

This updates the previous Practice Note-2014-35 issued July 2014 titled Lapsed Building Permits.

Purpose

The purpose of this practice note is to provide guidance on the time limits for commencement and completion of building work and on the process for managing lapsed building permits.

Background

A person must not carry out building work unless a building permit is issued and in force (section 16 of the *Building Act 1993* (Act)).

Once issued, a building permit remains in force for a defined period. Building work must be carried out and completed during that period. This is to ensure that building work does not remain unfinished and potentially unsafe or unsightly, for an inappropriate period of time.

If building work is not completed during the time limits set by the *Building Regulations 2018* (Regulations), the building permit will lapse. Building work cannot continue unless there is an extension of time granted before the permit lapses or a new building permit issued.

The time limits for the commencement and completion of building work and requirements for notification of imminent lapse of a building permit are intended to facilitate the timely completion of building work and the completion of the building permit process.

The timeframes for insurance coverage and for bringing legal proceedings for building disputes run from the date of issue of an occupancy permit or certificate of final inspection. It is in the interest of all parties to avoid lapsed building permits and complete the building permit process so that legal rights and obligations are clearly defined.

Time limits

The relevant building surveyor (RBS) must ensure that the dates for the commencement and completion of building work are specified on the building permit (*Form 2*).

The dates are derived from the time limits specified in regulations 53 and 54 of the Regulations.

Where building work is not commenced or completed in compliance with these dates the building permit will lapse.

Where a building permit has lapsed it is no longer in force pursuant to regulation 55(3) of the Regulations.

If the building permit is not in force, no further building work can lawfully be carried out. Any building work carried out after a building permit has lapsed may be an offence under section 16 or 16B of the Act.

Time limits for commencement

Regulation 53 provides that all building work must commence within 12 months of a building permit being issued except for the re-erection of a class 1 or 10 building which must commence within 6 months.

Time limits for completion

Regulation 54 provides the following time limits for completion of work:

Type of work or class of building under the building permit	Time limit to complete work
Re-erection of any building	12 months from the date of issue of the building permit
Class 1 or 10 building	24 months from the date of issue of the building permit
Swimming pool or spa or associated barrier or safety equipment if that work is being carried out concurrently with 'other building work' on the same allotment	The same period as is allowed for the 'other building work'
Swimming pool or spa or associated safety equipment not carried out concurrently with other building work on the same allotment	6 months from the date of commencement
Any building work not listed above (i.e. Class 2-9 that is not a re-erection)	36 months from the date of issue of the building permit

Staged building work where more than one building permit is issued

Where building work is to be carried out in more than one stage and more than one building permit is issued, the completion date of any sequential permit is to be based on the date of issue of the first building permit. Therefore, the issuing of multiple building permits for one building project does not extend the date within by which all the building work must be completed beyond the time limits in regulation 54(1).

Extension of building permit

Where the applicant for a building permit becomes aware that the commencement or completion dates will not be met, they may apply to the RBS for an extension to these dates under regulation 59 of the Regulations. The application must be in writing and must be made prior to the lapse of the building permit.

The RBS may extend these dates if they consider the application is justified due to the extent of the building work. This consideration must occur prior to the lapse of the building permit and if granted, the RBS must notify the applicant without delay of the new dates.

In determining new dates for commencement or completion, the RBS should consider the extent of outstanding building work and the time limits specified in regulations 53 and 54.

If the RBS refuses to grant an extension to the dates or the new dates granted are not acceptable to the applicant, the owner or their agent may appeal to the Building Appeals Board (BAB) under Part 10 of the Act.

In the event that a building permit has lapsed, (even though the notification process had been adhered to), an owner may apply for a determination from the BAB to modify regulation 59. This application is made to the BAB pursuant to section 160 of the Act.

Notification of lapsing building permit to applicant

The RBS must notify the applicant for a building permit that the building permit is about to lapse, prior to the permit lapsing.

A notification (*Form 3*) must be sent to the applicant if, 30 days before the date for commencement of the work, the RBS has not carried out an inspection of the work at the first mandatory notification stage. The notification is required if there has been no first inspection, even if the building work has commenced in regulation 56.

Notification (*Form 4*) must be sent to the applicant if, 30 days before the date for completion of the work, the RBS has not carried out an inspection of the work relating to the final mandatory notification stage in regulation 57.

Where a notification is issued under regulation 56 or 57, within 7 days a copy of the notification must also be given to the owner and the builder named on the building permit in regulation 58.

Where a building permit has lapsed, and work has not commenced

Where the building permit has lapsed, and the work has not been commenced, if the owner does not intend to commence the work, the owner should notify the Authority and relevant council under section 81(2) of the Act that the work has been terminated.

Upon receipt of this notification, the appointment of the private building surveyor is taken to be terminated in section 81(3).

If the owner later decides to undertake the building work, they may engage any private or municipal building surveyor to be the RBS.

Where the building permit has lapsed, and the building work has not commenced but the owner still intends to carry out the work, the owner must seek a new building permit from the same RBS that issued the lapsed building permit.

If the owner would like to appoint another person to be the RBS, they must apply to the Authority to terminate the appointment of the original RBS pursuant to section 81, or pending agreement, a transfer of functions under section 80C of the Act.

It is an offence for the owner to appoint another person to be the RBS where an RBS has already been appointed for the same building work (sections 78(2)).

Where a building permit has lapsed, and work is incomplete

Where a building permit has lapsed, and the building work is incomplete, the owner must not continue with the building work until a new building permit has been issued by the RBS.

If the owner would like to appoint another person to be the RBS, they must apply to the Authority to terminate the appointment of the original RBS pursuant to section 81, or pending agreement, a transfer of functions under section 80C of the Act.

If the RBS becomes aware that building work has commenced after the building permit has lapsed and a new building permit has not been issued, the RBS should immediately issue a building order to stop the work pursuant to section 112 of the Act.

The RBS should also consider whether a building notice should be issued, for example, if the building is a danger to the life, safety or health of persons using the building or land.

Where a building permit has lapsed, and building work is complete

Where all building work has been completed before the building permit lapsed, the RBS should have been notified of the completion of the 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 pursuant to section 33(1) of the Act.

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 building permit lapsing, an application can be made to the RBS for a certificate of final inspection or occupancy permit without the need to obtain a new building permit.

If the building work is compliant, and the RBS has all required documents and certificates, a certificate of final inspection and/or occupancy permit can be issued.

If the final inspection identifies that the building work is non-compliant due to minor outstanding works, the RBS may issue a building order for minor work pursuant to section 113 of the Act. This will allow for work of a minor nature to be carried out without a building permit. Upon completion of this work an application may be made to the RBS to cancel the building order for minor work and also for the occupancy permit or certificate of final inspection as required.

Any decision of an RBS to issue a building notice or order or refuse to issue an occupancy permit or certificate of final inspection can be the subject of an appeal to the BAB by the owner.

Where a notification is issued and there is no response

If a notification is issued by the RBS and the owner does not respond, the RBS should arrange to inspect the building work to ensure that the site is safe, particularly if it is being occupied.

If the RBS is concerned about the safety of the site due to incomplete building work, the RBS should consider issuing a building notice or building order for minor work to address the safety concerns.

Administration procedures

All RBSs must have administrative systems in place to monitor compliance with the commencement and completion dates specified in the building permit. This is essential for the RBS to comply with their obligations to notify of imminent lapse.

It is recommended that the RBS highlight to owners and builders important information about time limits for commencement and completion of building work.

Such information may include:

- the importance of ensuring that the building work is completed in a timely manner;
- the importance of ensuring that the building permit process is completed;
- the procedure to request an inspection at a mandatory notification stage;
- any additional fees arising from the lapse of a building permit, request for extension to dates, additional administration and/or inspections, enforcement and appeals processes;
- the process and documentation required for an application for occupancy permit or certificate of final inspection.

Details of any lapsed building permits must be included on the “building work inspection, completion or permit lapse return”, submitted by the RBS to the VBA each month in regulation 47.

Further information

Want to know more?

If you have a technical enquiry, please email technicalenquiry@vba.vic.gov.au or call 1300 815 127.

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