

BA20 Requirements for Local Government-

Members have recently queried process for dealing with possible adverse affect or encroachment of adjoining land. Local Governments must be satisfied that if the work may affect other land, the owner of that land has consented (or court order has been issued). The BA1 and BA2 forms include a declaration to that effect, but Local Government should consider all relevant information and ensure they have adequate details of the works and land to inform their decision. This guide includes a suggested approach but Local Government should ensure they consider whether the specific application raises any additional considerations.

Note: The Builder/person responsible for the work has an ongoing responsibility to ensure that other land is not adversely affected without consent.

Building Act Requirements:



The Building Act 2011 outlines the provisions for work affecting other land (s.76, s.77, s.78, s.79, s.80 and s.81). A notifiable event includes:

- **Encroachments-** parts of buildings or incidental structures that encroach over the boundary of adjoining land.
- **Adverse affects-** includes reducing the bearing capacity of adjoining land or a building or structure on the land, changing the site drainage of adjoining land so that it reduces the effectiveness of drainage of the land or existing or future buildings or structures on that land and causing damage or reducing the structural adequacy of a building or structure on the land.
- **Protection structures-** sheet piling, ground anchors, underpinning or other work the purpose of which is to prevent or minimise the risk of of works land or any other land being adversely affected by the work.
- **Party walls-** affecting the structural, waterproofing or noise insulation of party walls. Substantial dividing fences or retaining walls
- **Fences-** removal of fences or other barriers
- **Access-** accessing adjoining land for construction purposes

A snapshot of notifiable event requirements

No.	Notifiable event	Notice and request for consent form no.	Consent/court order required	
			Before permit	Before work
1*	Encroachment (s. 76)	BA20	•	•
2*	Adversely affecting other lands (s. 77)	BA20	•	•
3	Protection structure on other land (s. 78)	BA20A		•
4**	Affecting party walls (s. 79)	BA20A		•
5	Removing fences etc (s. 80)	BA20A		•
6	Accessing other land (s. 81)	BA20A		•

*Nos. 1 and 2

Where it is proposed for a part of a building or incidental structure to be placed (encroach) beyond the boundaries of the work land or if the building work may adversely affect other land evidence of consent or court order must be submitted as part of the relevant building or demolition permit application.

Where it may have been unlikely at the permit stage for the building or incidental structure to encroach on other land or building work to adversely affect other land but comes to light during construction then consent or court order must be obtained before carrying out that work. NB: This may also require amendments to the building permit record.

BA1 Form requires applicants to make the following declarations:

4. All consents or court orders have been obtained if part of a building or incidental structure is proposed to be placed beyond the boundaries of the works land.

Does the proposed work encroach on other land? ☐ Yes ☐ No

If yes, has consent or a court order been obtained? ☐ Yes ☐ No

Attach a copy of each consent (form BA20) or court order obtained.

5. All consents or court orders have been obtained if the building work may adversely affect land beyond the boundaries of the works land.

Does the proposed work adversely affect other land? ☐ Yes ☐ No

If yes, has consent or a court order been obtained? ☐ Yes ☐ No

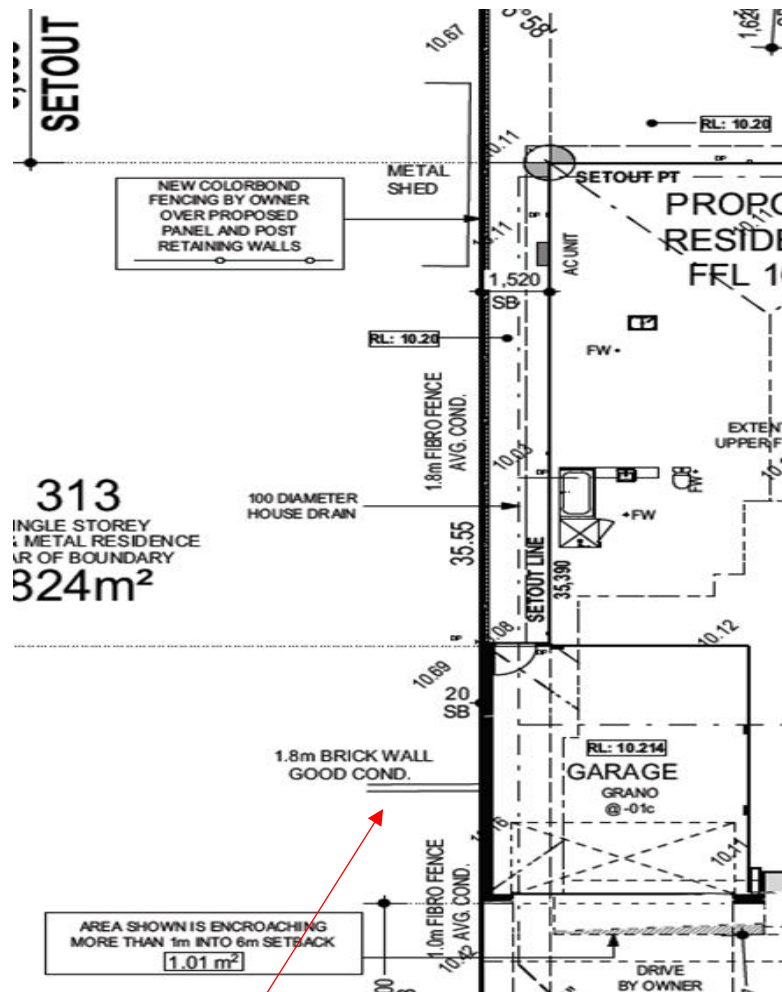
Attach a copy of each consent (form BA20) or court order obtained.

What information is required on the plans to enable the local government to be satisfied whether there is a proposed encroachment or may be an adverse affect on adjoining land?

- Clear survey documentation including details of structures on the neighbours property such as pools, sheds, brick screen walls ect including setbacks to the boundary
- Where structures are located on the neighbours property on or near the boundary provide the footing level or engage an engineer to carry out a site inspection
- Provide clear proposed and existing finished ground levels
- Provide clear top and bottom wall heights for retaining walls on the boundary
- Sectional details that clearly show the footing in relation to the boundary line to identify if a footing encroaches

Refer to the following two pages of examples where the adverse affect could not be determined.

EXAMPLE 1:



Brick screen wall no footing level established- ground level at base of wall is approximately 10.5 and propose to cut on the boundary approximately 500mm- will the walls footing be undermined?



Where plans indicate a possible adverse affect, what information may be requested from the applicant to demonstrate there will be no adverse affect?

- Structural engineers signed certification that there will be no adverse affect from the works proposed
- A construction methodology from the registered builder (or the engineer) demonstrating how the work will be carried out without affect on the neighbour (shoring, underpinning etc)
- In the case that the submitted plans indicate the possibility of undermining a building on an adjoining property then a licensed land surveyors plan detailing the bottom of the adjacent footing levels and the corresponding levels of proposed work may be requested

What information should be on the form and/or attached to the BA20/BA20a form?

The BA20 or BA20a form must have:

- A clear description of the works proposed
- A clear description of how the land will be affected and when
- Details of the person responsible for the work
- Plans, specifications and any technical certificates that show how the work will affect the land.

What information is required when one half of a duplex is being demolished?

Affecting party walls occurs where the structural, waterproofing, or noise insulation capacity of a party wall or substantial dividing fence shared with the works land is affected. This is a notifiable event that requires BA20a. The Local Government building surveyor should be satisfied that the works will not affect the structural stability of the adjoining property. This could be determined by obtaining a scope of work from the demolition/building contractor or certification from a structural engineer.

A Note on Encroachment:

Where a part of a building or structure is placed into, onto or over land beyond the boundaries of the works then it is a notifiable event requiring a BA20. Whilst BA20 consent must be obtained from the current adjoining landowner for the encroachment, this will affect subsequent property owners. Whilst this is outside the scope of the Building Act requirements, Local Governments may wish to include an advice note recommending that both property owners seek advice to ensure that their property rights, and those of their successors in title, are adequately protected.

WALGA has requested that DMIRS update their guidance information for both builders and owners to provide additional clarity on this matter.