

Permits & paperwork before, during and after building

What are building permits?

The Building Act 1993 (the Act) and *Building Regulations 2006* (the Regulations) legislate that all building work is subject to the issuing of a building permit, unless an exemption exists for the proposed work under the Regulations. This includes some minor alterations, demolitions, and repair or maintenance work.

A building permit will specify when an occupancy permit is required or when a certificate of final inspection is necessary on completion of the building work.

A building permit is a document that certifies that the Relevant Building Surveyor has approved the relevant plans and documentation before your project begins.

Why are building permits issued?

Building permits are issued to ensure that the building work complies with the Act and Regulations.

Undertaking building work without obtaining the necessary building permit is a serious offence and can result in severe penalties. The Act prescribes a penalty of 500 penalty units for anyone carrying out building work without a permit. This equates to an amount in excess of \$70,000. The Act and Regulations provide benefits to consumers.

They establish, maintain and improve standards for the construction and maintenance of buildings, enhance the amenity of buildings and ensure the safety of people using them.

However, compliance should not be the key motivator for people when they are arranging a building permit.

Why obtain a building permit?

Obtaining a building permit ensures:

- The required building practitioners are registered and carry the required insurance(s)
- Adequate documentation is prepared to enable compliant construction of the proposed building
- An independent review of building documentation occurs
- Key stages of the work are independently inspected
- Your building is independently assessed as suitable for occupation.

Other benefits for owners include compliance with building legislation prior to building work commencing.

Are there exemptions?

The Regulations provide exemptions from the requirement to obtain a building permit for some works that are generally minor in nature. Examples of exemptions may include pergolas associated with houses, garden sheds with a floor area less

than 10m² and repair work done for maintenance purposes, such as replacing rotted weatherboards.

Please note: These exemptions do not relate to town planning or other statutory approvals.

It is suggested that you seek advice from your local council whenever building work is proposed, to confirm whether a building permit or planning permit is required.



How do I apply for a building permit?

Before applying for a building permit, you need to choose a building surveyor. You may choose either a municipal building surveyor or a private building surveyor.

Your architect or builder can apply on your behalf for the permit but you

Permits & paperwork before, during and after building

must first authorise the architect or builder in writing to make the application.

Do not sign a blank form authorising others to obtain all permits for you and always check that a permit has been issued before any work commences.

Applying for a permit requires you to:

- apply for the building permit through your choice of a municipal or private building surveyor
- pay the appropriate fee, building permit levy and submit at least three copies of drawings, specifications and allotment plans along with the completed application form and other prescribed information.

What is the process?

Once your building permit application has been lodged with a building surveyor, they will check for compliance with the Act and Regulations and can then decide to issue a building permit with or without conditions.

In some instances they may refuse to issue a permit. If a permit is refused, you can either alter the application to comply with the Regulations or appeal the refusal of the permit to the Building Appeals Board.

The building permit issued may be a permit for the whole of the proposed building work or for a stage of the proposed building work. The building surveyor cannot issue the building permit until any required consent of a reporting authority is received.

The consent could be in relation to such matters as building over an easement or the siting of a carport. A building permit cannot be issued until a relevant planning permit (if required) is obtained.

The building surveyor who issues the permit must follow the project through to the end, carrying out building inspections and issuing an occupancy permit or a certificate of final inspection on completion of your building work.

The building surveyor must specify on the building permit the mandatory inspections that will be required throughout the course of the building work. There are no restrictions preventing the building surveyor from varying the required inspections or carrying out additional inspections, if they deem this to be necessary.

If you intend to carry out building work close to an adjoining neighbour's property the building surveyor can, in some cases, require you to perform work to protect your neighbour's property. This may include obtaining the appropriate insurance cover for the building work prior to commencing the protection work. This is generally determined during the building permit application process.

Protection work cannot commence until the adjoining owner has agreed to the proposed protection work.



What is the difference between building permits and planning permits?

Building permits relate specifically to the carrying out of building construction. However, there are times when a planning permit may also be required.

Planning permits are legal documents giving permission for a land use or development, and may be required by your local council. If a planning permit is required, it must be obtained before a building permit can be issued, however, both applications can be made at the same time.

The documentation for the proposed building submitted in support of an application for a planning and building permit must be consistent in design.

A planning permit does not remove the need to obtain a building permit. The best way to find out whether you need a planning permit is to contact your local council's Town Planning Office.

When must building work commence?

The Regulations specify the required commencement and completion dates for building works that are associated with a building permit. If works have not commenced or are not completed within the required time period, or an extension to the building permit has not been sought or approved, then the building permit will lapse.

Permits & paperwork before, during and after building

- Building work relating to houses and outbuildings must commence within 12 months and be completed within 24 months of the date of issue of the building permit.
- Building work relating to swimming pools and associated barriers or fences must commence within 12 months of the date of the issue of the building permit and be completed within six months of commencement of the work.
- Building work relating to the re-erection of houses and out buildings must commence within six months and be completed within 12 months of the date of the issue of the building permit.
- All other building work, must commence within 12 months and be completed within 36 months of the date of issue of the building permit.

An exception is the re-erection of a building which must be completed within 12 months of the date of the issue of the building permit.

Building Permit Levy

The *Building Act 1993* imposes a Building Permit Levy. The Levy is paid by an applicant for a building permit and must be paid before the permit can be issued. The levy is collected by the building surveyor and forwarded to the Victorian Building Authority by monthly return.

Lapsed permits

Under ordinary circumstances, the building work will have commenced and been completed before the expiry of the prescribed time periods.

If for some reason, circumstances prevent the commencement or completion of the building work by

the nominated date, you must do one of the following:

1. Before the relevant date passes, seek an extension of the time in which the building work must be commenced and/or completed from the relevant municipal or private building surveyor who issued the permit. The relevant building surveyor may grant an extension if the extent of the building work warrants it. If the building surveyor refuses to grant an extension of time for the building permit, you may appeal the decision to refuse the extension of time to the Building Appeals Board; or
2. Apply for a determination from the Building Appeals Board to modify regulation 315(4) of the Regulations to allow the RBS to extend the time limits of the building permit.

What happens if a permit lapses?

If a building permit lapses but building work continues, that work then becomes illegal and the relevant building surveyor should issue a stop work order.

The building work may have been required to be inspected at one of the mandatory inspection stages and where works have continued, it is difficult to determine that the building work complies after it has been completed.

If an owner does not comply with the stop work order, then the relevant building surveyor will refer the matter to the VBA for further action.

The building surveyor who originally issues the building permit may refuse

to approve the work or may require a part of the building to be exposed to be satisfied that the work is appropriate before issuing an occupancy permit or certificate of final inspection, whichever is required for that work.

In the instance that the building permit has lapsed and all that is required by the relevant building surveyor is certificates (i.e. plumbing), then a new building permit may not be required. The relevant building surveyor may issue the occupancy permit or certificate of final inspection once such certificates have been submitted satisfactorily.

If a building permit lapses and building work is not complete, a new building permit will be required to enable completion of the unfinished building work. This will require a new application for a building permit.

The relevant municipal or private building surveyor will require plans that show the work to be completed and payment of fees and levies relative to that work will need to be paid.

The application must be made to the same building surveyor who issued the original building permit unless an approved termination of his or her appointment has been obtained from the Victorian Building Authority.

What are occupancy permits?

Occupancy permits are documents that signify that a building surveyor is satisfied that the completed building work is suitable for occupation. The *Building Act 1993* requires the issue of

Permits & paperwork before, during and after building

an occupancy permit prior to occupation of a building where a building permit states that one is required.

When are occupancy permits required?

A building permit will state whether you require either an occupancy permit or a certificate of final inspection prior to occupation.

Building work for a new home (including units or apartments) will always require an occupancy permit to be issued. It is an offence to occupy a new home that does not have an occupancy permit.

A certificate of final inspection is issued for extensions or alterations to existing homes. Extensions and alterations do not require an occupancy permit as the existing building should already have had an occupancy permit issued on its completion. Again, the requirement for issue of a certificate of final inspection will be indicated on the building permit.

What is the process?

Occupancy permits are issued when your building is considered suitable for occupation. An application for an occupancy permit is made to the relevant building surveyor who issued the building permit.

In deciding whether to issue an occupancy permit, the building surveyor may request certificates or statements from various practitioners involved in the construction of the building to confirm that the work complies with relevant building legislation.

How does an occupancy permit relate to the building contract?

Where the value of your building work is more than \$5000 and is being carried out by a builder, the builder must be a registered building practitioner and must carry out the work under a major domestic building contract.

With respect to occupancy permits, section 42 of the *Domestic Building Contracts Act 1995* sets out the conditions to be met before a builder can request a final payment from you.

The final payment cannot be claimed until the work carried out under the contract has been completed in accordance with the plans and specifications as set out in the contract and the building owner has been given either a copy of the occupancy permit or a copy of the certificate of final inspection. You should read the contract and if you don't understand it, seek legal advice.

In the case of apartments that are bought off the plan, occupation may still not be possible even if an occupancy permit has been issued for an individual unit. This may be due to contractual arrangements such as completion of the contract and settlement. You should obtain legal advice to ensure you understand when settlement will occur and whether it is tied to the issuing of an occupancy permit (or the final inspection or some other factor).

What if there is still ongoing building work?

An occupancy permit will only be issued to you when items affecting health, safety and amenity are in place and fully operational. These include but are not limited to things such as the water supply, smoke alarms, safety glass, handrails and balustrades. It does not mean that all the painting is done, that the carpet is laid or that all the fittings are installed, for example.

For a high-rise apartment, in addition to it being suitable to occupy, an occupancy permit means that the common areas have been made safe and useable, but they may not necessarily have been completed.

The relationship between the occupancy permit and your contract of sale (or domestic building contract) should be clear to you before entering into the relevant contract. If you have any doubts or do not understand the relationship you should obtain legal advice.

Regardless of whether an occupancy permit has been issued, a builder is still responsible for the construction of a building in accordance with the relevant contract and/or approved building permit documents that form part of that contract. It is advisable that you clearly understand your rights, obligations and conditions of contract prior to signing.

For more information regarding contracts made under the *Domestic Building Contracts Act 1995*, please contact Consumer Affairs Victoria on 1300 558 181.