registration of plans of subdivision.

This Practice Note provides guidance on issuing a building permit for building work on an allotment, prior to the registration of the plan of subdivision, to ensure compliance with the Building Act 1993 (the Act) and the Building Regulations 2018 (the Regulations).

The context below provides guidance for:

- Issuing a building permit prior to registration of plan of subdivision
- Difference between certified and registered plan of subdivision Insert header here
- Subdivision process
- Evidence of ownership of an allotment

### Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993 (the Act) or Building Regulations 2018 (the Regulations).

- **Act** – The Building Act 1993
- **Office of Titles** – Land Use Victoria
- **RBS** – Relevant Building Surveyor
- **Regulations** – The Building Regulations 2018
- **SLA** – Sale of Land Act 1962

### Issuing a building permit prior to registration of plan of subdivision

The issue of a building permit is predicated on there being an identifiable allotment on which the building work will take place. An 'allotment' is defined in Regulation 5 of the Regulations as land that can be disposed of separately, under section 8A of the Sale of Land Act 1962, without being subdivided.

A building permit may therefore 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 Office of Titles.

However, all other requirements of the Act and the Regulations must be satisfied, and the building permit must not be issued prior to certification of the plan of subdivision by the relevant council.

## Difference between certified and registered plan of subdivision

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. Certification ensures the plan meets the Subdivision Act 1998, the planning permit requirements, and any requirements from any other relevant authorities.
- A 'registered plan' includes a plan registered or approved by the Registrar of Titles. New certificate of titles will be created for each lot following their registration.

Therefore, for the purpose of the Regulations, an allotment 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 Office of Titles.

## Subdivision process

When a parcel of land is proposed for subdivision, several steps must occur, this includes:

- preparing a plan of subdivision
- applying and receiving approval of a planning permit for the proposed subdivision
- certification of the plan of subdivision by the relevant council; and
- registration of the plan of subdivision by the Registrar of Titles.

Section 8A of the SLA sets out various categories of land that can be disposed without being subdivided. This includes 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) of the SLA).

## Evidence of ownership of an allotment

A Certificate of Title for individual allotments will not be issued until the plan of subdivision has been approved and registered by the Office of Titles.

The RBS should therefore request from the owner another 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.

For example, regulation 29(e) permits a contract of sale for the allotment to be submitted with an application for a building permit where no other evidence of ownership is available.

## Related Documentation

- Building Act 1993 (VIC)
- Building Regulations 2018 (VIC)
- Transfer of Land Act 1958 (VIC)
- Subdivision Act 1988 (VIC)
- Sale of Land Act 1962 (VIC)

## Contact Us

If you have a technical enquiry, please email [technicalenquiry@vba.vic.gov.au](mailto:technicalenquiry@vba.vic.gov.au) or call 1300 815 127.

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## Version History

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