



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

Building
Commission

**REQUIREMENT FOR OWNERS
TO GIVE CONSENT TO
AN APPLICATION FOR A BUILDING PERMIT**

**DISCUSSION PAPER
APRIL 2015**

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1.0 INTRODUCTION

1.1 What is a building permit?

In Western Australia, a building permit is required before any building work can be carried out. For residential building work, in most instances, the builder will submit an application for a building permit to the local government on behalf of the owners.

An application for a building permit will be accompanied by copies of plans and specifications, a certificate of design compliance (signed by an independent building surveyor or a local government building surveyor), copies of any necessary approval from other statutory bodies (e.g. planning approval), appropriate consent forms or court orders where work encroaches onto or adversely affects other land, evidence of insurance documents and an application fee.

Some of the information required in a building permit application include:

- Street address of the property,
- Class of building as defined by the Building Code of Australia,
- Nature of building work (e.g. new dwelling, alteration and addition),
- Type of structure – detached or attached to another structure,
- Estimated value of building work,
- Site (lot) area,
- Details of owners, and
- Details of the building contractor.

1.2 Exemption from signing a building permit application form

Section 16(b) of the *Building Act 2011* (the Act) requires all owners of land to sign a building permit application before it is submitted to the local government. The reason for requiring the owners to sign a building permit application for building work to be carried out on their land is to ensure that the owners are aware of the building work to be carried out on their land and give consent to the application being submitted.

When the Act commenced in April 2012, this requirement was identified by some volume home builders in the Perth metropolitan area as causing delays in the building process. The difficulties in obtaining the signature of all owners prior to submitting a building permit application were caused by:

- some users and permit authorities interpreting 'signature' to mean 'wet signature';
- larger project home builders often having inflexible contract and application processes under which the request for the owner signature is left until the last minute; and
- complex commercial ownership arrangements (real estate investment trusts, and overseas owners) which often obscured who the owner is and who has authority to sign the application.

In an attempt to speed up the approval of building permits at that time, a temporary exemption under section 67(2A) of the Act was introduced. This exemption, which waives the requirement for owners to sign an application for single residential dwellings (which can also include townhouses, units, villas, etc) will expire on 31 December 2016.

1.3 Purpose of this discussion paper

This paper provides guidance and seeks comments and suggestions to assist in developing a mechanism other than a wet signature, to verify that owners are aware of and consent to a building permit application. Your submissions will inform the development of a preferred mechanism.

While the proposed mechanism is yet to be determined, the intention is to require owners to give consent to an application for a building permit by means other than a wet signature. This intention has been derived from the survey that was conducted for home owners, local governments and builders in February and March 2015. The results of the survey are presented in section 4.0. It should be noted that the proposed mechanism should take into consideration the possibility of electronic lodgement which some local permit authorities have in place.

2.0 ADVANTAGES AND DISADVANTAGES OF REQUIRING OWNERS CONSENT

Table 1 contains the advantages and disadvantages of requiring owners to give consent to a building permit application form.

Table 1. Advantages and disadvantages of requiring owners consent

Advantages	Disadvantages
Builder would be more accountable to the owners.	Owners may not want to be so closely involved in process.
Owners would be aware of the plans and specifications that are submitted with the application.	Present logistical difficulties and delays if owners are absent or unable to be contacted.
Owners would be aware of the estimated cost of the building work that is stated in the application.	Cause delays if owners are absent or unable to be contacted.
Owners will be able to substantiate who their building contractor is. The name and registration number of the building contractor on the building permit application form must be the same as what is stated in the contract.	Depending on the mechanism, some forms of owner consent may not be applicable with electronic lodgement.
Owners would have better access to documentation and information.	

3.0 REQUIREMENT IN OTHER JURISDICTIONS

The requirement for owners to give consent to an application for a building permit varies from one jurisdiction to another in Australia. Table 2 provides a summary of those requirements.

Table 2. Requirement for owners to sign or give consent to a building permit application form

State / Territory	Permit Authority	Is owner signature / consent required	Mechanism (If the consent is required)
Australian Capital Territory	Private Certifier	No	N/A
New South Wales	Local Government	Yes	Building permit application form must be signed by the owners and builder.
Northern Territory	Private Certifier	No	N/A
Queensland	Private Certifier	No	N/A
South Australia	Local Government	No	N/A
Tasmania	Local Government	Yes	Written authority.
Victoria	Local Government or Private Certifier	Yes	Written authority should be in contract or in a separately signed document.
Western Australia	Local Government	Yes	Building permit application form should be signed by the owners and the builder. Note that there is an exemption in place until 31 December 2016.

In the Northern Territory, Queensland and South Australia, where there is no requirement, if there is a dispute between the owner and the builder then it becomes a matter for the courts.

In the Northern Territory, within seven days of a building permit being issued, all private certifiers are required to submit document (plans and specification, certificate of design compliance, etc) to the Integrated Land Information System (ILIS) The ILIS is maintained by the Building Authority, Northern Territory Government. Owners can request a password to obtain access these documents.

In Tasmania, owners or an agent can submit an application to a permit authority. The agent must obtain the authority of the owner in writing. The permit authority does not require proof of any written authority to be lodged with the application. However, there is a penalty for breach of this requirement if it is later discovered that no written authority was obtained.

4.0 IS THE WET SIGNATURE WORKING IN WESTERN AUSTRALIA?

The requirement for the owners to sign on the building permit application form does not seem to be widely known or used. With the current exemption in place, the majority of the building permit applications are submitted without the signatures of the owners.

The Building Commission conducted a survey of home owners, local governments and builders in February and March 2015 to review the requirement for owners to sign a building permit application form. These stakeholders were surveyed on:

- Their awareness of the current exemption;

- The requirement for owners to give consent to a building permit application form being submitted to the local government;
- Any positive outcomes or benefits of the current exemption; and
- Any negative outcomes or problems of the current exemption.

486 respondents participated in the survey. Of these, 77% of home owners, 86% of local governments and 65% of builders agreed that owners should give consent to a building permit application before it is submitted to the permit authority.

The results in terms of positive or negative outcomes of the exemption varied for the three stakeholder groups. Home owners indicated that there were more problems as a result of the exemption in place. However, the local governments and builders felt that there were more positive outcomes from the exemption (Figure 1).

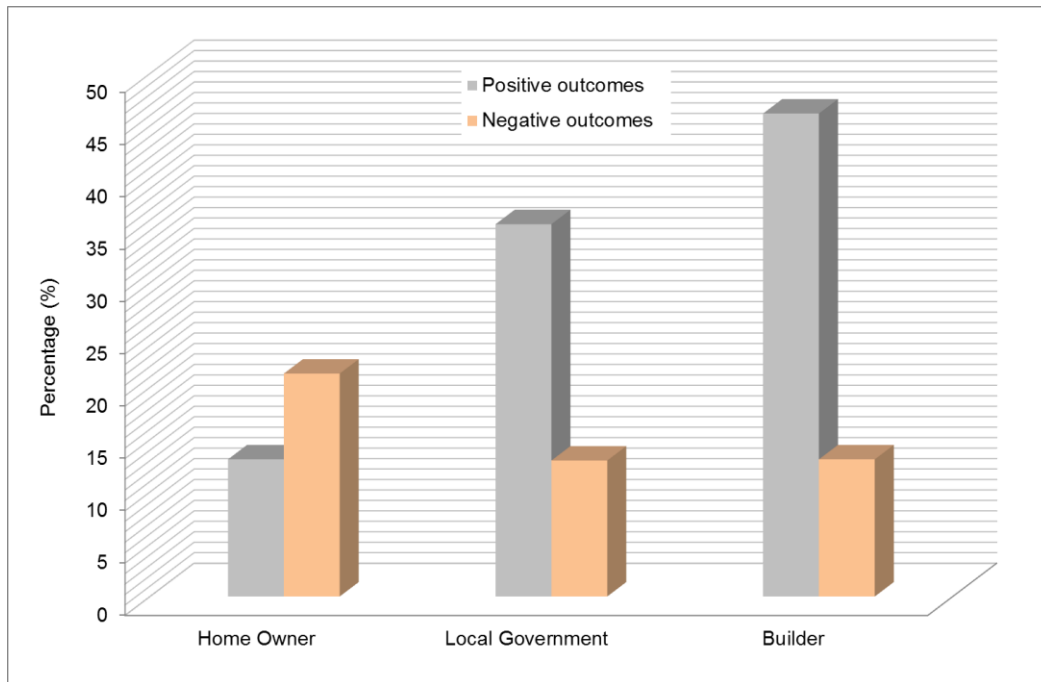


Figure 1. Percentage of stakeholders that indicated that there was a positive or negative outcome as a result of the current exemption (i.e. no requirement for owners to sign).

Table 3 contains some of the benefits and losses of the current exemption in place that was provided by the survey respondents.

Table 3. Benefits and losses of the current exemption in place
(i.e. no requirement for owners to sign)

Benefits (positive examples)	Losses (negative examples)
Prevented delays in cases where owners were not available. For example, where owners were interstate or overseas, working as fly-in-fly-out worker, in hospital due to illness.	The local government found out that the owner was not willing to go ahead with the building work only when they were notified of a civil action. The owner was not willing to go ahead with the building work due to substantial increase in costs from what was initially agreed to.
Prevented delays in cases where there were multiple owners such as companies, corporations or trusts.	Owners were not aware when the builder had submitted amendments to the local government.
It was convenient because it allowed for the electronic lodgement of forms.	Owners were not aware of the construction of a patio that was approved on their property.
Multiple applications could be lodged at once.	Building work commenced without the consent of one of the owners. For example, when a couple were going through a divorce.

5.0 OPTIONS FOR COMMENT

The Building Commission seeks input from stakeholders on the mechanisms that can be used to obtain the consent of owners. The Building Commission does not wish to limit the scope for options. However, to facilitate discussion, four options have been identified. These options are outlined below.

5.1 Option 1: Signing the building permit application form

Remove the exemption and require all owners to sign the building permit application form as required under section 16(b) of the Act.

5.2 Option 2: Consent by written authority, checked by permit authority

All owners to give consent to the builder to act on their behalf by means of a written authority. The written authority must be submitted with the building permit application.

For example, the written authority might be in the building contract, an agreement between the owners and the builders or in a separate consent form.

5.3 Option 3: Consent by written authority, not checked by permit authority

All owners to give consent to the builder to act on their behalf by means of a written authority. This written authority will not be checked by the local government when processing a building permit application. However, a penalty will apply for a breach of this requirement.

For example, the written authority might be in the building contract, an agreement between the owners and the builders or in a separate consent form.

5.4 Option 4: No requirement for consent

No requirement for consent. Leave it to the owners and builders to sort it out themselves and if there is a dispute, this will become a matter for the courts. With the current exemption in place, this is the present situation.

Comments are sought from the stakeholders on the following aspects.

1. Which is the preferred option?
2. What are some of the advantages of your selected option? (Please include reference to any cost savings).
3. What are some of the disadvantages of the other options? (Please include reference to any additional costs you foresee).
4. Is there any other mechanism that you can suggest to achieve the same outcome?
5. For option 2 and option 3, should the legislation specify what comprises a written authority?

If yes, then what are some of the examples of how a written authority can be demonstrated? For example, in the building contract, an agreement between the owners and builders or a separate consent form.

HAVE YOUR SAY

Submissions are invited from home owners, local governments, builders and other interested parties on the options contained in this Discussion Paper (Sections 5.1 to 5.4). Submissions can be made online at <https://www.surveymonkey.com/r/ownerconsent>. Name and contact details must be supplied with each submission. Please submit your response by **5 pm, 9 June 2015**.

Information provided may become public

After this consultation period concludes, all responses received may be publicly available on the Department of Commerce website. Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available to the public.

How your input will be used

The information gathered from this consultation will be taken into account when finalising the submission to the Minister for Commerce seeking approval to make the relevant amendments. Your input is crucial as it will assist in identifying issues of concern and will help in the formulation of the advice.

Further information

For further information, please contact one of the officers on the Owner Consent Review Team .

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