WA - Guide to Work Affecting Other Land under the Building Act 2011

HIA is often asked by members about the circumstances in which consent needs to be obtained in relation to accessing or affecting an adjoining landowner’s property. It is important that builders are familiar with the circumstances and processes under the Building Act 2011 (WA) in this regard, and what recourse is available to the builder if the neighbour refuses to grant consent.

When is consent required under the Building Act?

The Building Act requires the consent of the neighbouring land owners to be obtained in the following circumstances:

- **Access** - you need to access their land (unless the land is vacant or unoccupied);
- **Encroachments** - the works will encroach on the neighbouring land;
- **Adverse affects** - the works will “adversely affect” the neighbouring land (that is, where the building work will affect the stability, bearing capacity or natural site drainage of the adjoining land or structure);
- **Protection structures** – where protection structures (whether temporary or permanent) are to be placed beyond the boundaries of your client’s land;
- **Structural, waterproofing or noise insulation** – where the building works would affect the structural, waterproofing, or noise insulation capacity of a party wall, a substantial dividing fence, or a boundary retaining wall that protects land beyond the boundaries of the building; and
- **Removing fences** - the works would involve removing a fence, gate or other barrier to land on or beyond the boundaries of the building works. NOTE: consent is not required to remove a dividing fence where a building permit or development approval authorises the construction of a zero lot boundary wall.

**Special case – be careful when accessing vacant or unoccupied land!**

Whilst consent is not required under the Building Act in relation to access to land which is vacant or unoccupied, a builder should still try and obtain neighbour consent where this is practicable. This is because the builder may still be exposed to liability under the common law rules of trespass for entering the land without the owner’s permission.
For vacant or unoccupied land, the owner can still ask you to vacate the land under the trespass laws in the event they find out that you are accessing the land without their permission.

**Process for getting consent under the Building Act**

Under the Building Act, a Form BA20 or BA20A must be used in obtaining the consent of the neighbouring landowner.

The Form BA20 is to be used where the works would encroach or adversely affect the neighbouring land, and the Form BA20A is used in all other cases (e.g., such as in relation to access to the land).

Copies of the Forms can be found on the Building Commission website as follows under the “NOTICES” section:


The neighbouring landowner will then have 28 days within which to give their consent by filling out and returning to you the “Response Notice” section of the Form.

**What next?**

**If consent is given**

If consent is given then you may carry out the proposed works to which the neighbouring landowner has consented. However, if there is a change in the nature and potential effect of those works then you might need to go back to the neighbouring landowner and obtain their consent to the new works.

**If consent is not given**

If consent it not given within 28 days of issuing a Form BA20 or BA20A to the neighbouring landowner, or if consent is refused before the expiry of this period, then the builder named on the building permit may apply under the Building Act to the Magistrate’s Court of Western Australia for an order to authorise the works affecting other land.

The relevant court form to utilise for this purpose is the Form 53 “Application under a Conferring Act”. You can access a copy of the Form 53 on the following section of the Magistrate’s Court website:


In commencing any court application it is recommended that you seek independent professional advice e such as legal advice from a law firm. If you do not have your own solicitor then the HIA can provide you with a list of HIA member law firms for your consideration.

**Avoiding disputes with neighbours**

In order to assist in acquiring the neighbouring landowner’s consent it is suggested that you approach them in person with the BA20/BA20A Form, and have your client present with you at the time. This is to provide an opportunity for you and your client to:
• Explain the reason why you are issuing them the Form and the nature and effect of the works for which you require consent; and
• Discuss any solutions you have or workarounds to take into account any concerns the neighbour may have about potential damage to their property.

Should you require any further information then please call Michael O’Kane, HIA Workplace Advisor (Western Australia) on 9492 9200 or email m.okane@hia.com.au