



COURSE IN OWNER BUILDER COMPLIANCE

NTIS code: 91509NSW

MODULE 1 PREPARE TO BE AN OWNER BUILDER



New South Wales
Government

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Department of Services Technology and Administration



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BECOMING AN OWNER-BUILDER



Extracts NSW Fair Trading Website

An owner-builder is an individual who does owner-builder work and holds a permit for that work. The work is usually the job of managing their own residential building project and performing the coordinating and contracting roles usually undertaken by a builder.

Owner-builder work is:

-  Any work (including supervising and coordinating) involved in the construction of, or alteration, repair or addition to, a dwelling (which includes a house, terrace, town house, garage, swimming pool and certain other structures and improvements).
-  Where the reasonable market cost of the work (including labour and materials) exceeds \$5,000; and
-  Which relates to a single dwelling or dual occupancy:
 -  That requires a development consent under Part 4 Environmental Planning & Assessment Act 1979; or
 -  That is a complying development within the meaning of the *Act*; and
 -  Is done by an owner of the land (or a person having a prescribed interest in the land eg: long term lease) upon which the work is to be carried out.

What are your responsibilities as an owner-builder?

As an owner-builder, you are responsible for:

-  Overseeing and supervising all tradespeople.
-  Ordering of materials and management of the building site.
-  Obtaining all necessary council and authority approvals.
-  Ensuring that the financial, taxation and insurance requirements of the building work are met and fully comply with all laws.
-  Providing a safe work environment that complies with WorkCover requirements. Being aware of your obligations under the *Workers Compensation Act 1987* and *Occupational Health and Safety Act 2000*.
-  Ensuring any contractor engaged is appropriately licensed and insured to do the work contracted for.
-  Warranting that the work and materials will be fit for the purpose and that the work results in a dwelling fit for occupation.



An owner-builder permit is not a building licence.

It does not allow you to:

-  Do work other than the project covered by the Development Application or Complying Development number.
-  Do specialist work such as electrical, plumbing, gasfitting, air-conditioning and refrigeration work (unless you hold a licence for such work).

It is an offence under the *Home Building Act* for the holder of an owner-builder permit to:

-  Knowingly engage an unlicensed contractor.
-  Lend your permit to another person.
-  Refuse to disclose to an authorised officer the names and addresses of contractors working on the site.

The maximum penalty for these offences is \$22,000.

Do your sums before you start and ask yourself if any saving you will make is worth the time and responsibility it will take. As an owner-builder you are guaranteeing the work you undertake.

If you don't want the responsibility of being an owner-builder, you should be wary of a builder who suggests you obtain an owner-builder permit while they do all the building work for you. This may be a ploy where the builder is shirking responsibility, is unlicensed, or is unable to get the necessary insurance.

Only one owner-builder permit can be issued within any five-year period, unless the application and any earlier permit relate to the same land and to related owner-builder work or unless special circumstances exist.

Being an owner-builder takes organisation, self-motivation, communication skills and lots of free time.

This means that an owner builder must be prepared to spend a significant part of their time at the site looking and being aware of what has happened and what is about to happen.



GETTING A PERMIT

How do I get an owner-builder permit?

To obtain an owner-builder permit, you must apply to a Fair Trading Centre and demonstrate that:

-  You are over 18 years old.
-  You own or have a prescribed interest in the land (eg certificate of title, rates notice).
-  You do or intend to live in the completed home.

You should also provide:

-  A description and address of the proposed work with copy of plans; and
-  Council development certificate number or complying certificate number; and
-  An owner-builder permit application fee; and
-  Evidence you have completed an education course or training approved by the Commissioner of the NSW Fair Trading, if the value of the proposed work is over \$12,000.

EXTRACT FROM THE HOME BUILDING ACT 1989

Division 3 Owner-builder permits

29 Definitions

(1) In this Division:

owner-builder work means residential building work:

(a) the reasonable market cost of the labour and materials involved in which exceeds the prescribed amount, and

(b) that relates to a single dwelling-house or a dual occupancy:

(i) that may not be carried out on the land concerned except with development consent under Part 4 of the [Environmental Planning and Assessment Act 1979](#), or

(ii) that is complying development within the meaning of that Act.

(2) If land is owned by a company that is wholly owned by individuals, the land is to be taken (for the purposes of this Division) to be owned by those individuals.

(3) In this Division, a reference to an owner of land includes a reference to a person who has a prescribed interest in the land.



30 Application to owner-builder permits of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)

- (1) The Director-General may grant owner-builder permits for the purposes of this Act.
- (2) Part 2 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#) (*the applied Act*) applies to and in respect of an owner-builder permit, subject to the modifications and limitations prescribed by or under this Act.
- (3) For the purpose of applying Part 2 of the applied Act to an owner-builder permit:
 - (a) the permit may be amended under that Act, and
 - (b) the reference to 14 days in section 24 (1) of that Act (as to the period within which changed particulars must be notified) is to be read as a reference to 7 days.
- (4) An application for an owner-builder permit may be made only by an individual, and not by a corporation, partnership or other association.
- (5) Subject to this section, the regulations may make provision for or with respect to such matters concerning an owner-builder permit as are relevant to the operation of Part 2 of the applied Act.

31 Issue of owner-builder permits

- (1) (Repealed)
- (2) The Director-General must reject an application for an owner-builder permit if the Director-General is not satisfied:
 - (a) that the applicant is an individual of or above the age of 18 years, or
 - (b) that the applicant owns the land concerned, whether or not together with another or other individuals, or
 - (c) that the single dwelling-house or one of the dwellings comprising the dual occupancy concerned will be occupied as the residence (being, in the case of a dual occupancy, the principal residence) of the applicant after the work authorised by the permit is done, or
 - (d) that the applicant has completed any applicable education course or training approved by the Director-General for the purposes of this section.
- (3) The Director-General must reject an application for an owner-builder permit if the applicant was, during the 5 years (or, if the regulations prescribe another period, during the other period) occurring immediately before the application was lodged, issued with another owner-builder permit (or an owner-builder permit under the *Builders Licensing Act 1971*), unless the Director-General is satisfied:
 - (a) that the application and the other permit both relate to the same land and to related owner-builder work, or
 - (b) that special circumstances exist.

32 Authority conferred by owner-builder permits

- (1) An owner-builder permit authorises its holder to do such residential building work as is described in the permit on the land specified in the permit.
- (2) The authority conferred by an owner-builder permit:
 - (a) is subject to the conditions applicable to the permit for the time being, and
 - (b) may, on the application of the holder of the permit, be varied by an order of the Director-General set out in a notice served on the holder of the permit.

32AA Unlicensed contracting

- (1) The holder of an owner-builder permit must not contract with another person for that person to do any residential building work (or any part of the work) for the holder unless the person is the holder of a contractor licence to do work of that kind.

Maximum penalty: 200 penalty units.

- (2) The holder of an owner-builder permit is not guilty of an offence under this section if the holder establishes that the holder did all that could reasonably be required to prevent the contravention of this section.



OWNER BUILDER COURSE



SELF TEST QUESTIONNAIRE

	Question	Ref Page
1.	What is Owner Builder Work	3
	Answer:	
2.	What are your responsibilities as an Owner Builder (be able to list 5)	3
	Answers:	
3.	What are you NOT TO DO under an Owner Builder Permit	4
	Answer:	
4.	What activities (as an Owner Builder) would you consider to be an offence under the Home Building Act	4
	Answer:	
5.	How often are you able to obtain an Owner Builder Permit	4
	Answer:	
6.	List 3 Points that would allow you to apply for an Owner Builder Permit	5
	Answers:	
7.	What information/evidence should you provide when applying for an Owner Builder Permit	5
	Answer:	



HOUSE CONSTRUCTION

Most modern houses are referred to either as brick-built or timber-framed. However, there are wide variations on this theme, and older buildings can comprise a number of different structures and features.



Brick built houses

Cavity Brick

Modern brick built houses are based on a cavity wall construction, with an outer layer of brick or block and a secondary, inner layer of brick or block. The cavity between the two walls is usually around 40mm wide.

To ensure structural strength, the cavity between the outer and inner brick walls is spanned by special ties. If the internal wall is loadbearing, it will be made from block or brick. If it is non load bearing, the internal wall may again be built with blocks, or less heavyweight stud partitioning (timber frames) may be used.

Consideration of using cavity brick construction include:

-  Virtually maintenance free
-  Reduces energy usage in winter and summer
-  Entire walls may be used as a feature
-  Termite management systems still have to be considered for timber floor and roof structure, and non-structural timbers (eg: doors, mouldings furnishing).
-  Rot resistant in wet areas (though rising damp must be considered).
-  Has good sound insulation from both internal and external noise
-  Heavyweight system of building
-  Long walls may require additional support and articulation

Brick Veneer

Brick veneer construction involves an outer brick façade connected to a timber or steel frame using metal brick ties.

The timber or steel frame is the structural loadbearing component, whereas the brick exterior wall acts only as a façade and weather barrier.



Considerations for this type of construction include

-  Lighter weight construction than cavity brick
-  Wide choice of bricks provides versatility in exterior design and finish
-  Can easily incorporate different flooring systems
-  Termite protection is an important consideration
-  Articulation (vertical breaks) may be needed in long walls.

Timber / Steel framed houses

As the name suggests, the main structural elements of these houses are built using timber or steel frames, though they are also built on a cavity structure consisting of two walls.

The internal, wall framework is erected first and the outer wall is then built from brick, block or wood cladding. As with brick-built houses, the exterior walls are generally load bearing. However, if the internal walls are made from wood, it can be difficult to determine whether these walls are load bearing or not.

Considerations for this type of construction include:

-  Light weight
-  Used with all types of floor construction materials readily available
-  Suitable building system in areas of highly reactive soil types
-  Less trades involved than is required for masonry systems
-  Termite management is an important consideration

Solid wall construction

This type of construction features in older houses, where there is no cavity and therefore a two-layer system is not used. Walls in these houses tend to be thicker, often with the stone or brick make-up extending from the outer to the inner face of the wall. Internal walls are either made of similar materials to the external walls or they may be constructed from timber partitioning, demonstrating lath and plaster characterises. Load bearing walls in these houses nearly always comprise the same stone or brick structure as the external walls.

Pole Construction

This method of construction uses strong, substantially straight and treated timber poles as a means of supporting the timber frame. Pole homes are commonly seen on steep allotments although they are just as suitable for flat sites.



Considerations for using this type of construction

-  Blends well with the surrounding natural environment
-  Can be used on very steep slopes
-  Avoids major cut and fill earthworks and retaining walls
-  Can avoid slippage problems on sloping sites.
-  Regular termite management inspections will have to be undertaken.
-  Requires experienced and competent tradespeople

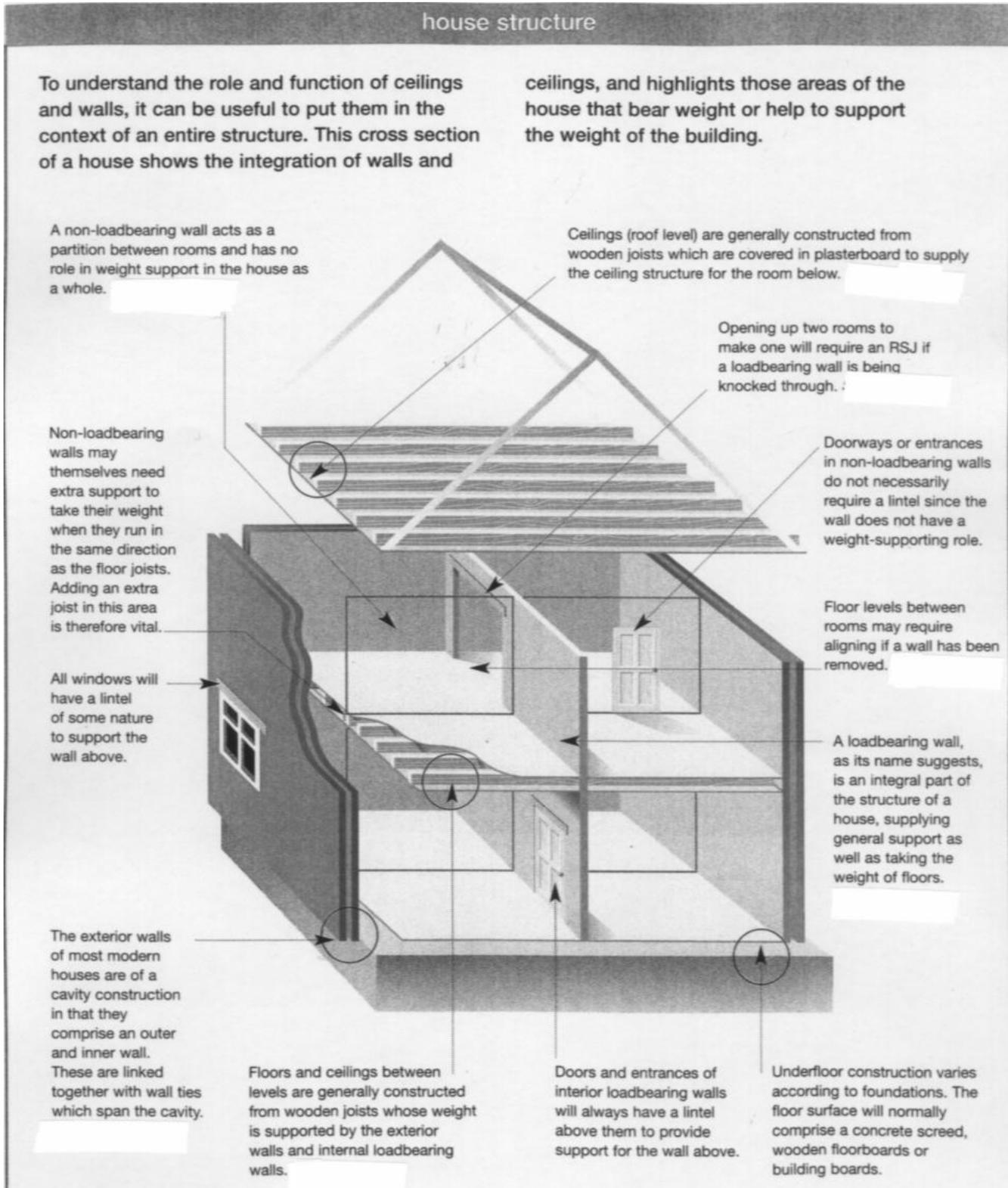
LOAD BEARING WALLS

Walls of a house are load bearing or non load bearing. Non Load bearing walls act as a partition and do not bear any of the house weight, whereas load bearing walls play an integral part in supplying general support and bearing the weight of floors. This theme is common to all house structures and is the starting point for deciding on any alterations.



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Source: Repair and Renovate Your Home by Julian Cassell, Peter Parham, Mar Corke, Mike Lawrence – Published by Bay Books (Murdoch Books – Sydney)





STAGES OF CONSTRUCTION – BEFORE YOU START BUILDING

First determine the design and method of construction – Renovation of an existing building, building a new Single Storey, Double Storey, 3 Storey walk up or Duplex. Is it going to have 3 Bed, 4 Beds etc? Are you are going to build it as Brick Veneer, Blocks, Cladding, Rendered, etc. Then consider the type of footings – For example - piers, slab on ground, suspended slab etc., etc.

Next you need to know what the soil classification is on your block – this is to determine what type of footings *can* be used. You may need to engage a **Geotechnical Engineer** – refer to the **Yellow Pages OR Building Code of Australia** – Section 3.2.2.2 Filling under concrete slabs. **Australian Standard AS1289** Methods of Testing soil for engineering purposes.

If you want to know what the different soil classifications are look up the **Building Code of Australia** – Section 1.3

Have you had an inspection of the block for underground services that may have been pre-existing – do they exist, will they need to be disturbed or removed?

If you want to know more - you may need to contact your **Local Council, Electricity Authority, Water Authority and/or Mine Subsidence Board**. Refer to their websites noted in The Authorities – Pages 39-40 & 51-53 of this section.

Do you need to clear the block? Does the block need to be excavated for the footings. **Contact an Excavation Contractor** – Look in the **Yellow Pages** also refer to Section 3.1.1 Earthworks of the **Building Code of Australia**

How will the building affect neighbouring properties, streets, footpaths etc. – Consider what is called a *Dilapidation Inspection* - Refer to Module 5 Page 138 – take photos of existing buildings, paths, fences etc **PRIOR** to commencing the construction – prepare a written description of the surrounding buildings etc, their condition if there is any defects or damage. Keep the information in your Project File.

This is a precautionary activity in case you are accused of creating any damage due to the coming and going of machinery, changes in the slope of the property due to excavation etc. The original report and photos will determine if the damage was created by your building process or if it was pre-existing.

Are there any special Councils requirements?

If you want to know more contact your **Local Council** – these requirements may have been determined at the **Development Application Stage**.

Is demolition required?

If you want to know contact your **Local Council** – these requirements may have been determined at the **Development Application Stage** – **Contact WorkCover** if Asbestos is involved. Don't forget the Safety Issues.



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PRELIMINARY CHECKLIST

The following list is not exhaustive nor necessarily in the correct order – it is meant as a guide only.

	Description of Task	Date Completed
1.	Set up bank account for project	
2.	Complete Owner Builder Course	
3.	Prepare detailed budget for project	
4.	Obtain preliminary finance approval	
5.	Design/select house plan	
6.	Obtain site survey and contour plan	
7.	Provide design brief and final sketch to designer	
8.	Obtain preliminary design drawings	
9.	Choose a Certifying Authority	
10.	Obtain soil test and foundation report	
11.	Obtain engineer's drawings	
12.	Complete working drawings	
13.	Prepare copies for tender/quotes	
14.	Prepare budget estimates for Trade Contractors	
15.	Compile specifications for tenders	
16.	Call prices from a) Trade Contractors	
17.	B) Suppliers	
18.	Finalise construction schedule (RDO's & Public Holidays marked)	
19.		
20.	Insurances Workcover	
21.	Public Liability	
22.	Contractors All Risks	
23.	Personal Sickness/Accident	
24.	Sight, record and file Trade Contractors insurance details	
25.	Check Trade Contractors Licenses with Licensing Authority	
26.	Sign contracts with Trade Contractors	
27.	Obtain Work Method Statements from Trade Contractors	
28.	Finalise Construction Workplace Plan for project	
29.	Confirm account details with suppliers	
30.	Erect Owner Builder sign on site	
31.	Confirm starting dates with Trade Contractors – amend construction schedule if required	
32.	Make arrangements (and pay deposits) for temporary services	
33.	Finalise budget for project	
34.	Finalise Site Diary from Project start date	
35.	Send commencement notification to lender (if applicable)	
36.	Set out building, check (and recheck)	



The following areas of work can only be performed by properly licensed or certified professionals:

-  Plumbing
-  Drainage (sewerage, septic, sullage, etc.)
-  Gas fitting
-  Electrical
-  Demolition
-  Removal of hazardous substances (e. asbestos, lead-based paint)
-  Scaffolding where a person can fall
-  Pest control (installation of termite management systems)
-  Waterproofing

SEQUENCE OF WORK

The following is the normal sequence of a project involving the construction of an entire home. The sequence could vary in detail but should be the same in general no matter what building system is adopted.

- 1st. Prepare and clear the site
- 2nd. Construct footings/subfloor
- 3rd. Construct floor
- 4th. Erect walls and roof structure
- 5th. Install service pipes, wires, windows, etc. (this may need to be done at the same time as the item above or after the next item and some fixtures, such as a bath or spa, may need to be installed as well)
- 6th. Install roof covering and roof drainage
- 7th. Install Windows
- 8th. Install external cladding, doors etc
- 7th. Install internal linings
- 8th. Install joinery and cabinets
- 9th. Apply finishing coverings (paint, tiles, carpets, etc.)
- 10th. Install and connect service outlets/fixtures
- 11th. Clean up and move in



STAGES OF CONSTRUCTION - THE BUILDING PROCESS

1. Foundation – Footings – be it piers, strip footings, slab on ground.

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.1.1 Earthworks The Australian Standard is AS 2870 Residential Slabs & Footings. Don't forget the Safety Issues.

2. . Drainage – Surface Water Drainage, Subsoil Drainage, Stormwater Drainage

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.1.2 Drainage.

3. Sub Floor Ventilation

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.4.1 Sub Floor Ventilation - The Australian Standard is AS 1684 National Timber Framing Code.

4. Concrete floors or bearers, joist and floor laid (if a platform floor is being used).

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.2 Footings and Slabs. The Australian Standard is AS 2870 Residential Slabs & Footings, AS 1684 National Timber Framing Code, AS 3600 Concrete Construction.

5. Damp Proof Courses (DPC's)

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Sections 3.2.2 Vapour Barriers, 3.3.4 Weatherproofing of Masonry. The Australian Standard is AS 2870 Residential Slabs & Footings, AS 2904 Damp Proof Courses and Flashings.

6. Termite Protection

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.1.3 Termite Risk Management. The Australian Standard is AS 3660 Protection of Buildings from Subterranean Termites.

7. Wall frames are erected, plumbed and braced (true and straight)

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.4 Framing (3.4.2 Steel Framing & 3.4.3. Timber Framing. The Australian Standard is AS 1684 – National Timber Framing Code or AS 4100 Steel Structures, NASH Residential and low rise steel framing, AS 3623 Domestic Metal Framing.



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8. Roof framing is construction plus fascia and barge boards fitted.

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.4 Framing (3.4.2 Steel Framing & 3.4.3. Timber Framing. The Australian Standard is AS 1684 – National Timber Framing Code or AS 4100 Steel Structures, NASH Residential and low rise steel framing. AS 3623 Domestic Metal Framing, HB 39-1992 Code of Common Practice for Steel Roofing Don't forget the Safety Issues relating to Working at Heights.

9. Roof drainage is installed.

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.5.2 Gutters & Downpipes. The Australian Standard is AS 3500 National Plumbing & Drainage. Don't forget the Safety Issues relating to Working at Heights

10. Roof sarking is applied and cladding attached.

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.5.1 Roof Cladding. The Australian Standard is AS 2049 Roof Tiles, AS 2050 Installation of Roof Tiles, AS 1562 Design and installation of sheet roof and wall cladding. AS/NZS 4200 Installation of pliable membrane and underlay. Don't forget the Safety Issues relating to Working at Heights.

11. Windows and exterior doors installed.

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.6 Glazing. The Australian Standard is AS 1288 Glass in buildings. AS 2047 Windows in buildings. Don't forget the Safety Issues relating to Working at Heights.

12. External wall cladding applied and soffits lined.

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.5.3 Wall Cladding and 3.3. Masonry. The Australian Standard is AS 2269 Structural plywood cladding. AS 3700 Masonry Structures – Don't forget the Safety Issues relating to Working at Heights.

13. Tongue and groove strip footing laid if specified.

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.4 Framing. The Australian Standard is AS 1684 National Timber Framing Code. Don't forget the Safety Issues.

14. Ceiling battened and/or noggin.

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.4 Framing. The Australian Standard is AS 1684 – National Timber Framing Code. Don't forget the Safety Issues relating to Working at Heights.



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15. Plumbing pipes, sewerage – Gas may need to be considered.

If you want to know the detail of compliance – Refer to NSW Code of Practice for Plumbing & Drainage (2006). The Australian Standard is AS 3500 National Plumbing & Drainage. Don't forget the Safety Issues.

16. Electrical Wiring

If you want to know the detail of compliance – Refer to the Australian Standard is – AS 3000 Wiring Rules. Don't forget the Safety Issues.

17. Internal ceilings and walls lined

If you want to know the detail of compliance – Refer to the Australian Standard is AS 1530 (Insulation) –AS 2588 Gypsum Plasterboard, AS 2589 Gypsum linings in residential. Don't forget the Safety Issues.

18. Bath, shower and kitchen cupboards are installed – Consider the wet area compliance issues

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.8.1 Wet Areas 3.8.3 Facilities. The Australian Standard is AS 3740 Waterproofing of wet areas within residential construction. AS1351 Kitchens. Don't forget the Safety Issues OR refer to website:

19. Internal doors and all mouldings are fitted.

If you want to know the detail of compliance – Refer to the Australian Standard is AS 2688 Timber Doors. Don't forget the Safety Issues.

20. Stairs, Balustrades, Handrails

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.9.1 Stair Construction, 3.9.2 Balustrades. Don't forget the Safety Issues.

21. Electrical Wiring finished off

If you want to know the detail of compliance – Refer to the Australian Standard is – AS 3000 Wiring Rules. Don't forget the Safety Issues.

22. Plumbing finished off

If you want to know the detail of compliance – Refer to the NSW Code of Practice for Plumbing & Drainage (2006). The Australian Standard is The Australian Standard is AS 3500 National Plumbing & Drainage. Don't forget the Safety Issues.

23. Electrical work finished off.

If you want to know the detail of compliance – Refer to the Australian Standard is – AS 3000 Wiring Rules. Don't forget the Safety Issues.



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24. Finishes, Rendering, Floor & Wall Tiles, Painting and decorating carried out

If you want to know the detail of compliance –Don't forget the Safety Issues

25. Floors sanded if required.

If you want to know the detail of compliance –Don't forget the Safety Issues

26. Fire Resistance/Safety – Separating Walls, FFL Levels, Smoke Alarms, Bush Fire Zones.

If you want to know the detail of compliance – Refer to the Building Code of Australia – Volume 2 Section 3.7 Fire Safety. The Australian Standard is AS 3786 Smoke Alarms. Don't forget the Safety Issues.

27. Fencing

If you want to know the detail of compliance – The Dividing Fences Act - Don't forget the Safety Issues

28. Swimming Pools

If you want to know the detail of compliance – Refer to the Swimming Pools Act 1992. Refer to the Building Code of Australia – Volume 2 Sections 3.9.3 Swimming Pool Access. The Australian Standard is AS 1926 Swimming Pool Safety. Don't forget the Safety Issues.



SELF TEST QUESTIONNAIRE

	Question	Ref Page
1	Why would you consider a Cavity Brick Method of Construction	10
	From a drawing provided – indicate the load bearing walls	
	Answer	
2	What is the difference between load bearing and non load bearing walls	12
	Answer:	
3	Could you point out from a drawing what would be considered a load bearing wall	12-13
	From a drawing provided – indicate the load bearing walls	
	Answer	
4	What would you need to consider prior to starting the building process	14
	Answer:	
5	Where would you go to know more about the building compliances and codes	17-20
	Answer:	



THE PROFESSIONALS

CONSULTANTS

Who are the consultants?

The consultants that owner builders are likely to engage may include the following:

-  Architect/Draftsman
-  Valuer
-  Town Planner
-  Surveyor
-  Structural Engineer
-  Electrical Engineer
-  Mechanical Engineer
-  Hydraulic Engineer
-  Geo-Technical Engineer
-  Certifying Authority/Accredited Certifier
-  Builder
-  Sub Contractor

Owner builders are likely to be required to engage valuers, surveyors, structural engineers, and Certifying Authority or Accredited Certifier in almost every case.

ARCHITECTS/DRAFTSMAN

There is a reluctance to engage an architect mainly due to the cost and the concept that they are only engaged for large and complex commercial projects.

It is considered that houses are generally built to conventional standards. However not all owner builders consider the conventional mode of building. A majority of owner builders want to build a residence that expresses their own life style and personality. An architect/draftsman is able to convert those ideas into drawings/plans and specifications that can be approved by the relevant authority.

THE VALUER

Valuers are required to be registered by a Valuers' Registration Board in all States and may be engaged directly by owner builders who wish to put an independent value on to residential unimproved or improved property when considering a purchase.

The Institute of Valuers in each Australian State will assist owner builders with lists of valuers who are skilled in the particular area of valuation required.

TOWN PLANNER

Today freestanding residences may require specific town planning development approval. A qualified town planner determines what development if any is allowed on a chosen allotment.



SURVEYOR

Surveyors may be engaged up to three occasions:

1. Boundary survey; on purchase of the property, to ascertain the location of site boundaries, possible encroachments. This survey may be widened to include:
 -  a tree location survey
 -  a contour (ground levels) survey
 -  services survey
2. Building set out survey; to position the building alignments, boundaries. This survey can be a benefit for steep or awkward sites in locating critical corners.
3. Check survey; this is only required to ensure side boundary and frontage setbacks have not been accidentally encroached upon during construction.

STRUCTURAL ENGINEER

A structural engineer is engaged to design, document and possibly supervise particularly critical structural components. The two most common areas are:

1. The design of steel and sometimes concrete beams, particularly over large spans or openings.
2. The design of suspended reinforced concrete floor and roof slabs, particularly those on upper floors and with critical design details such as cantilevered balconies and upper floor spa tubs.

It should be noted that in some localities authorities may require engineering details for other structural work than that listed above.

ELECTRICAL ENGINEER/MECHANICAL ENGINEER

Consulting electrical/mechanical engineers are engaged for commercial and industrial projects, however when complex electrical and/or mechanical installations or energy management systems (eg: central air conditioning systems) are required, then consideration should be given to engaging an engineer.

HYDRAULIC ENGINEERS

Hydraulic engineers are involved with the design of fluid movement systems and complex or restricted water/sewerage/drainage systems.



GEO-TECHNICAL ENGINEERS

Geo-technical engineers conduct test holes into the substrata of land to be developed. They ascertain significant information about bearing capacities, stability and subsurface water tables which is often required before design of structures on difficult sites can commence.

Note: The geo-technical engineer is usually engaged under instruction from the structural engineer or architect.

ACCREDITED CERTIFIER

If you are planning to have building work done or are subdividing land, you may need to have certificates issued under the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *Strata Schemes (Freehold Development) Act 1973* or *Strata Schemes (Leasehold Development) Act 1986* from either your local council or an accredited certifier. (Check with your local council on what certificates are needed. An overview of the development assessment process is available on the [NSW Department of Planning](http://www.planning.nsw.gov.au) website www.planning.nsw.gov.au.)

If your development needs to be certified, you need to choose whether to appoint the local council and/or an accredited certifier to do this work.

Accredited certifiers and local councils can:

-  Issue construction certificates, certifying (among other things) that the proposed work will comply with the Building Code of Australia (BCA).
-  Issue compliance certificates specifying that conditions of consent have been satisfied or that work complies with the plan and specification, or nominating the classification of a building under the BCA.
-  Issue complying development certificates, certifying that nominated development proposals comply with standards and criteria in council's local environmental plans (LEP) and development control plans [where the council's LEP allows these certificates, they can be issued instead of obtaining a development consent from council].
-  Issue strata certificates to enable registration of strata plans.
-  Conduct inspections of building works during their construction; and
-  Act as a principal certifying authority (PCA) responsible for, among other things, issuing occupation certificates specifying that buildings are safe to occupy and subdivision certificates specifying a subdivision can proceed to registration (accredited certifiers may only issue subdivision certificates where the council's LEP permits their involvement).

You can appoint one certifying authority (an accredited certifier or your local council) to issue a construction certificate or a complying development certificate (CDC), and another certifying authority to act as the PCA. Note that both a construction certificate (or CDC) must be issued, and a PCA appointed, before you can start work on your development.



CHOOSING A CERTIFYING AUTHORITY

Choosing a certifying authority (local council or an accredited certifier) is an important decision.

You can appoint one accredited certifier or the council to issue the construction certificate (or CDC) and a different accredited certifier or the council as the PCA)

Whether you choose council or an accredited certifier, they are working for you and the community to ensure that the building work is safe and meets relevant building standards.

Before choosing a certifying authority, you should:

-  Obtain quotes from a number of certifiers, and your local council.
-  Check their references.
-  Make sure they hold current accreditation for the type of building work you want to do. If in doubt, check with the Building Professionals Board (BPB) on (02) 98955 5950.
-  View a list of certifiers accredited by the BPB at www.bpb.nsw.gov.au alternatively, find a certifier in the Yellow Pages under 'building surveyors' or 'building certifiers'.

What specifically will the Accredited Certifier or council consider?

- | | |
|--|---|
|  Zoning |  Pollution possibilities |
|  Council planning scheme |  Shadow on the neighbours |
|  Amenity of the area |  View restriction(s) of the proposal |
|  Traffic volume and changes |  Geotechnics of the site |
|  Adjoining properties |  Environmental Impact |
|  Rights of way |  All relevant authorities controlling building works |
|  Easements |  Building Code Australia |
|  Covenants | |



EXTRACTS: LOCAL GOVERNMENT ACT, 1993- DIVISION 3 DETERMINATION OF APPLICATIONS

Matters for consideration by Accredited Certifier or Council determining whether to approve development applications.

12 (1) in determining an application for approval to erect a building the council must take the following matters into consideration:

- a) drainage, ventilation, lighting, and the healthiness of the building;
- b) design, materials, stability, building line and height;
- c) size, height and lighting of rooms;
- d) height of floor levels in relation to level of road;
- e) size height and materials of party walls between buildings;
- f) the proportion of the site to be covered by the building and the provision of open spaces and light areas;
- g) the position of the building or any out-building or office in relation to other buildings or to the boundaries of the site;
- h) the provision of storage for water for domestic purposes;
- i) means of access generally and particularly the means of access for the purposes of the removal of human waste and other waste;
- j) whether a public place may be obstructed or rendered inconvenient if the approval is given;
- k) height, materials, stability, design and position of fences (if any) to be erected on or on the boundaries of the allotment on which the building is to be erected;
- l) whether the site is subject to flooding or tidal inundation;
- m) whether the site is or probably will be subject to subsidence or slip;
- n) whether the erection of the building adversely affects the drainage of adjoining sites;
- o) whether the use of the building is likely to cause offensive noise within the meaning of the Noise Control Act 1975;
- p) the likely effect of the building on other land and buildings;

If the land is not or will not be connected to a public sewerage system, whether the site is suitable for the satisfactory disposal of effluent from, and an adequate water supply is or can be made available for, a septic tank, or if not, a septic closet or, if not, another means of disposing of human waste.



BUILDERS

Owner Builders are not required to engage a builder, for this would normally defeat the purpose of being an owner builder.

However there are occasions when you may find it an advantage. The most common of these is where you would engage a builder to construct the house to what is termed 'lock up'. This means that the builder would complete the site works, the structural frame, the cladding and roofing and install the doors and windows.

The jobs that an owner builder would undertake if a builder was not engaged would include the following, but would not necessarily be limited to:

-  Set out the project.
-  Provide the storage containers and amenities (depending on the size and type of construction).
-  Provide the basic safety requirements eg: PPE, Signage, First Aid etc
-  Erect the hoarding and/or fencing.
-  Provide the necessary security measures.
-  Site clearance and preparation.
-  Arrange the temporary services – for example telephone, electricity, gas, water etc.
-  Negotiate with and engaging the trade
-  Preparing and administering the sub contractors terms and conditions.
-  Pay the trade/sub contractors.
-  Coordinate the site inspections by council and other authorities.
-  Negotiating prices, ordering and arranging delivery of materials and supplies.
-  Scheduling/Coordinating the works
-  Keeping the site safe and clean.
-  Learning the building jargon.
-  Attending to any short fall in deliveries immediately.
-  Controlling the changes created by weather conditions.
-  Administering the GST/PAYG withholding compliance.
-  Solving problems, delays etc.
-  Writing contracts that protect you, and are binding on the (sub) contractors, suppliers etc
-  Adhering to legislation and regulations.
-  Answering any questions asked by any person about any aspect of the job instantly.



SUBCONTRACTORS

List every sub-trade that you are likely to need for the job in what is called the Trade Order (the order in which they are needed on the job).

It is ideal to have at least two subcontractors quotes for each trade grouping. This allows you to get comparative prices. It is absolutely essential that if you are getting prices from more than one subcontractor and that you give the same instructions to all subcontractors so that the price you receive *is* comparative.

Your instructions to the sub contractors must be clear and you should make sure that you provide all the details, specifications, drawings that are relevant to that trade for the sub contractor to be able to compile an accurate quotation/price.

A good question to ask the subbies after they have looked at you drawings/plans is to say *"is there anything else on the plan that you can see that you would like to give me a price for?"*

Once you have established a price for the work with your subcontractor you then need to ensure you both sign some form of contract that will afford you reasonable protection from default and/or insurance claims. Some subcontractors may not wish to sign a full contract – however it is important some written agreement is prepared stating all of the work that has to be done and those that are not to be included, when payments are due and the conditions that you expect to be applied should they default. **Do not** be talked out of a written agreement. Refer to the Contracts & Contracts Administration - Section 4

On the matter of payment to the subcontractor, the best advice seems to be do not pay anything unless the work has been done. The written agreement/contract must clearly outline the method and timeframe of payment.

Job Scheduling

It is important to determine a schedule of the job and in what order and when the sub-trades are required on the job.

The key is regular communication with each trade. When you have selected the subcontractor give them an approximate timeframe when you will require them on the job, then keep them informed of the progress of your job – keep them informed if there are delays or changes. Always ask how the delay will affect them and if they will be able to re-work their schedules to carry out the work in the new time frame. Be conscious of the point that you may need to engage another subcontractor.

Also be conscious how the change in schedule will affect the following trades.



Selecting a tradesperson or builder

The golden rule

The golden rule is to make sure all builders and tradespeople have a valid licence. You can look up the licence details of any contractor you are thinking of using on the OFT home building online licence check by logging onto:

www.fairtrading.nsw.gov.au/About_us/Online_services/Home_building_licence_check.html

or call 13 32 20 and the OFT customer service officers will help you.

Important. By law, all builders and tradespeople must display their licence number on any advertisement for their services.

Choosing a builder or tradesperson

Only a builder or trader who is properly trained and has the relevant experience to do the work may be licensed with the NSW Fair Trading. Any person who carries out residential building work over \$1,000 in labour and materials content without an appropriate licence is breaking the law and could be prosecuted.

Specialist tradespeople who carry out any of the following must be licensed regardless of the cost of the work:

-  Electrical wiring.
-  Plumbing, draining and gasfitting work.
-  Air conditioning and refrigeration work (except plug-in appliances).

'Gold Licence' is out of date

The word 'gold' in relation to a licence is out of date. The proper term is now 'contractor licence'.

What does a builder do?

Many builders today do not do actual building work themselves. Builders or building contractors:

-  Manage and coordinate home building or renovation projects.
-  Manage the purchase and delivery of materials.
-  Coordinate the work of tradespeople such as plumbers, painters and carpenters involved in the project.

What does a tradesperson do?

A tradesperson has a current licence from the NSW Fair Trading to carry out work in a particular field in the home building industry in NSW.



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The term tradesperson includes all licensed:

-  Concreters
-  Bricklayers
-  Carpenters
-  Electricians
-  Plumbers
-  Roof Tilers
-  Plasterers
-  Tilers
-  Painters
-  Fencers
-  Gasfitters.

Do you need a builder or tradesperson?

If you want your gutters replaced, your plumbing fixed or your floors sanded, you need a tradesperson.

If you want to add another bedroom or build a new home, you need a builder to organise the right tradespeople to do the work.

What does a supervisor do?

A supervisor is an individual who is responsible for supervising the work under a building contract on behalf of a contracting company or partnership.

The supervisor may hold either a qualified supervisors certificate or a contractor licence.

Qualified Supervisors Certificate

This certifies that the supervisor is qualified to supervise but not to enter into contracts under this certificate.

What if the supervisor is an architect?

Where an architect or other person (not being the building contractor) has been contracted separately to supervise the work of the builder, the roles and responsibilities of that person should be clearly defined in an appropriate contract separate from the building contract.

This is so that there is no confusion about what someone is paid to do. Every person working on a residential building work (RBW) project for the property owner should itemise separately their responsibilities in writing, in case of future dispute about who was the principal person responsible (builder) for the whole RBW project.



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How to find a builder or tradesperson

Try the following:

-  Ask people for their personal recommendations.
-  Ask other people in the industry.
-  Ask the relevant industry association for a list of names.
-  Look for advertisements on television, radio, in home buyer magazines or the local newspaper.
-  Look in the Yellow Pages under 'Building contractors' and under the various types of trade categories.

Project homes

If you choose one of the designs of a builder on display at an exhibition home, then you will probably use that builder. Unless you have otherwise agreed, your new home must by law, be built to the same standard of work and materials used in the exhibition home.

Before you sign a contract, find out what the standard inclusions are. You will have to negotiate with the project builder if you want any changes to the design, fixtures and fittings so that the total cost will fit your budget.



TWELVE IMPORTANT QUESTIONS TO ASK A BUILDING CONTRACTOR

1. What is your contractor's licence number?

You should only deal with a contractor who is currently licensed by the NSW Fair Trading:

 Go to our Home building online licence check and look up the contractors details yourself:

www.fairtrading.nsw.gov.au/About_us/Online_services/Home_building_licence_check.html

or

 Call the NSW Fair Trading on 13 32 20 and one of our customer service officers will search the public register for you.

2. Where can I see examples of your work?

Ask the contractor for the addresses of previous houses they have renovated or built and **ask the owners if they were satisfied** with the results.

Some questions you can ask:

 Was the project finished on time?

 Did they stay close to the quoted costs?

 Was there proper supervision of the other tradespeople?

 Did any defective work get fixed promptly?

 Would they recommend the contractor?

 And importantly, was there good communication with the contractor?

3. What other jobs have you got on at the moment?

A contractor with a lot of work on may not be able to properly manage your job as well.

4. Who will supervise the work?

A contractor doing a large job may get a supervisor to manage the project.

Make sure the supervisor has:

 Sufficient experience in the type of work you want done, and

 A current Supervisor's Certificate from the NSW Fair Trading.

5. Do you have proper insurance?

It is important to check the contractor has all the necessary insurance cover to protect you and your home if something goes wrong.



Go to the Insurance page for an explanation of the different issues and types of insurance:

-  Home Warranty Insurance
-  Builders All-Risk Insurance
-  Public Liability Insurance
-  Workers Compensation or WorkCover Insurance
-  Kit Homes and Insurance
-  Contracts Insurance

6. How much deposit do you need?

The law specifies the maximum deposit you can be asked to pay:

-  If the contract price is up to \$20,000, the maximum deposit is 10% of the contract price.
-  If the contract price is over \$20,000 you can't be asked to pay more than 5% of the contract price.

But, if the work needs to be covered by home warranty insurance, it is illegal for the contractor to take a deposit or progress payment until a certificate of insurance has been given to you.

Important. It is highly recommended that you check the validity of the insurance certificate given to you by contacting the insurance company shown on the certificate.

7. When can you start the work and how long will it take?

If you want the work done by a specific date, make sure the time frame provided in the contract:

-  Is realistic.
-  takes into account possible delays through bad weather or the late supply of materials
-  has a start date and completion date.

Make sure you and the contractor are clear on what they consider 'complete'.

8. What sort of contract will be used?

If the cost of labour and materials is more than \$1,000, the law requires a written contract to be used.

Contracts are not only legal requirements, they will protect you if anything goes wrong.



Fair Trading Contracts

The NSW Fair Trading has produced a series of plain English contracts covering all types of building and renovating work. These are available from Fair Trading Centres, most post offices and some councils.

It's okay to use another contract as long as it contains certain elements.

9. How much will it cost?

Make sure:

-  The contractor includes the total cost of the work in the contract estimated costs are clearly stated in the contract and are realistic
-  You understand how and why costs may change and how the total cost can be affected (eg. some builders will specify the site cost in the contract as a 'provisionary cost item'. This means that this cost may change depending on what the builder's actual costs are in preparing the site. If the site is difficult to build on, or the builders hit solid rock, it will cost you more).

10. When are progress payments to be made?

Most building contracts have a fixed price and should provide for payments to be made for work done, not time on the job. Progress payments should be equal to the dollar value of work completed.

If you've borrowed to build or renovate, your bank or mortgage provider may want to inspect the work before each payment is made. You may want to have an architect or building consultant inspect the work at each stage to ensure it is being done properly and to contract specifications and drawings.

11. What happens if the work is defective?

This question will help you get a sense of how the builder is likely to deal with any complaints you may have about the work. You should know in advance what your options are if a dispute arises.

12. Who cleans the site?

Get this clear from the start so when work is completed, you are not left with a big mess, or a dangerous building site. Make sure an agreement about cleaning the site regularly is included in the contract.



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Learning Activity 3 – Professionals, Consultants & Trades



List the professionals you would need to engage for **your** project and why.

Name of Professional	Why you would need to engage the professional
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

List the trades you may need to engage for your project

Name of Sub Contractor or Trade	What part of the project would you need to engage this Sub Contractor/Tradesman
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	



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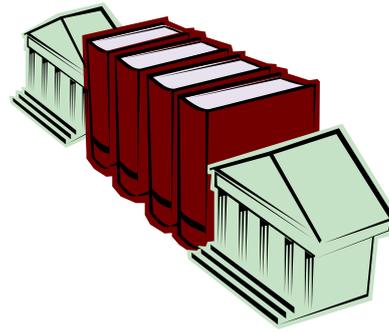


SELF TEST QUESTIONNAIRE

	Question	Ref Page
1.	What professionals would you utilise throughout the construction process Answer	24
2.	Why would you need these professionals Type: Reason Type: Reason Type: Reason Type: Reason	24-30
3.	What is the role of the accredited certifier Answer	26
4.	What will the Accredited Certifier/Council consider when assessing the DA Answers	27
5.	What are the roles and responsibilities of the Owner Builder when choosing the Accredited Certifier Answer	27
6.	What is the advantage of using a builder to complete the project to Lock Up Stage Answer:	29
7.	Why is it to the Owner Builders advantage to provide the Sub Contractor with detailed specifications, drawings etc. Answer:	30
8.	Name 6 of the 12 questions that should you ask a building contractor/sub contractor 1 2 3 4 5 6 7 8	34



THE AUTHORITIES



There are many authorities who have jurisdiction over owner-builders.

The type and names of authorities will vary from location to location and State to State throughout Australia, but the general mechanism and process of control will remain generally constant.

Some of the common areas of authority control are:

1. Local Municipal Council

Health and Building Departments

- Town Planning Departments
- Engineers Department
- Heritage
- Mine Subsidence

2. Water Supply

3. Sewerage Drains

4. Stormwater Drains

5. Electricity Supply

6. Gas Supply

7. Scaffolding Regulations

8. Telephone Connection

9. Builders' Licensing Authorities



Local Municipal Council

In most areas the local shire, municipality, town or city council has control of the main building approval requirements. Most local councils are subdivided into four main departments.

-  Administration – Municipal Clerks Department
-  Engineers Department
-  Health and/or Building Department.
-  Town Planning Department.
-  Mine Subsidence

Most owner builders will only encounter the Building Department at the local council.

Some owner builders may live in areas where Town Planning approval as well as Building Department approval may be required. This requirement is generally restricted to areas that have special environmental impact risks, such as water frontages. Some municipalities however do require all buildings to have Town Planning Department approval either separately from or in conjunction with the building applications.

Generally the Building Department will also encompass the local Health Department, owner builders are unlikely to have any contact with this department unless they intend to install a septic tank or similar on site effluent disposal system.

The Engineering Department of the council generally concerns itself with matters relating to road and stormwater drainage construction.

The Mine Subsidence Board – Also refer to Page 52

The Mine Subsidence Board is a service organisation operating for the community in coal mining areas of New South Wales, Australia, and is responsible for administering the Mine Subsidence Compensation Act.

The Act provides for compensation or repair services where improvements are damaged by mine subsidence resulting from the extraction of coal. The Act also makes the Board responsible for reducing the risk of mine subsidence damage to properties by assessing and controlling the types of buildings and improvements which can be erected in Mine Subsidence Districts.

Other important roles are the elimination of public and private danger caused by mine subsidence and the provision of a comprehensive and accessible advisory and technical service.



Water Supply

The water supply authorities vary significantly between locations, from the owner builder provided rainwater collection or subterranean bore, to the huge Sydney Water Corporation.

Most urban areas are provided with water reticulation, the owner builder only needs to tap into the main. Note: All water supply authorities require this tapping to be carried out by an approved/licensed plumber.

Sewer Drainage

The sewer drainage is commonly controlled by a special department of local government or a board responsible for the sewage collection and disposal system.

Make yourself aware of the regulations of your local sewerage authority, particularly with respect to the need for any applications, and what requirements are placed on drainage contractors by way of registered or licensed trades.

Inspections of sub surface sewer drains may be required by the sewer authority before they are backfilled or built over.

Most plumbing and sewerage pipes are fittings stamped by a water or sewerage board to make sure that the fittings purchased are allowable in the area.

At the completion of plumbing and sewerage installation obtain the certificate of compliance from the plumber/drainer and/or control authority.

Stormwater Drains

In most municipalities the main stormwater and inter allotment drainage systems are controlled by the engineers department, although in some areas centrally controlled stormwater drains apply.

Check carefully on the requirements that apply to stormwater drainage and disposal in your locality.

Electricity Supply

Throughout Australia the methods to distribute electrical power vary significantly. In some States the electrical supply is the exclusive domain of a central generating and distributing authority, but in other States various generating and distribution authorities operate.

Check that the electrician to be engaged is licensed to work in the applicable distribution area. Some electrical authorities require their inspectors to test completed electrical installations. Make sure that your installation is inspected and approved.



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Gas Supply

The Gas supply companies vary from state wide government corporations to private companies operating in small towns or cities.

Most supply companies have a list of approved/licensed gas fitter plumbers who must be used for the installation of gas piping in their area of operation.

The companies may require inspections by their own employees, but in many instances the control of quality is maintained through a tough licensing system.

Scaffolding Regulations

The scaffolding regulations that apply to owner builders vary significantly from state to state and location to location. Check with your local council, NSW Fair Trading or WorkCover to ascertain what regulations are applicable.

In some locations a fee must be paid before erecting any scaffolding and a safety inspection must be carried out before the scaffolding is used by tradesmen.

Telephone Connection

The telephone connection is made exclusively by Telstra in all states; however internal wiring for the in house telephone system may be installed during the building construction period by non Telstra personnel with approval.

All wiring has to be checked and approved by Telstra, before the phones may be used.

Builders' Licensing Authorities

In some states, (notably NSW) the state governments have legislated to license residential house builders and building tradesmen. This legislation was brought in to control the quality of the product being offered by builders and to introduce an insurance protection system for house purchasers against poor workmanship and/or structural failure.

Owner builders should check carefully their particular state legislation on builder licensing or registration, tradesmen licensing or registration and any requirements of building tradesman's long service leave portable contribution fund.

Also Refer to Page 129 in this Module



THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES (DIPNR)

The Department of Infrastructure, Planning and Natural Resources objectives are to:

-  Provide efficient and credible assessment of major development and infrastructure proposals.
-  Establish a state-wide framework for strategic environmental impact assessment.
-  Set up coordinated auditing and compliance systems.

In doing this, they intend to:

-  Maintain close links with environmental regulators, local councils and other government agencies who influence private development and infrastructure improvements.
-  Facilitate community input into projects that affect their local environment.
-  Develop policies, procedures and guidelines.
-  Ensure the assessment process is apt and of the highest quality.

The Departments Goals

To improve economic performance, environmental sustainability and quality of life for the NSW community through better land use and natural resource management supported by well timed, quality infrastructure.

Purpose

DIPNR will have lead responsibility for:

-  Providing integrated advice to Government on decisions affecting land use and natural resource management.
-  Development of the regulatory environment for land use and planning.
-  Establishing a framework for development control.
-  Administering decisions about natural resource allocation and establishing a regulatory environment for natural resource decisions.



NSW FAIR TRADING

What the NSW Fair Trading does

The NSW Fair Trading safeguards consumer rights and advises business and traders on fair and ethical practice. Besides direct services for individuals, the legislative framework we administer sets the rules for fairness in the countless daily transactions between consumers and traders. Unfair practices are investigated and prevented and a licensing system helps ensure unqualified or inappropriate people do not work in a range of NSW industries.

Consumer help

Consumers of everyday goods and services can contact the OFT for information on their rights and responsibilities and assistance with resolving disputes. People who are renting homes, building or renovating, buying or selling property or living in strata scheme property can turn to the OFT for information and assistance.

Business and trader services

Traders and business people can register business names and obtain the licenses and certificates they need to operate in New South Wales. People in the accommodation and property services and building industries and those engaged in selling goods or providing services can receive information on their rights and obligations under fair trading laws.

Associations and Co-operatives

The OFT actively encourage the formation and development of co-operatives and help community groups establish themselves as associations.

Services offered:

Helping consumers

Buying goods and services

Fair trading laws set out your rights and responsibilities in all sorts of purchasing situations such as refunds, lay-bys, warranties and unsafe or defective products. The OFT can provide information to help you if you have a problem. But remember, traders and retailers have rights too, and you may have misinformed them or made the wrong choice.



OWNER BUILDER COURSE

Resolving a complaint

If you believe you have a legitimate complaint, the first step is to make every effort to sort out the problem directly with the trader or service provider.

Be clear, firm and polite and state what the problem is and how you would like it fixed.

Keep all relevant documents, such as receipts, warranties and quotes.

If you don't reach a satisfactory outcome, you can contact the OFT on 13 32 20 or visit your nearest Fair Trading Centre. The OFT provide free information about your rights and options to resolve the dispute.

In some cases the OFT staff can contact the trader and attempt to negotiate a settlement.

Dispute resolution

If the OFT staff are unable to successfully negotiate your matter, you can consider taking your dispute to the Consumer, Trader and Tenancy Tribunal.

The Tribunal provides independent, low cost and accessible dispute resolution in consumer or tenancy disputes. There is a fee to lodge an application. Application forms and the fee schedule can be obtained from the Tribunal's website at www.cttt.nsw.gov.au or by calling the Tribunal Registry on 1300 135 399.



Home building and renovating- - Also see topic on Licensing Page 129 of this Module

Thinking of building a new home or renovating? Only use a builder or tradesperson who is currently licensed with the NSW Fair Trading. You can check a licence by calling 13 32 20 or by visiting our website.

The OFT website and building publications also contain lots of practical information, covering such things as the importance of written contracts, home warranty insurance and resolving building disputes.

Renting

The OFT provide information to tenants, landlords and real estate agents about their rights and responsibilities. This service covers all residential premises, including residential parks. The OFT also fund a number of community-based advocacy and advice services across NSW that deal specifically with tenants.

Any money given to a landlord or their agent as a bond must be lodged with the Rental Bond Board.

Buying or selling your home?

The OFT have information to help you buy or sell a home either at auction or by private treaty. The OFT also have information to assist you with buying 'off the plan' from a developer.

Strata living

The OFT also provide information on all aspects of strata management and administration, including solving disputes.

Retirement villages

Look for information booklets called Retirement village living which outlines the basic rights for prospective residents. It must be given out by village operators to anybody who expresses an interest in becoming a resident. Copies are available free by calling 13 32 20 or they can be downloaded from the OFT website.



THE BUILDING PROFESSIONALS BOARD

The Building Professionals Board is a new authority that was established under the Building Professionals Act 2005 (the Act) on 25 January 2007 and commenced full operations on 1 March 2007.

The role of the Board is to accredit certifiers to issue construction, occupation, subdivision, strata, compliance and complying development certificates under the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986*. The Board also investigates complaints against accredited certifiers and audits accredited certifiers and councils in their certification role

Accredited certifiers (also known as "private certifiers") are accredited by the Building Professionals Board under the *Building Professionals Act 2005* (the Act) to issue construction, occupation, subdivision, compliance certificates and complying development certificates under the *Environmental Planning and Assessment Act 1979* and strata certificates under strata legislation.

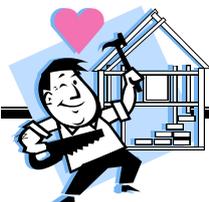
The Act received assent on 7 December 2005, was proclaimed on 25 January 2007 and fully commenced on 1 March 2007. It establishes the Board as an independent statutory body, reporting to the Minister for Planning, which is responsible for:

-  Accrediting all accredited certifiers.
-  Investigating complaints against them.
-  Conducting audits of accredited certifiers and councils; and
-  Improving professional practice through education and training.

Following the proclamation of the Act, the Minister for Planning announced the appointments to the new Building Professionals Board.

The Building Professionals Regulation 2007 was gazetted on 25 January 2007 and commenced on 1 March 2007.

The accreditation scheme for accredited certifiers, made under the Act, was gazetted on 2 February 2007 and commenced on 1 March 2007.



THE COUNCIL'S FUNCTIONS UNDER THE LOCAL GOVERNMENT ACT 1993

The Service Functions of Councils

Examples of these functions include the provision, management or operation of:

-  Community services and facilities
-  Public health services and facilities
-  Cultural, educational and information services and facilities
-  Sporting, recreational and entertainment services and facilities
-  Environment conservation, protection and improvement services and facilities
-  Waste removal, treatment and disposal services and facilities
-  Pest eradication and control services and facilities
-  Public transport services and facilities
-  Energy production, supply and conservation
-  Water, sewerage and drainage works and facilities
-  Storm water drainage and flood prevention, protection and mitigation services and facilities
-  Fire prevention, protection and mitigation services and facilities
-  Land and property development
-  Housing
-  Industry development and assistance
-  Tourism development and assistance

This list of examples is not exhaustive.

These functions are conferred in broad terms in Part 1 of the Act. Particular provisions are made for the management of public land in Part 2 of the Act. Part 3 of the Act imposes some restraints and qualifications on the exercise of the service functions.

A council may have other service functions under other Acts. For example, a council has functions relating to the provision and management of roads under the *Roads Act 1993*.



Regulatory Functions of Councils

A council, in relation to a range of activities within its area, exercises regulatory functions of 2 main kinds.

First – various activities can only be carried out if the council gives its approval (for example, the erection of a building or the operation of a caravan park)

Second – a council can order a person to do, or to stop doing, something (for example, a council can order a person to demolish a building that has been erected without an approval or to keep fewer animals on specified premises).

In exercising its regulatory functions, the council must observe any relevant statutory criteria and any other criteria contained in a local policy it may have adopted after public consultation.

Chapter 5 Section 21 Functions under the Local Government Act 1993

The Chapter provides, as an adjunct to the approvals and orders systems, for the issuing by a council of certain certificates, including building certificates. If a council issues a building certificate for a building, the building is protected by the certificate from being the subject of an order to demolish the building or to carry out work to the building because of:

-  Anything existing before the date of the certificate
-  Deterioration due solely to fair wear and tear within 7 years after that date.
-  Any encroachment of the building onto council land.

Note The Act classified certain of a council's functions as service, that is non-regulatory (Chapter 6), regulatory (Chapter 7) or ancillary (Chapter 8). Ancillary functions are those functions that assist the carrying out of a council's service and regulatory functions.

A council also has revenue functions (Chapter 15), administrative functions (Chapters 11, 12 & 13) and functions relating to the enforcement of this Act (Chapters 16 & 17).

Chapter 5 Section 22 Other Functions

A council has the functions conferred or imposed on it by or under any other Act or law.



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Note: While the main functions of councils are provided for under this Act, councils also have functions under other Acts.

Some other Acts and some of the functions they confer include:

<i>Bush Fires Act 1949</i>	Declaration of bush fire danger periods and issue of permits to light fires during those periods requiring the furnishing of information to the Bush Fire Council and its Co-ordinating Committee
<i>Clean Air Act 1961</i>	Requiring the installation of equipment on industrial premises to reduce air pollution.
<i>Community Land Development Act 1989</i>	Planning functions as consent authority.
<i>Conveyancing Act 1919</i>	Placing covenants on council land
<i>Dog Act 1966</i>	Dog registration and control
<i>Environmental Offences and Penalties Act 1989</i>	Service of penalty notices for certain offences under the Act and the <i>Clean Air Act 1961</i>
<i>Environmental Planning and Assessment Act 1979</i>	Environmental planning
<i>Fire Brigades Act 1989</i>	Payment of contributions to fire brigade costs and furnishing of returns
<i>Fluoridation of Public Water Supplies Act 1957</i>	Fluoridation of water supply by council
<i>Food Act 1989</i>	Inspection of food and food premises
<i>Impounding Act 1993</i>	Impounding of animals and articles
<i>Library Act 1939</i>	Library services
<i>Noise Control Act 1975</i>	Noise control
<i>Public Health Act 1983</i>	Inspection of systems for purposes of microbial control
<i>Recreation Vehicles Act 1983</i>	Restricting use of recreation vehicles
<i>Roads Act 1993</i>	Roads
<i>State Emergency Service Act 1989</i>	Recommending appointment of local controller
<i>Strata Titles Act 1973</i>	Approval of strata plans
<i>Strata Titles (Leasehold) Act 1986</i>	Approval of leasehold strata plans
<i>Swimming Pools Act 1992</i>	Ensuring restriction of access to swimming pools

The exercise by a council of its functions under this Act may also be modified by the provisions of another Act. Some of those Acts and some of the modifications they affect include:

<i>Costal Protection Act 1979</i>	Limitation on coastal development by councils
<i>Environmental Offences and Penalties Act 1989</i>	Forfeiture of council functions to person appointed by Governor
<i>Freedom of Information Act 1989</i>	Council required to publish certain information, to grant access to certain documents and to amend certain records that are shown to be incomplete, incorrect, out of date or misleading
<i>Heritage Act 1977</i>	Rating based on heritage valuation.
<i>State Emergency & Rescue Management Act 1989</i>	Council required to prepare for emergencies
<i>Unclaimed Money Act 1995</i>	Unclaimed money to be paid to the Chief Commissioner of Unclaimed Money
<i>Unhealthy Building Land Act 1990</i>	Council, which approves subdivision of unhealthy building land, required to notify Environment Protection Authority.



MINE SUBSIDENCE BOARD

The Mine Subsidence Board is a service organisation operating for the community in coal mining areas of New South Wales, Australia, and is responsible for administering the Mine Subsidence Compensation Act.

The Act provides for compensation or repair services where improvements are damaged by mine subsidence resulting from the extraction of coal. The Act also makes the Board responsible for reducing the risk of mine subsidence damage to properties by assessing and controlling the types of buildings and improvements which can be erected in Mine Subsidence Districts.

Other important roles are the elimination of public and private danger caused by mine subsidence and the provision of a comprehensive and accessible advisory and technical service.

Expert advice is provided to property owners, government departments and authorities, local councils, community organisations and industries within Mine Subsidence Districts, and throughout NSW. This advice aims to provide compatibility between surface development and underground mining. To this end, the Board controls building and other surface development in Mine Subsidence Districts, setting building and construction requirements that provide protection from subsidence damage. These requirements cover the nature and class of improvements, including height, type of building materials used and the method of construction.

The Board has the power to issue stop work notices to prevent illegal construction in Mine Subsidence Districts, and any improvements erected without the Board's approval, or contrary to an approval are not eligible for compensation.

If you are planning, building or renovating in a Mine Subsidence District you should see the helpful staff at your local Mine Subsidence Board Office. Our offices are located in Newcastle, Picton, Singleton and Wyong. Also for Lake Macquarie residents we have a kiosk located in the Lake Macquarie City Council reception area for submission of Building Applications.

Buying Property and Building in a Mine Subsidence District

Early notice as to whether a property is within a Mine Subsidence District is shown on a Section 149 Certificate, which must be attached to a Contract of Sale when a property is put on the market. Local councils issue the certificate, which is sometimes known as the "Zoning Certificate".

It is important to read the 149 Certificate, because if a property is in a Mine Subsidence District, you need to get more information from the Mine Subsidence Board. As a service to home and land owners and prospective buyers, the Board provides advice and issues certificates, at a prescribed fee, which form part of a legal property search. Certificates will tell you if buildings are eligible for compensation, if there are or have been claims related to a property or the Guidelines for property development.

These enquiries should be made in the normal course of conveyancing.



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Future Building Activity

Purchasers must obtain approval from the Board prior to any future building activity or extensions within a Mine Subsidence District. Contact any of the Board's offices for information and advice.

Applicants intending to develop major structures or large scale developments should contact the Board at the preliminary planning stage. The Board's expert staff would be pleased to assist you with further enquiries or provide you with any of our other brochures.

The Mine Subsidence Board will provide interpreter services free of charge to people of non-English speaking backgrounds.

Surface Development Guidelines

These development controls involve the Board setting subdivision, building and construction guidelines, which are developed and introduced for the protection of homeowners. They are designed to ensure that homes and other structures will tolerate the expected levels of subsidence, thus minimising the risk of being damaged.

Guidelines set by the Board cover both the nature and class of improvements and include the height of a building, the type of building materials used, construction methods including types of footings and reinforcement and any special conditions. Construction guidelines vary from area to area depending on the coal mining activity and the expected amount of subsidence.

It is mandatory to obtain the Mine Subsidence Board's approval to subdivide or erect or alter any improvements on land that is within a proclaimed Mine Subsidence District.

However, where a council does not require a building application, the Board will deem approval for those improvements.

Buildings built outside of and prior to the proclamation of a Mine Subsidence District are automatically covered for compensation. However homes and other structures built in contravention of, or without, the Board's approval, in a Mine Subsidence District, are not eligible for compensation in the event of damage due to mine subsidence.

If you wish, The Mines Subsidence Board can send you guidelines for your property, complete the an online Request For Guidelines Form, or print out the Guidelines Application form and mail to MSB office or collect a claim form at any MSB office.

NB: Surface development guidelines are valid at the date of issue only and may vary according to future mining proposals.

BUILDING

Depending on the guidelines in place for the District, the Board may grant unconditional approval, stipulate certain conditions or, in some cases where the risk of damage is too great, refuse approval. Improvements must be built in accordance with the Board's approval to be eligible for compensation.



Conditions That May Be Imposed

Conditions to reduce the risk of damage may include:

-  Restrictions on the types of building materials used.
-  Use of control joints for articulation of larger improvements with a restriction on the maximum length of masonry or concrete sections.
-  Footings or other specified components of the building to be designed and certified by qualified engineers.
-  A maximum height of foundation brickwork.
-  Footing trenches and swimming pool excavations complete with reinforcement, to be inspected by an officer of the Board prior to pouring concrete. The minimum footing system required should comply with AS 2870.
-  Submission of a satisfactory site investigation report prepared by a qualified geotechnical engineer.

Access the MSB website for information on *Designing for Mine Subsidence*. In areas of shallow mine workings, further design may be required. Access the MSB website for information on *Designing for Pothole Subsidence*.

Delegated Approvals

Development NOT requiring a separate approval – some specified development does not need a separate or formal approval from the Mine subsidence Board. For details, Access the MSB website for information on *Deemed Approvals*



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AUSTRALIAN SAFETY AND COMPENSATION COUNCIL

The ASCC lead and coordinate Australia's national effort to:

-  Promote best practice in occupational health and safety (OHS)
-  Improve workers' compensation arrangements
-  Improve rehabilitation and return to work of injured workers

Their role is to:

-  Develop national occupational health and safety (OHS) and workers' compensation policy
-  Encourage policy discussion and research

National Policy:

-  OHS strategy
-  OHS standards and codes of practice
-  Workers' compensation and return to work

Who is ASCC?

The ASCC is a partnership of governments, employers and employees.

The ASCC provides policy advice to the Workplace Relations Ministers' Council on national OHS and workers' compensation arrangements in order to achieve national regulatory frameworks.

The ASCC:

Leads and coordinates national efforts to:

-  Prevent workplace death, injury and disease; and
-  Improve workers' compensation arrangements, and the rehabilitation and return to work of injured workers;
-  Provides a national forum by which representatives of Commonwealth, State and Territory governments, employers and employees consult and participate in the development of policies relating to OHS and workers' compensation matters; and
-  Promotes national consistency.

National standards and codes of practice declared by the ASCC are advisory only, and require separate legislative action by Commonwealth, State and Territory governments to implement the standards and codes within their jurisdiction.



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The work of the ASCC is supported by the Office of the ASCC within the Commonwealth Department of Education, Employment and Workplace Relations.

The ASCC is not a regulatory authority and as such it does not make or enforce laws. This is because OHS laws in Australia operate in each of the state, territory and commonwealth jurisdictions and are administered by jurisdictions' OHS authorities.

The ASCC is a council made up of government, employer and employee representatives.

THE NEW NATIONAL OHS FRAMEWORK

Establishing a new body to replace the ASCC

The Australian Government has committed to establishing a new and independent national occupational health and safety (OHS) and workers' compensation body to replace the ASCC. The Government has stated in policy documents that this new independent body would be an inclusive and reform-focused agency.

At the Workplace Relations Ministers' Council (WRMC) meeting on 23 May 2008, Ministers agreed to replace the ASCC with a body that will have tripartite representation and will be jointly funded by the Commonwealth, states and territories. Legislation to establish the body will be introduced into Federal Parliament to enable it to commence operations as soon as possible.

The Council of Australian Governments signed an Intergovernmental Agreement to end the fragmented and inconsistent approach to OHS on 3 July 2008. This will see the implementation of uniform legislation, complemented by consistent compliance and enforcement.

Workplace Relations Ministers' Council 12 February 2009

The Workplace Relations Ministers' Council (WRMC) met on Thursday 12 February 2009 to consider OHS issues.

The WRMC agreed that Safe Work Australia would be established as an Executive Agency prescribed under the Financial Management and Accountability Act 1997. Executive Agencies are created by the Governor-General on advice of the Prime Minister (refer Public Service Act 1999).



National OHS Review

The first report of the National Review into Model OHS Laws makes recommendations on the priority areas of duties of care and the nature and structure of offences, including defences.

The second and final report covers other matters relevant to a model OHS Act, such as definitions, workplace-based consultation, enforcement and compliance, permits and licensing arrangements, and the role of OHS regulatory agencies.

National standards codes of practice and related guidance

One of the ASCC's key roles is to help achieve nationally consistent regulation by producing national standards as a model for laws in the states and territories.

The ASCC has the power to declare National OHS Standards and Codes of Practice. These documents are the basis for a nationally consistent OHS regulatory framework. The standards and codes of practice are not legally enforceable unless State and Territory governments adopt them as regulations under their principal OHS Acts.

Guidance notes provide further explanation on how to comply with the National Standard.



WORKCOVER

WorkCover NSW is a statutory authority within the Minister for Commerce's portfolio. Its primary objective is to work in partnership with the NSW community to achieve safe workplaces, effective return to work and security for injured workers.

WorkCover administers and enforces compliance with occupational health and safety (OH&S), injury management and workers compensation legislation, and manages the workers compensation system. WorkCover manages these areas through education, inspections, investigations into incidents and complaints and, when necessary applies penalties and prosecutions.

WorkCover also has a regulatory role in licensing and certification of certain activities and hazardous equipment

Vision and Mission

WorkCover NSW is committed to safe, secure workplaces by working in partnership with the NSW community to achieve safer workplaces, effective recovery, return to work, and security for injured workers.

Objectives

WorkCover NSW:

-  Promotes the prevention of work-related injury and diseases, and assists workplaces to become healthier and safer.
-  Promotes the prompt, efficient and effective management of injuries to persons at work.
-  Ensures the efficient operation of workers compensation insurance arrangements.
-  Ensures the appropriate coordination of arrangements for the administration of the schemes to which the workers compensation legislation and the OHS legislation relates.



Statutory Functions

WorkCover NSW's main statutory function is to administer the following legislation:

Acts:

-  *Occupational Health and Safety Act 2000*
-  *Explosives Act 2003*
-  *Workers Compensation Act 1987*
-  *Workplace Injury Management and Workers Compensation Act 1998*
-  *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*
-  *Workers Compensation (Dust Diseases) Act 1942*
-  *Sporting Injuries Insurance Act 1978*
-  *Rural Workers Accommodation Act 1969*

Regulations and codes of practice under these Acts, including:

-  *OHS Regulation 2001*
-  *Dangerous Goods Regulation 2005*
-  *Explosives Regulation 2005*



PUBLICATIONS – AVAILABLE FROM ALL WORKCOVER OFFICES

Guidance Notes/Alerts

Amenities

Amenities on Housing Construction (Cottage Industry) Sites
Provision of amenities on mobile and short term civil construction sites

Certificates of Competency

Crane Loadshifting Equipment Operations and Dogging
Slewing Mobile Cranes
Certificate Requirements for Telescoping Boom Cranes
Certification requirements for people who service cranes, hoists, and forklift trucks

Cranes and Hoists

Vehicle loading cranes on construction sites
Precautions in Jumping Tower Cranes
Further precaution in Jumping Tower Cranes
Snatch Block Failures in Tilt-Up Construction
Elevating work platform failures due to poor maintenance
Operating crane – load shifting equipment and dogging at the same time
Design Notification of Tower Cranes
Design Notification and Registration of Pin Jib Cranes
Certificate requirements for side boom cranes used for pipe laying
Design and installation of cantilevered crane loading platforms

Demolition

Electrical Dangers in Demolition

Electrical Safety

Poorly Maintained Electrical Tools and Equipment Can Kill
Tiger Battens on Power Lines
Working near Underground Electrical Cables
Electrical Dangers in Demolition

Hazard Identification and Risk Assessment

Hazard Identification, Risk Assessment and Risk Control in the Workplace

Lifting Equipment

Imported Lifting Equipment Failure
Snatch Block Failures in Tilt-Up Construction

Manual Handling

Dangers in using stilts for elevated work
Manual Handling Risks
NIOSH Lifting Equation



Miscellaneous

- Exposure to radiofrequency (RF) radiation
- Post-tensioning prestressed concrete elements
- Employee Health and Safety Training
- Consulting with Employees on Health and Safety
- Precautions in using high tensile Z-tie bars

Personal Protective Equipment

- Connectors and couplings for supplied air respirators
- Respiratory Protective Devices

Plant and Equipment

- Forklifts - instability and excessive speed
- Developing a safe system of work for jump forms and slip forms
- Dangers in using stilts for elevated work
- Incidents Involving Post Hole Diggers
- Worker Crushed to Death while Cleaning Concrete Truck
- Hazards of Using Hand held Concrete Cutting Saw
- Requirements for Using Tractors & Other Powered Mobile Plant
- Hazards of concrete trucks reversing to discharge into a pump
- Requirements For Maintaining Plant in Safe Working Order
- Hand Held Concrete Cutting Equipment
- Earthmoving Equipment Used as a Crane

Rigging

- Precautions in Jumping Tower Cranes
- Further precaution in Jumping Tower Cranes
- Certificate Requirement for Dogging and Slinging Techniques
- Snatch Block Failures in Tilt-Up Construction

Scaffolds/Formwork

- Dangers of Mixed Brand Modular Components in Modular Scaffolds
- Requirements for Safe Construction of Perimeter Formwork

Tilt Panels

- Precast & tilt-up panels: concrete strengths for initial lifting
- Use of Anchors as Bracing Inserts in Precast Concrete Panels

Trenching

Work at Height

- Unsafe Roofing Supports in Housing Construction
- Danger in Using Stilts for Elevated Work
- Anchors for Fall Arrest and Travel Restraint Systems
- Safe installation and removal of outdoor advertising material



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Learning Activity 4 – The Authorities



List the Authorities you would need to consult regarding *your* project and why.

Name of Authority	Why you would need to consult with this Authority
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	



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SELF TEST QUESTIONNAIRE

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1	List the common areas of authority over Owner Building	40
	Answers	
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	Answers	
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	Answer	
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	Answer	
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	Answer	
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	Answer	



COMPLIANCE WITH LEGISLATION & REGULATIONS



LOCAL GOVERNMENT ACT 1993

What are the purposes of this Act?

The purposes of this Act are as follows:

- (a.) To provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales.
- (b.) To regulate the relationships between the people and bodies comprising the system of local government in New South Wales.
- (c.) To encourage and assist the effective participation of local communities in the affairs of local government.
- (d.) To give councils:
 -  The ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public.
 -  The responsibility for administering some regulatory systems under this Act.
 -  A role in the management, improvement and development of the resources of their areas.
- (e.) To require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities.



HOME BUILDING ACT 1989

The Home Building Act 1989 is a law that regulates residential building work in NSW. Residential building work is building or trade work on single dwellings, villas, houses and home units.

Some of its most important provisions are listed below:

-  All builders and tradespeople must be licensed to practise their trade where the value of the work (including labour and materials) is over \$1,000 (except the specialist trades of electrical plumbing, drawing, gasfitting, air-conditioning or refrigeration work, which must be licensed regardless of value of work).
-  A written contract must be used for residential building work where the value of the contract is more than \$1,000
-  If the value of the contract is more than \$12,000 (including the cost of any materials supplied by the contractor), the builder or tradesperson must give a certificate of home warranty insurance to the home owner, before taking any money (including a deposit) on the contract, and before starting any work.

The Home Building Act 1989 also applies to contract to supply kit homes. A kit home means a set of building components which, when offered for sale, are sufficient for the construction of a dwelling (home), garage or carport according to plans or instructions provided by the supplier.

The Regulations which accompany the Home Building Act define a dwelling as:

"Dwelling" certain structures and improvements included for the purposes of [the Act](#) the following structures and improvements are declared to form part of a [dwelling](#) when constructed for use in conjunction with a [dwelling](#):

- (a) parts of a building containing more than one [dwelling](#) (whether or not the building is also used for non-residential purposes), being stairways, passageways, rooms, and the like, that are used in common by the occupants of those [dwellings](#), together with any pipes, wires, cables or ducts that are not for the exclusive enjoyment of any one [dwelling](#),*
- (b) parts of a building containing one [dwelling](#) only (where the building is also used for non-residential purposes), being stairways, passageways and the like which provide access to that [dwelling](#),*
- (c) if non-residential parts of a building containing one or more [dwellings](#) give support or access to the residential part the structural elements of the non-residential parts giving such support or access,*
- (d) cupboards, vanity units and the like fixed to a [dwelling](#),*
- (e) detached garages and carports,*
- (f) detached decks, porches, verandahs, pergolas and the like,*
- (g) cabanas and non-habitable shelters,*



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- (h) *detached workshops, sheds and other outbuildings (but not jetties, slipways, pontoons or boat ramps and any structures ancillary to these exceptions),*
- (i) *concrete tennis courts and the like,*
- (j) *driveways, paths and other paving,*
- (k) *retaining walls,*
- (l) *agricultural drainage designed or constructed to divert water away from the footings of a dwelling or a retaining wall,*
- (m) *fences and gates,*
- (n) *ornamental ponds and water features, and other structural ornamentation, the construction or installation of which requires an approval under the Local Government Act 1993.*

The Regulations define the following as **outside the definition** of dwelling under the Act:

- (a) *a boarding house, guest house, hostel or lodging house,*
- (b) *all residential parts of a hotel or motel,*
- (c) *any residential part of an educational institution,*
- (d) *accommodation (other than self-contained units) specially designed for the aged, disabled or children,*
- (e) *any residential part of a health care building that accommodates staff,*
- (f) *a house or unit designed, constructed or adapted for commercial use as tourist, holiday or overnight accommodation,*
- (g) *any part of a non-residential building that is constructed or adapted for use as a caretaker's residence,*
- (h) *a moveable dwelling (with or without a flexible annexe) within the meaning of the Local Government Act 1993, that is, or is capable of being, registered under the Traffic Act 1909 (such as a caravan or a motor home),*
- (i) *a residential building for the purposes of which development consent can be granted only because of State Environmental Planning Policy No 15 Multiple Occupancy of Rural Land.*



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Includes the following:

-  Development Application to replacing the development, building and subdivision applications.
-  All aspects of development will be assessed under this system.
-  Categories of development – State, local and integrated development; complying development does not begin until either councils prepare their own Local Environmental Plans (LEPs) or the State Environmental Planning Policy (SEPP) comes into effect.
-  Private certification of:
 - › construction certificates
 - › compliance certificates
 - › occupation certificates

Private certification of the subdivision certificate will not begin until either councils prepare their own LEOs or the SEPP comes into effect.

-  Issues about approvals needed under other legislation, such as a water licence, will be considered at the development application stage – section 78A for approvals under the Local Government Act and Section 91 for licences under various other Acts.
-  Revised ‘matters for consideration’ in assessing an application (see section 70C; and
-  Orders – transferred from the Local Government Act 1993

In December 1999, the State Environmental Planning Policy will come into effect where a LEP does not apply.



Acts administered by the EPA

The following Acts are administered by the EPA and empower the EPA to act on behalf of the environment and the community.

- Contaminated Land Management Act 1997
- Environmental Trust Act 1998
- Environmentally Hazardous Chemicals Act 1985
- National Environment Protection Council (New South Wales) Act 1995
- Ozone Protection Act 1989
- Pesticides Act 1999
- Protection of the Environment Administration Act 1991
- Protection of the Environment Operations Act 1997 (POEO Act)
- Radiation Control Act 1990
- Recreation Vehicles Act 1983
- Road and Rail Transport (Dangerous Goods) Act 1997
- Unhealthy Building Land Act 1990 [repealed 28.4.03]
- Waste Avoidance and Resource Recovery Act 2001
- Waste Minimisation and Management Act 1995 [repealed 8.10.01]

Regulations administered by the EPA

The following regulations are made under Acts which are administered by the EPA.

- Clean Air (Domestic Solid Fuel Heaters) Regulation 1997 [repealed 1.9.02]
- Note: This Regulation has been replaced by the *Protection of the Environment Operations (Clean Air) Regulation 2002*.
- Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997 [repealed 1.9.02]
- Note: This Regulation has been replaced by the *Protection of the Environment Operations (Clean Air) Regulation 2002*.
- Clean Air (Plant and Equipment) Regulation 1997
- Clean Waters Regulations 1972
- Contaminated Land Management Regulation 1998
- Environmentally Hazardous Chemicals Regulation 1999
- Ozone Protection Regulation 1997
- Pesticides Regulation 1995
- Protection of the Environment Administration Regulation 2002
- Protection of the Environment Operations (Clean Air) Regulation 2002
- Protection of the Environment Operations (Control of Burning) Regulation 2000
- Protection of the Environment Operations (General) Regulation 1998
- Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002
- Protection of the Environment Operations (Noise Control) Regulation 2000
- Protection of the Environment Operations (Penalty Notices) Regulation 1999
- Protection of the Environment Operations (Savings and Transitional) Regulation 1998
- Protection of the Environment Operations (Waste) Regulation 1996
- Radiation Control Regulation 2003
- Road and Rail Transport (Dangerous Goods) (Rail) Regulation 1999
- Road and Rail Transport (Dangerous Goods) (Road) Regulation 1998



BASIX – Building Industry Sustainability Index

BASIX is a building sustainability index. It has been developed by the Department of Infrastructure, Planning and Natural Resources (DIPNR), with input from agencies, utilities and councils. It complements Sydney Water's water smart initiatives and programs which encourage water conservation, substitution and recycling in residential areas and homes.

Introduced as part of the NSW planning system, BASIX (the Building Sustainability Index), is a web-based planning tool that measures the potential performance of new residential dwellings against sustainability indices.

BASIX ensures each dwelling design meets the **NSW Government's targets** of:

-  Up to 40% reduction in mains potable water consumption and
-  25% reduction in greenhouse gas emissions, compared with the average home.

The greenhouse target will increase to 40% from July 2006.

Each development application for a residential dwelling must be submitted with a BASIX Certificate. A Certificate is issued once a BASIX assessment has been satisfactorily completed, using the on-line tool.

To get a BASIX Certificate, the building designer enters the house design data into the BASIX assessment tool, which then calculates whether the design meets the reduction targets. Once the design complies, a Certificate can be printed.

The building applicant, (e.g. architect, builder, owner builder) is responsible for completing the assessment, ensuring the BASIX commitments are clearly marked on the plans, and submitting the BASIX Certificate with the development application.

The sustainability indices are:

-  Water
-  Stormwater
-  Energy
-  Indoor Amenity
-  Landscape
-  Waste
-  Materials
-  Transport
-  Social

To access BASIX, information about proposed new developments is entered into a web-based application – an on-line checklist. This will calculate the sustainability index of projects.



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When BASIX came into force, proposals for new residential development must be submitted with a BASIX Certificate. To get a BASIX Certificate, the proposed development must satisfy the requirements of the BASIX assessment. The assessment can be completed by architects and other design professionals or by owner builders using the BASIX tool on the Internet.

From 1 July 2005

All new housing (including new multi-unit residential developments such as villas, townhouse and low-rise, mid-rise and high-rise developments) throughout NSW will be required to comply with the same requirements.

BASIX Certificate

In order to obtain a BASIX Certificate to submit with the development application and/or complying development certificate, complete the on-line BASIX assessment. Following are suggested steps for completing this process.

1. Download and read the Data Input checklist. This provides a list of the information that will be required to complete the BASIX assessment tool. It is recommend to use this list to gather all relevant information before starting the BASIX assessment.
2. Use the BASIX tutorial for a demonstration of how the BASIX tool works.
3. Read some background information on BASIX from the website www.basix.nsw.gov.au A range of documents are available to assist you to use and understand the BASIX tool. If the information you require is not here, please call the BASIX Help Line on 1300 650 908 or email basix@dipnr.nsw.gov.au.
4. Login to the relevant BASIX tool (for single dwellings or for multi-units) on the home page. Before you login for the first time, you must register your details, to get a username and password. Each time you use the BASIX tool, you will need to login, otherwise your project details will not be saved.
5. Follow the steps through the tool, entering project details and data. The tool displays how your proposed house design is scoring, according to its potential to meet the energy and wager reduction targets. There are help notes throughout the process to help you understand the questions and show you have to meet these targets.
6. Print your project report and review the BASIX commitments you have made.
7. Once you are happy with the commitments, print your Certificate and attach it to your house plans an development application and submit to Council.



NATIONAL STANDARD FOR CONSTRUCTION WORK (NOHSC: 1016 (2005)).

Preface

Construction is one of Australia's highest risk industries.

In 2002-03, the construction industry employed approximately 5% of the Australian workforce but accounted for 9% of the accepted workers' compensation claims involving one or more weeks off work that were lodged in that year. On average, 49 building and construction workers have been killed at work each year in Australia since 1997-1998. People working in the construction industry are more than twice as likely to be killed at work as the average worker in all Australian industries. In 2002-03, for example, workers compensation records show there were 9.2 fatalities for 100,000 employees in the construction industry, compared with the national average of 3.1 fatalities per 100,000 employees.

This National Standard for Construction Work (NOHSC: 1016 (2005) aims to protect persons from the hazards associated with construction work. It assigns responsibilities to individuals to identify these hazards and either eliminate them or, where this is not reasonably practicable, minimise the risks they pose.

The genesis for this standard was the NOHSC's recognition in October 2002 that the construction industry warranted a high priority in Australia's efforts to reduce workplace death and injury. This was followed in March 2003 by the Final Report of the ?royal Commission into the Building and Construction Industry, which recommended that uniform national occupational health and safety (OHS) construction standards be developed under the National OHS Strategy. In November 2003, the Workplace Relations Ministers' Council agreed that the NOHSC should undertake the recommended work to develop national material for the construction industry.

To assist it in this work, the NOHSC established a Construction Reference Group, with representatives from each state and territory, the Commonwealth, the Housing Industry Association, the Master builders' Association, the Construction, Forestry, Mining and Energy Union and the NOHSC Office conducted focus groups around the country to inform affected parties and elicit comment.

Along with associated national codes of practice, including codes for the prevention of falls in construction work, tilt-up and precast concrete construction work, and occupational health and safety induction training for construction work, the NOHSC National Standard for Construction Work draws together best practice from Australian state and territory OHS authorities into a framework that will promote, for the first time, a nationally uniform approach to the management of OHS in the building and construction industry.

This National Standard for Construction Work was declared by the NOHSC, in accordance with Section 38 of the National Occupational Health and Safety Commission Act 1985 (Cth), on 27 April 2005.



Compliance with the provisions of this standard will not necessarily mean that a person has fulfilled their obligations under all relevant occupational health and safety acts and regulations. Persons should contact their state, territory or Australian Government health and safety authority for information on those obligations.

Scope and Application of the Standard

The national standard applies to:

-  Clients and designers of construction projects;
-  Persons with control of a construction project;
-  Persons with control of construction work;
-  Persons engaged to undertake construction work; and
-  Construction sites.

But does not apply to owners and or occupiers of dwelling personally performing construction work on those dwellings.

Note: This national standard sets out requirements for issues that are relevant to construction work.

Hazards that are present in construction work and covered by other NOHSC standards include:

-  Manual handling
-  Plant
-  Occupational noise
-  Hazardous substances
-  Dangerous goods

This national standard does not set out all the requirements that may need to be satisfied when undertaking construction work. It concentrates instead on the management of those hazards and risks that have a significant construction-specific component.

Check with the OHS authority in the jurisdiction in which you are undertaking construction work for guidance on what is 'reasonably practicable'.

Objectives and Principles

The objective of this national standard is to protect persons from the hazards associated with construction work by:

-  Requiring specified classes of persons to ensure these hazards are identified, the risks they pose assessed, and either the risks eliminated or, where this is not reasonably practicable, the risks are minimised; and
-  Requiring the provision of information, consultation, planning, documentation, training and other measures to ensure occupational health and safety.

This national standard does not supersede obligations under relevant legislation of the states and territories and the Australian Government.



OCCUPATIONAL HEALTH & SAFETY ACT 2000

The Occupational Health and Safety Act sets out legal responsibilities for both the principal contractor, employers and employees. You as the Owner Builder are required to:

“...provide and maintain for workers, a working environment that is safe and without risks to health.”

“Practicable” involves doing what can be done in consideration of:

- (a) The severity of the hazard or risk in question.
- (b) The state of knowledge about that hazard or risk and any methods of removing or mitigating that hazard or risk.
- (c) The availability and suitability of ways to remove or mitigate that hazard or risk; and
- (d) The cost of removing or mitigating that hazard or risk.

A number of ways to meet this general duty include:

-  Providing and maintaining safe plant and systems of work.
-  Arranging safe systems of work when working with plant and substances.
-  Providing a safe work environment.
-  Providing adequate welfare facilities; and
-  Providing adequate information on hazards, as well as instruction, training and supervision to employees, to enable them to work safely and without risks to health.

The Acts state that Employers and Owner Builders have the same responsibility to independent contractors and their employees whom are working at the workplace on matters under the employer’s control.

The Acts requires you, as far as practicable, to:

-  Monitor the health of the workers.
-  Keep information and records relating to the health and safety of the workers.
-  Employ or engage suitable qualified persons to provide advice on the health and safety of the workers.



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-  Nominate a person with an appropriate level of seniority to be your representative when health and safety issues arise or when health and safety representatives carry out their functions under the Act.
-  Monitor conditions at any workplace under their control and management; and
-  Provide health and safety information to the workers, in appropriate languages, including the names of persons to whom a worker may make an inquiry or complaint in relation to health and safety.

The Acts require you to ensure that the health and safety of members of the public is not adversely affected by your activities on and around your site.

Extracts from the National Standard for Construction work (NOHSC:1016 (2005))

Clause 7.8 Responsibilities of persons with control

A person with control of a construction project or control of construction work is responsible for the health and safety of any person who may be affected by the construction work:

- (a.) To the extent that the person has control over the construction work; and
- (b.) To the extent that the health and safety of the affected person is affected by the construction work.

Note: the '***person with control of a construction project***' is usually a person who manages the project and may be known as the:

-  Principal Contractor/Owner Builder
-  Head Contractor
-  Main Contractor
-  Builder
-  Employer, or
-  Person with management and control

Depending on the terminology used in different areas.

Examples of '***persons with control of construction work***' include:

-  Principal Contractors/Owner Builder
-  Main Contractors
-  Sub Contractors
-  Employers; and
-  Self Employed persons.



Clause 7.28 Joint Responsibility

If more than one person has responsibility for a matter under clauses 7.1 to 7.42 of the national standard:

- (a.) Each of these persons retains responsibility of the matter.
- (b.) Each person must fulfil their responsibility to the extent that they control the construction project or the construction work.
- (c.) All of them must discharge their responsibilities in a co-ordinated manner; and
- (d.) Each person must cooperate with all other parties who have a responsibility concerning occupational health and safety.



COMPLYING WITH THE AUSTRALIAN STANDARDS

Standards Australia was founded in 1922 as a non government, not for profit association to serve Australia's national interest, primarily through the preparation and publication of voluntary technical standards and through conformity assessment provisions.

Standards Development

There are currently approximately 5750 Australian Standards (of which more than 20% relate to the building and construction industry – these cover varying aspects from design, material manufacture, testing procedures and construction techniques etc.), developed by technical committees representing a balanced spectrum of relevant interests. There are approximately 8500 Technical Committee members who give their time and expertise free of charge.

What is a Standard?

The dictionary defines a Standard as: "*an accepted or approved example against which other things may be judged or measured*". Standards have been in existence for a long time - from the earliest societies there have been physical standards for weights and measures. As writing developed, written Standard evolved which set mutually agreed standards for products and services such as agriculture, ships, buildings and weapons etc. Relics from ancient civilizations such as Babylon and earlier periods provide ample evidence that standardization was being consciously applied as far back as a thousand years ago.

After the industrial revolution the word Standard is now defined as: "*A Standard is a published document which sets out technical specifications or other criteria necessary to ensure that a material or method will consistently do what it is intended to do*".

When a building contract document is being prepared the parties have to determine a standard of construction that is acceptable to them for the project being considered. Most contract documents require the work to be carried out in accordance with the relevant Australian Standard.

Additionally the Building Code of Australia (BCA) refers to Australian Standards and the parties are required to comply with the BCA. In this instance the Australian Standard sets both the minimum requirement for construction and becomes a legal document.

Note: Where there is a conflict between the BCA and a referenced document or Australian Standard, the BCA interpretation takes precedence over the other document.

As mentioned earlier there are over 5750 Australian Standards listed on the following pages are only a selected group of standards for reference only.



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AUSTRALIAN STANDARDS RELATING TO DOMESTIC CONSTRUCTION

AS1170.1 – 1989	Dead & Live Loads
AS1170.2 – 1989	Wind Loads
AS 1170.3 – 1990	Snow Loads
AS 1170.4 – 1993	Earthquake Loads
AS 1288 1994	Glass in buildings – selection and installation
AS 1289 (SET)	Methods of testing soils for engineering purposes
AS 1351.1-1974	Kitchens
AS 1680	Interior lighting
AS 1684 (Set)	National Timber Framing Code
AS 1926	Swimming Pool Safety
AS 1926.1 – 1993	Fencing for Swimming Pools
AS 2047 – 1999	Windows in buildings
AS 2049 1992	Roof Tiles
AS 2050-1995	Installation of roof tiles
AS 2061 1991	The demolition of structures
AS 2311 1992	The painting of buildings
AS/NZS 2588 1998	Gypsum plasterboard
AS/NZS 2589	Gypsum linings in residential and light commercial construction – application and finishing
AS 2688 1984	Timber Doors
AS/NZS 2803	Doors – Security screen
AS/NZS 2803.1:1995	Hinged
AS/NZS 2803.2:1996	Sliding
AS 2870-1996	Residential slabs and footings - Construction
AS/NZS 2904:1995	Damp-proof courses and flashings
AS 3000. 2000	Wiring Rules
AS/NZS 3500	National Plumbing & Drainage
AS 3600 1994	Concrete Structures
AS 3600 – 2001	Concrete Construction
AS 3623-1993	Domestic metal framing
AS 3660 1993	Protection of buildings from subterranean termites – prevention, detection and treatment of infestation.
AS 3700 2001	Masonry structures
AS 3727-1993	Guide to residential pavements
AS 3740-1994	Waterproofing of wet areas within residential buildings
AS 3786 – 1993	Smoke Alarms
AS 3798-1996	Guidelines on earthworks for commercial and residential developments
AS 3850	Tilt-up concrete and precast concrete elements for use in buildings
AS 3854	Performance standards in buildings
AS 3958	Ceramic Tiles
AS 3959-1999	Construction of buildings in bushfire-prone areas
AS 4055-1992	Wind loads for housing
AS 4100 1998	Steel structures
AS 4285-1995	Skylights
AS 4349	Inspection of buildings
AS 4349.1-1995	Property inspections-residential buildings
AS 4349.3-1998	Timber pest inspections
AS/NZS 4386	Domestic kitchen assemblies
AS/NZS 4386.1.1996	Kitchen Units
AS/NZS 4386.2:1996	Installation
AS/NZS 4455	Solar heating – domestic water heating systems
AS/NZS 4505:1998	Domestic garage doors



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WHERE TO BUY THE AUSTRALIAN STANDARDS

Refer to the Website for more information: www.standards.com.au

Australian Standards may be purchased in either print or electronic versions from:

Sydney Information Centre, Standards Australia

NSW: P.O. Box 1055, Strathfield NSW 2135, Fax 1300 65 49 49

Phone 1300 65 46 46, or to your nearest State Office.

Phone (02) 9746 4700 Fax (02) 9746 8450

Email: sic@standards.com.au

SOUTH AUSTRALIA

63 Greenhill Road, WAYVILLE SA 5034.

VICTORIA

Melbourne Information Centre

Facsimile (03) 9696 1319

Telephone (03) 9693 3533

Email: mic@standards.com.au

ACT

Shop 5, Gallery Level, the boulevard City Walk CANBERRA ACT 2601

TAS

237 Elizabeth Street, North Hobart TAS 7000

QLD

232 St Pauls Terrace Fortitude Valley QLD 4006



BUILDING CODE OF AUSTRALIA (BCA)

Source Building Code of Australia – Volume 2- Introduction

The Building Code of Australia (BCA) is produced and maintained by the Australian Building Codes Board (ABCB) on behalf of the Commonwealth, State and Territory Governments. The BCA has been adopted into building regulation by all States and Territories. The Australian Building Codes Board website www.abcb.gov.au.

The BCA is a uniform set of technical provisions for the design and construction of buildings and other structures throughout Australia. It allows for variations in climate and geological or geographic conditions.

The Goals of the BCA

The goals of the BCA are to enable the achievement and maintenance of acceptable standards of structural sufficiency, safety (including safety from fire), health and amenity for the benefit of the community now and in the future.

These goals are applied so that the BCA extends no further than is necessary in the public interest, is cost effective, easily understood, and is not needlessly onerous in its application.

Format

The BCA is published in two volumes:

-  **Volume 1** – pertains primarily to Class 2 to 9 buildings; access requirements for people with disabilities in Class 10 buildings; and certain Class 10 structures.
-  **Volume 2** – pertains primarily to Class 1 and 10 buildings (houses, sheds, carports etc) – other than access requirements for people with disabilities in Class 10 buildings.

Both volumes are drafted in a performance format to provide greater flexibility for the use of new and innovative building products, systems and designs.

A user may choose to comply with the *Deemed to Satisfy Provisions* or (described as acceptable construction practice in the *Housing Provisions*) or may use an *Alternative Solution* that satisfies the Performance Requirements.

The Housing Provisions (Volume 2) are significantly different from Volume One in that it is presented in plain English with diagrams to expand on and explain the code requirements. Explanatory information also accompanies clauses to assist users in understanding the requirements of the code. The code has been structured to follow the construction sequence, commencing with site works and progressing through the various construction stages to completion.



State and Territory Variations and Additions.

Each State's and Territory's legislation adopts the BCA subject to the variation or deletion of some of its provisions, or the addition of extra provisions. In the Housing Provisions these are divided into two types:

1. A variation to the Housing Provisions – these are identified following the Clause that is being varied.
2. Additional requirements – these are contained in Appendix A of the BCA

The BCA Structure

The structure of the BCA comprises of the following:

- a) The objectives.
- b) The Functional Statements.
- c) The Performance Requirements with which all Building Solutions must comply.
- d) The Building Solutions.

LEGISLATIVE ARRANGEMENTS

The BCA is given legal effect by building regulatory legislation in each State and Territory. This legislation consists of an Act of Parliament and subordinate legislation, which empowers the regulation of certain aspects of buildings and structures, and contains the administrative provisions necessary to give effect to the legislation.

Any provision of the BCA may be overridden by, or subject to, State or Territory legislation. The BCA must therefore be read in conjunction with the legislation. Any queries on such matters should be referred to the State or Territory authority responsible for building regulatory matters.



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SECTION 3 ACCEPTABLE CONSTRUCTION.

The section most referred to for residential construction is in Volume 2 - Section 3 Acceptable Construction.

Part 3.1 Explanatory Information Site Preparation Earthworks Drainage Termite Risk Management	Part 3.2 - Footings & Slabs Explanatory Information Preparation Concrete and Reinforcing Site Classification Footing and Slab Construction
Part 3.3 - Masonry Definitions Unreinforced Masonry Reinforced Masonry Masonry Accessories Weatherproofing on Masonry Earthwall Construction	Part 3.4 - Framing Explanation of Terms Sub Floor Ventilation Steel Framing Timber Framing Structural Steel Members
Part 3.5 - Roof and Wall Cladding Explanatory Information Roof Cladding Gutters and downpipes Wall cladding	Part 3.6 - Glazing
Part 3.7 - Fire Safety Fire Separation Smoke Alarms Heating Appliances Bushfire Areas Alpine Areas	Part 3.8 - Health & Amenity Wet Areas Room Heights Facilities Light Ventilation Sound Insulation
Part 3.9 - Safe Movement and Access Stair Construction Balustrades Swimming Pool Access	Part 3.10 - Additional Construction Requirements Explanatory Information High Wind Areas Earthquake Areas
Part 3.11 - Structural Design Manuals	Part 3.12 - Energy Efficiency Definitions, Applications Building Fabric External Glazing Building Sealing Air Movement Services



NEW SOUTH WALES HOUSING CODE

Source: NSW Government – Dept Planning Fact Sheet – NSW Housing Code

About the Code

As part of its ongoing planning reforms, the NSW Government has released the first stage of the NSW Housing Code.

The NSW Housing Code outlines how owners of lots of 450 square metres or above can undertake specified residential developments as complying development with council or accredited certifier sign off. These developments include:

-  Detached single and double storey dwelling houses;
-  Home extensions and renovations; and
-  Other ancillary development, such as swimming pools.

It also outlines how 40 types of minor development types (known as “exempt development”) can be undertaken without the need for planning or construction approval. However, other legislative requirements for approvals, licences, permits and authorities still apply.

Why do we need a Housing Code?

The NSW Housing code will provide a more streamlined assessment process for new detached dwelling houses and house extensions. Last year, about 94 per cent of new detached dwelling house approvals in NSW required lodgement of a development application (DA).

The average time to process a DA for a typical detached house across NSW is 75 days. In Sydney, individual councils may take anywhere from 34 to 254 days.

Furthermore, there are currently 115 different exempt and complying plans (114 council plans, plus 38 council issuing the existing voluntary Statewide standard). Even neighbouring council areas, with a similar housing stock and subdivision type, may have markedly different rules for the same sorts of development.

The introduction of the NSW Housing Code will also help homebuyers access increased NSW and Australian government grants, which expire during 2009.



How does the NSW Housing Code deal with these issues?

There are two elements which make up what is known as the NSW Housing Code.

1. The general housing code section of the NSW Housing Code outlines how typical new detached dwelling houses, house alterations and additions and ancillary developments can be approved within 10 days by a council or private accredited certifier, if the code is followed.
2. The exempt development code outlines a series of standards for 40 different types of alterations, improvements and landscaping. If your proposed work fits within the standards laid out in the exempt development code, you do not need to seek planning approval.

Taken together these two new codes are known as the *NSW Housing Code*.

What are the cost savings?

The Housing industry Association has estimated that under the NSW Housing Code, a new home builder will save, on average, more than \$6,500 in the Sydney metropolitan area, or about \$2,500 in regional areas. In addition, the process will be about two months shorter than is currently the case.

Is NSW going it alone in this area?

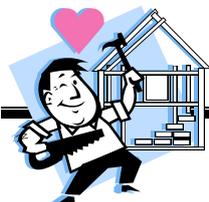
Other States and Territories have either introduced or plan to introduce building regulation codes.

Victoria, Queensland, Western Australia and the Australian Capital Territory have introduced housing codes; South Australia is planning to do so. Tasmania and the Northern Territory are at an early stage in drafting their own codes.

To ensure that the code meets the needs of the NSW community, the NSW Housing Code has been subject to an extensive public consultation process, involving input from the housing industry, planning professionals, councils and members of the public.

Which lot sizes does the NSW Housing Code cover?

The general housing code applies to the construction of new detached housing; housing extensions for single and two storey houses; and other ancillary development on land 450 sqm and greater. The exempt development code does not stipulate any limits on lot size.



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How will the rights of neighbours and local communities be protected?

The NSW Housing Code has been drafted with careful consideration for the rights of neighbours, sustainability, and protection of heritage values and the character of an area. Different rules apply to different lot sizes.

The code protects the amenity of neighbours by limiting heights and requiring setbacks. In addition, councils will be able to incorporate local variations to certain standards to maintain local character. The code will be reviewed regularly – it is a living document.

For further information, a series of fact sheets is available at www.planning.nsw.gov.au/housingcode

When does the NSW Housing Code come into force?

The NSW Housing Code was gazetted on 12 December 2008 and commenced 27 February 2009.

How do you find out more

Log on to the Department of Planning website www.planning.nsw.gov.au/housingcode for a wealth of information and resources, or contact the Department's Information Centre on 1300 305 695.

For up to the minute updates, sign up for the Department's Enews email service, and get the latest information delivered direct to your inbox.

Visit <http://www.planning.nsw.gov.au/enews/index.asp> to sign up, its easy and its free.



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Learning Activity 5 – Building Compliance



List the Legislations, Regulations, Standards, Codes that may relate to **your** project and why.

Name of Legislation, Regulation, Standard, Codes	Why you would need to know about this Legislation, Regulation, Standard or Code
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	



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SELF TEST QUESTIONNAIRE

	Question	Ref Page
1	What is the purpose of the Local Government Act Answer	65
2	What is the purpose of the Home Building Act Answer	66
3	What is the purpose of Environmental Protection Act Answer	68
4	What is purpose of BASIX Answer	70
5	When must a BASIX Certificate be submitted Answer	71
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10	What is the purpose of the NSW Housing Code Answer	83-85



THE APPROVAL PROCESS

DEVELOPMENT APPLICATIONS



Important Note: Councils all over N.S.W. have small variations to these procedures, check your individual Councils for their specific requirements.

Do I need a Development Application?

You may need to make a Development Application if you propose to do any of the following:

-  Erect a new building or structure.
-  Erect outbuildings, swimming pools, retaining walls, etc.
-  Carry out work that is not Exempt Development such as adding to or altering an existing building that does not involve replacing old non-structural materials for new.
-  Demolish a building.
-  Demolish, damage or alter a building or place that is a heritage item.
-  Change the use of a building or premises to another use.
-  Subdivide land or strata subdivide a building.
-  Display an advertising sign (in some instances).
-  Carry out earthworks, excavation, or filling of land.

Development requires consent under the *Environmental Planning and Assessment Act 1979*. To obtain Development Consent, you must lodge a Development Application with Council. Within some parts of your council area the Department of Planning are the consent authority.

Some minor developments are called Exempt Development and do not require consent. For another type of development called Complying Development, you will need to obtain a Complying Development Certificate prior to carrying out the work or commencing the use being considered (refer to planning controls on Exempt and Complying Development).



Why do I have to submit a Development Application?

-  You are legally bound to submit a Development Application to Council for any building and subdivision works and for any development requiring consent under Council's Local Environmental Plan (LEP).
-  Development applications are required so that Council may assess your plans and information, inspect your property, and determine whether your proposal is appropriate.
-  Council seeks to ensure that a proposal:
 - Is a permissible and appropriate use of the site according to its zoning.
 - Complies with the provisions of the *Environmental Planning and Assessment Act 1979* (as amended).
 - Complies with the relevant Development Control Plan (DCP) or the land use activity. Complies with any Development Control Plans applicable to the land.
-  Minimise any detrimental visual impact upon a locality.
-  Minimise any adverse impact upon occupants of adjacent properties in the locality.

Principal Certifying Authority

Building or subdivision works cannot commence until Council is notified of the appointment of a Principal Certifying Authority (PCA).

Either council or a *private accredited certifier* may be appointed as the PCA to take carriage and responsibility for all requirements under the Act subsequent to the issue of a Construction Certificate.

A key role of the PCA will be to oversee the construction phase of a development and certify that a building or work has been inspected and that construction meets all appropriate standards such as the Building Code of Australia (BCA).

The PCA will be responsible for the issue of Compliance and Occupation Certificates, where required.

Subdivision

Subdivision also comes under The Act. Once development consent has been obtained for a land subdivision (if required), a Subdivision Certificate must be obtained.

Strata subdivisions also require development approval and also an approval under *The Strata Schemes (Freehold Development) Act 1973* or *The Strata Schemes (Leasehold Development) Act 1986*.



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A Strata Certificate may be issued by the *Council* or, where the DA approval for strata subdivision was granted after 1 June 2000, a private accredited certifier in certain circumstances.

Construction Certificates

As well as obtaining a Development Consent through a DA, you will need to obtain a Construction Certificate if you are undertaking any building or structural work.

Construction Certificates were previously known as a Building Application (BA) - in addition to securing development consent through a DA.

A *Construction Certificate* certifies that the detailed construction plans and specifications for the development are consistent with the development consent and comply with the Building Code of Australia.

The certificate is required prior to commencing work.

You may obtain a Construction Certificate from a Council or from a private Accredited Certifier.

For some minor work such as partitioning, an “Application for Development and Construction Certificate” (joint application) may be made to Council. This is the mechanism for obtaining development consent and a construction certificate in one process. This mechanism, however, cannot be used on Heritage Items, for change of use, food shops and external changes and increases in floor space.

Modifying a Development Consent

If you wish to modify an existing development consent, you may make application under Section 96 of *The Environmental Planning and Assessment Act 1979*.

A Section 96(1) application is made to correct a minor error, miss-description or miscalculation.

A Section 96(2) or 96(1A) application is made to modify the consent in other ways, such as design changes or deletion of a condition of consent. The development as modified must be substantially the same development, and you must provide evidence of this. It is recommended that you contact the officer who dealt with the DA to discuss the modification before it is lodged.

The following information is provided by the *City of Sydney Council* as an example only. Individual City and Regional Councils Development Applications may vary slightly. Ensure you contact the council in your area to determine the exact procedure.



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Before Preparing a DA

Essential checks to make and important preliminary steps to take before preparing a DA.

Before preparing a Development Application (DA), you should contact a planner at your nearest Council Location to:

-  Check whether the proposed development is permissible.
-  Check whether a DA is required.
-  Check how the City's planning instruments – plans, codes and policies – affect the proposed development.
-  Obtain copies of the information necessary to submit a DA, including the DA form and the relevant planning instruments.
-  Obtain advice on the required DA fees.

It is advisable that you discuss your proposal with your neighbours.

Before you lodge a Development Application for a major development, you should make an appointment to talk to an officer from the Planning Unit.



LEGISLATION AND PLANNING INSTRUMENTS

Source: www.planning.nsw.gov.au

The New South Wales planning and development assessment system is the means by which we manage our environment and use of resources.

The legislation

Planning and development is carried out under the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000.

Environmental planning instruments

Environmental planning instruments (State environmental planning policies, regional environmental plans and local environmental plans) are legal documents that regulate land use and development.

The plan-making system in NSW is set out in Part 3 of the *Environmental Planning and Assessment Act 1979*. The Act provides for members of the public to participate in planning decisions that will shape their community's future.

State environmental planning policies

How is a state environmental planning policy prepared?

-  The idea for a State environmental planning policy is proposed.
-  The Department prepares a draft for the Minister for Planning's consideration. We may then invite the public to comment on the draft.
-  We consider any feedback from members of the public, which may be incorporated into the draft planning policy.
-  With the Minister's and the State Government's approval, the planning policy becomes law and is published in the Government Gazette.

Regional environmental plans

How is a regional environmental plan prepared?

-  A regional environmental plan is proposed, either by the Minister for Planning or the Director-General of the Department.
-  The Department carries out a regional environmental study of the area. This deals with topics like environmental conservation, housing and settlement, and infrastructure development. It allows us to identify and focus on important issues that must be considered in the draft plan



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-  The Department prepares a draft plan and invites community members to comment on it, along with the regional environmental study.
-  We consider the comments made by members of the public, and may incorporate them into the draft plan.
-  With the Minister's approval, the plan becomes law and is published in the Government Gazette.

Local Environmental Plans (LEP)

Local environmental plans prepared by councils guide planning decisions for local government areas. Through zoning and development controls, they allow councils to supervise the ways in which land is used. Development control plans, prepared in accordance with the Environmental Planning and Assessment Act, are also used to help achieve the objectives of the local plan by providing specific, comprehensive requirements for certain types of development or locations eg for urban design, and heritage precincts and properties.

How is a local environmental plan prepared?

-  The local environmental plan is proposed, by a local council or by the Minister for Planning.
-  The council may carry out a local environmental study. This deals with topics like environmental conservation, housing and settlement, and suitable infrastructure development for industry. It allows the council to identify and focus on important issues.
-  The council prepares a draft plan, assisted by general directives from the Minister for Planning. The council then invites the community to comment on the plan, along with the local environmental study (if prepared).
-  The council considers the comments made by members of the public, and may incorporate them into the draft plan.
-  With the Minister's approval, the plan becomes law and is published in the Government Gazette.

More information

The text of NSW planning legislation, including State, regional and local environmental planning instruments are available on the NSW legislation website at:
www.legislation.nsw.gov.au.

For maps relating to the various environmental planning instruments, or further information, contact:

Information Centre
Department of Planning
23-33 Bridge Street Sydney NSW 2000
Tel: 1300 305 695 Email: information@planning.nsw.gov.au





WHAT IS A DEVELOPMENT CONTROL PLAN (DCP)

Source: Blacktown City Council

A Development Control Plan (commonly called a DCP) is a document which provides details of the various standards, policies and guidelines adopted by Council for development within a council area. It also assists developers in designing proposed developments and preparing their applications to Council. The information contained within a DCP is in addition to the provisions of the legal planning instrument or Local Environmental Plan (commonly called an LEP). This information is presented in the form of a written statement and/or a map.

Purpose of Development Control Plan

The specific purpose of the DCP is to provide advice to people submitting Development Applications (DAs), in one series of documents and maps, on all of Council's codes, policies and guidelines relating to the development of land in the area

As with most LEP's they apply to all land within the Council area. This advice is of 2 types:

- (a) procedures to be followed, e.g. DA submission requirements for certain types of development; and
- (b) standards to be met, e.g. building height, design and car parking requirements.

The DCP is a matter that the Council must consider in assessing any DA. Providing succinct information to developers will hopefully avoid Council having to either request additional information (which takes time) or refuse applications for proposals, which depart substantially from Council's requirements.

Intending developers are encouraged to discuss their proposals with Council officers as early as possible to avoid costly amendments. The detailed requirements of the councils DCP are advisory and flexible in particular circumstances.

Compliance with the provisions of the council's DCP does not necessarily guarantee that Council will consent to an application. Council must also consider other matters listed in Section 79C of the *Environmental Planning and Assessment Act 1979*.



ASSESSMENT OF DEVELOPMENT APPLICATIONS

Note: City of Sydney Council is a typical source of information – for specific information regarding Development Applications in your area, contact your local council.

Source: City of Sydney Council

Development Applications are assessed against the provisions contained in Section 79C of the *Environmental Planning and Assessment Act 1979*. In determining an Application, Council takes into consideration such matters as compliance with the provisions of the relevant planning instruments and codes, the likely impacts of the development, the suitability of the site, any submissions and the public interest. If the approval of another authority such as the Heritage Council or the Roads and Traffic Authority is also required, Council must refer the application to that authority and seek its approval. This is called Integrated Development.

Any inaccuracies or inadequate information will result in delays, and may also result in the rejection of the application.

Certain types of development require the payment of a monetary contribution, as a condition of consent, pursuant to Section 61 of the *City of Sydney Act 1988*, Section 94 of the *Environmental Planning and Assessment Act 1979*, or the Affordable Housing Program.

Lodging a Development Application

The following items are required for all Development Applications.

Item 1: Development Application form completed with:

-  Consent of all the registered owners. Owners that are companies must indicate consent by signing under seal or as otherwise authorised under Corporations Law. An application relating to a strata plan must have the Strata Plan seal affixed where the works involve common property.
-  Details of the proposed development such as; existing use, hours of operation, number of staff, details of goods to be made or stored, the number of existing and proposed car spaces and loading facilities.

Item 2: Statement of environmental effects

-  This statement should detail any expected impact of the development on the environment, adjoining premises or the public. The statement should also include a description of both the existing situation and the proposed development.
-  If it is considered that there is minor or no impact, the statement could be included on the Development Application form.



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Source: City of Sydney Council

Item 3: Required fees

-  A schedule of fees is available from the Council's customer service centres and Council's website at www.cityofsydney.nsw.gov.au.
-  Advice on the items that should be included in the cost estimate can also be provided.
-  An advertising fee or a notification fee is necessary for most types of development.
-  For Integrated Development, an additional fee is required as well as a cheque made out to the relevant authority. Integrated Development that affects items on the State Heritage Register needs to be advertised and notified.

Item 4: Six sets of drawings (minimum) of the proposed development, plus one A4 set and a digital copy. These must include:

-  A site plan showing the location of the development within a building or within the locality. The site plan should also identify the site, streets, and adjoining properties, and include a north point.
-  Floor plans of the proposed buildings showing layout, partitioning, room sizes and intended uses of each part of the building. Existing floor plans would also be useful.
-  Elevations and sections showing proposed external finishes and heights (not required where there is no new work proposed).
-  New work must be coloured on three sets, with a clear distinction being made between alterations and additions.
-  Drawings must be to scale, normally at 1:100.
-  Drawings are to be suitably numbered and dated.
-  Sign applications require plan and elevation details of the location, size and width of the sign, height above ground, materials, colouring, text including size of lettering, graphics and logo, and illumination. Council's Signage and Advertising Structures DCP 2005 contains details of the requirements for the design and location of signs.
-  Drawings are to be folded to A4 size with the title block to the front. Digital copies of plans and supporting documentation must be submitted with every application in Portable Document Format (PDF) files no more than 1mb size. See the Guide to Creating PDF files. For small applications, the City offers a scanning service for a fee.



Source: City of Sydney Council

Additional Information that may be required

The following additional information may also be required. Note: This is not a complete list. Refer to the checklist on the Development Application form.

1 Statement of Heritage Impact

If the building is a Heritage Item, adjacent to a heritage item or within a conservation area, a Statement of Heritage Impact is required detailing the impact of the development on the heritage item or the area. A separate pamphlet is available at Council's customer service centres.

2 Floor Area

If any additions result in an increase in the gross floor area or total floor area of the building, details of the existing floor area of the building and the additional proposed floor area must be provided. In these instances, floor space ratio details must also be provided.

3 Demolition/Excavation

In the case of demolition, full details of the age and condition of the buildings or works to be demolished must be provided. In the case of excavation, geo-technical details must be provided.

4 Shadow Diagrams

These are required for all new buildings and where changes are made to the building envelope.

5 BASIX

Development Applications for new multi-unit buildings; new single dwellings; dual occupancies and boarding houses; and alterations and additions to existing residential developments must be accompanied by a BASIX certificate confirming compliance with the State Government's sustainability targets. Applicants can generate the BASIX Certificate only on the NSW Department of Planning BASIX website: www.basix.nsw.gov.au. For more information, phone the BASIX Help Line on 1300 650 908.

6 Waste Management Plan

This is required for all building works. Refer to Council's Policy for Waste Minimisation in New Developments.



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Source: City of Sydney Council

7 Code of Practice for Licensed Premises and Security Management Plan

In the case of applications for new licensed premises, and for extension of trading hours for existing licensed premises, a Code of Practice and a Security Management Plan must be submitted. These enable interested parties to understand the commitment of the owner/ operator to ensuring that the premises are operated in an appropriate way. They will also assist in the assessment of the application. The licensee is also encouraged to become a member of the City of Sydney Accord with Licensed Premises.

Additional Information for Major Development

Where new buildings and major refurbishments are being considered, additional information will be required depending on the size and scope of the development.

This additional information may include a BCA report, physical and 3D model, specifications of materials, a traffic and parking report, photomontages and a wind effects report. 10 sets of drawings are also required.

Details of additional information required for major developments are available in a separate brochure, and a checklist is included in the Development Application form.

Modifying a Development Consent

If you wish to modify a Development Consent, you may make application under Section 96 of the *Environmental Planning and Assessment Act 1979*.

A Section 96(1) application is to correct a minor error, misdescription or miscalculation. A Section 96(1A) application is made for modifications involving minimal environmental impact. A Section 96(2) application is to modify the consent in other ways, such as major design changes.

A Section 96AA application is made for modifications by consent authorities of consents granted by the Court.

The development as modified must be substantially the same development for which consent was originally granted, and you must provide evidence of this.

It is recommended that you contact the Council Officer who dealt with the Development Application to discuss the modification before it is lodged.



Source: City of Sydney Council

Other Approvals

Before you lodge a Development Application you also need to consider whether your proposal needs other approvals in addition to development consent (ie: Is it integrated development?)

Approvals from other Agencies which you may need to obtain approval include:

-  Heritage Council of NSW
-  Planning NSW
-  Environmental Protection Authority
-  National Parks and Wildlife Service
-  NSW Rural Fire Service
-  Mine Subsidence Board

If your proposal does require an approval from another agency, you must state this on the Development Application form. A fee is required for each referral to a government department. Council will refer the application to the relevant agency and incorporate its requirements into the Development Consent.

To avoid unnecessary delays, Council strongly recommends that you consult with all relevant government agencies before you lodge this type of Development Application with Council.

It is the responsibility of the applicant to identify which approvals from government agencies are required when the development application is lodged.

Other approvals from Council

There are a number of activities that require Council approval under the Local Government Act in addition to development consent. The following is a short list of examples:

-  Stormwater drainage work.
-  Placing a building waste container on the footpath.
-  Operating a place of public entertainment.
-  Installing a Septic Tank.

A Customer Service Officer can help you identify which approvals are required for your proposal. You can apply for these approvals as part of your development application. By indicating on the development application form which approvals you are applying for, you will avoid the need to make a separate application later.



MINE SUBSIDENCE BOARD

Refer Pages 41 & 52 of this section for more information regarding the Mine Subsidence Board

Lodging a Building Application

Under the Integrated Development Assessment process, your local council is intended to be a 'one-stop-shop'. You lodge your application with them, they refer it to other approving authorities (such as the Mine Subsidence Board) and the council advises all conditions of approval in the Development Consent. You may have the option of using an Accredited Certifier for assessment of your final plans and to obtain your Construction Certificate from council. Check with your council for details. There is no fee for the Board's processing of your building application, and it will normally be processed within five working days.

If lodging your application at one of the MSB offices, you will need to provide the number of plans required by your local council, plus one A3 copy to be retained for our records. The MSB encourage electronic lodgement of plans, preferably in PDF format.

Step 1

Prior to having plans drawn, contact the local office of the Board to find out if your property is in a Mine Subsidence District. You will be advised of the surface development guidelines that apply to the property.

Step 2

Lodge an application for approval with your council. In some cases, applications may be lodged directly with the Board. Application forms are available from all Board offices and local councils or download from the MSB website the *Building Application Form*.

You also need to specify on the application the relevant property details, including the lot or portion, deposited plan, section number (if applicable), house number, street, suburb or town. These are all usually contained in your council rate notice.

Location plans are required for rural properties in order that the building site can be clearly identified in relation to mining.

Step 3

Under the Integrated Development Assessment system, your council Development Consent will advise all conditions of approval, or of refusal. If you go direct to the Board, they will advise you when the application has been processed so you can collect your plans to lodge with council.

District Maps

You may access from the MSB website a MSB map showing all its districts.



Section 94

Section 94 of the *Environmental Planning and Assessment Act 1979* (as amended) provides an important way for councils to provide necessary public services and amenities to meet the demand of new development. This section of the Act enables councils to levy contributions for public services and amenities needed as a consequence of or to facilitate new development. The power to levy a contribution relies on there being a clear link (or nexus) between the development being levied and the need for the public amenity or service for which the contribution is required. Councils may either:

-  Require a monetary contribution or dedication of land at no cost to Council for the provision of services and amenities to be carried out in the future; or
-  Require a contribution to fund services and amenities which have already been constructed or acquired in anticipation or to facilitate development.

Further, following a change to the Act in 1992 (The Environmental Planning and Assessment (Contributions Plans) Amendment Act 1991), councils must have a contributions plan in place before a contribution can be levied.

Period of Validity

Under Sec 103 Local Government Act 1993 an approval lapses 5 years after the date of its determination or, in the case of a staged approval, 2 years after approval is obtained for the last stage. However a council may bring forward the date on which an approval lapses.

If a council does not approve an application within 40 days, (or if it has consulted some other authority about the application, 80 days), it is deemed to have been refused (Sec 105)

Secs 106,107 and 108 provide for approvals to be amended extended or renewed or revoked or modified. Sec 109 sets out the circumstances under which an approval can be revoked or modified.



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Learning Activity 6 – Development Application



What do you need to provide the Council to support your Development Application for your project and why.

What will you need	Why you would need to provide this information
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	



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SELF TEST QUESTIONNAIRE

	Question	Ref Page
1	When would you need to lodge a Development Application (DA)	89
	Answer	
2	Why would you need to lodge a Development Application (DA)	90
	Answer	
3	What is the purpose of a Principal Certifying Authority	90
	Answer	
4	What is the purpose of a Construction Certificate	91
	Answer	
5	Where can a Construction Certificate be obtained	91
	Answer	
6	What is the purpose of Section 96 under the EPA Act 1979	91
	Answer	
7	What is the purpose of contacting your local council prior to preparing a DA	92
	Answer	
8	What is the purpose of a LEP	94
	Answer	
9	What is the purpose of a DCP	95
	Answer	



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SELF TEST QUESTIONNAIRE- CONTINUED



10	What information should be included in the DA	96-97
	Answer	
11	What additional information should be considered when lodging the DA	98
	Answer	
12	What other approvals would you need	100
	Answer	
13	What is the purpose of Section 94 of the EPA Act 1979	102
	Answer	
14	How long is an DA approval valid	102
	Answer	



INSURANCE

Insurances for owner-builders

For your own protection, check that you as the builder or the relevant tradesperson has the following key types of insurance and that the certificates are current:



-  Home warranty (Contractors)
-  Contract works insurance (Contractors/Owner Builder)
-  Professional indemnity (Contractors/Architects)
-  Public liability (All parties)
-  Workers compensation (All relevant parties)

There are two major reasons to consider purchasing insurance coverage.

1. Protection
2. Security

The forms of Insurance available to the Building Industry are listed below...**The first three insurance's are compulsory by law**

1. Home Warranty Insurance
2. Workers Compensation
3. Transcover or Motor Vehicle Third Party (Green Slip)

The next three insurances are essential

1. Public Liability
2. Contracts Works Cover (All Risks)
3. Professional Indemnity (where applicable)

The insurances shown below are optional

-  General Property
-  Income Protection - Personal Disability/Sickness and Accident)
-  Partnership Insurance
-  Key Person Insurance
-  Product Liability
-  Loss of Profits
-  Plate Glass
-  Document Insurance
-  Cash
-  Home Warranty Insurance
-  Goods in Transit
-  Machinery Motor
-  Vehicle – Comprehensive/Third Party Property



SUMMARY OF POLICY COVERS

Note:

The Insurance policies mentioned below are a brief summary only of the covers that are generally available.

You should refer to the policy you purchase for the precise details of cover as these will prevail in the even of a claim.

Additionally, there are many other forms of cover, which may suit you..

It is suggested that you refer to your insurance advisor to assess availability and appropriate cover for your operations.

BURGLARY INSURANCE

Should be carried on that portion of your contents, which is easily removed and constitutes a significant potential loss. It is not usually worth the high premiums to cover all of your contents for their full value. Burglary insurance not only covers stolen property but it also covers damage done by burglars to premises and contents arising from forcible entry.

CONTRACT WORKS

Covers physical loss or damage to building works in course of construction, which generally includes occurrences of theft, malicious damage, cyclone, storm, flood and other water damage, subsidence or landslip, fire and earthquake.

Policies can be arranged job by job or on an annual basis, which covers all jobs with premiums paid on turnover.

It is important that the policy you arrange complies with contract conditions and also includes protection such contingencies as:

-  Architects, Engineers fees incurred in rectifying insured damage.
-  Removal of debris, site clearance.
-  Contract variations during construction
-  Principal supplied materials such as spa's, stoves, fittings etc.
-  Resultant damage from faulty workmanship or materials.



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FIRE AND PROPERTY INSURANCE'S

Fire and property insurance provides coverage against losses stemming from destruction of real property, such as buildings, and personal property, such as machines, furniture, fittings and goods. The term **fire insurance** has a much wider meaning than simply insuring property against damage by fire or lightning.

Other risks which can be covered in a fire policy include damage caused by:

-  Aircraft
-  Explosions
-  Storm and tempest
-  Riots, strikes and vandalism
-  Impact by vehicles, horses or cattle
-  Water
-  Flood
-  Earthquake
-  Electric current (fusion)

HOME OWNERS WARRANTY

Consumer protection against contractors failure to correct building defects. This insurance is covered in detail in Pages 108-111 of this section.

MOTOR VEHICLES

Comprehensive motor vehicle policies provide cover for theft or damage to the insured vehicle and liability to other vehicles or property for “at fault” circumstances. Some important aspects to consider are:

-  Agreed value or market value cover.
-  Excess(s) applicable to claims.
-  Age excess(s) or under 25 y.o. driver limits.
-  Third party liability sum insured.
-  Cover for towed trailers – such as a tools trailer
-  Choice of repairer by insured or insurer.

MOTOR VEHICLE – Third Party Personal Injury

Provides indemnity against injury(s) to persons arising out of the use of a registered motor vehicle or plant item. This insurance is commonly known as a “CTP Certificate” insurance and paid in conjunction with the vehicle registration.

PERSONAL ACCIDENT

This class of policy was designed to provide loss of income and lump sum benefits to self employed persons.

The policy is very flexible in the cover provided, which can be tailored to your individual needs.



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Some of the variables from which you can select are.

-  Accident only protection or accidents and sickness.
-  Workplace or 24 hour/7 day cover.
-  The amount of weekly income payments you require. Essentially, you nominate how much you require to be paid, but this is generally limited to 76% of normal earnings.
-  Policy excess or waiting periods which can vary anywhere from 7 days to 3 months.
-  How long you are paid in the event of your disablement by accident or illness. This can be any period from 12 months to lifetime.
-  The amount of lump sum payments for death, loss of limbs etc.

An important difference to be aware of, is whether you purchase what is known as a “cancellable” or “non-cancellable” policy.

A “cancellable” policy means the insurance company has the right to refuse renewal of your policy, which would normally occur in the event of too many claims or a recurring injury (i.e. back or heart problems).

Renewal of a “non-cancellable” policy can usually not be withheld by the insurer, provided premiums are paid on time.

PROFESSIONAL INDEMNITY

The most common requirements for this insurance in the building industry arise from design or engineering work, property inspection reporting and private certification. Requirements for the full design and construct process may also be encountered.

You are effectively covering your professional negligence arising from an act, error of omission in the conduct of the nominated activities insured.

PUBLIC LIABILITY

Provides indemnity for amounts you become legally liable to pay for personal injury (excluding WorkCover entitlements) and damage to property sustained during the period of insurance as a result of an occurrence in connection with your business operations.

You should make sure that your policy also includes coverage for:

-  Legal expenses incurred in defending actions against you.
-  Indemnity to you, if you are held liable from actions of subcontractors
-  Damage to persons or property caused by unregistered vehicles (e.g. a backhoe)
-  Vibration or other damages caused to adjoining property by excavations on your site.



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TOOLS, PLANT, EQUIPMENT

Policies for such items are usually purpose written to the agreed cover required. You should be aware of whether you purchase:

A replacement value or depreciated value policy.
Locked premises or vehicle warranties and conditions
Location limits such as site only or Australia wide.

WORKCOVER

Required to protect your workers in the event of workplace injury for weekly income and lump sums as provided under the Workers Compensation Act. Protection is also included for common law claims against the employer arising from such workers.

OTHER INSURANCE ISSUES FOR HOME OWNERS

If you're renovating or extending an existing home:

-  Notify your home insurance provider in writing before construction begins.
-  Find out if your home and contents insurance policy will cover damage or theft to your home during the period of construction. Sometimes, if you don't inform your insurance company before the work begins, you may not be covered at all.
-  Your lender (if borrowing money to fund the project) will want to see a current certificate of insurance to make sure you are protected.
-  And if the value of your home has increased as a result of renovations, you may wish to increase the value of your home/building insurance policy.

Important. Always check with your home insurer or insurance broker before you sign a contract.



INSURANCE PROVIDERS

Currently the point of contact between the insurance consumer and the insurance market will be by one of three different groups.

1. Insurance Companies (the underwriters)
2. Insurance Agents
3. Registered Insurance Brokers.

Insurance Companies

The Insurance Company (or underwriter) is the company that accepts the premium for any risk to be insured and is the one that actually pays in the case of any claim being made. In essence, all premiums are “pooled” so that if one of the contributors suffers a loss, the payment of the claim comes out of the pooled premium.

There are in excess of 160 registered Insurance Companies within Australia, all of whom provide various types of insurance policies to the public. Whilst there will be slight variations between companies in the scope of cover provided under their various policies, the policies sold to the public are usually standard policies for that company and not necessarily designed for a particular business or industry.

Insurance Agents

Agents are, as their name implies, agents for the insurance company they represent and at law they are deemed to act on behalf of the insurance company and not the purchaser of insurance.

The product sold by this agent on behalf of the insurance company is usually the standard product available through that company.

The insurance company is legally responsible for the actions of his agent, so action taken against any agent usually transfer to the company.

Insurance Broker

A broker is an independent insurance specialist who is not an agent of any insurance company and at law is deemed to act on behalf of the client who is insuring. Brokers, unlike insurance agents, can place business with the insurance company they believe can provide the best cover at a rate competitive with that available on the market.

Summary

In short the fundamental difference is that a Broker is obliged both by law and in practice to act in the best interests of his client. An agent is required to act in the best interest of the insurance company he represents the insurance company itself ultimately acts to maximise the return to its shareholders.



HOME WARRANTY INSURANCE

INFORMATION FOR LICENSEES

On 8 November 2009, the Government announced **major structural reforms** to the Home Warranty Insurance Scheme in NSW that will safeguard building industry jobs and better protect homeowners. The change, which will take effect in NSW on **1 July 2010**, involves the Government underwriting and capitalising the Home Warranty Insurance Scheme, which will be fully funded by premiums. For more information, refer to the **New home warranty insurance arrangements web page**.

Home warranty insurance needs to be provided by:

- a builder or tradesperson before taking any money (including a deposit) from a home owner (including an owner-builder) under a residential building contract and before starting any work under that contract
- a 'spec' builder before starting any residential building work on a property owned by the builder
- a developer before entering into a contract for the sale of a property on which a builder is doing or has done residential building work for the developer+
- an owner-builder (ie. a home owner who did owner-builder work under an owner-builder permit) before entering into a contract for sale of the property on which residential building was done within the previous 6 years.

Insurance threshold

Home warranty insurance is required to be obtained where the **contract price is over \$12,000** or, if the contract price is not known, the reasonable market cost of the **labour and materials involved is over \$12,000**.

Where the contract price or the reasonable market cost of the labour and materials involved does not exceed \$12,000, there is no legal requirement for home warranty insurance to be obtained.

Contractors who carry out residential building work must still hold an appropriate licence with Fair Trading where the labour and materials involved are valued at over \$1,000.

Persons who contract and/or carry out specialist work (ie. electrical wiring, plumbing, gas-fitting, air-conditioning and refrigeration) require a licence regardless of the value of the work.



Applying for insurance

Home warranty insurance must be obtained by the home building contractor. To apply to take out insurance, contractors will need to get an application form from an approved insurer.

You can minimise delays with your application by:

- submitting a complete application
- including up-to-date financial records
- checking with your insurance broker for specific information required
- making sure that all the required information is attached to the form.

You are generally required to provide the following information:

- recent balance sheet, profit & loss statement or tax returns
- statement of personal assets and liabilities
- copies of rates notices for all properties declared on the statement of personal assets and liabilities
- copy of current contractor licence
- if you were previously approved through another insurer, declaration of jobs undertaken and currently insured for the past 12 months.

The name on your licence and the name on the application form must be the same.

That is, if you are:

- a sole trader, all of the above must be only in your individual name
- a partnership, all of the above must be in the name of you and your partner/s
- a company, all of the above must be in the name of your company.

For contact details of insurers and their brokers and agents, refer to the Approved insurers and past approved insurers ages on the Fair Trading www.fairtrading.nsw.gov.au. Should further assistance be required, contact the Fair Trading on 13 32 20.



Cover provided

Minimum cover

From 1 March 2007, home warranty insurance policies must provide cover of at least \$300,000. Between 1 May 1997 and 28 February 2007, the minimum cover that had to be provided was \$200,000.

Future increases in the minimum cover provided under the scheme will be in line with any corresponding increase in the Producer Price Index [Materials used in House Building (Sydney)] that might have occurred since the previous increase. The next review of the minimum cover will occur in mid 2010.

The cover may be subject to limitations relating to over payment of deposits and progress payments and other limitations specified in the policy.

Claims for incomplete work are limited to 20% of the contract price (up to a maximum of \$200,000 for policies issued between 1 May 1997 and 28 February 2007 and from 1 March 2007 onwards up to a maximum of \$300,000).

Periods and types of cover

All policies

Cover is provided for loss (eg. financial loss or damage), arising from **non-completion of work** for a period of 12 months after the failure to commence, or cessation of, the work.

Policies issued before 1 July 2002

For policies issued before 1 July 2002, cover is also provided for a period of **seven years** from the date of completion of the work or the end of the contract for the work (whichever is the later), for loss arising from **defective work**.

Policies issued from 1 July 2002

For policies issued from 1 July 2002 onwards, cover for all losses (including loss arising from non-completion) is provided in the event of the death, disappearance or insolvency of a builder, tradesperson, developer or owner-builder. Cover for loss arising from defective work is provided for a period of:

- **six years** from the date of completion of the work or the end of the contract for the work (whichever is the later), for loss arising from a **structural defect**, and
- **two years** for loss arising **otherwise than from a structural defect**.



Policies issued from 19 May 2009

For policies issued from 19 May 2009 onwards, cover is also provided in the event of the suspension of the contractor licence of a builder or tradesperson responsible for work on the home owner's property for failure to comply with a money (compensation) order in favour of the home owner made by a Court or the Consumer, Trader and Tenancy Tribunal. The period of cover provided in this event is the same as for policies issued from 1 July 2002.

Disappearance of a builder

The disappearance of a builder is one of the grounds for lodging a claim under the present version of the home warranty insurance scheme.

The Office of Fair Trading and home warranty insurers have agreed on guidelines to be followed where a beneficiary of a home warranty insurance policy cannot locate the builder.

A homeowner who has a concern regarding defective or incomplete building work and who is unable to locate their builder should, in the first instance, lodge a complaint with Fair Trading. In the event that Fair Trading cannot find the builder, a letter will be provided to the homeowner stating that the builder is unable to be located, which can be submitted with any claim to an insurer under a home warranty insurance policy.

The provision of the letter will not in any way oblige an insurer to approve a claim or preclude an insurer from making its own enquiries to try to locate the builder. The period in which an insurer is required to determine a claim (ie 45 or 90 days, depending on when the policy was issued) will commence when the insurer receives the claim information.

The letter will, however, be accepted by the insurers as evidence of the homeowner's belief that the contractor has disappeared and of the homeowner having made all efforts to locate the builder. The homeowner will not be required by an insurer to undertake a further search for the builder.

Fair Trading will be responsible for issuing the letter to the homeowner on completion of its assessment of the complaint.



Multi-storey buildings

General exemption

Construction of a new **multi-storey** residential building does not require home warranty insurance cover to be in place. For the purposes of the exemption from the home warranty insurance requirements, a multi-storey building is a building that:

- has a rise of more than three storeys
- contains two or more separate dwellings.

A rise in storeys has the same meaning here as in the Building Code of Australia. A storey does not include an underground basement or a space within a building which is only intended to accommodate vehicles.

If a home owner is planning to buy a unit that is part of a multi-storey residential building, the developer is not required to attach a certificate of home warranty insurance to the contract for sale.

Not exempted

Conversely, construction of a new **multi-unit** residential development (where the rise is three storeys or less, eg. villa units, town houses, low and medium rise projects etc) does require home warranty insurance cover to be in place. In this instance, a developer is required to attach the certificate of home warranty insurance to the contract for sale of such dwellings.

Similarly, home warranty insurance cover must also be taken out before residential building work is done on an existing multi-storey building (eg. repairs, maintenance, alterations and additions etc).

Exemptions from insurance requirements

Section 97 of the *Home Building Act 1989* allows the Commissioner for Fair Trading to grant an exemption from the home warranty insurance requirements contained in Part 6 of the Act, if satisfied that there are exceptional circumstances or that full compliance is impossible or would cause undue hardship.

An exemption will not be considered where insurers will not provide home warranty insurance because of a contractor's financial or business circumstances.

Residential building work done by some Government departments is automatically exempted from the insurance provisions (section 103E *Home Building Act 1989*; clauses 76 and 76A Home Building Regulation 2004).



Council requirements

Under the legislation governing the operation of the development and construction approval process, the Council/principal certifying authority is required to be notified of the builder for the project. It is also a condition of the approval for a project that home warranty insurance be obtained. Where home warranty insurance is not obtained, the Council/principal certifying authority may not be able to issue an occupation certificate for the completed building work. This may impact on the ability of the property to sell and its market price.

Home warranty insurance claims

A claim under a home warranty insurance policy may be lodged with, or notified to, an insurer by a home owner (including a subsequent purchaser) in the event of a loss being suffered as a result of a builder, tradesperson, developer or owner-builder (as the case may be) failing to complete or commence work and/or failing to rectify defective work and the home owner cannot recover financial loss nor have the work rectified or completed.

It is recommended that in order for home owners to safeguard their position under a home warranty insurance policy, once they become aware of defective or incomplete work they should immediately notify the home warranty insurer of a loss, in writing.

The Home warranty insurance claims web page has information about making a claim, periods and types of cover provided as well as claim notification and lodgement procedures.

Important: A home owner must take action (eg. initiate dispute resolution by lodging a complaint with NSW Fair Trading) to try to have the builder finish any incomplete work and rectify any defective building work. Where a home owner does not take action to enforce a statutory warranty an insurer may reduce its liability (or the amount paid under a claim), to the extent that the insurer's interests have been prejudiced as a result of the home owner not trying to have the builder complete or repair the work.

For more information refer to the Resolving building disputes web page.



Home Warranty Insurance Scheme Board

The Home Warranty Insurance Scheme Board was established to oversee the operation of the home warranty insurance scheme. As part of its ongoing scheme monitoring role, the Scheme Board is examining how the scheme may be improved for the benefit of home owners and builders. For more information, refer to the Home Warranty Insurance Scheme Board web page.

Approved insurers

The *Home Building Act 1989* requires that insurers providing home warranty insurance in NSW be approved by the Minister for Fair Trading. The Minister may approve an insurer and the type of insurance they can provide after consultation with the Home Warranty Insurance Scheme Board. The approval granted by the Minister may be unconditional or subject to conditions.

Refer to the Approved insurers and the Previously approved insurers web pages for more information.

Certificate of insurance

The certificate of home warranty insurance should be an original issued by the insurer and should have the name of the contractor, home owner, property address and total sum. The builder's name shown on the insurance certificate should be exactly the same as that on the building contract and the builder's licence.

It is recommended that prior to making any payment under a sale or building contract, home owners check the validity of the certificate of home warranty insurance by contacting the home warranty insurer whose contact details should appear on the certificate.

Complaints against insurers

Fair Trading is able to investigate complaints about insurers approved to provide home warranty insurance in NSW under the *Home Building Act 1989*. For more information, refer to the Complaints against insurers web page.



Why is this happening?

Advice to Government from the Home Warranty insurance Scheme Board indicated that a substantial contraction of the market has occurred following the Global Financial Crisis.

The announcements earlier this year by Lumley General and CGU Insurance Limited of their exit from the market is evidence of the tightening of the market. The advice to the Government is that this contraction and current market conditions will likely lead to further insurers exiting the market in the near future.

Evidence to the Scheme Board and Government is that an increasing number of builders in NSW are unable to obtain cover.

The Government is acting decisively to protect jobs and give peace of mind to families.

What does this mean for homeowners with existing policies?

Cover for building projects already issued by insurers will remain in force for the duration of the policy, allowing consumers to make claims where necessary.

What are the benefits for consumers?

Existing consumer benefits provided by the current home warranty insurance scheme will be maintained. There will also be scope to provide and implement enhanced benefits (e.g. level and type of cover) and address any problems more effectively and quickly under the new arrangements.

Surplus funds from the new arrangements could be made available to Government to fund regulatory responsibilities.

What does this mean for builders insured with Lumley and CGU?

Around 2,500 builders will need to obtain eligibility with another insurer prior to 1 December 2009 (CGU builders) or 1 January 2010 (Lumley General builders) in order to continue contracting for work requiring home warranty insurance, regardless of these future changes.

Transitional provisions will be in place to ensure the continued provision of home warranty insurance by the three remaining insurers (Vero, QBE and Calliden) until such time as the new arrangements come into effect which is expected to take six months.

What about other builders?

If a builder cannot get insurance, they cannot work. Their apprentices and sub-contractors cannot work. Developers cannot build new homes. Materials pile up in storage yards instead of being sold.

Builders, apprentices, sub-contractors and suppliers need certainty, and that is what the Government is providing.



OWNER BUILDER COURSE

What happens to those builders who cannot get HWI cover?

Builders who are currently unable get cover insurance should contact Fair Trading on 13 32 20.

The plan is to incorporate a “managed” cover offering as part of the new scheme arrangements. This type of cover is designed to assist new entrants to the industry or existing builders who have low equity in their business, obtain cover.

What would happen if the Government did nothing?

Doing nothing would endanger the economic recovery of the State.

We could face a situation which jeopardises a \$20 billion industry employing 250,000 people, as:

- project starts and completion dates are delayed
- insurance premium prices are affected
- young builders starting out find it difficult to obtain insurance
- household budgets come under strain with extra rent costs or loan repayments
- a shortage of builders could artificially drive up prices
- a large number of consumers could be unwittingly forced down the owner-builder path.

The government will not allow a situation where NSW home builders eligible for home warranty insurance cannot get cover and keep building.

What are the next steps?

Fair Trading is working with insurers to ensure a smooth transition to the new arrangements. We are also looking to:

- the expansion of the current Home Warranty Insurance Scheme Board to include industry and consumer representation
- further consultation with industry and other jurisdictions, particularly Victoria, with a view to possibly harmonising new schemes
- development of the specifications for the tendering out of the operations of the scheme and the introduction of an amendment Bill into the Parliament in early 2010, to provide the framework for the new arrangements.



WORKERS COMPENSATION INSURANCE

Source: WorkCover New South Wales

The law requires every *employer* in New South Wales to take out an insurance policy with a licensed insurer to cover the full liability for workers compensation. In other words, workers compensation insurance is compulsory and it is an offence not to insure.

The Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998 – is a statutory, no-fault system of compensation for work-related injuries.

Basic Liability

In NSW, you are liable to pay compensation to a worker who is injured, or the dependants of a worker who is killed, if the work was a substantial contributing factor to the injury or death.

An injury can be either physical or psychological. A physical injury can also include a disease contracted while at work where the work was a contributing factor, and also the aggravation, acceleration, exacerbation or deterioration of a disease where the work was a contributing factor.

Who should have a policy?

If you employ or hire workers on a regular, casual or contract basis, you are considered to be an *employer* and must have a workers compensation insurance policy.

Home builder policies

Homeowners who are building their own homes should take out a workers compensation insurance policy to make sure they are fully covered. Any contractors engaged by an owner-builder may be deemed to be a worker of that owner-builder.

Workers Compensation Changes - June 2008

On 15 May 2008, the New South Wales Parliament passed legislation introducing a number of changes to workers compensation aimed at cutting red tape.

Under the amendments, from 4pm on 30 June 2008, only those who pay annual wages greater than \$7,500 will be required to take out workers compensation insurance or where an employer engages an apprentice/trainee or is a member of a Group for workers compensation purposes.



Taking Out Insurance

You as the Owner Builder in NSW must have workers compensation insurance.

Most business owners/contractors/principal contractors are either insured with a licensed insurer, are a licensed self-insuring employer, are government departments insured with the Treasury Managed Fund or are a specialised insurer.

When you apply for insurance, the insurer issues you with a cover note. The insurer then provides paperwork to you so that the correct premium can be calculated.

How is your premium determined?

You are required to estimate the number of employees/workers you expect to employ/engage in the next year, and the amount of wages you expect to pay. You are also asked to describe the work to be carried out so that a correct classification can be assigned (see premium calculation information below)

A premium is calculated using this information and you are then required to pay a deposit premium.

At the end of the year, you provide more accurate information to the insurer on the number of workers actually employed and the wages actually paid during the year. The insurer then recalculates the actual premium that should be levied and adjusts the deposit premium (either upwards or downwards).



WORKERS COMPENSATION FOR CONTRACTORS AND SUBCONTRACTORS

Who needs a workers compensation policy?

Anybody who employs workers **or engages contractors** must obtain a Workers Compensation insurance policy.

You have a legal liability to pay compensation to workers who are injured in the course of their work you are required by law to hold a workers compensation insurance policy from a licensed WorkCover insurer to cover that potential liability.

Who is a 'worker' for workers compensation insurance purposes?

The *Workplace Injury Management and Workers Compensation Act 1998* defines a 'worker' to be:

any person who works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, or is oral or in writing,...

For the purposes of workers compensation, a group of people may be '*deemed workers*' and are also entitled to workers compensation benefits if injured, and the person or company who engages their services is obliged to provide workers compensation insurance just as they would for a direct employee.

These 'deemed workers' include: outworkers, salespersons, *some contractors*, some rural contractors, some timbergetters, jockeys, taxi drivers, and ministers of religion.

If you engage contractors who are 'deemed to be workers' you will be considered to be 'an employer' even if you have no direct employees. For information about the special provisions applying to other situations, contact the WorkCover Authority.

It is not always necessary to conclusively determine whether a person is an 'employee' or a 'contractor'. In borderline cases, the person, even if a 'contractor', would be 'deemed' to be a worker for workers compensation purposes, under the provisions of the law.

The law does not solely use a person's tax status to determine whether they are a 'worker', 'deemed worker' or contractor.



How do you distinguish between 'an employee' and 'a contractor'?

There are several factors which distinguish an employee from a contractor.

A contractor is more likely to:

-  Be engaged to carry out a particular task, using his or her own skill and judgement.
-  Employ others, delegate or sub-let work to another.
-  Be paid on the basis of a job quotation
-  Supply his or her own tools and materials.
-  Carry on an independent business in his or her own name or under a business name.
-  Be affected by PAYG tax arrangements.

An employee is more likely to:

-  Be subject to *direction* from the employer as to the work to be performed and the time and manner in which it is performed.
-  Be required to actually carry out the work they have been directed to do.
-  Be paid on a time basis.
-  Have tools and materials supplied by the employer.
-  Work exclusively for a single employer.

When is a contractor 'deemed to be a worker'?

The contractor is deemed to be a worker employed by the person or company who made the contract with the contractor when:

-  The value of the work exceeds \$10
-  The contractor does not employ workers
-  The contractor does not sub-let part or all of the contracted work, and
-  The work is not part of a business or trade regularly carried out by the contractor in his/her own name or under a business name

In this situation, if you engage the contractor and have a similar level of control over the contractor as that over a direct employee. You should have workers compensation.

If in doubt, contact WorkCover for further advice.



A contractor is not a worker if:

-  The contract for the work is made between you and the contractor's limited liability company or properly constituted partnership; or
-  The contractor employs any workers in relation to the contract, or the contractor sub-lets all or part of the contracted work; or
-  The contractor is a tradesperson conducting a business in a recognised trade, and the nature of contracted work is in that trade; or
-  The contractor, who may be a sole trader, is shown carrying out an independent business in his or her own name or under a business name.

Some important points to note ...

-  Where a contractor enters a permanent or ongoing arrangement with a single principal, the contractor is no longer considered to be 'regularly carrying on a business or trade in his or her own name', and is considered a worker of the principal.
-  If a contractor or tradesperson contracts to perform work which is outside his normal trade or business, then he or she is deemed to be a worker. For example, if a person whose normal business/trade is a bricklayer contracts to move some furniture, that person would be deemed to be a worker, as the work is not part of this person's normal business or trade.
-  If a contractor employs workers and does not have workers compensation insurance, the law allows injured workers to claim directly against a principal. A principal who engages a contractor who employs workers should always check that the contractor has workers compensation insurance. Principal contractors have a right to request to see a sub-contractors Certificate of Currency.
-  Where a contractor operates through a limited liability company, the contractor is considered to be a worker of his or her own company. The contractor's company must obtain a workers compensation policy to cover the contractor, even if the company employs no other workers.
-  When a contractor lodges a workers compensation claim, the status of the claimant as a worker is a question that may ultimately be decided by the Compensation Court. To be safe, all principals who engage contractors should obtain a Workers Compensation Insurance policy.



What should be declared as 'wages' for contractors who are 'deemed' workers?

If you hire contractors who are deemed to be workers, the total contract payments made to the contractors must be declared as wages on wage declaration forms submitted to the WorkCover insurer.

The total amount paid will be reduced by the insurer to allow for costs incurred by the contractor in performing the contract.

WorkCover has developed standard percentages which represent the amount of the total contract payment that will be considered wages. If a dispute exists between the principal and the insurer as to the appropriate percentage, then the principal may refer the matter to WorkCover for a determination.

How do these arrangements apply to owner-builders?

Workers compensation arrangements apply to owner-builders, as they do to any other person who engages workers or contractors. Contractors engaged by an owner-builder may be deemed to be workers.

All owner-builders who engage contractors should obtain a standard Workers Compensation Policy to ensure that they are fully covered.

Why is a policy required if there are no workers?

Anyone who engages contractors should obtain and maintain a workers compensation policy. Even if you do not have 'employees', and the contractors engaged appear not to be 'deemed' workers, you still have a potential workers compensation liability. A contractor, or a contractor's worker, may be found by the court to be a worker, and you would be liable to pay compensation.

A workers compensation policy operates to cover all workers and deemed workers whom the principal engages. It is not necessary to arrange separate cover for contractors.



WORKPLACE INJURY MANAGEMENT

The *Workplace Injury Management and Workers Compensation Act 1998* focuses on the management, prevention and administration of workplace injuries. The emphasis is on a safe, timely and durable return to work of injured workers.

There are two programs available to assist injured workers:

1. An Injury Management Program is a coordinated and managed program that integrates all aspects of injury management including treatment, rehabilitation, re-training, claims management and employment management practices to achieve optimum results.

The responsibility for establishing the program lies with the insurance company, who must lodge a copy of the program with WorkCover.

2. An employer must establish a Return-to-Work Program incorporating policies and procedures for the rehabilitation of injured workers. The program must follow the WorkCover Guidelines for employer's return to work programs. It will nominate the employer's return-to-work coordinator, list the rehabilitation providers who will work with that employer and describe how suitable duties will be made available for workers who are certified fit for such duties

Roles and obligations

Injury notification

An injured worker must notify their employer that they have received an injury as soon as possible after the event occurred.

The employer must then notify their insurer within 48 hours after becoming aware that a worker has received a workplace injury that seems to be a significant injury.

A significant injury is one that prevents a worker from undertaking their normal jobs for more than seven days.

For injuries other than significant injuries, the employer must notify the insurer within seven days after becoming aware that the worker has received an injury.

-  From 1 January 2002, there are changes to the workers compensation claims and notification process.



Worker's obligations

An injured worker must:

-  Participate and cooperate in the establishment of the Injury Management (IM) plan.
-  Comply with their obligations under the IM plan.
-  Nominate a treating doctor who will agree to participate in the development of the IM plan.
-  Authorise the treating doctor to provide relevant information to the insurer or the employer for the purposes of the IM plan.
-  Make all reasonable efforts to return to work with their pre-injury employer, as soon as possible, having regard to the injury.

Employer's obligations

The employer must participate and cooperate in the establishment of the IM plan and comply with the obligations imposed upon the employer under the IM plan.

The employer must also provide suitable employment for a worker who has been incapacitated for work and is able to return to work on a full-time or part-time basis. A return-to-work plan will be developed by the return-to-work coordinator after discussions with the worker and the treating doctor.

Insurance company's obligations

After being advised by the employer that a worker has suffered a significant injury, the insurance company must initiate action within three working days, including making contact with the worker, the employer and the worker's treating doctor.

The insurance company must then:

-  Establish an injury management plan for the worker in consultation with the employer, the doctor and the worker.
-  Provide to the employer and worker information regarding the IM plan.
-  Keep the employer informed of significant steps taken or proposed to be taken under the IM plan.



The nominated treating doctor

The nominated treating doctor:

-  Must provide a WorkCover Medical Certificate
-  Is the point of communication for treatment and the IM plan
-  Will be authorised by the worker to provide to the employer and insurance company information relating to the nature of the worker's injury, the extent of incapacity, any restrictions on employment prognosis, suitable duties and time frames for a return to suitable work.

The injury management consultant Any difficulties in relation to the suitability of duties offered to injured workers can be referred to an injury management consultant. The injury management consultant is a medical practitioner appointed by WorkCover to facilitate agreement between the treating doctor, the worker and the employer about the suitability of duties.

Information contained in this website will assist all parties to meet their obligations under the new legislation. It also contains essential information about the roles of the key parties and directs readers to source documents and other useful resources such as:

-  Vocational rehabilitation programs, such as Work Trials Guidelines Retraining Guidelines and provision of Equipment and Workplace Modification Guidelines are available to injured workers to assist in the return to work.

Employer incentives are also available to encourage employment of injured workers with the JobCover Placement Program.

-  Medical Certificates

WorkCover is available to assist with more complex enquiries. The hotline for doctors to call is 1800 661 111. Other injury management enquiries may be directed to the WorkCover Assistance Service on 13 10 50.



OWNER BUILDER COURSE

Learning Activity 7 - Insurance



What insurances will you need for **your** project and why.

Name of Insurance	Why you would need this insurance
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	



OWNER BUILDER COURSE



SELF TEST QUESTIONNAIRE

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1	What insurances should an Owner Builder consider	107
	Answer	
2	Where can insurance be purchased	112
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3	What is the purpose of Home Warranty Insurance	113
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8	When is a contractor deemed to be a worker	125
	Answer	
9	When is a contractor NOT a builder	126
	Answer	
10	How do the Workers Compensation Insurance arrangements apply to the owner builder	127
	Answer	



LICENSING REQUIREMENTS

HOME BUILDING LICENCE

You must have a contractor licence or employ the holder of a qualified supervisor certificate to contract, subcontract or advertise to do:



-  Residential building work where the labour and materials content is more than \$1,000.
-  Electrical wiring work.
-  Plumbing, draining and gas fitting work.
-  Air conditioning and refrigeration work (except plug-in appliances).

Caution! By law, a licence number must be shown on all advertising, stationery and signage.

If a contractor works without the proper licence, they are breaking the law and you will be unable to enforce a contract for the work against the other party.

Licence types

The NSW Fair Trading licenses all builders and tradespeople that carry out work in the residential building industry in NSW.

Contractor Licence authorises that holder to contract and advertise to carry out the work described on their licence card.

Qualified Supervisor Certificate allows the holder to carry out the work as described on their licence. A 'Q' on their licence card indicates this.

Nominated Supervisor is an individual who holds a qualified contractor licence or a supervisor certificate, and who is registered against a contractor licence as the person supervising the residential building work or specialist work. All companies, partnership and unqualified individuals holding a contractor licence must nominate a supervisor.



OWNER BUILDER COURSE

The categories of residential building work are:

- | | |
|--|---|
|  Bricklaying |  Metal fabrication |
|  Building |  Minor maintenance/cleaning |
|  Carpentry |  Minor tradework |
|  Decorating |  Painting |
|  Dry plastering |  Roof plumbing |
|  Erection of prefabricated metal-framed home additions and structures |  Roof slating |
|  Excavating |  Roof tiling |
|  Fencing |  Stonemasonry |
|  General concreting |  Structural landscaping |
|  Glazing |  Swimming pool building |
|  Joinery |  Swimming pool repairs and servicing |
|  Kitchen, bathroom and laundry renovation |  Underpinning/piering |
| |  Wall and floor tiling |
| |  Waterproofing |
| |  Wet plastering |

Specialist trade categories are defined in the *Home Building Act 1989* and *Home Building Regulation 2004*.



HOME BUILDING LICENCE CHECK

NSW Fair Trading provides an online public register of builders' licences in NSW.

There are a number of important things to think about before choosing a builder or tradesperson to build or renovate your home. For a list of the key questions you should ask any builder, refer to the *12 important questions to ask a building contractor* on Page 32 of this section.

One of the things the builder or tradesperson should give you is their contractor licence number. You should then do a licence check to:

-  Make sure that the contractor you wish to use holds a valid and current licence which is suitable for the type of work you want done
-  Obtain details of other licences held now or before; and
-  Obtain information on the contractor's history of complaints, insurance claims etc.

This facility allows you to do a licence check online. You should always do a licence check before entering into a contract with a builder or tradesperson and you should only deal with a licensed builder. Any person who carries out residential building work worth over \$1,000 in labour and materials content without an appropriate licence is breaking the law and could be prosecuted.

The Register records information relating to licences such as:

-  Date of issue and expiry of licence.
-  Conditions endorsed on the licence.
-  Names of partners of a partnership or directors of a corporation.
-  The licence category for which the licence holder is licensed to undertake.
-  The results of any relevant disciplinary determination.
-  The results of any prosecutions against the licence holder under the Home Building Act.
-  The number of insurance claims paid (after 1 September 1997) in respect of work done, or kit homes supplied, by the licence holder.
-  Details of any penalty notices issued to the holder.
-  Any cancellations or suspensions of the licence.
-  The number of Consumer, Trader and Tenancy Tribunal orders not complied with (since 1 January 2002).



OCCUPATIONAL LICENSING

WorkCover's licensing system protects removal workers, building occupants and the public by ensuring that contractors have the appropriate skills, training and experience in asbestos removal work to prevent occupational and environmental contamination.

The permit and notification requirements allow monitoring of asbestos removal projects on a job-by-job basis, ensuring compliance with legislation and nationally-agreed work methods.

Licensing publications available on the WorkCover website

-  Guidelines for licensed asbestos removal contractors
-  Demolition licensing
-  Explosives User's Learner's Permit - EX1
-  Explosives User's Permit - EX2
-  Application for licence to manufacture explosives - DG5
-  Application for licence to import explosives - DG7

For enquiries regarding licensing and permits call the Asbestos and Demolition Hotline (02) 9370 5885.

Registration

Plant includes any machinery, equipment or appliance. Plant registration applies to certain plant that has a higher level of risk of harm associated with its operation, use or maintenance. The Plant Registration (Lifts, Amusement Devices, Plant, Welding) Hotline is (02) 4321 5498.

Notification

In addition to the requirements to hold licenses for asbestos and demolition, you must also notify WorkCover whenever you intend to commence certain asbestos or demolition work. A list of the tasks that will require notification are listed below:

-  Notification to commence demolition work and bonded asbestos work;
-  Work involving use of carcinogenic substances - Guidelines for Notification ;
-  Work involving use of carcinogenic substances - Notification Form;
-  Lead Risk Work - Guidelines for Notification;
-  Lead Risk Work - Notification Form.



OWNER BUILDER COURSE

Certificate Classes

Crane and Hoist Operation	
Code	Class
CT	Tower Crane
CD	Derrick Crane
CP	Portal Boom Crane
CB	Bridge and Gantry Crane
CV	Vehicle Loading Crane (greater than 10 metre tonnes)
CN	Non-slewing Mobile Crane (greater than 3 tonnes)
C2	Slewing Mobile Crane (up to 20 tonnes)
C6	Slewing Mobile Crane (up to 60 tonnes)
C1	Slewing Mobile Crane (up to 100 tonnes)
C0	Slewing Mobile Crane (open/over 100 tonnes)
WP	Boom-Type Elevating Work Platform (boom length 11 metres or more)
HM	Materials Hoist (Cantilever Platform)
HP	Hoists (Personnel and Material)
PB	Concrete Placing Boom
Scaffolding, Dogging and Rigging	
SB	Basic Scaffolding
SI	Intermediate Scaffolding
SA	Advanced Scaffolding
DG	Dogging
RB	Basic Rigging
RI	Intermediate Rigging
RA	Advanced Rigging
Pressure Equipment Operation	
BB	Intermediate Boiler Operation
BA	Advanced Boiler Operation
TO	Turbine Operation
ES	Reciprocating Steam Engine Operation
Loadshifting Equipment Operation	
LF	Fork-lift Truck
LO	Order-Picking Fork-lift Truck
LL	Front-End Loader
LB	Front-End Loader/Backhoe
LS	Front-End Loader (Skid Steer Type)
LE	Excavator
LE	Dragline



OWNER BUILDER COURSE

Learning Activity 8 - Licensing



What licenses do you believe your Sub Contractors should hold when working on *your* project?

Type of Sub Contractor	What Licence should this Sub Contractor Hold
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	



OWNER BUILDER COURSE



SELF TEST QUESTIONNAIRE

	Question	Ref Page
1	When is Home Building Licensing Required	134
	Answer	
2	What are the 3 main licence types in NSW	134
	Answer	
3	What are the categories of building work in NSW	135
	Answer	
4	What information would you expect to gain should you access the OFT Register of Records (Licence Check)	136
	Answer	
5	Identify 5-8 certificate licenses issued by WorkCover that would apply in the Building and Construction Industry.	138
	Answer	
	1	
	2	
	3	
	4	
	5	
	6	
	7	
8		



DEFINITIONS

accredited certifier, in relation to matters of a particular kind, means a person who is accredited by an accreditation body under section 109T in relation to those matters.

accreditation body, in relation to matters of a particular kind, means a professional association that is authorised under section 109S to accredit persons as accredited certifiers in relation to those matters.

advertised development means development, other than designated development, that is identified as advertised development by the regulations, an environmental planning instrument or a development control plan.

advertisement means a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.

advertising structure means a structure used or to be used principally for the display of an advertisement.

alignment means the boundary line between any public place and any land abutting that place.

associated structure has the same meaning as in the *Local Government Act 1993*.

building includes part of a building and any structure or part of a structure, but does not include:

- (a) a manufactured home, a moveable dwelling or associated structure or part of a manufactured home, a moveable dwelling or associated structure, or
- (b) a temporary structure within the meaning of the *Local Government Act 1993*.

Building Code of Australia means the document of that name published on behalf of the Australian Building Codes Board in October 1996, together with:

- (a) such amendments made by the Board, and
- (b) such variations approved by the Board in relation to New South Wales, as are prescribed by the regulations.

building work means any physical activity involved in the erection of a building.

certifying authority means a person who, by or under section 109D, is authorised to issue Part 4A certificates.

change of building use means a change of use of a building from a use that the *Building Code of Australia* recognises as appropriate to one class of building to a use that the *Building Code of Australia* recognises as appropriate to a different class of building.



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compliance certificate means a certificate referred to in section 109C (1) (a).

complying development is development for which provision is made as referred to in section 76A (5).

complying development certificate means a complying development certificate referred to in section 85.

consent authority, in relation to a development application or an application for a complying development certificate, means:

- (a) the council having the function to determine the application, or
- (b) if a provision of this Act, the regulations or an environmental planning instrument specifies a Minister or public authority (other than a council) as having the function to determine the application—that Minister or public authority, as the case may be.

construction certificate means a certificate referred to in section 109C (1) (b).

Crown land has the same meaning as in the *Crown Lands Act 1989*.

designated development has the meaning given by section 77A.

development means:

- (a) the use of land, and
- (b) the subdivision of land, and
- (c) the erection of a building, and
- (d) the carrying out of a work, and
- (e) the demolition of a building or work, and
- (f) any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument, but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.

development application means an application for consent under Part 4 to carry out development but does not include an application for a complying development certificate.

development consent means consent under Part 4 to carry out development and includes, unless expressly excluded, a complying development certificate.

exempt development is development for which provision is made as referred to in section 76 (2).

integrated development has the meaning given by section 91.

local development has the meaning given by section 76A (4).

manufactured home has the same meaning as in the *Local Government Act 1993*.

moveable dwelling has the same meaning as in the *Local Government Act 1993*.



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objector means a person who has made a submission under section 79 (5) by way of objection to a development application for consent to carry out designated development.

occupation certificate means a certificate referred to in section 109C (1) (c).

owner has the same meaning as in the *Local Government Act 1993* and includes, in Division 2A of Part 6, in relation to a building, the owner of the building or the owner of the land on which the building is erected.

Part 4A certificate means a certificate referred to in section 109C (1) (a), (b), (c) or (d).

place of shared accommodation includes a boarding house, a common lodging house, a house let in lodgings and a backpackers hostel.

premises means any of the following:

- (a) a building of any description or any part of it and the appurtenances to it,
- (b) a manufactured home, moveable dwelling and associated structure,
- (c) land, whether built on or not,
- (d) a tent,
- (e) a swimming pool,
- (f) a ship or vessel of any description (including a houseboat).

principal certifying authority means a principal certifying authority appointed under section 109E.

prohibited development means:

- (a) development the carrying out of which is prohibited on land by the provisions of an environmental planning instrument that apply to the land, or
- (b) development that cannot be carried out on land with or without development consent.

provision for fire safety means provision for any or all of the following:

- (a) the safety of persons in the event of fire,
- (b) the prevention of fire,
- (c) the detection of fire,
- (d) the suppression of fire,
- (e) the prevention of the spread of fire.

public place has the same meaning as in the *Local Government Act 1993*.

public reserve has the same meaning as in the *Local Government Act 1993*.

public road has the same meaning as in the *Roads Act 1993*.

relevant accreditation body, in relation to an accredited certifier, means the accreditation body by which he or she is accredited.



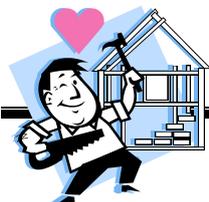
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State significant development has the meaning given by section 76A (7).

subdivision certificate means a certificate referred to in section 109C (1) (d).

subdivision of land has the meaning given by section 4B.

subdivision work means any physical activity authorised to be carried out under the conditions of a development consent for the subdivision of land, as referred to in section 81A (3).



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FURTHER REFERENCE

Websites	
www.fairtrading.nsw.gov.au	NSW Fair Trading
www.lawfoundation.net.au	Law Foundation (Access to legislation and Regulations)
Own Research	Local Councils
www.minesub.nsw.gov.au	Mine Subsidence Board
www.planning.nsw.gov.au	NSW Department of Planning
www.bpb.nsw.gov.au	Building Professionals Board
www.ato.gov.au	Australian Taxation Office
www.basix.gov.nsw.au	BASIX
www.standards.com.au	Australian Standards
www.abcb.gov.au	Building Code of Australia
www.workcover.nsw.gov.au	WorkCover Authority of NSW

Legislation & Regulations
Home Building Act 1989
Home Building Regulations 2004
Occupational Health & Safety Act 2000
Environmental Planning & Assessment Act 1979
Environmental Planning & Assessment Regulation 2000
Strata Schemes (Freehold Development) Act 1973
The Strata Schemes (Leasehold Development) Act 1986
Building Professionals Act 2005
Local Government Act 1993
Roads Act 1993
National Occupational Health Safety Commission Act 1985 (Commonwealth)
Australian Standards
NOHSC Standard 1016 (2005)
Workers Compensation Act 1987
Workplace Injury Management and Workers Compensation Act 1998
Refer to Page 50 of this section for Legislation Councils refer to
Refer to Page 67 of this section for Legislation & Regulations administered by the EPA
Refer to Page 76 of this section for a list of Australian Standards for Domestic Construction

Other	
Yellow Pages	Building Surveyors
	Builder Certifiers
	Insurance Companies
	Insurance Brokers
	Valuers Registration Board
	Institute of Valuers

