



Government of **Western Australia**
Department of **Commerce**

Building
Commission

Frequently Asked Questions

Building Act 2011 & Associated Legislation

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The *Building Act 2011* (the Act) and the supporting *Building Regulations 2012* (the Regulations) set out the process for determining building standards and ensuring these standards are met through a system of certifying compliance, granting building, demolition and occupancy permits, and inspecting building work in buildings. This legislation also regulates work affecting other land and standards that apply to certain existing buildings, and provides for enforcement of standards and processes by permit authorities.

Local government remains the permit authority for most buildings and incidental structures under the Act. However, the State is also made a permit authority with jurisdiction across Western Australia. Provision is made for permit authorities that may need to become special permit authorities where necessary under the Act.

The Act replaces Parts VIII, IX and XV of the *Local Government (Miscellaneous Provisions) Act 1960* that deal with:

- private swimming pool safety barriers;
- smoke alarm installation into existing dwellings;
- the setting of building standards;
- licences for the erection, modification or demolition of buildings and other structures;
- enforcement of building control;
- the accreditation of building surveyors; and
- the *Building Regulations 1989*.

This document is intended to provide standard answers to commonly asked questions raised in relation to the *Building Act 2011*, the *Building Regulations 2012* and associated building services legislation. It is intended to be a living document and will continue to be updated with frequently asked questions as they arise.

This document is available on the Building Commission website.

The Act and Regulations can be downloaded from the State Law Publisher's website www.slp.wa.gov.au. Guidelines and further information is also available from the Building Commission website at www.buildingcommission.wa.gov.au.

Disclaimer

The material contained is provided as information and advice in good faith and is derived from sources believed to be reliable and accurate at the time of publication.

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1. Building and Demolition permits

1.1 Applications

Q Does an application for a Class 1b building need to be certified or uncertified application?

A The *Building Regulations 2012* prescribe uncertified applications may only be lodged for Class 1a and 10 buildings only, therefore an application for a building permit for a Class 1b must be a certified application.

Q How many copies of plans need to be submitted for uncertified and certified applications?

A Two sets of plans should accompany a certified or uncertified application for a building permit.

Q Do uncertified applications require all the other approvals prior to being lodged and will they be processed similarly to the previous approval system?

A An uncertified application will not need all relevant prescribed authorities to be obtained prior to lodging the application with the permit authority. The permit authority must be satisfied that all relevant prescribed authorities have been obtained prior to granting a building permit. However it is recommended, if feasible, applicants obtain the approvals required prior to applying to ensure their application is dealt with more expediently.

Q Can more than one structure be included on an application for a building permit? For example a new residence, a swimming pool and a shed.

A Multiple structures on one application are allowed.

Q Will there be the ability under the new system for an application to be made for a building permit without a building contractor being named on the application? If a permit is then issued at a later date, can the applicant advise the permit authority of the builder who has been appointed?

A A permit authority cannot issue a building permit without naming the builder. There are three pathways for this situation below—

The owner engages the local government to provide a commercial certification service (i.e. not regulated under the *Building Act 2011*). The owner steadily provides information to the local government as it becomes available. When all information, approvals and certifications are complete the local government generates a certified application on behalf of the owner and then processes it as the permit authority.

The owner engages a private sector certification service and steadily provides information to the private provider as it becomes available. When all information, approvals and certifications are complete the private provider generates a certified application on behalf of the owner and submits it to the permit authority for processing.

The owner submits an incomplete uncertified application to the local government as permit authority. Sensibly, this should be done with the knowledge and agreement of the local government, so that the local government knows that missing information will be made available when it becomes available. The owner must understand that if the missing information is not made available the local government may reject the application outright, or make a formal request for the information and extend the processing time accordingly.

The best way for an owner (or a builder such as a project home builder who is responsible for submitting the permit application) to get processing started when all information or approvals are not available is to use option 1 or 2. This lets certifications and other work start without the risk of the local government using its powers to require the missing information, or just rejecting the application. As always, the key to a smooth and flexible process is to talk to the local government first.

1.1.1 Fees

Q Why does the permit authority still get a fee to process permits?

A The fee covers the permit authority's costs in assessing, granting and enforcing permits.

Q Can the permit authority retain the \$5.00 (including GST) when refunding the Building Services Levy when an application has been refused?

A The Building Services Levy Fee is collected by the permit authority when an application is lodged. If the application is refused, the levy must be refunded. There is currently no provision under the *Building Services (Complaint Resolution and Administration) Regulations 2011* for a permit authority to retain the \$5.00 collection fee.

Q Are the new *Building Act 2011* fees inclusive of GST?

A The new fees have been adjusted to include the GST component of the estimated value of the building work – eg the estimated value of the building work for uncertified class 1 & 10 buildings from 2 April 2012 will be calculated against 0.32%. Under the old fees the same buildings would be calculated against 0.35% of 10/11 of the estimated value of the building work. So from 2 April 2012 there will be no need to consider GST anymore when calculating because the fees have been adjusted down accordingly.

Q What will the building permit application fee be now that the *Building Act 2011* has commenced?

A The application fees for a building permit application are prescribed under the ***Building Regulations 2012, Division 1 of Schedule 2 – Fees.***

Please note that the fee for a certified application is less than that for an uncertified application. This is because the permit authority is not required to refer a certified application to a building surveyor for a certificate of design compliance.

Q Can local government charge for certification services?

A Yes, local governments can charge for certification services (certificates of: design compliance; construction compliance; & building compliance) under the *Building Act 2011* for all classes of buildings. In particular, certificates of design compliance may be issued by the local government for proposed building work for the purpose of accompanying a certified application for a building permit.

However, for an uncertified application the local government must provide the certificate of design compliance as part of its responsibility under section 17 and in these circumstances the local government cannot charge more than the prescribed building permit application fee.

In addition, a permit authority cannot charge more than the prescribed application fee if under transitional regulation 30 of the *Building Regulations 2012*, a building license application was not decided prior to commencement day for the *Building Act 2011* (2 April 2012). In such situations, the application is taken to be an uncertified building permit application and as such, the permit authority must provide a certificate of design compliance at no extra cost.

Q If the building services levy has already been paid in relation to a building permit application which is not determined by 2 April 2012, will an additional levy be payable?

A While the building services levy is normally paid after a building licence is issued (prior to 2 April) or a building permit is granted (from 2 April), if the levy (\$41.50) has been paid prior to commencement, no further levy is payable after commencement or once a building permit is granted. If the levy has not been paid prior to commencement, it must be paid after a building permit is granted – however under transitional regulation 26 of the *Building Services (Complaint Resolution and Administration) Regulations 2011*, it must only be paid at the flat fee of \$41.50.

1.1.2 Timeframes

Q How will the new system be quicker when the issue/s lie with the Planning Department?

A The *Building Act 2011* is intended to speed up the time taken for building approvals. Where planning approvals are likely to delay the application, applicants are encouraged to deal with these approvals prior to applying for a building permit. There is parallel but separate ongoing state government reform intended to reduce the time taken for planning approvals.

Q If a permit is not issued within the required time-frame what are the consequences to the permit authority?

A Under section 23(3) of the *Building Act 2011*, if a permit authority has not made a decision within the required time frame, the application is deemed refused and the permit authority must refund the application fee and the Building Services Levy to the applicant.

However, if the reason the permit authority has not made a decision within the time frame due is that information was not supplied by the applicant on request for further information under section 18 of the Act (the time cannot be more than 21 days), the permit authority can retain the application fee.

Q The timeframe that a permit authority has to consider applications is measured by business days which exclude weekends and public holidays. Does this include local government holidays?

A Public holidays are declared under the *Public and Bank Holidays Act 1972*, and local government holidays are not included.

Q Is the 21 days for the submission of further information by an applicant calendar or business days?

A Section 18 of the *Building Act 2011* enables a permit authority to require an application for a building or demolition permit to give the authority, within a specified time of not more than 21 calendar days, further information that the authority requires to determine the application.

Q For applications received prior to 2 April 2012 but not determined until after 2 April 2012, if the building works are to affect other land then will the written consent of the adjoining owner be required prior to the permit authority determining the application?

A Yes, in order to grant a building permit, under the transitional provisions of section 178(4) of the *Building Act 2011*, the permit authority must be satisfied that the requirements of section 20 of the Act are met including:

20 (1) (g) – if a part of a building or incidental structure is proposed to be placed beyond the boundaries of the land on which the building work is proposed to be done, that there is compliance with section 76; and

20 (1) (h) – if the building work may adversely affect land beyond the boundaries of the land on which the work is proposed to be done, that there is compliance with section 77.

1.1.3 Other Authorities Consent and Approvals

Q Do I have to notify the Water Corporation of my intention to do building work before submitting an application for a building permit?

A You must notify the Water Corporation of your intention to do building work before getting a building permit. Evidence of this notification need not be submitted with an application for a building permit, but must be submitted or the permit authority must otherwise be satisfied that a notification has been given before the permit authority can grant the building permit.

Q Do I have to get Water Corporation consent or approval before submitting an application for a building permit?

A You only need to get Water Corporation consent before getting a building permit when you propose to build over a water main or sewer. Evidence of this approval must be submitted with a certified application for a building permit. Evidence of this consent need not be submitted with an uncertified application for a building permit, but must be provided to the permit authority before the permit authority can issue the building permit.

If you do not know whether your building will be placed over a water main or sewer, the best way to confirm this is to notify the Water Corporation of your intention to do building work.

Q Is it mandatory for all plans and specifications to be referred to FESA prior to lodgement of a building permit application with the permit authority?

A Regulation 17(e) of the *Building Regulations 2012* provides that a certificate of design compliance must contain, for Class 2-9 buildings, a statement that FESA has been given plans and specifications in sufficient detail to allow assessment of compliance with FESA operational requirements at least 15 business days prior to signing the certificate and that FESA has been advised of any decision not to follow any advice provided by it.

In addition, regulation 18(4) requires that, prior to the grant of a building permit, the applicant must deposit with FESA the plans and specifications specified in the applicable certificate of design compliance.

Q When do I need to submit plans to FESA for assessment?

A For the purposes of signing a Certificate of Design Compliance, all BCA class 2 to class 9 buildings require the submission of plans to FESA. Under regulation 17(e) of the *Building Regulations 2012*, the building surveyor must give FESA plans and specifications in sufficient detail to allow assessment of compliance with FESA operational requirements a minimum of 15 business days prior to signing a certificate of design compliance. However it is expected the building surveyor will consider the complexity of the work and where appropriate submit plans to FESA well in advance of the 15 business days. Please note where an alternative solution is proposed through a fire engineered report, consultation with FESA may be required at an early stage of the design including the submission of a Fire Engineering Brief.

The applicant will also need to ensure that prior to the grant of a building permit by the permit authority, the plans and specifications that have been specified on the signed certificate of design compliance (in respect of a Class 2 to Class 9 building) for the grant of a building permit application have been deposited to FESA.

Q Is it the responsibility of the registered building surveyor or the local government permit authority to check that all relevant authorisations have been obtained under Regulation 18(2)?

A Regulation 17(d) of the *Building Regulations 2012* requires the registered building surveyor to certify on the certificate of design compliance that the proposed building will comply with any relevant authority approval which has been obtained, including a development approval. The building surveyor is not required to obtain the approvals or even know that the project needs an approval. The responsibility for obtaining the approvals rests with the applicant (may be the developer) and if no such approvals are obtained if required, the permit authority must not grant the building permit under section 20(1)(n) of the *Building Act 2011*. Regulation 18(2) prescribes the specific authorities that must be in place if relevant.

Under s20(1)(o) of the Act, the permit authority is required to ensure that the application complies with the authorities listed under 20(1)(n) if relevant. In other words, unlike building standards, in relation to prescribed authorities, the permit authority needs to form its own opinion on whether compliance has been achieved.

Permit authorities may refer to s20(1)(a) to (s) as a check list to tick off compliance section by section before granting the permit.

1.1.4 Logos

Q Can the permit authority include their logo on forms and permits?

A The *Building Act 2011* states that ‘an application must be made in a manner and form approved by the Building Commissioner’. The intent of the Act is to have standard forms used across the state. This provides certainty for industry that they have a common form that can be lodged anywhere in the state.

In relation to logos on forms, the Building Commission position is that any permits (e.g. the building permit) that the permit authority issues can have a logo but forms lodged with the permit authority (e.g. the application forms) should remain generic without a logo.

The application forms are available on the Building Commission website for download. By using these forms, an applicant can ensure that it is always the correct, current approved form.

The Building Commission recommends adding a link from the permit authority website to the Building Commission website for the application forms.

1.1.5 Signatures

Q Do you need the signature of the owner on the application form?

A EACH owner must sign the application form. This is to ensure that ALL owners know what is happening to their land. Owners can authorise someone else to sign on their behalf if they have the legal authority to do so. The person who is authorised to sign on behalf of the owner must provide evidence of the legal authorisation. The permit authority will determine what evidence it requires.

Q Can electronic signatures be used?

A Yes, electronic signatures can be used on digital (soft copy) forms in line with the *Electronic Transactions Act 2011*. Part 2, section 10 of this act refers specifically to electronic signatures.

Q Can a building permit application be signed by future owners before a certificate of title is issued?

A Regulation 10(1) of the *Building Regulations 2012* prescribes certain interests in land for the purposes of defining owner in relation to freehold land. The interest prescribed in paragraph (b) enables prospective owners who have signed a contract to purchase the land, but may not yet be named on the certificate of title, to be taken to be the owners.

1.2 Permits

Q What is the process for obtaining a building permit?

A A building or occupancy permit must normally be granted by the relevant permit authority within the timeframes relevant to the particular application process (certified or uncertified). If the permit is not granted within the prescribed timeframe, it is deemed refused and an immediate right of review arises through the State Administrative Tribunal (SAT).

The *Building Act 2011* and the *Building Regulations 2012* set out what information is required at the point of lodging the application to ensure that the permit can be granted within the relevant timeframe. If one of these requirements has not been fulfilled, for example a policy of home indemnity insurance has not been provided, the application for a building permit can be refused.

Refer to the relevant 'Guide to lodging a building permit application' for details on the information required to lodge an application.

Q Who receives copies of the actual Building Permit?

A The permit document must be issued by the permit authority to the builder, each owner of the land and the applicant, if different from the owner or builder.

Q Does a permit authority need to have a registered building surveyor grant the building or demolition permit?

A No, not legally. Any employee of the permit authority who has delegated power in accordance with section 127 of the Act can grant the permit on behalf of the permit authority. However, it would be reasonable to expect that the permit authority would delegate this duty to an employee who has a sufficient level of experience to be able to confidently sign off the permit.

Q Can a registered building surveyor within a permit authority sign the certificate of design compliance and grant the associated building permit?

A Yes, if the building surveyor is registered and therefore appropriately qualified to sign a certificate of design compliance and has been given delegation to grant the building permit.

Q What happens after a building permit has been deemed refused? eg if an uncertified application is not decided within the prescribed time frame – will the applicant be required to submit a new application?

A Under section 23(3) of the *Building Act 2011*, if a permit authority has not made a decision within the required time frame, the application is deemed refused and the permit authority must refund the application fee to the applicant.

However section 23(6) of the *Building Act 2011* does allow a permit authority to continue to deal with an application after the required time frame and decide whether or not to grant a building permit.

Whether the permit authority requires a new application or continues to deal with the existing application will depend on the circumstances of each application and the policy of the permit authority.

Q Can a building permit be granted to any person?

A A permit authority may grant a building permit to the person who is named and has signed the application as being the builder of the proposed work. The permit authority must first be satisfied, among other things, that the builder is a registered 'building service contractor', or an approved owner-builder, or a person prescribed who may be named on the building permit as the builder under the *Building Services (Registration) Act 2011*.

Q What are the requirements for dealing with variations after the building permit has been granted?

A A guidance note to provide information on the requirements for variations made after a building permit has been granted is currently in development and will be placed on the Building Commission website.

Q The *Building Regulations 2012* sets out what works require a building permit and what works are exempt. My clients are mostly retail and their works often involve the refurbishment and or minor internal alterations to existing tenancies. I am seeking an interpretation on the wording in schedule 4.

A The starting point is that building work as defined in the *Building Act 2011* section 3, includes alternations, additions and so requires a building permit pursuant to section 9, unless the applicant can demonstrate to the permit authority that a permit may not be required pursuant to the exemptions in Schedule 4 Clause 2 Item 2 of the *Building Regulations 2012*. It is the decision of the permit authority whether or not a permit is required.

As this is a matter of interpretation of the Regulations, if in doubt you should liaise on a case by case basis with the relevant permit authority, which is responsible for ensuring compliance with the requirement to obtain a building permit and may prosecute under Part 8 of the Act in cases where it considers a building permit should have been obtained.

Q Is a building permit required for partition alterations (such as an office or shop fit out)?

A The starting point is that building work as defined in the *Building Act 2011* section 3, includes alterations, additions and so requires a building permit pursuant to section 9, unless the applicant can demonstrate to the permit authority that a permit may not be required pursuant to the exemptions in Schedule 4 Clause 2 Item 2 of the *Building Regulations 2012*.

As this is a matter of interpretation of the Regulations, if in doubt it is suggested you liaise on a case by case basis with the relevant permit authority, which has the power to make the call or to prosecute under Part 8, as the case may be.

The permit authority would need to consider whether the particular refurbishment or fit-out needs a permit or alternatively meets the exemption criteria under item 2 of Clause 2 of Schedule 4 of the Regulations. For instance, the criteria in paragraphs (d) and (e) may not be met if say, a fit out adversely affected the distance and coverage of fire hydrants or the distance to exits, so a permit would be required to ensure such matters were addressed.

1.3 Certificate of Design Compliance

Q Is there a time limit on the Certificate of Design Compliance?

A It should be issued a short time before the application for a building permit. However, there is a notional time limit of up to a year, as the Certificate of Design Compliance shows compliance with the Building Code of Australia, which changes annually.

Q Does the same design (eg a project home) need to be certified every time?

A Yes, the certification must be current and may apply to the same design but the properties will be different in every case - but it can be less complex as it will have the same or similar plans. If you use the same registered building surveyor, then they will have knowledge of the design and can easily approve most of the plans, and only concentrate on the changes.

Q Can you get a certificate of design compliance from a Local Government that isn't in the area you are building in?

A Yes. Any registered building surveyor can sign a Certificate of Design Compliance. However, the application for the permit must be lodged with the permit authority (local government) whose area you are building in.

Q Who can sign a certificate of design compliance?

A A Certificate of Design Compliance can be signed by a registered building surveyor who may be privately employed or employed by a permit authority. The Certificate of Design Compliance can be issued by a registered building service contractor or by a permit authority. The fees charged by building surveyors are not regulated, so costs are market driven.

Q Can a certificate of design/construction/building compliance be used to confirm compliance with buildings/incidental structures not classified under the BCA?

A No – Only buildings classified under the BCA can be assessed using these certificates.

Q Is it possible for a permit authority (local government) to use an external agent to provide Certificates of Design Compliance for uncertified applications that are received?

A Certificates of Design Compliance may be signed by a private of local government registered building surveying practitioner. Provided that such external agent is a registered building surveying practitioner, he/she can sign the certificates for a local government.

Q Under the *Building Act 2011* will an external agent be able to issue the building permit on behalf of the local government?

A Under the *Building Act 2011* section 127(3), only a person employed by the local government under the *Local Government Act 1995* section 5.36 can be delegated a local government's powers or duties as a permit authority, these powers include granting a building permit. That person can be anyone that the local government permit authority considers suitable. That person does not have to be a registered building surveyor.

Q What happens if a permit authority sees an 'error' in the Certificate of Design Compliance?

A The *Building Act 2011* does not create a duty for a permit authority to check the accuracy of a Certificate of Design Compliance. However, under section 22 (1) a permit authority may refuse to grant a building permit applied for if it appears there is an error in the information provided in the application or in a document that accompanies the application.

It is recommended that, in the first instance, the permit authority should talk to the registered building surveyor to discuss this matter and arrange for any required changes to be made. If no solution is reached, the permit authority may ask the Building Commission to make an evaluation, however this is not binding.

If a permit authority decides to refuse the application, it must record its decision and advise the applicant in writing of the decision, the reasons for it and the applicant's right of review on this decision to the State Administrative Tribunal.

Q Do approved plans, certified and uncertified, need to be stamped?

A There is no formal requirement to stamp approved plans, whether certified or uncertified. The Building Commission expects that the certification refers to the approved plans and that the permit authority will be able to identify the approved plans. If stamping assists with identifying the approved plans then that is the call of the permit authority.

Q Is there a mechanism that certifiers need to be aware of if there is no comment received from FESA within 15 business days?

A The information guides will encourage practitioners to liaise with FESA as early as possible, particularly on complex projects.

Q Can we issue our Certificate of Design Compliance at this point and apply for a building permit?

A Yes, certification can proceed and a permit can be issued without comments being received from FESA. Once comments are received the certifier can ensure the certificate of design is current.

Q Have there been some parameters considered for projects of a certain size and or value that do not require FESA review, and if not does FESA have the capacity to deal with all the projects undertaken?

A FESA has indicated that it will continue to receive plans and specifications for proposed building work under 500 square metres in floor area and not comment on these buildings so that FESA can advise on buildings greater than 500 square metres in floor area, which it believes it has capacity to deliver.

Q Are there going to be “technical certificates”?

With the commencement of the *Building Act 2011* there will not be any technical certificates to be signed by a “specialist”. The term specialist is defined in the Act. It means an individual who belongs to a class of persons prescribed as persons who can sign the technical certificates for the purposes of the Act. There are currently no specialists prescribed under the *Building Regulations 2012*.

Q The *Building Act 2011* now covers all work and provides that the Certificate of Design Compliance must be issued by a person who is not associated with the building owner. Does this mean that a building development proposed by a local government will no longer be able to be certified by the Local Government building surveyor?

A Section 20 requires that a permit authority must be satisfied that...

‘that the building surveyor who signed the certificate of design complianceis an independent building surveyor in relation to the application (s.20 (1) (d) (ii)’

Section 4 of the Act gives a definition for ‘meaning of independent building surveyor’ –

- S.4 (2) (a) ‘A building surveyor is neither an owner of the land on which the building or incidental structure that is the subject of the application is, or is proposed to be, located, nor an employee of an owner of the land; and
- S.4 (2) (b) ‘the building surveyor is neither the person who proposes to be named as the builder or demolition contractor on the permit, nor an employee of that person.

Therefore, a building owned by the local government cannot be certified by its own building surveyor but will need to be certified by a building surveyor external to the local government. The Act makes no similar statement about independence in relation to the issue of a building permit so a local government can issue the building permit for a building that it owns.

1.4 Planning

Q Who is responsible for checking planning requirements?

A It is legally up to the permit authority to check that any required planning approval has been given - whether this has been obtained by the applicant prior to lodging an application or is checked by the permit authority via the relevant planning department. Currently, there are two processes:

If the application is subject to a full development approval, this will occur early in the approval or project process. It is likely that the development approval will be processed long before an application for a building approval is submitted. The registered building surveyor will sign the certificate of design compliance stating that the plans are consistent with the development approval requirements

If the application is subject to R-Code compliance the registered building surveyor will sign the certificate of design compliance confirming that if built in accordance with the plans and specifications, the building will comply with each authority that applies (including the planning department).

Q Do planning issues have to be addressed for both certified and uncertified applications prior to their lodgement?

A The *Building Regulations 2012* allow for concurrent assessment of planning applications and uncertified applications. Certified applications must have planning issues addressed and any necessary development approval obtained prior to lodgement of the building permit application. If an applicant wants to take full advantage of the reduced approval time lines, it is recommended they deal with the development approval prior to lodging a building permit application, regardless of whether it is a certified or uncertified application.

1.5 Notice of Completion

Q Is the Notice of Completion the same as practical completion?

A No, they are not connected. In practice they may be linked as the builder may use the practical completion date as the point at which the building is complete, but this is not a requirement.

Q Can the permit authority still get the builder to rectify any non-compliant work after they have submitted the Notice of Completion?

A Yes. The permit authority has powers under Part 8 (Enforcement) of the *Building Act 2011* to deal with non-compliant building work, including the use of building orders.

Q If a building licence has been issued prior to 2 April 2012 and the building work is completed after this date, will the notice of completion requirement apply to these developments?

A Regardless of the fact that the building licence is issued prior to commencement of *the Building Act 2011*, if the building work is completed after 2 April 2012, the builder needs to comply with section 33 and provide a Notice of Completion.

1.6 Notice of Cessation

Q Can an owner ask the builder to cease work and can they submit a notice of cessation?

A Any issue about the owner wanting another builder is between the builder and owner. A Notice of Cessation can only be submitted by the builder.

1.7 Inspections

Q Can permit authorities demand inspections on a permit?

A No. Mandatory inspections cannot be a condition of a permit. A permit authority has powers to inspect any site at any time as part of its enforcement role.

Q What is a mandatory inspection?

A Regulation 27 of the *Building Regulations 2012* prescribes mandatory tests which must, if relevant be conducted in relation to Class 2-9 buildings. As these tests are mandatory, the Certificate of Design Compliance does not need to list them; it is the responsibility of the builder to determine who should carry out these tests and to arrange for the tests to be done. The Regulations indicate when the test should be done.

An inspection certificate, containing details set out in the Regulations, must be provided to the relevant builder.

The permit authority can inspect any building or structure at any time as part of its enforcement role.

Q Can a permit authority specify as a condition of the permit that inspections are conducted at various stages in the construction?

A No.

1.8 Conditions

Q Can conditions be placed on a building or demolition permit?

A Yes, the permit authority may impose conditions on the granting of the permit regarding the work to which the permit applies rather to work of that kind generally but in doing so, cannot modify the certificate of design compliance or the plans or specifications that are specified in that certificate. Conditions cannot include a requirement for inspections or tests and cannot include a generic list of inspections or tests – conditions must be specific to the particular building.

1.9 Transitional arrangements for applications and permits

Q How is an application for a building licence made, but not yet decided on before commencement day (2 April 2012), to be dealt with by the permit authority?

A Section 178(4) of the Act deals with existing building licence applications, which have not been decided by a local government by commencement day for the *Building Act 2011*, and regulation 30(1) of the *Building Regulations 2012* clarifies that such applications are to be treated as if they were uncertified applications under section 17 of the Act. It will be the responsibility of the permit authority to organise for a Certificate of Design Compliance to be signed by a registered building surveyor. Time frames to the application will be those for an uncertified application, ie 25 business days from the commencement day – 2 April 2012. The permit authority will then decide whether or not to grant a building permit.

Q Does an application for a building licence not finalised at commencement have to comply with all the Act's requirements?

A The Building Commission has been advised that under section 178(4) of the *Building Act 2011* a building licence application that was lodged but not finalised by commencement (2 April 2012) must comply with the requirements of the Act and the Building Regulations 2012, including the requirement in regulation 16(3) for evidence of consents and/or court orders for encroachments and work affecting other land.

The *Building Regulations 2012* cannot be inconsistent with or override the Act, so the Regulations cannot say that such applications are deemed to have met the requirements of section 16 (making a building permit application). However regulation 30 was inserted to provide for a transitional arrangement whereby the permit authority must treat such applications as if they were uncertified applications. So the permit authority must provide at no extra cost a Certificate of Design Compliance and have 25 business days from the day after commencement day (2 April 2012) to decide the application.

As with any application, the permit authority may request further information under section 18 of the Act, such as evidence of consent and/or court order for any encroachment or adverse affect on other land. And if such information is provided in the time specified in the request, under section 23(1)(b), the permit authority has a further 25 business days starting from the day after the further information is provided to decide the application.

Q Can additional fees be charged to the applicant for the issue of a certificate of design compliance by the permit authority where fees have been paid upon lodgement for a building licence application prior to 2 April 2012?

A There can be no additional charges to the client for the issue of the certificate of design compliance in respect of meeting the transitional arrangements.

Q What happens to my previously issued building licence?

A A building licence will automatically be taken to be a building permit on commencement of the *Building Act 2011*. There is no need to reapply for a permit to continue building work.

Q If a building licence was in effect prior to 2nd April 2012 but completion is after 2nd April 2012, is a Notice of Completion required, and is the Occupancy Permit application process applicable?

A If a project stretches over the commencement date, it will have to adhere to the new requirements as the Act is now in operation. In this case the builder will need to provide a Notice of Completion to the permit authority (the local government that approved the building licence) and an occupancy permit issued if the building is a BCA class 2 to 9 (commercial or apartment block).

Normally an application for an occupancy permit for a completed building requires a certificate of construction compliance to state that the building has been completed in accordance with the plans and specifications that are specified in the applicable certificate of design compliance. However, as the project in question has no certificate of design compliance, it would be appropriate for the certificate of construction compliance to refer to the plans and specifications (including any variations during construction which accompanied the most up-to-date building licence).

Q If a building licence application for a commercial building was lodged, but not decided before the *Building Act 2011* commenced, and a building permit was subsequently granted under the new Act, do I need to get an Occupancy Permit?

A Yes, any Class 2 – 9 building that is completed after commencement will need to get an Occupancy Permit.

Q If a building licence and a certificate of classification is issued before the *Building Act 2011* commenced, do I need to get an Occupancy Permit?

A No, a certificate of classification issued prior to commencement of the *Building Act 2011* is taken to be an Occupancy Permit.

2. Registered Building Surveyors

Q Will there be a register of registered building surveyors, showing their practising level of registration?

A Yes, a register of Building Service Providers, including builders, painters and building surveyors is available on the Building Commission's website.

Q How will registered building surveyors be audited?

A The Building Commission has a role to investigate the conduct of registered building service providers and may refer matters to the Building Services Board recommending disciplinary action.

Q Will the fees charged by registered building surveyors for services be regulated?

A No, the price charged will be market driven.

Q How does someone become a registered building surveyor?

A A building surveyor who is currently accredited as a Level 1, Level 2 or a Building Surveying Technician will automatically be taken to be registered as a 'Building Surveying Practitioner' under the *Building Services (Registration) Act 2011* as from 2 April 2012.

Building Surveyors who wish to contract with others to provide certification and other services under the *Building Act 2011* must apply for registration as a 'Building Surveying Contractor'.

Further information and application forms are available.

Q Are registered building surveyors required to obtain Continuing Professional Development (CPD) points to renew registration on 1 Feb 2013?

A No, the Building Commission is not proposing to introduce compulsory CPD requirements for building surveyors. The same applies in relation to builders and painters. The introduction of CPD requirements in Western Australia would require extensive consultation with industry prior to any recommendations to amend the *Building Services (Registration) Regulations 2011*.

Q Will local governments automatically be a registered Building Surveying Contractor under the *Building Services (registration) Act 2011* as of 2 April 2012 OR do they have to wait for a number to issue certificates of compliance?

A Local governments are exempt under section 7(2)(b) of the Building Services (Registration) Act 2011 from the requirement to be a registered building surveying contractor. Therefore local governments that issue compliance certificates in relation to uncertified applications or choose to provide a compliance certification service are not required to be registered as contractors.

Q If a certifier wants to request an inspection, where on the Certificate of Design Compliance can this be requested?

A A registered building surveyor cannot request inspections on the Certificate of Design Compliance as the regulations do not prescribe any inspections under s36(2)(b). However the building permit should list the necessary optional tests required for Class 2 to Class 9 buildings under regulations 27 and 28 of the *Building Regulations 2012*.

If the registered building surveyor seeks particular work to be inspected, he/she may request that the builder arranges such an inspection. This would be done outside the requirements in the Regulations.

Q Alternative solutions - can the registered building surveyor certify an alternative solution?

A The registered building surveyor signing a Certificate of Design Compliance, must be satisfied that any proposed building complies with the applicable building standards.

The Building Commission expects that every registered building surveyor when signing such certificates is aware of his or her level of competence and expertise and will not under any circumstances sign a certificate where the building surveyor is not certain of compliance with the applicable building standards.

Determining compliance with alternative solutions can be particularly complex and in most cases will require extensive input from people with expertise beyond that of a competent registered building surveyor. The normal training provided as part of building surveying courses does not provide in sufficient detail the competencies required for determining alternative solutions involving complex fields such as fire safety.

The Building Commission expects that registered building surveyors will consult with experts such as fire safety engineers and others to assess compliance of alternative building solutions with the applicable building standards.

3. Registered Builders

Q When is a registered builder required to carry out building work under a building permit?

A A registered builder (or approval as an owner builder) is required to carry out the building work under a building permit when the:

- building work value is over \$20,000;
- building work is not on an “incidental structure” as defined in clause 3 of the *Building Act 2011* (i.e. swimming pool, mast, fence, chimney, protection structure); and
- building work is within an area of the State referred to in the Regulations under the *Building Services (Registration) Act 2011*(the current geographical locations continue);

Builders’ registration is not required for the following types of work:

- farm buildings;
- greenhouse structures used for agricultural purposes or constructed on land used primarily for agricultural purposes;
- the production of prefabricated/transportable buildings (also known as kit homes) in a manufacturing yard;
- formation of parking areas;
- formation of tennis courts including associated fencing and lighting;
- the construction of walkways, viewing and gathering platforms; and
- water tanks, unless incorporated in the structure of a building.

Q Why is there now registration as a contractor and a practitioner?

A A contractor must satisfy the Building Services Board that they have the necessary financial standing to operate a business.

A practitioner (individual) will not need to demonstrate that they satisfy financial requirements and as an individual will be able to work as an employee rather than an employer/ business owner. A practitioner is an individual who can demonstrate that they are qualified and experienced in building and construction.

Contractors must employ at least one registered practitioner as a nominated supervisor.

Q Can a registered “practitioner” be named as builder on a building permit (i.e. be granted the building permit?)

A No. Only a registered building “contractor” or approved owner-builder can be named as builder on a building permit and be granted the building permit, unless the proposed work is not “builder-work” as defined by the *Building Services (Registration) Regulations 2012, 13(1)* in which case any person can be named.

4. Applications for Occupancy Permits and Building Approval Certificates

Q Which Building Codes / standards will existing buildings requiring a Building Approval Certificate / Occupancy Permit need to comply with?

A For an existing building whose construction was authorised under the laws of the time, the building standards will be those that applied at the time of construction. The building surveyor in giving the certificate of building compliance is confirming that there have been no obvious departures from the original building permit and that the building is safe to occupy.

For an existing but unauthorised building, or for a change of use or classification, building standards will be prescribed under Part 3 of the *Building Act 2011* for existing buildings. Health and safety standards for existing buildings will be comparable to those prescribed in the Building Code of Australia (BCA) for new buildings. Performance standards in the BCA make it possible to check that an existing building performs to current health and safety standards when it does not comply with current deemed-to-satisfy requirements. In giving the certificate of building compliance, the building surveyor is confirming that the building will perform to the level set by the building standards for the proposed use and is safe to occupy.

4.1 Grant of an occupancy permit, building approval certificate

Q Does a Class 1 or Class 10 building require an occupancy permit?

A No.

Q What happens if local government is dealing with a current Form 7 application but has not issued the Form 7 by the time the *Building Act 2011* commenced on 2 April? Will the person have to start again (that is apply for either an Occupancy Permit – Strata or a Building Approval Certificate – Strata plus arrange for a Certificate of Building Compliance) or can Landgate accept a Form 7 after the 2 April 2012 if the application was lodged prior to this date?

A There are transitional provisions for strata applications in the *Building Act 2011*. Section 174 and the related Part VIII on page 127 of Act. Section 174 introduces sections 133 to 136, which are transitional provisions for strata applications made under the current Strata Act but not issued by the local government before commencement day of the *Building Act 2011*. These sections state that these applications are to be dealt with as if the amendments to the Strata Act had not been made, therefore these applications are to be dealt with under the current provisions (and issue a Form 7). There is no need to arrange for a Certificate of Building Compliance for these applications.

For applications made after the 2 April 2012, it must be dealt with under the new provisions and will require either an Occupancy Permit – Strata or a Building Approval Certificate - Strata.

4.2 Building Services Levy

Q Is the Building Services Levy payable on an occupancy permit as well as the building permit?

A Yes, a flat rate \$40.50 is payable on occupancy permits for authorised class 2 – 9 buildings (commercial) under section 47, 49, 50 or 52 of the *Building Act 2011*. However for an occupancy permit or building approval certificate for unauthorised work under section 51 of the Act, a building services levy of \$91.00 applies if the value of the work is under \$45,000, or otherwise a rate of 0.18% of the value of the work.

5. Work Affecting Other Land

Q When should a permit authority require evidence of a neighbour consent to Work Affecting Other Land?

A Evidence is required when work shown on plans and specifications submitted with an application for a building permit shows one of the following:

- Work that will encroach over the boundary.
- Protection work or structures to be placed on the neighbours land.
- Work which will permanently adversely affect the bearing capacity or the site drainage. This is not always obvious and applies in most cases to boundary retaining walls. If such a wall is shown, the applicant may consider having the building surveyor certify on the certificate of design compliance that the wall will not adversely affect the bearing capacity or the site drainage, or provide an engineer's certificate to the same effect. Otherwise the permit authority is entitled to ask for further information to satisfy it that the wall will not adversely affect the bearing capacity or site drainage, or else must carry out its own assessment to demonstrate that the wall will adversely affect the bearing capacity or site drainage before it rejects the application.

Q Is there a guide on technical impacts that will be determined as Work Affecting Other Land?

A The Notice and Request for Consent to Work Affecting Other Land must be accompanied by the plans and specifications showing details of how the notifiable event will affect the land, as well as any technical certificates that are relevant to the notifiable event.

A notifiable event is defined as any of the following:

- a part of a building or structure is placed into, onto or over land beyond the boundaries of the works land;
- land beyond the boundaries of the works land is adversely affected;
- a protection structure is placed into or onto land beyond the boundaries of the works land;
- the structural, waterproofing, or noise insulation capacity of a party wall or a substantial dividing fence shared with the works land, or a boundary retaining wall that protects land beyond the boundaries of the works land, is affected;
- a fence, gate or other barrier to land on or beyond the boundaries of the works land is removed;
- in doing the work a person goes onto other land as defined in section 81(1) of the *Building Act 2011*.

Q Can a permit authority reject a building permit application that shows boundary walls where there is a slight difference in level between the floor on one side of the wall and the soil level on the other side ie the neighbour's side?

A The permit authority must consider whether a parapet wall built along a boundary will adversely affect other land or a building on other land. Minor variations in levels may be unlikely to have an adverse affect, however this is subject to specific conditions. A declaration from a suitably qualified structural engineer may provide certainty to owners or builders and may be relied upon by the permit authorities building surveyor when clarification is required.

Q How will the Work Affecting Other Land provision of the *Building Act 2011* impact on Dividing Fences issues?

A If carrying out building work that affects other land, or requiring access to a neighbours property, an owner or builder must give notice and obtain consent on Form BA 20 'Notice and Request for Consent to Work Affecting Other Land' available from the Building Commission website. This consent is required before application for a building permit or during construction.

If seeking to replace a damaged fence or seeking payment from neighbours for a new fence or repair to a fence, the *Dividing Fence Act 1961* applies. However consent for access is still required, if consent is not provided then this would become a civil matter

In some circumstances both Acts may apply, eg where access to the neighbours' land is required to repair or install a fence or retaining wall.

Q What is the formal role of Local Councils' in this process?

A Local governments can enforce non compliance with these requirements. If no consent is obtained, calls should be directed to the relevant local government. A penalty of up to \$25,000 applies under the *Building Act 2011*.

If a neighbour is adversely affected by building work a complaint can be made to the Building Commission Complaints Branch. If a registered building service provider fails to comply with these requirements a disciplinary complaint can also be made against them.

Q Who will deal with enquiries regarding Work Affecting Other Land?

A Both the Building Commission and the relevant local government will be able to assist the general public and industry with enquiries about Work Affecting Other Land.

5.1 Consent or Court order

Q Who is responsible for gaining consent to Work Affecting Other Land?

A Evidence of any consent or court order authorising a proposed encroachment or adverse affect on other land must be attached to a building permit application. If the work on other land is an issue that arises during construction, then it is the responsibility of the builder to gain the consent. Examples of such work include work affecting party walls, fences being removed, access to other land and removal of unauthorised encroachments or protection structures.

Q Is the Crown bound and, in particular does the Crown need to obtain consent to access an adjoining property pursuant to Part 5 of the *Building Act 2011*?

A Refer to section 76(1) and section 81(2) of the *Building Act 2011*.

5.2 Encroachments

Q If encroachments are approved during the permit process, how will this be dealt with for future owners? Will it be registered under the titles of the property?

A As encroachments may not be permanent, the *Building Regulations 2012* do not require them to be entered on the certificate of title. An owner with a permanent encroachment may however choose for the encroachment to be entered on the title. Future owners and settlement agents should check the permit authority building records for existing encroachments when purchasing a property.

5.3 Fences

Q Will Local Government be required to deal with fencing disputes and is this not part of the dividing fences legislation?

A The *Building Act 2011* does not affect the operation of the *Dividing Fences Act 1961*.

6. Existing buildings

6.1 Enforcement

Q Who is responsible for compliance and enforcement?

A Builders are responsible for building in compliance with the plans and specifications specified in the applicable certificate of design compliance and the building permit, including each condition that applies to it and with the prescribed building standards. The permit authority is responsible for enforcement to ensure buildings comply with the building permit.

6.2 Transitional Provisions

Q In relation to a Building Order, how do sections 401, 402, etc of the *Local Government (Miscellaneous Provisions) Act 1960* transition under the *Building Act 2011*?

A Part 16 of the *Building Act 2011*, specifically sections 190 to 195 set out transitional arrangements which deal with a number of the repealed sections of the *Miscellaneous Provisions Act*.

7. Delegations and authorisations of permit authorities

7.1 Delegations

Q Under what circumstances is a local government required to delegate its powers or duties as a permit authority under the *Building Act 2011*?

A Section 127 of the *Building Act 2011* enables local governments to delegate any of its powers or duties as a permit authority under the Act. Under the Act section 127(3), such a delegation can only be made to an employee of the local government as per the *Local Government Act 1995* section 5.36.

The delegation must be in writing executed by or on behalf of the local government.

A delegate cannot sub-delegate the power or duty.

Delegates may perform permit authorities' powers and functions under *Building Act 2011* including the following:

- s. 20 – Grant of building permit
- s. 21 – Grant of demolition permit
- s. 24 – Notice of decision not to grant building or demolition permit
- s. 32 – Application to extend duration of building or demolition permit
- s. 58 – Grant of occupancy permit, building approval certificate
- s. 60 – Notice of decision not to grant occupancy permit or grant building approval certificate
- s. 65 – Extension of period of duration (of an occupancy permit or a building approval certificate)
- s. 110 – Building orders
- s. 111 – Notice of proposed building order other than building order (emergency)
- s. 117 – Revocation of building order
- s. 118 – Permit authority may give effect to building order if non-compliance
- s. 128 – Register of permits, building approval certificates, building orders
- s. 129 – Inspection, copies of permits, building approval certificates in register
- s.130 – Building records to be kept
- s. 131 – Inspection, copies of building records
- s. 132 – Provision of information to Building Commissioner
- s. 133 – Prosecutions

The proposed Delegations to Officers would be based on the local government's expectations of their skills and qualifications in order to be able to perform the required duties. A delegate does not need to be a registered building surveyor in order to be delegated to perform the above powers or duties.

Section 127(7) of the Act enables an officers or agent of a local government to perform a function of a permit authority under the Act. Such officer or agent does not have to be an employee of the local government.

7.2 Authorisations

Under section 96 of the *Building Act 2011*, permit authorities (local governments) may also designate employees as authorised persons for the purposes of the enforcement provisions in Part 8 of the *Building Act 2011*.

Under section 96(3) of the Act such an authorisation can only be made to an employee of the local government as per the *Local Government Act 1995* section 5.36.

Authorisations are needed to carry out enforcement activities under the following sections of the Act including:

- s.100 – Entry Powers
- s.101 – Powers after entry for compliance
- s.102 – Obtaining information and documents
- s.103 – Use of force and assistance
- s.106 – Entry warrant to enter place
- s.108 – effect of entry warrant
- s.109 – Execution of entry warrant.

8. General

Q Is the threshold for building work requiring a registered builder/owner-builder still \$20,000?

A Yes

Q How does the *Building Act 2011* change the building approval process?

A The *Building Act 2011* replaces much of the *Local Government (Miscellaneous Provisions) Act 1960*, and amends a range of associated acts introducing significant changes to the building approvals process, from the design stage right through to occupation of a building. Details are available in the guides available to download from www.buildingcommission.wa.gov.au/regulations/building-act-2011.

Q What are certification services and who can provide these services?

A A registered building surveyor is responsible for certifying the design of a new building to state it will meet the applicable building standards and for confirming that the building has been built in accordance with the specified plans and specifications. A registered building surveyor is also responsible for certifying that existing buildings meet the applicable building standards for temporary or permanent changes of use or classification, or when a building is being strata titled or retrospectively approved.

Certificate of Design Compliance

A certificate of design compliance is signed by a registered building surveyor to state that the building will comply with each applicable building standard when the building is completed in accordance with the specified plans and specifications. The certificate also states that the building will comply with any prescribed authorities (such as planning, health, construction over sewers, etc.) that have issued for the building.

Certificate of Construction Compliance

A certificate of construction compliance is signed by a registered building surveyor to state that building work has been completed in accordance with the specified plans and specifications and the building is suitable to be used.