



## WORK AFFECTING OTHER LAND

### Introduction

The *Building Act 2011* provides comprehensive provisions for work that affects other land. This includes —

- Encroachments — parts of buildings or incidental structures that encroach over the boundary of adjoining land;
- Adverse affects — reducing the bearing capacity of adjoining land or interfering with the site drainage of adjoining land;
- Protection structures — sheet piling, ground anchors, underpinning or other work needed to protect existing structures that are placed on adjoining land;
- Party walls — affecting the structural, waterproofing or noise insulation capacity of party walls, substantial dividing fences or boundary retaining walls;
- Fences — removal of fences or other barriers;
- Access — using adjoining land for construction purposes.

These provisions apply to all building and demolition work, regardless of whether a building or demolition permit is required. These provisions in the *Building Act 2011* provide a balance between the needs of builders when working close to a boundary, and the rights of adjoining owners. To work effectively they will require the common sense and cooperation of all the parties affected by building work. Both builders and adjoining owners can use these provisions to ensure the building process runs smoothly with minimal impact on neighbours.

### Building on Boundaries

In most urban areas land owners will want to maximise the effective use of their land by building as close to the boundary as possible. It is also in the community's interest to get efficient use of land and not leave narrow gaps between buildings. Planning Schemes have the capacity to allow construction right up to the boundary for buildings in commercial or industrial areas and for residential areas in city locations or on small lots. Even where there is a required set-back, construction work may inevitably affect land on the other side of the boundary. Construction work inevitably causes some disruption to neighbours, whether it is noise, dust, vibration or the impacts of construction traffic. Builders have a special obligation to minimise disruption, and most try very hard to make the building process as smooth and trouble-free as possible. Builders must be tolerant of neighbours and understanding of their needs. Most neighbours will understand that the disruption is temporary, and that they too may cause disruption in their turn when undertaking new building work or renovations. Tolerant and cooperative neighbours are an important contributor to efficient building processes.

The *Building Act 2011* requires owners or builders to get consent from adjoining landowners before doing specified work that may affect the adjoining land. If consent cannot be obtained, either because it is refused or the relevant landowner cannot be found, an owner or builder can seek a court order to allow the work to proceed. In some cases the consent or court order will be confirmed by the Shire of Northam before issuing a building or demolition permit.

## **Encroachments**

Encroachments are when part of a building extends over the boundary line into the adjoining property or road reserve.

### **Private Property**

It is rare to need a permanent encroachment into neighbouring private property as building work above ground will remain within the lot boundaries. It is more common to have encroachments below ground related to retaining walls and similar structures. A boundary retaining wall may work much more efficiently if part of its footing encroaches under the ground into the neighbour's land. This may cause little or no inconvenience to the neighbour. Such permanent encroachments are shown on the plans and specifications and consent will be checked as part of the building or demolition permit process. Although not required by the *Building Act 2011*, an owner who has obtained consent for an encroachment onto adjoining land may wish to record the agreement on the land title to protect future owners and reduce disputes over whether consent was given.

### **Crown Land**

Encroachments onto road reserves and other Crown land are more common, and include things such as awnings and signs, as well as decorative features on the façade of buildings. Consent is most commonly given where there is a public benefit in the encroachment, such as an awning over the footpath. Where the owner may obtain a private or commercial benefit, such as balconies for multi-storey apartments, consent may be contingent on obtaining a lease of air space or paying some other compensation. Users should consult ***Government Land Bulletins*** numbers 5 and 6 issued by the Department of Regional Development and Lands for more information on encroachments onto Crown land. Bulletin No 5 gives a standing consent for minor encroachments and public benefit structures including plinths, awnings, flowerpots, light fittings, banner signs and minor building encroachments at road level, which are of an ornamental nature. Consent for encroachment onto a road is also needed from the relevant local government or the Commissioner for Main Roads.

## **Adversely Affect**

Adversely affecting land is defined in the *Building Act 2011* to mean reducing the stability or bearing capacity of the land or of a building or structure on the land, damaging the structural adequacy of a building on the land or changing the natural site drainage of the land in an adverse way. Adverse affects are most likely to occur as a result of excavation close to a boundary line, or the construction of retaining walls along a boundary line to support the adjoining land. Excavation close to a boundary can undermine adjoining structures, or cause land movement that damages adjoining buildings. It is unlikely that a neighbour will give consent to this sort of damage so damaging a building in this way may result in prosecution by the permit authority and claims for restitution from affected owners.

Retaining walls along a boundary that hold back the neighbour's land must be strong enough not to adversely affect the bearing capacity of the land behind the wall. It is strongly recommended that an engineer's advice is obtained for boundary retaining walls. As a guide, a surcharge should be allowed equivalent to the nominal bearing capacity of the soil, commencing at the closest set-back to the boundary allowed by the relevant town planning scheme. In areas subject to new development an adjoining owner may consent to a reduced bearing capacity at the surface because that owner also intends to excavate the land for a new building whose footings will be set below the zone that will affect the retaining wall. Alternatively an adjoining owner may consent to a reduced bearing capacity if other protection work is done to support existing buildings. With some soil types or underlying geologies, retaining walls along boundaries may act as a dam to hold back the flow of groundwater. This may cause saturation of soil under adjoining buildings with related dampness or reduction in bearing capacity, or adversely affect existing sub-soil drains. It is strongly recommended that an engineer's advice is obtained for boundary retaining walls

## **Protection Structures**

Protection structures may be temporary, such as sheet piling to protect an excavation while building work takes place, or may be permanent, such as underpinning the footings of an adjacent building. Protection structures cannot be placed on adjoining land without consent. Any work on adjoining land is likely to be an inconvenience to the neighbour, and careful planning of the construction work is important to minimise impact if consent is to be obtained. If consent or a court order cannot be obtained the owner or builder may need to modify the proposed building or construction technique to remove the need for protection structures on adjoining land. An exemption from the need for consent is if work is needed in an emergency or to comply with a building order issued by the Shire of Northam. However if work is done in an emergency the person doing the work must notify the affected landowner as soon as practicable.

## **Party Walls**

Party walls are jointly-owned walls that straddle a boundary and provide separation and support to adjoining dwellings. The provisions that apply to party walls also apply to boundary retaining walls and substantial dividing fences (that is, a fence that was constructed under a building permit). A person doing building work must not affect the structural stability, waterproofing or noise-insulation capacity of such walls or structures without consent. This includes changing the way the wall or structure works, even though there may not be an adverse affect. An exemption from the need for consent is if work is needed in an emergency or to comply with a building order issued by the Shire of Northam. However if work is done in an emergency the person doing the work must notify the affected landowner as soon as practicable.

## **Removal of Fences**

An owner or builder must not remove dividing fences or other barriers to adjoining land without consent. This is important because fences may be used to prevent children or animals from escaping, or may form a security barrier to hazards such as swimming pools, dangerous goods or machinery. Where necessary a temporary barrier must be erected to replace the fence while work is being done. An exemption from the need for

consent is if the fence needs to be removed in an emergency or to comply with a building order issued by the Shire of Northam. However a fence is removed in an emergency the person doing the work must notify the affected landowner as soon as practicable. Note that these provisions complement the *Dividing Fences Act 1961* that provides a mechanism for compelling contributions for the construction or maintenance of a dividing fence. Removal of an existing, satisfactory fence for construction purposes does not allow an owner or builder to compel a contribution from the neighbour for the construction of a replacement fence.

## **Access to Adjoining Land**

In many cases construction work will be made much easier and more efficient if access is available to adjoining land. This may be short-term access for the delivery of materials or the placement of concrete pumps or mobile cranes, or it may be longer-term access to allow for scaffolding, lifts or storage of materials. An owner or builder must obtain consent before accessing adjoining land for construction purposes. An exemption from the need for consent is if access is needed in an emergency or to comply with a building order issued by the Shire of Northam. However if work is done in an emergency the person doing the work must notify the affected landowner as soon as practicable.

An owner or builder must seek consent before applying for a building permit in case some adjustment to the design or construction process is needed where consent is not obtained. The owner or builder requiring access must also give 24 hours notice to the owner and person in residence of the land affected before actually accessing the adjoining land.

## **Removal of Unauthorised Encroachments**

Because encroachments or protection structures can adversely affect the adjoining landowner that land owner is permitted to remove any encroachments or protection structures that have been placed on the adjoining land without consent or a court order. The adjoining landowner does not need to seek approval or a permit to remove unauthorised encroachments or protection structures, so long as any damage caused is made good.

**If during the building process you as the builder or owner will be undertaking work affecting other land, which will permanently encroach or adversely affect adjoining land a BA20 or a court order is to be submitted with your Building Permit Application.**

**If the building work involves the Removal of fences; Protection Structures; Access to adjoining land or party walls then a BA20 or court order will be required prior to starting construction works.**

**Failing to obtain consent or a court order before undertaking work affecting other land can result in a penalty of up to \$25,000.**