



Guideline for Land Owners

Building Notice & Building Order

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Civic Centre, 15 Channel Hwy, Kingston, Tasmania 7050 Locked Bag 1, Kingston Tasmania 7050
AusDoc: DX 70854 T: (03) 6211 8200 F: (03) 6211 8211 E: kc@kingborough.tas.gov.au

Building Work without Approval

Building Work is defined in the *Building Act 2016* (the Act) as constituting of, or relating to:

- a) erecting, re-erecting, constructing, altering, repairing, underpinning, demolishing or removing a building;
or
- b) adding to a building; or
- c) excavating, or filling, that is incidental to an activity referred to in paragraph (a) or (b); or
- d) any other prescribed work.

Building work that has received the relevant building approval (via building permit or notification of building work) and the required certificates prior to use is considered to have been completed in accordance with the Act.

A publication from the Director of Building Control called *Directors Determination - Categories of Building and Demolition Work* (Determination) specifies the relevant categories of building and demolition work. Category 3 and 4 building work as outlined with the Determination requires the relevant approval under the Act prior to being carried out.

Building work that has been carried out without the relevant approvals and certificates is considered not to have been completed in accordance with the Act.

Building Notice and Building Order

Council's Permit Authority is required, under the Act, to issue a Building Notice to owners of land, that through an investigation, have been identified as having carried out building work without the relevant building approval.

The Building Notice will often provide owners with the ability to show cause¹ why they should not carry out either of the following within a specified timeframe:

- complete the work in accordance with the requirements of the Act; or
- remove the structure from the land.

In the event that the landowner is unable to demonstrate why a Building Order should not be issued then Council's Permit Authority may proceed with the issue of a Building Order to the owner. The Building Order may require the owner to carry out the following within a specified timeframe:

- complete the work in accordance with the requirements of the Act; or
- remove the structure from the land.

Appeal Rights

The owner of a property that has been served with a Building Order can appeal to the Appeal Tribunal against the Order within 28 days after the applicant is notified that they have been issued with a Building Order.

More information on the Appeal Tribunal can be found on the Resource Management and Planning Appeal Tribunal Website at: www.rmpat.tas.gov.au

¹ Show Cause period provides a person that has been served with a Building Notice with a period of time to provide a reason(s) as to why a Building Order should not be issued.

Compliance with Order

There are two ways in which a person can comply with the requirements of Building Order, these are as follows:

- complete the building work in accordance with the requirements of the Act; or
- remove the illegal structure.

Both these options are discussed below.

Complete the Building Work in accordance with the *Building Act 2016*

If the landowner has decided to secure approval for the structure so it can be retained on the site then the landowner will need to complete the building work in accordance with the requirements of the Act. This will include seeking a building approval and completion certificate for the work. The process for this is provided in Attachment 1 to this Guideline.

An applicant is not considered to have complied with the requirements of a Building Order until a Certificate of Completion has been issued for the building work that has been carried out.

An owner will need to secure a Permit of Substantial Compliance for building work that has been carried out without the relevant approval. The process for securing a Permit of Substantial Compliance is outlined in Attachment 1 to this Guideline. It should be noted that one of the considerations prior to issue of a Permit of Substantial Compliance is whether other permits and consents required under any other relevant Act have been issued. The use and development of a building may require permits and consents under different legislation (for example a Planning Permit that is issued under the *Land Use Planning and Approvals Act 1993*).

Removal of the Building Work

If the owner chooses to remove the unapproved structure, then the work associated with the removal of the structure is to be carried out safely and in a manner that will not cause a nuisance to the public or adjoining land owners.

In some cases, the work associated with the removal of an illegally erected structure may trigger the need for a building approval. Council's Permit Authority will advise you accordingly if this is the case.

Upon completion of the work, the owner is to notify Council's Permit Authority in writing that the work is complete. The Permit Authority may require a compliance inspection of the site. Once satisfied that the owner has complied with the requirements of the Building Order the Permit Authority will revoke the Order in writing.

Penalties

Carrying out building work without the required building permit or notification in place and non-compliance with a Building Order can attract penalties under the Act including infringement fines or prosecution.

The lodgement of an Application for Permit of Substantial Compliance attracts higher permit lodgement fees than an Application for a Building Permit (which is to secure approval after the work is carried out).

Council is willing to work with owners to achieve compliance however some infractions of the Act will may attract infringement fines. In addition, continued non-compliance may result in prosecution.

Application Fees & Charges

Illegally constructed building work can, in some cases, be legalised by securing retrospective approvals.

The cost of securing retrospective approvals is significantly higher than if the relevant approvals had been secured prior to carrying out the building work.

More Information

Additional information regarding the obligations of a Permit Authority, Council and a landowner as well as the Appeal process in relation to the above is available from the following publications and websites:

- *Building Act 2016*;
- *Building Regulations 2016*;
- Consumer Building and Occupational Licensing (Telephone: 1300 654 499);
- www.rmpat.tas.gov.au
- Kingborough Council Development Services Department for planning, building and plumbing enquiries.

Attachment 1 – Process for Completing Building Work In Accordance with the *Building Act 2016*

STEP 1 – Engage Private Building Surveyor

The first step is to consult with a private licensed Building Surveyor. The Building Surveyor will need to inspect the building to determine the likeliness of the building being able to achieve compliance with National Construction Code requirements. Your Building Surveyor will require plans of the structure as well as confirmation of Planning Compliance.

STEP 2 – Have Plans Prepared

In order to secure the relevant approvals for the building you will require scaled plans including the following:

- Site Plan showing the location of the building on the land in relation to the property boundaries and other buildings on the land;
- Elevation Plans of the building;
- Drainage plans

STEP 3 – Planning Compliance

Once your plans are prepared it is recommended that you liaise with Council's Planning Department (Planning Authority) to see if the building requires planning approval. In the event that planning approval is required you will need to lodge a Planning Permit Application for Development/Use with Council. The information requirements for Development/Use Applications are provided at Attachment 2 and the application form can be downloaded from Council's website. Please note - if the building is situated on land containing a hazard area or that contains natural or cultural values you may be required to provide additional information relating to these matters to support your Development/Use Application.

STEP 4 – Plumbing Compliance

Once your plans have been prepared you can liaise with Council's Permit Authority to see if the building work carried out requires Plumbing Approval. The Permit Authority will categorise the plumbing work and advise you if plumbing approval is required. There are three categories of plumbing work, these are: Permit Plumbing Work, Notifiable Plumbing Work and Low Risk Plumbing Work. Both Permit and Notifiable Plumbing Work will require approval from Council. Low Risk work can be carried out by a suitably qualified person. Once you have your plans prepared a check with Council's Permit Authority will inform you as to what level of plumbing compliance is required.

STEP 5 – Certificate of Substantial Compliance

In this step you need to lodge an Application for a Certificate of Compliance with your Building Surveyor. To do this you will need a full set of plans of the structure as well as any other documentation as required by your Building Surveyor.

It is highly recommended that prior to submitting this documentation to your Building Surveyor that you check your planning permit (if one was required) to ensure that you have complied with any condition on the planning permit and that the plans submitted to the Building Surveyor for certification align with the planning permit requirements. Your Building Surveyor will require you to demonstrate evidence that you have complied with any relevant Planning Permit.

The Building Surveyor may require you to provide reports from suitably qualified persons to support your application such as Structural Engineers, Bushfire Hazard Management Designers, etc.

STEP 6 – Permit of Substantial Compliance

When the Building Surveyor has issued a Certificate of Substantial Compliance for the building you need to submit an Application for a Permit of Substantial Compliance with Council's Permit Authority. In order to make this application with the Permit Authority you will require the following documentation:

- Completed application form for a Permit of Substantial Compliance (Form 9);
- Current Registered Title for the land;
- All documentation provided to you from your Building Surveyor for the certification of the building;
- Payment of all relevant application fees;
- Evidence of Planning Compliance;
- Relevant Plumbing Approval for plumbing work associated with the building.

STEP 7 – Complete Building, Plumbing and Planning Work in Accordance with the relevant Approvals.

When Council's Permit Authority has issued a Permit of Substantial Compliance for the building you can proceed with finalisation of the building work in accordance with the requirements of the Permit of Substantial Compliance, Certificate of Substantial Compliance, Plumbing Approval and Planning Approval. Please note – there may be notifications that are required from the Building Surveyor, Permit Authority and Planning Authority prior to starting building work so it is important for permit holders to read all permit documentation prior to commencing work.

STEP 8 - Secure Final Certificates

When the building work is complete and all building and plumbing inspections have been carried out and final certificates issued. The Applicant for the Permit of Substantial Compliance will need to submit these to the Council's Permit Authority to enable the issue of a Certificate of Completion for the work. It should be noted that completion certificates for building work will not be issued until completion certificates have been issued for related plumbing work.

STEP 9 – Revoke Building Order

When a Certificate of Completion has been issued for the Permit of Substantial Compliance the owner should make written application to Council's Permit Authority to revoke the Order.

Council's Permit Authority will revoke the Building Order if a Certificate of Completion has been issued for the building work.

Planning Compliance

It is recommended that owner's carry out regular compliance checks of their development to ensure compliance with the conditions of their planning permit. Although this process outlines compliance requirements under the Act, owners should be aware of their responsibilities under relevant planning legislation (*Land Use Planning and Approvals Act 1993*).