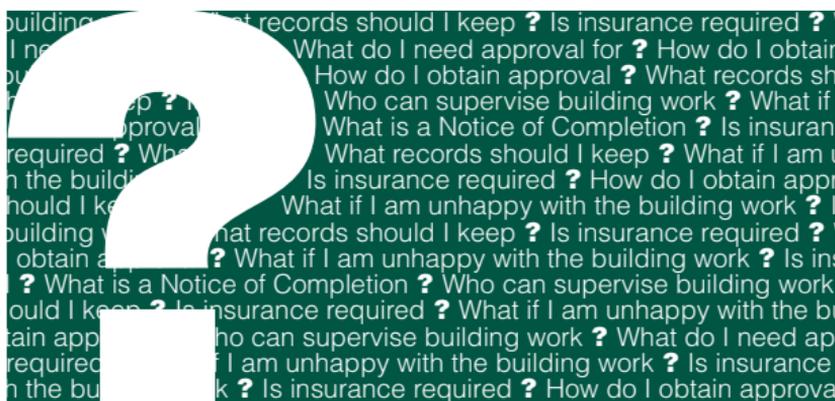

AS AN

OWNER BUILDER



WHAT ARE MY RESPONSIBILITIES
UNDER THE DEVELOPMENT ACT 1993



Government of South Australia

Department of Planning
and Local Government

Who is an owner builder?

Land owners who plan to build on their land and either carry out the building work themselves, or coordinate the necessary tasks to construct the building are considered to be owner builders. If the building work is being done with the view to sell or let the land or buildings then a licensed building work contractor will need to be hired to undertake the building work.

Owner builders are required by law to meet the same legislative requirements relating to building work as licensed builders. These requirements are contained in the *Development Act 1993*¹ and *Development Regulations 2008*.

What are my responsibilities as an owner builder?

Under the Act, owner builders proposing to undertake building work must:

- obtain a Development Approval
- lodge all copies of certificates of indemnity insurance for building work to be undertaken by a licensed building work contractor with the council before commencing that stage of building work
- notify adjoining owner/s of an intention to perform building work that may affect adjoining property
- notify the council at prescribed stages of the building work
- advise the council of the name and contact details of the person who will be supervising the building work
- undertake the building work in accordance with the approved documents
- submit a signed Statement of Compliance (Schedule 19A) to the relevant authority on completion of the building work.

¹ The Development Act 1993 may be referred to throughout the remainder of the text as 'the Act'.

How is building work regulated under the Development Act 1993?

The Development Act 1993 is the legislation controlling development, including building work, in South Australia. Development cannot be undertaken unless it is approved under the Act. All developments must be designed and constructed in accordance with the Act.

Where a development involves building work, an application is assessed against the provisions of the Development Plan and the Building Rules.

A Development Approval will be issued after a Development Plan Consent and Building Rules Consent have been obtained, as well as any other consents that may be required (eg Land Division Consent).

A 'relevant authority' grants consents and approvals required by the Act. The relevant authority granting the Development Plan Consent and the Development Approval will in most cases be your council. The exception to this is where the Development Assessment Commission (DAC) is the relevant authority for a development that is not located within a council area.

For a Building Rules Consent, the relevant authority can be your council or you may choose to engage a private certifier to undertake the functions of the relevant authority instead of your council.²

What building work needs approval?

All building work that is classed as 'development' requires a Development Approval under the Act.

The term 'building work' is very broad in its definition. Common examples include the construction of a new dwelling, extensions/renovations to existing dwellings, carports, verandahs, pools, internal alterations, structural changes as well as the demolition of existing buildings. On some occasions retaining walls, water tanks, fences and sheds may also require Development Approval depending upon their size and/or location.

² A brochure outlining the role and responsibilities of private certifiers can be obtained from the Building Policy Branch, Department of Planning and Local Government.

In addition, heritage listed properties or properties located in heritage zones will generally require Development Approval for any building work, including painting and restoration. A Development Approval is also required for the removal or pruning of a significant tree.

If you are unsure if a Development Approval is required, contact the council for advice.

What do I have to do to get a Development Approval?

The approval process requires the preparation of documentation that clearly portrays the nature and extent of the proposed building work and the site on which it is to be constructed, including access to and from the site, the slope of the land and site drainage.

Applicants will need to lodge the following documents for assessment:

- site plan showing the boundaries and dimensions of the site, including the location of easements and trees
- dimensioned floor plans, elevations, sections and construction details
- a soil report
- engineers footing and structural details
- specification/s.



If you are unfamiliar with the requirements of the council Development Plan or the Building Rules, we recommend that you engage an architect, building designer or other suitably qualified person to undertake the preparation of the documents on your behalf.

At the time of lodgement, a Development Application Form will need to be filled out and fees paid to cover planning and building assessment costs. Following the lodgement of all necessary documents, the council usually has four weeks to issue an approval or notify the applicant that their application has been refused.

When the documents are approved, a stamped and/or signed copy of all approved documents will be returned to the applicant together with a Decision Notification Form and the Development Approval. The approval will detail any conditions that have been imposed, as well as notifications required by council during construction.

Owner builders have 12 months from the date Development Approval was granted to substantially commence building work. The development must be substantially completed within three years or the approval is deemed to have lapsed and is no longer valid. In some circumstances you can apply to extend the approval. If you find yourself in this situation, contact your council for information.

Before commencing building work, owner builders should check that the proposed development is an approved development and that they have received a copy of the relevant Development Approval. Any queries regarding the Development Approval or its conditions should be clarified with the relevant authority prior to the commencement of building work.



What is the Construction Industry Training Levy?

Prior to the issuing of the Building Rules Consent, the project owner is required to pay the Construction Industry Training Levy³. The levy totals 0.25% of the value of the building work to be undertaken and is used to finance training schemes in the building industry. The levy must be paid on all building or construction work where the estimated value exceeds \$15,000.

Some councils act as collection agencies for the levy and payment can be made at these councils. Alternatively, payment can be made to the offices of the Construction Industry Training Board. In this instance, a stamped copy of the payment form must be forwarded to the relevant authority as evidence that the payment has been made.

Payment can also be made online at www.citb.org.au with a copy of the receipt forwarded to the relevant authority as evidence of payment.

³ The 'Project Owner' may be the builder, main contractor or an owner/builder. Contact the Construction Industry Training Board for further information.

I have a Development Approval, what are my responsibilities before I start to build?

What if I hire subcontractors to do some of the work?

When hiring building work contractors (subcontractors or tradespeople) to undertake building work, an owner builder needs to be aware of statutory requirements for licences, contracts and insurance.

Licences

The *Building Work Contractors Act 1995* requires any person who carries on the business of performing work for others to have a building work contractor's licence. When hiring a building work contractor ask to see this licence that will show the licence number, qualifications and any restrictions on the type of work the building work contractor is licensed to perform.

If you have any queries about licensing contact the Office of Consumer and Business Affairs.

Contracts

Under the *Building Work Contractors Act 1995*, you must have a signed contract for all domestic building work costing \$12,000 or more. This contract should detail the roles and responsibilities of all parties involved, and define such things as the method and timing of payments, completion dates and the extent of damages, if any, that can be claimed. Standard contracts are available from the Master Builders Association and the Housing Industry Association.

Insurance

The *Building Work Contractors Act 1995* requires licensed building work contractors to take out indemnity insurance for all domestic building work contracts costing \$12,000 or more to cover non-completion of the building work and/or failure to rectify faulty work if the contractor dies, disappears or is declared bankrupt. The contractor is required to forward the certificate of indemnity insurance to the building owner.

If you have selected contractors before lodging the documents for assessment with the council or private certifier, the certificates of indemnity insurance should be submitted with the documents at the time of lodgement.

If you have not selected contractors prior to lodging the documents, you must forward the certificate/s to your council prior to commencing that stage of the building work.

I am building close to the boundary – do I need to advise the adjoining owners?

If you intend to excavate 600 mm or more near a property boundary, or place 200 mm or more of fill near the boundary, the Act requires you to do the following:

- At least 28 days before the building work commences, notify the owner/s of the adjoining property/ies in writing of your intention to perform building work and the nature of the proposed work.
- Comply with any condition imposed by the relevant authority at the time of approval.
- Take precautions to protect the adjoining land and/or premises. At the request of the owner of the adjoining land or premises, you must carry out other building work to their land or premises as authorised by the regulations. This includes any building work specified by a professional engineer who has been engaged by the owner of the adjoining land or premises.

It is recommended that you verify the exact location of property boundaries and any easements before commencing building work, and if necessary engage a licensed surveyor to establish the correct alignment.

What are my responsibilities during construction?

What are notifications?

Under the Act, an owner builder must give the council one business day's notice of the commencement of building work on site and of completion of the building work. You must also give one business day's notice to the council of any other stage of work that was stipulated as part of the Development Approval.

You can make a notification in writing, by telephone, post, fax or email.

Should I engage a supervisor?

You will need to engage a registered building work supervisor or private certifier to oversee the construction of the building work from commencement to completion and to sign a Statement of Compliance that verifies the building work has been built in accordance with the approved documents and all of the required notifications were given during construction.

The notification given prior to the commencement of building work must include the name, address and telephone number of the registered building work supervisor or private certifier who is going to sign the Statement of Compliance at the completion of the building work.

Will the council inspect the building work during construction?

The Act gives your council the power and responsibility for building inspections in their area. Councils are required to develop and adopt a building inspection policy for any building work within their area. Whether your building will be inspected is up to your council and the policies it has adopted. Most inspections are conducted randomly.

On a day-to-day basis, council's delegate a variety of building inspection powers to authorised officers who hold appropriate qualifications to function as inspectors. An inspector will have an identity card that will be produced on entering the site to carry out a building inspection.

Authorised officers will check for compliance with the approved plans and specifications and have the power to request that non-complying building work be rectified within a certain time frame. As an owner builder you have appeal rights against such decisions through the Environment, Resource and Development Court. Before proceeding with legal action you should try to resolve any issues that you have with council through discussions or mediation.



What if changes are made during construction?

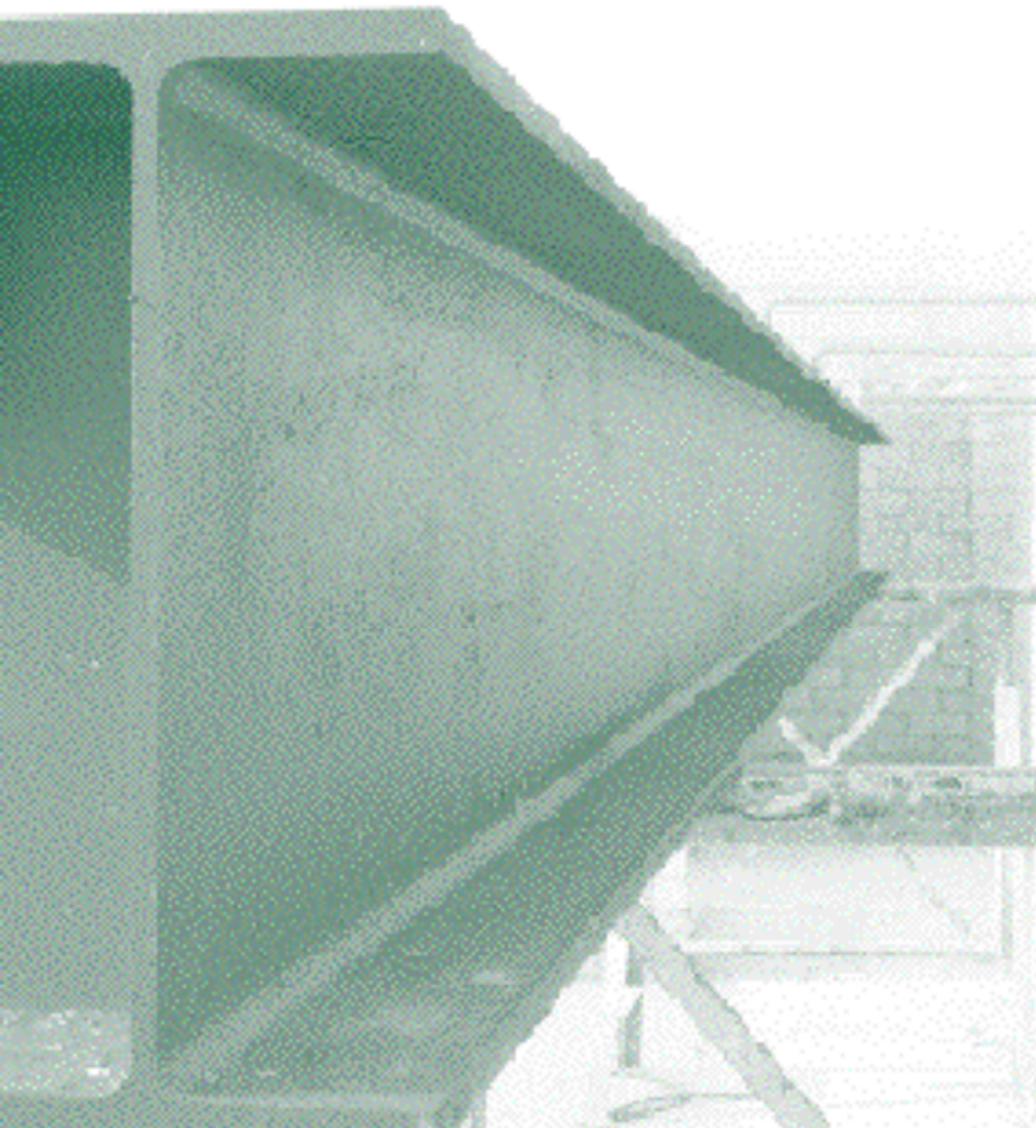
Owner builders must build in accordance with approved documents.

This means that the relevant authority must also approve any major changes made to the documents following the initial approval.

In addition, if you decide to change a material or method of construction during the construction phase you must contact the relevant authority to determine if the approval needs to be varied. Major changes are considered to be those that affect the structural soundness or safety of the building.

All building work must also comply with the requirements of statutory authorities such as SA Water (sewer and plumbing) and Energy Division, DTEI (gas and electricity). You will need to ensure that you receive Certificates of Compliance for electrical, gas and plumbing work from the relevant contractors.

Some statutory authorities offer a 'dial before you dig' service to aid in the location of existing services.



What are my responsibilities at the completion of the building work?

What is a Statement of Compliance (Schedule 19A)?

In addition to notifying council at the completion of the building work, an owner builder is required to submit a signed Statement of Compliance to the relevant authority that issued the Building Rules Consent. The Statement of Compliance has two parts. Part A is the Builders Statement and Part B is the Owners Statement.

Part A of the Statement of Compliance certifies that the building work has been completed in accordance with the approved documentation. In the case of an owner builder Part A must be signed by the registered building work supervisor or private certifier whose details were forwarded to council at the notification of commencement of the building work. Part B must be signed by the owner of the land or by someone acting on his or her behalf.

The statement must be submitted within ten business days of giving notice of completion of the building work or, where occupation of the building has occurred before a notice of completion of the building work has been given, within ten days after the building has been occupied.

Owner builders should be aware that a house, or an addition to a house, must not be occupied unless:

- the building is structurally sound and weatherproof
- the building work has been carried out in accordance with the relevant approval
- all smoke alarms have been installed and tested
- the building includes all facilities specified in Part 3.8.3 of Volume Two of the Building Code of Australia (toilet, shower, kitchen and laundry facilities) or D.10.2 of the SA Housing Code.
- all connections required for the supply of water (including rainwater tanks), and the disposal of water and effluent have been completed
- the provisions required to protect the building from bushfires (if required) have been installed, including equipment required by Minister's Specification SA 78.

As an owner builder you are responsible for the building work that you have undertaken. If you sell the building, legal action may be taken against you for economic loss or rectification costs resulting from defective work for a period of up to ten years from the date of completion of the building work. The Statement of Compliance establishes the date from which the ten-year liability period commences.

What if I do not comply with the Development Act 1993?

Penalties can be imposed if the provisions of the Act and/or the Regulations that place specific responsibility on the owner builder are not complied with. Penalties are determined according to the nature and severity of the breach of the Act and can include imprisonment ranging from three months to 15 years and/or fines ranging from \$50 to \$60,000.

Are there any other statutory requirements that affect owner builders?

In addition to the requirements detailed in the Act, there is also legislation concerning the quality of the environment contained in the *Environment Protection Act 1993*, administered by the Environment Protection Authority.

Owner builders should be aware that the *Environment Protection Act 1993* may impose additional restrictions such as the hours that work can be carried out, the location and use of noisy equipment, measures to reduce soil erosion and the removal of construction wastes from sites.

The council area in which you reside may also have by-laws relating to noise levels, on-site burning, removal of refuse and use of council footpaths.

The *Occupational Health Safety & Welfare Act 1986*, administered by Safework SA, requires owner builders to provide a safe working environment on construction sites.

For further information:

Copies of the *Development Act 1993*, the *Development Regulations 2008*, the *Building Work Contractors Act 1995* and the *OHS&W Act 1986* can be downloaded from the Government website at www.legislation.sa.gov.au.

Enquires about the specific requirements of the *Development Act 1993* and the *Development Regulations 2008* should be directed to your council.

Construction Industry Training Board

Tel. 8172 9500

Environment Protection Authority

Tel. 8204 2000

Environment, Resource and Development Court

Tel. 8204 0300

Home Owners Warranty Insurance (SA Division)

Tel. 8340 7500

Housing Industry Association (HIA)

Tel. 8340 5900

Land Services Group

Tel. 8226 3983

Master Builders Association (MBA)

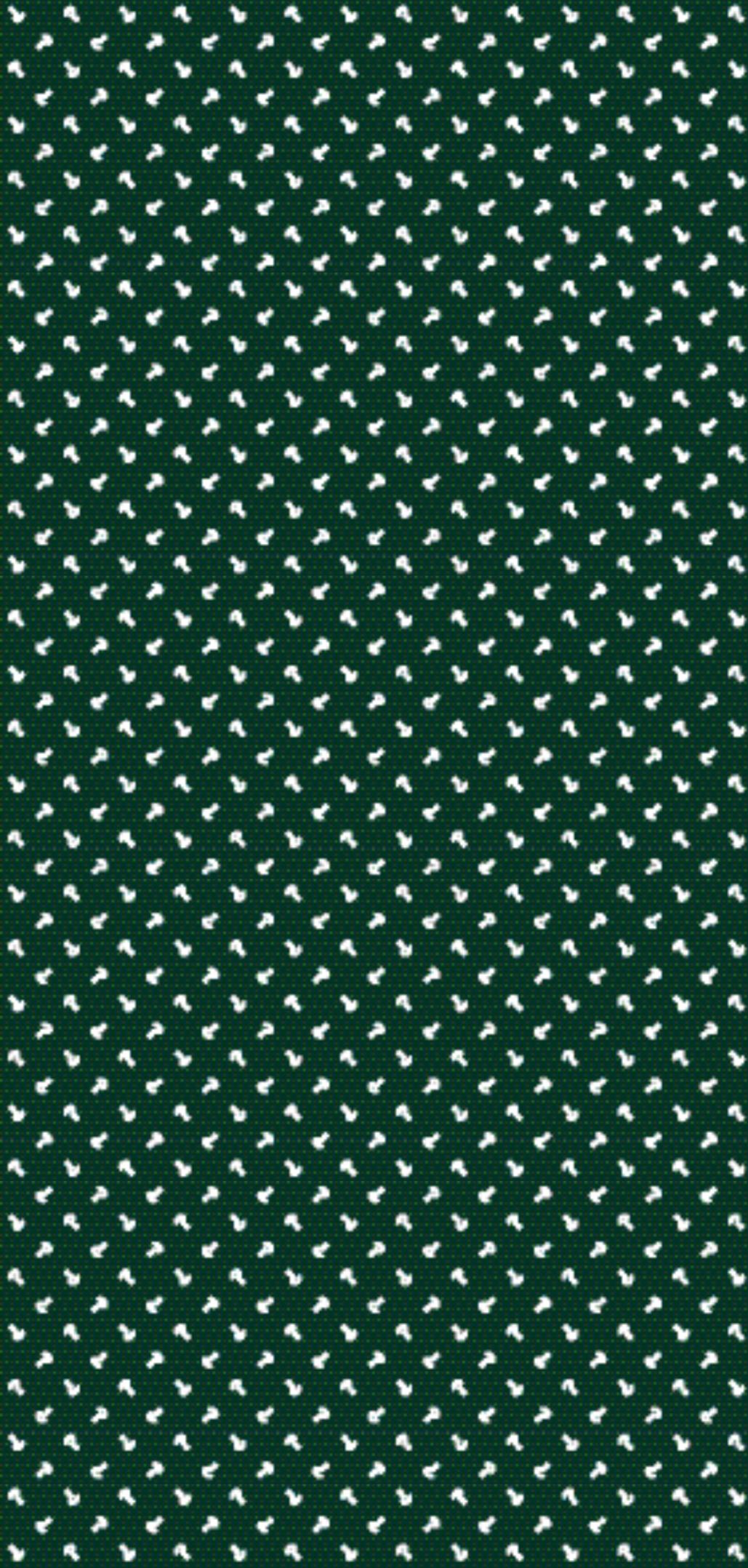
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Published by

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Department of Planning and Local Government

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Date April 2010