

When do you need a building permit?

Building involves planning, management, and, importantly, compliance with relevant laws and regulations. This is when confusion and uncertainty can usually dominate, resulting in the most common question:

“Do I need a Building Permit?”

In most cases the answer is YES! Never assume your project is so minor that a permit is not required. As a result of changing regulations and their complexities, it is recommended you seek professional advice on your individual project.

Obtaining a building permit is not as simple as it may appear. The application process requires adequate information that may be dependant on third party approval, and this can become a complex task.

The Building Act 1993

The Building Act 1993 and Building Regulations 1994 legislate that most building work is subject to the issuing of a building permit prior to work commencing. The Act prescribes a penalty of 100 penalty units (\$10,000) for anyone who does work without a permit.

The Building Act 1993, including its subordinate legislation, sets the requirements and the procedures by which building is administered throughout Victoria.

Building Regulations 1994

“Why do we have regulations? And what are they?”

Regulations are written laws that the industry must follow, in order to protect occupants and their investments.

Regulations are enforced to determine:

- Structural efficiency
- Safety of occupants
- Protection of adjoining properties
- Equal or better level of fire safety

Regulations relate to safe building practices, ensuring the building will not collapse and will remain serviceable for the life of the building. Regulations apply to all structures across the board.

These regulations, codes and documents are not easy to understand. Regulations require careful reading to ensure that correct interpretation will be given to their meaning and/or requirements. The process of regulations needs to be analysed to appreciate how they came into being.

What exactly is a building permit?

Building permits relate to the construction of a building or development. They are the final document issued under the Act, on condition that the proposed building work complies with all relevant legislative provisions. It is then that construction work may commence, in accordance with the building permit issued.

Building permit process is the key part of the industry; it is a system of controls to establish, maintain and improve standards for the construction and maintenance of buildings, enhance the amenity of buildings and protect the safety and health of people using them.

A building permit will not always be issued immediately. In special circumstances and/or complex cases, additional third party approvals/permits may be applicable prior to issuing a building permit. This may involve one or more dispensations, modifications, consents and/or Planning Permits. (See Additional Approvals and/or Permits.)

Issuing a Building Permit

A building permit is issued by the Relevant Building Surveyor only when he or she is satisfied that the building work and the building permit will comply with the Act and the building regulations.

Building Surveyor's Role

It is the responsibility of the Building Surveyor to ensure that the building work will satisfy the relevant requirements under the Building Act 1993, Building Regulations 1994 and The Building Code of Australia. The Building Surveyor must be satisfied that all standards are met prior to issuing a Building Permit.

Benefits of a Building Permit

Building permits are designed to protect the building, and more importantly, the occupants. Amongst many other factors, they ensure that:

- Certain practitioners are registered and carry insurance
- Adequate documentation is prepared to correctly construct the building
- Independent review of that documentation occurs
- Key stages of the work are independently inspected and
- The building is independently assessed upon completion, to ensure that all requirements have been satisfied, and a certificate of occupancy/final inspection is issued when the works meet the standard.

Other benefits include:

- Certainty of compliance for the owners and relevant insurers.
- Ease of preparation of compliance reports, which may be required at the sale of the property
- Ease in making an insurance claim and receiving the full benefits, with no risk to loss
- Peace of mind knowing the structure is

safe and is not a hazard to the occupants.

These are just some of the many benefits a building permit delivers, which can prove to be a very rewarding process.

Additional permits and approvals

If a proposal does not comply with building regulations, a building permit will not be issued. In these circumstances the application is referred to the reporting authority for consent to vary the relevant regulation.

In such circumstances, one or more of the following may be applicable:

Dispensation:

Consent obtained from the relevant reporting authority (local Council) under the regulations prior to the issue of a building permit. This applies to building work that does not comply with one or more regulations. In such circumstances an application for Council consent is prepared and submitted to Council for consideration/review by the Municipal Building Surveyor (MBS).

It is the decision of the MBS at his/her discretion to grant dispensation where a special circumstance may exist. These applications need to demonstrate that they meet the regulation objective and the Ministerial Decision Guidelines.

Modification:

In circumstances where building work does not comply with one or more sections under the Building Code of Australia (BCA), an application for determination by the Building Appeals Board must be prepared and submitted to the Building Commission, seeking that the relevant section of the BCA be modified. The Building Appeals Board will assess the application based on the concept of performance assessment or approval of alternative design solutions.

Planning Permit:

Is separate from a building permit. If a Plan-

ning Permit is required, this will be issued before the building permit. (See Planning Permits link)

Developer's Consent:

Particularly within newly established estates governed by Delfin, Vic Urban and any other developer, proposed building work must undergo review by the design panel.

If approved, the plans are endorsed in accordance with the covenant (s) and/or the design guidelines. It is through these practices that neighbourhood character and streetscape is retained and kept consistent.

Building over an Easement:

Requires consent from Council and the authority in charge of the easement. The owner must agree to allow access to the easement at anytime, if required, for maintenance, service and/or repair works upon the easement.

Building Permit Exemption

There are some minor types of building work that are exempt from the issuing of a building permit. This work is of such a minor nature that the protection and advantages that a building permit can provide are not necessary or will not be achieved.

Examples of work that do not require a building permit include:

- Freestanding carport costing less than \$5000 (See New Building Laws)
- Unroofed pergola associated with house
- Garden shed less than 10m² in area
- Repair work for cosmetic/maintenance purposes – for example, replacing rotted weather boards

NOTE: The above must still comply with the regulations and the code.

The objective of the exemptions is to legitimise all minor building work which previously required a building permit but for which the

permit process added little value or benefit. In these cases the regulations exempt owners from having to obtain a building permit.

In some instances works may appear to be of a minor nature, but will still require a building permit. This is because such works may affect the structural soundness of a building – for example reblocking or restumping may fall well within the category.

Often it is misunderstood that building work costing less than \$5000 does not require a building permit. This only applies to the above-mentioned “freestanding carport”, which must still comply with the regulations and the code. The exemption does not apply to any building work attached to a dwelling and/or another building, even though the cost may be well below the threshold.

It is important to consider that not all minor work is exempt from a building permit. So it is highly recommended that you do some research before commencing any work.

You do not want to become a victim of consequences from illegal building work.

Illegal Building Works and Their Ramifications

“Illegal building work can have severe ramifications, such as injury and even death”

Engaging in building work without a permit can result in serious consequences in many ways:

- Prosecution by the Building Commission and a substantial fine of \$10,000. This sum is significantly higher for companies and/or organisations, along with further disciplinary action.
- Substantial safety and health risks are placed upon all occupants resulting from incorrect structural practices that can lead to occupant injury and even death.
- Fire safety has become a major concern. Victoria has the highest statistical rate of

death by residential fires in comparison to all other states. This fact alone is why regulations are enforced and tightened constantly, in order to minimise danger and improve safety.

- Spread of fire is the other element of concern. It is through the spread of fire that one or more buildings (investment) can be destroyed and occupants injured or killed.
- Risk to insurance and public liability issues. In the event of any claim (s), most insurance organisations will not cover or compensate the insured as a result of an illegal structure.

Correct interpretation of codes is required to ensure accurate and safe building concepts are employed to eliminate the above consequences, followed by mandatory inspections to ensure consumers are protected against shoddy practices.

Avoid the ramifications and reap the rewards

Obtaining a building permit, may prove to be a very rewarding process in future. So do your research and seek advice from a professional prior to engaging in any building work. It is a peace of mind knowing you have built a sound structure that was granted a building permit followed by a certificate of occupancy or final inspection.

Next time you intend to build, please do not make the mistake of trying to save money on compliance issues. Your first and most important priority should be the safety of your loved ones and yourself. Take the time and do your homework to ensure that you get it right the first time.

Further information and technical advice:
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