

# Practice Note

## 2014-35

Issued July 2014

## Lapsed Building Permits

This updates the previous Practice Note 2011-35 issued June 2011

### 1. SUMMARY

The relevant building surveyor (RBS) must follow proper administrative procedures for lapsed building permits and those approaching their expiry date. The RBS and the owner of the building each have specific responsibilities, depending on the status of the permit and the building work.

Where the RBS declines to grant an extension, the owner may apply to the Building Appeals Board (BAB) to overturn the decision.

### 2. NOTIFICATION OF LAPSING BUILDING PERMITS TO APPLICANTS

It is important that the RBS has administrative systems in place to monitor and notify owners and/or applicants of the impending lapse of a building permit in advance. Ideally, such notification should be sent to owners and/or applicants at least two (2) months in advance of the permit lapsed date. It is recommended that such notifications should be copied to the relevant Council and the Victorian Building Authority.

### 3. BUILDING PERMIT ABOUT TO LAPSE

An owner or agent on behalf of the owner may request that the RBS extend the commencement and/or completion dates of building work before the required timelines of a permit expires.

The RBS may grant this extension, if the extent of the building work warrants an extension of time. It is important for RBS to be practical in determining reasonable timelines for extending a building permit taking into account the extent of outstanding building work in accordance with regulation 315(4).

If the RBS refuses to grant an extension of time for the permit, the owner may appeal the decision of the RBS through the BAB.

### 4. WHERE A BUILDING PERMIT LAPSES AND BUILDING WORK HAS NOT COMMENCED OR IS INCOMPLETE

The owner or agent on behalf of the owner of building work not commenced or completed must obtain a new building permit from the RBS. Where a private or municipal building surveyor (MBS) is the RBS, who issued the original building permit, he/she continues as the RBS for the functions related to the building permit and only the same building surveyor can issue a new building permit for those same functions.

A building permit may only be issued by another private building surveyor (PBS) upon application of section 81(1) of the Building Act 1993 (the Act) or if the scope and design of the project differs entirely from the original project design approved under the original building permit.

In such cases the owner must terminate the building work (approved by the original building permit) in accordance with section 81(2) of the Act prior to a new appointment. A new building surveyor (private or municipal) can then be engaged for the new works.

The owner must pay the relevant building permit levies, building permit fee, prescribed lodgement fee and any other applicable fees relating to any new building permit application. In the case of building work commenced but not completed, the building work cost for the purposes section 201 of the Act for calculating levies should only relate to the balance of building work that is to be completed under a new permit.

An owner may apply for a determination from the BAB to modify regulation 315(1)(b) to extend the time in which the building work must be completed. Application can be made to the BAB before or after a building permit has lapsed.

## **5. WHERE A BUILDING PERMIT HAS LAPSED AND NO BUILDING WORK REMAINS TO BE COMPLETED**

Where building work approved under a building permit has been completed, the person who is in charge of carrying out the building work must request the RBS to carry out a final inspection of the completed building work.

Failure to notify the RBS after the completion of a mandatory notification stage listed in a permit, including completion of the building work, is an offence and may attract a fine of up to 120 penalty units.

In the case where all mandatory inspections (other than an inspection on completion of the building work) have been undertaken and the building work is completed prior to the lapsing

of the permit, the owner can make application to the RBS for a certificate of final inspection or occupancy permit without the need to obtain a new building permit.

It is important to ensure that the final inspection is carried out as soon as practicable after the building work is completed.

If the completed building work is approved by the RBS, and where applicable the RBS has been provided with an application for the occupancy permit and other required documents and certificates, then a certificate of final inspection or occupancy permit can be issued.

If the final inspection of the completed building work is refused by the RBS, he/she can issue a direction, building notice or building order to the owner of the building. Under these circumstances the owner has the normal rights to appeal decisions of an RBS to the BAB. In accordance with s119 of the Act, if a building order is issued, the RBS may require that a building permit be obtained for any building work required for compliance; if this is the case it should be communicated to the owner in writing.

On the satisfactory resolution of the requirements of a direction or building notice/order, the RBS may proceed with the issue of the certificate of final inspection or occupancy permit.

## **6. RBS RESPONSIBILITIES**

Under Part 8 of the Act where a building permit has lapsed, the RBS remains responsible for administering any necessary enforcement procedures.

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The RBS clearly has a responsibility to address lapsed building permits and therefore it is important that office procedures be implemented to administer the requirements of the Regulations.

Building surveyors (and builders) are reminded that in regard to insurance cover, it is in their best interest that building work for which they are responsible is completed and finalised and either an occupancy permit or certificate of final inspection be issued by the completion date required by the building permit.

Section 134 of the Act (limitation on time when building action may be brought) states that – despite anything to the contrary in the Limitation of Actions Act 1958 or in any other Act or law, a building action cannot be brought more than ten years after the date of issue of the occupancy permit in respect of the building work (whether or not the occupancy permit is subsequently cancelled or varied) or if an occupancy permit is not issued, the date of issue under Part 4 of the certificate of final inspection of the building work. Note: “building action” means an action (including a counter-claim) for damages for loss or damage arising out of or concerning defective building work.

To assist proper administration of building permits and inspections and reduce the number of lapsed building permits the following procedures are suggested.

At the time of issuing the building permit, it is recommended that the RBS highlight the important information and requirements relevant to the building permit for which the owner and builder have responsibility during construction.

Some matters to be highlighted may include:

- Commencement and completion dates
- Mandatory inspections and procedure to request an inspection
- Responsibility as an owner/builder (if applicable)
- Any additional fees arising from the lapse of a building permit, additional administration and/or inspections, enforcement and appeals processes
- And any other compliance matters of which the owner or applicant is expected to be aware.

In addition to advising the owners and builders of the above, (particularly owner/builders) also refer them to the [Victorian Building Authority website](#) provides additional information on the Building permit process.

Building surveyors must also maintain a record keeping system so that owners can be reminded when their building permits are about to expire. At the time the building permit is issued, the procedure, professional service fees and consequences relating to a lapsed building permit and relevant compliance issues should be known to the applicant.

Where a permit has lapsed, an option for the RBS is to commence enforcement action by issuing a building notice under section 106. A notice made under section 106 could only be for the reasons of:

- The building work has been carried out that is in contravention of the building permit, the Act or the Regulations, or
- The building is being occupied without a required occupancy permit, or
- The building or building work is a danger to property or the life, safety or health of a member of the public or person using the building or land.

In the case where an RBS has adequately informed the owner and/or applicant of the requirement to notify the RBS of the mandatory notification stages set out in the permit and notification has not been given (and section 106 of the Act does not apply), a private RBS may refer the person in charge of the building work to the Victorian Building Authority for investigation. In the case where the RBS is an MBS, the relevant Council is the authority for bringing proceedings under s33 of the Act.

Details of lapsed building permits must be included on the “building work inspection, completion or permit lapse return”, submitted by RBS to the Victorian Building Authority each month.

## 7. MBS RESPONSIBILITIES

Where a MBS becomes aware that a building permit issued by the RBS has lapsed, it is recommended that the RBS and owner be made aware of the lapsed permit and be advised that they need to resolve the matter promptly.

An MBS should encourage a quick resolution to building work as this would in turn result in a revaluation of properties affected by the building work and hence generate additional rate revenue for council.

If you have a technical enquiry please email: [technicalenquiry@vba.vic.gov.au](mailto:technicalenquiry@vba.vic.gov.au) or phone 1300 815 127

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