



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

# Work affecting other land

a guide



**Building**  
**Commission**

# Contents

## Table of Contents

Introduction .....	3
What is 'work affecting other land'? .....	3
What is not 'work affecting other land'? .....	4
What should happen when work affects other land? .....	4
Notice and Request for Consent to Work affecting other land.....	5
How much time do I have to decide? .....	5
What if I don't give consent? .....	6
What happens after I give consent or a court order is made? .....	6
How will I know where the boundary line is?.....	6
What is the role of my local council?.....	6
Are you the person responsible for the work affecting other land?.....	7
What if work is already underway? .....	7
The process for requesting consent or a court order for work affecting other land .....	8
Example of the Consent form .....	9

### Disclaimer

The material contained in this booklet provides general guidance and information only and is current at time of printing. Readers should not act or omit to act solely on the basis of anything contained herein. In relation to a particular matter, you should seek appropriate professional advice.

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## Introduction

Building or associated works can adversely affect owners of adjoining land and result in ongoing disputes between neighbours and also leave builders and their workers unsure of their responsibilities.

New laws introduced in Western Australia under Part 6 of the *Building Act 2011* require those proposing to do building work that may affect adjoining land to obtain consent or a court order.

The Act reinforces the principle that a person's home is their castle and that other people must get permission to intrude.

Substantial fines may be imposed on those who do not adhere to these requirements and commence works that affect neighbours' land.

This booklet is intended as a guide both for owners and building professionals.



## What is 'work affecting other land'?

Work affecting other land has a specific meaning under the Building Act. It means any building work, demolition work or other activity that may affect adjoining land by:

- Part of a building or an associated structure being constructed or placed beyond the boundaries of the land on which work is being carried out; or
- Reducing the stability or load bearing capacity of adjoining land or a building or structure on the land; or
- Damaging or reducing the structural adequacy of a building or structure on adjoining land; or
- Changing the natural site drainage in a way that reduces the effectiveness of drainage or affects buildings or structures on adjoining land; or
- Placing a temporary or permanent protection structure beyond the boundaries of the land on which work is being carried out; or
- Affecting the structural, waterproofing or noise insulation capacity of a party wall, a substantial dividing fence, or a boundary retaining wall that protects adjoining land; or
- Removing a boundary structure such as fences or gates; or
- Building workers accessing adjoining land for work, conducting a survey in relation to the work or delivery of materials to the land on which work is being carried out without consent.

## What is not 'work affecting other land'?

Building activity will invariably create some inconvenience for owners or occupiers of nearby properties. Work that is **not** considered under the Building Act to be 'work affecting other land' includes:

- building noise from power tools and equipment; or
- noise from building site radios; or
- noise or dust from vehicles or earthmoving equipment

Disputes between neighbours over dividing fence matters such as access to adjoining land to construct or repair or to share the cost of a dividing fence are covered by the provisions of the *Dividing Fences Act 1961*. Refer to 'Dividing Fences – a guide' available on the Building Commission website for more information.

## What should happen when work affects other land?



If you are the owner of adjoining land that may be affected by work affecting other land, the person responsible for the work (owner, builder or demolition worker) must seek your consent before commencing the work.

If more than one owner is affected, written consent must be obtained from all owners of adjoining land.

In certain circumstances, where the work needs to be done as a matter of urgency, consent or a court order is not needed prior to the work. However, the person responsible for the work must notify each owner of the work, and the reasons for it, as soon as practicable after it is done.

## Notice and Request for Consent to Work affecting other Land

The person responsible for the work must give each owner a 'Notice and Request for Consent to Work affecting other Land'.

This is a standard Building Commission form - BA20 "*Notice and Request for Consent to Work affecting other Land*" (the notice and request for consent form). An example of this form is on page 9 of this booklet.

The notice and request for consent form should be completed by the person responsible for the work and have:

- ✓ a clear description of the works proposed; and
- ✓ a clear description of how your land will be affected and when; and
- ✓ details of the person responsible for the work; and
- ✓ plans, specifications and any technical certificates attached that show how the work will affect the adjoining land.

## How much time do I have to decide?

If you are unsure of the works proposed or it has not been made clear to you how your land will be affected, you should seek further clarification from the person responsible for the work before you consent.

There are clear timeframes for decisions to be made:

- If you do not request further information, you have up to 28 days after receiving the notice to decide whether to sign the consent part of the form; or
- If you do request further information, you have 14 days after the person responsible for the work provides you with the information to decide whether to sign the consent part of the form.

If these time limits expire without an outcome, then the person responsible for the work can seek a court order to undertake the work.

**You should understand what is being proposed on the consent form before you sign**

## What if I don't give consent?

If you do not give your consent, the person responsible for the work can seek a court order. If a court order is issued, both you as the adjoining owner and the person responsible for the work must adhere to the provisions of the court order. If neither consent is given nor a court order issued, the work affecting other land cannot proceed.

If the person responsible for the work should place any part of a building or structure on to your land, or place a protection structure on to your land without your consent or a court order, you may remove the structure as long as any damage caused by the removal is made good.

## What happens after I give consent or a court order is made?

Even after receiving your consent, or a court order is made, a person responsible for the work must give you and any other adult occupier of your land (such as a tenant) reasonable notice if they intend to access your land to carry out work or conduct a survey in relation to that work. This notice must be given for each 24 hour period during which your land needs to be accessed.

## How will I know where the boundary line is?

If you have any doubt about the exact position of the boundary line on your land, you should seek the services of a Licensed Land Surveyor. In Western Australia, the Land Surveyors Licensing Board has a list of licensed practitioners on their website. Visit [www.lslb.wa.gov.au](http://www.lslb.wa.gov.au).

## What is the role of my local council?

Local governments, which are permit authorities under the Building Act, are given effective powers to prosecute any person responsible for work that contravenes these requirements and seek severe penalties of up to \$25,000.

A complaint against the person responsible for the work can also be made to the Building Commission Complaints Branch in situations where work has adversely affected your land or buildings.

## Are you the person responsible for the work affecting other land?

Part 6 of the Building Act is intended to protect adjoining owners by requiring persons responsible for work that is likely to affect other land to obtain adjoining owners' consent or a court order before entering their land or commencing the work. Refer to page 3 of this booklet for a definition of work affecting other land under the Building Act.



If the building certifier, or the plans and specifications indicate that the work is likely to affect other land, you are required to seek the consent of the affected adjoining owners. You need to provide the BA20 form – 'Notice and Request for Work affecting other Land' as well as a copy of this booklet to each owner that will be affected.

A copy of the signed consent part of this form from each affected owner giving consent, or a copy of a court order from a Magistrate must accompany any building or demolition permit application where the work you are proposing will adversely affect adjoining land.

A Building or Demolition Permit will not be granted unless evidence of the consent or a court order is provided to the permit authority.

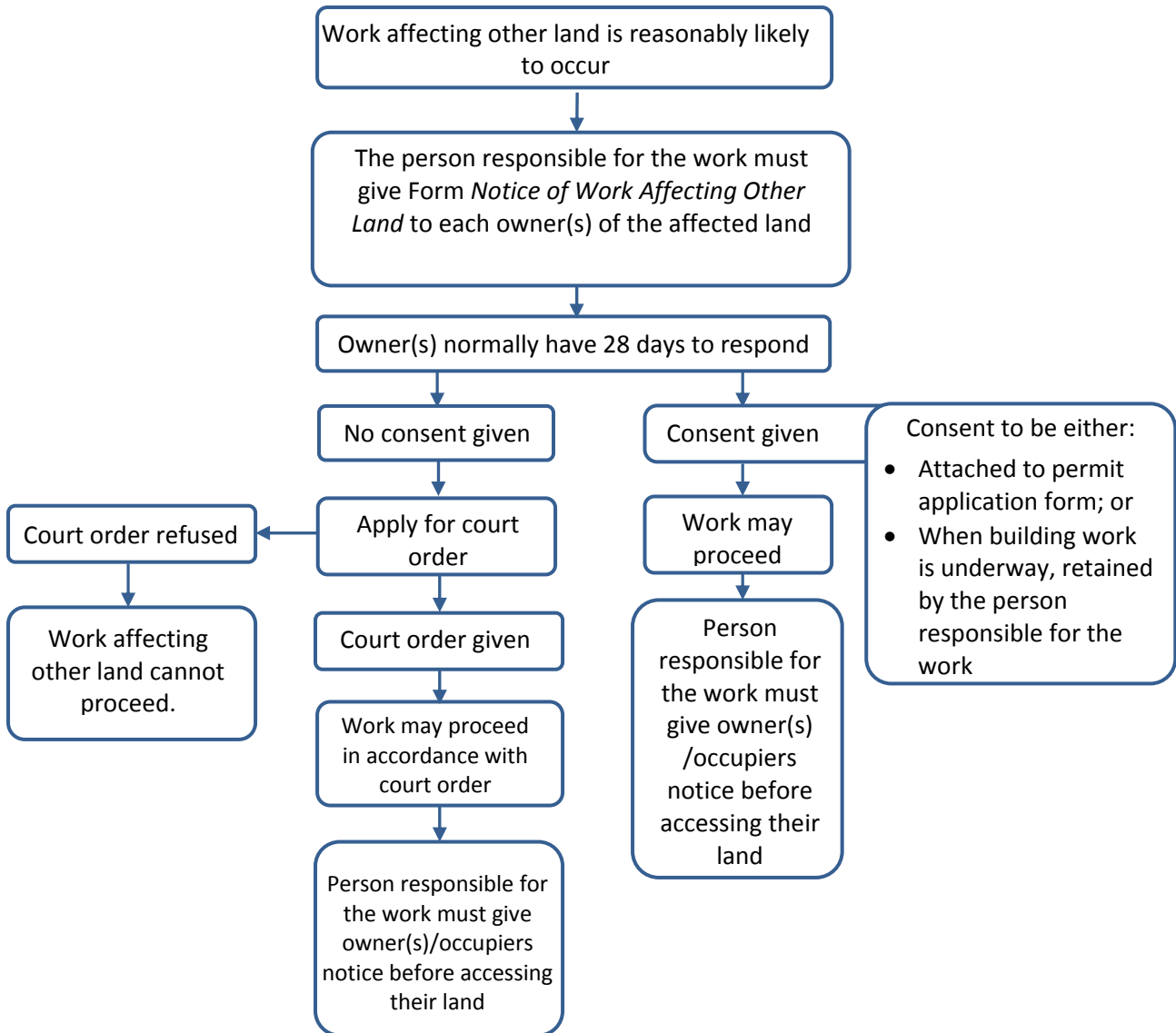
## What if work is already underway?

If there is a need for work affecting other land while construction is already underway, you, as the person responsible for the work, must obtain consent before undertaking the work. You should keep a copy of the consent as a record that consent was obtained.

Even after receiving consent, or a court order is issued, you must give an affected adjoining owner and any other adult occupier of adjoining land (such as a tenant) reasonable notice if you intend to access their land to carry out work or conduct a survey in relation to that work. This must be for each 24 hour period during which their land needs to be accessed.

## The process for requesting consent or a court order for work affecting other land

These are the steps to follow if it is reasonably likely that work will affect other land.





# Example of the Consent form

To download this form, please visit [www.buildingcommission.wa.gov.au](http://www.buildingcommission.wa.gov.au) and go to the Forms page. Please note that this form should not be given to the Building Commission, but needs to be given to the adjoining owner to seek consent and a copy retained by the person responsible for the work.

<b>NOTICE</b>	<b>FORM BA20</b>
<b>Notice and Request for Consent to Work affecting other Land</b>	
<small>Western Australian Building Act 2011, ss. 76 - 82, 85</small>	
<small>OFFICE USE ONLY</small>	Application number
<small>For assistance with this form refer to the 'Work Affecting Other Land' brochure.</small>	
Name of owner(s) of affected land	
Postal address	<small>Street number, Lot number, Street name, Suburb, Postcode</small>
<b>1. Land where work is proposed</b>	
Physical address	<small>Street number, Lot number, Street name, Suburb, Postcode</small>
<b>2. Affected land details</b>	
Physical address	<small>Street number, Lot number, Street name, Suburb, Postcode</small>
<b>3. Details of work affecting other land</b>	
Explanation of how work being done will encroach or adversely affect other land:	
When the work is likely to occur <i>(date, time and duration)</i> :	
Please find attached to this notice:	
<ul style="list-style-type: none"> <li>• Plans and specifications for the proposed building or incidental structure showing how the building work will affect the other land; and</li> <li>• Any relevant technical certificates in respect of the building work.</li> </ul>	
<b>Building Commissioner - date approved: 09 Mar 2012 Building Act 2011</b>	

<b>FORM BA20</b>									
<b>4. Person responsible for work details</b>									
Builder/demolition contractor/owner/agent									
Postal address	<small>Street number, Lot number, Street name, Suburb, Postcode</small>								
Email address									
Phone / Fax	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Phone</td> <td style="width: 33%;">Fax</td> <td style="width: 33%;">Mobile</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> </tr> </table>	Phone	Fax	Mobile					
Phone	Fax	Mobile							
Registration Number (builder), or Licence Number (demolition contractor), or Owner-Builder approval number									
<small>(if applicable)</small>									
Signature	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Name</td> <td style="width: 20%;"></td> </tr> <tr> <td style="height: 20px;"></td> <td></td> </tr> <tr> <td>Signature</td> <td>Date</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> </tr> </table>	Name				Signature	Date		
Name									
Signature	Date								
<b>Notice to owner of affected land</b>									
<small>In accordance with the Building Act 2011, the consent of owner(s) of affected land that is/are reasonably likely to be affected by work that encroaches or adversely affects adjoining land, must be sought prior to the work commencing. Under section 85 of the Building Act 2011, the owner(s) of affected land should respond to this notice by completing the 'Response Notice' below, normally up to 28 days after this notice is given (unless a request for further information is made).</small>									
<small>Please note that if the consent sought by this notice is not given in the above time, a person responsible for the work may apply under section 86 of the Building Act 2011 to the Magistrate's Court for a court order.</small>									
<small>The completed response notice must be returned to the person responsible for the work, usually the builder. The details are listed above. Please keep a copy for yourself or ask the builder to provide you with one.</small>									
<small>The brochure 'Work Affecting Other Land' provides further important information and a copy should accompany this form.</small>									
<b>5. Response notice from owner of affected land</b>									
In accordance with the Building Act 2011 s. 85, I hereby respond to the notice provided to me and:									
<input type="checkbox"/> I agree to the proposed work; or <input type="checkbox"/> I disagree with the proposed work									
Signature	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Name</td> <td style="width: 20%;"></td> </tr> <tr> <td style="height: 20px;"></td> <td></td> </tr> <tr> <td>Signature</td> <td>Date</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> </tr> </table>	Name				Signature	Date		
Name									
Signature	Date								

**For further information:**

**Building Commission**  
Level 1, 31 Troode St  
WEST PERTH WA 6005

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[www.buildingcommission.wa.gov.au](http://www.buildingcommission.wa.gov.au)