

PRACTICE NOTE 32-2018

This updates the previous Practice Note-2016-32 issued January 2016.

Purpose

This practice note provides guidance on where a building permit is not required for building work.

Background

Buildings must be constructed to meet minimum standards of safety and amenity as set out in the Building Act 1993 (the Act), the Building Regulations 2018 (the Regulations) and National Construction Code (NCC).

The building permit process is intended to ensure that the building work when constructed complies with the Act, Regulations, NCC and relevant Australian Standards and the building or structure is suitable to occupy or use.

The building permit is required to include detailed documentation which demonstrates that the building work will comply with the Act, Regulations and NCC. The building permit process also requires inspections of the work and the issuing of an occupancy permit or certificate of final inspection.

Some building work is of such a minor nature that the protections and advantages that a building permit provides are not necessary or will not be achieved. Schedule 3 of the Regulations sets out the building work that is exempt from the requirement for a building or occupancy permit.

Requirement for a building permit

Sections 16 and 16B of the Act make it an offence to:

- carry out building work without a building permit that is in force;

- carry out building work that is not in accordance with the building permit issued for the work;
- carry out building work that is not in accordance with the Act or the Regulations.

These offences do not apply if the building work is exempted by the Act or the Regulations.

Where a court finds that there has been a breach of section 16 of the Act a maximum penalty of 500 penalty units for a natural person and 2500 penalty units for a company can be imposed.

Where a court finds that a person has breached section 16B of the Act because they were in the business of building and knew a building permit was required, a maximum penalty of 600 penalty units or 5 years in prison or both for a natural person or 3000 penalty units for a body corporate, can be imposed.

Exemptions – Schedule 3

Schedule 3 of the Regulations lists items of building work, structures or buildings that do not require a building or occupancy permit.

Column 2 of the table in Schedule 3 describes the type of building or building work which is exempted from a building or occupancy permit.

Column 3 of Schedule 3 describes the parts of the Regulations that the building or building work is exempted from. For example, for item 10 there is a reference in column 3 to All Parts except regulation 89(1) and Schedule 6. This means that no building permit is required, but that the fence height requirements of regulation 89(1) and Schedule 6 – Planning Schemes (as applicable) must still be complied with.

Work that will not adversely affect structure or safety

Several items in Schedule 3 exempt work from the requirement for a building and occupancy permit if the building work will not adversely affect the structural soundness of the building and will not adversely affect the safety of the public or occupiers of the building. These terms should be interpreted to apply to the construction process and the completed building.

An example, even if the finished building will be structurally sound, if during construction there will be an adverse effect on any structural element or on the safety of the public or occupiers then the exemption does not apply. This means that any building work which involves work to structural or load bearing elements of an existing building, regardless of cost, will require a building permit. This would also apply to the removal of internal walls which contribute to the lateral stability of a building.

Construction of a Pergola

One of the exemptions from the requirement for a building permit is for the construction of a pergola. A pergola is defined in regulation 5 to mean an open structure that is unroofed but may have a covering of open weave permeable material.

A pergola is exempt by item 16 of Schedule 3, providing it is:

- not more than 20m² in floor area; and
- not more than 3.6m in height; and
- located no further forward on the allotment than the front wall of the building to which it is appurtenant; or
- located no further forward than 2.5m of the front wall of the building to which it is appurtenant.

Note: A shade structure and/or shade sail that has a permeable covering (*open weave shade cloth or open lattice*) that satisfies the above criteria would come within the definition of a pergola and be exempt from the requirement for a building permit.

Any pergola, including a shade sail or shade structure that falls within the exemption in item 16 must still be designed and constructed to resist applied loads and to ensure it does not adversely affect any building to which it is attached.

Repair, renewal or maintenance

Repair, renewal or maintenance of a part of an existing building, (*such as replacing rotted weatherboards, or replacing wall, ceiling or floor lining, retiling a bathroom or kitchen*) is exempt from the requirement to obtain a building permit under item 3 of Schedule 3 provided the building work:

- will not adversely affect the structural soundness of the building, will not increase or decrease the floor area or height of the building and is not underpinning or replacement of footings and does not include the removal or alteration of any element of the building that is contributing to the support of any other element of the building; and
- uses materials commonly used for the same purpose as the material being replaced; and
- will not adversely affect the safety of the public or occupiers of the building; and
- will not adversely affect an essential safety measure relating to the building.

Alterations to a building

Alterations to a building are exempt from the requirement to obtain a building permit by item 4 of Schedule 3 if the building work:

- will not adversely affect the structural soundness of the building and will not increase or decrease the floor area or height of the building; is not underpinning or replacement of footings and does not include the removal or alteration of any element of the building that is contributing to the support of any other element of the building; and
- will not adversely affect the safety of the public or occupiers of the building; and
- will not project beyond the street alignment; and

- is not work carried out on, or in connection with, a building included on the Heritage Register; and
- is not work in relation to, and will not adversely affect, an essential safety measure.

Construction of a freestanding building

Construction of a freestanding Class 10a building (a shed, carport or garage) is exempt from the requirement to obtain a building permit by item 1 of Schedule 3 providing it:

- has a floor area not exceeding 10m²; and
- is not more than 3m in height, or no more than 2.4m in height within 1m of the boundary; and
- if appurtenant to a building of another Class on the same allotment is located no further forward on the allotment than the front wall of the building to which it is appurtenant; and
- if it is the only Class 10a building and is not appurtenant to another building of another Class on the same allotment, is set back at least 9m from the front street alignment and at least 2m from each side street alignment; and
- is not constructed of masonry.

Where a freestanding Class 10a building is proposed to be located over an easement or relevant authorities service pipe, the *Water Act 1989* and/or *Local Government Act 1989* require that consent is obtained from the relevant authority prior to the construction of the building.

Some Class 10a buildings may still require a planning permit to be constructed (e.g. in a heritage overlay area).

Demolition of a freestanding building

Demolition of a freestanding Class 10 building such as a shed, carport or garage is exempt from obtaining a building permit under item 2 of Schedule 3 provided that the Class 10 building:

- is not constructed of masonry; and
- does not exceed 40m² in floor area; and

- will not adversely affect the safety of the public or occupiers of the building; and
- is not work carried out on or in connection with, a building included on the Heritage Register.

Some Class 10 buildings may still require a planning permit to be demolished (e.g. in a heritage overlay area).

Class 10b structures constructed for displaying a sign

A Class 10b structure that is built for the purpose of displaying a sign is exempt from the requirement to obtain a building permit by item 12 of Schedule 3 provided it:

- is less than 3.0m from a street and does not exceed 1m above natural ground level, or
- not less than 3m from a street and does not exceed 8m above natural ground level and 6 square meters in display area.

Where a sign is to be attached to an existing Class 10b structure which was not constructed for the purposes of displaying a sign, the exemption in item 12 does not apply (e.g. flag pole, tower or antenna.)

Where the exemption in item 12 applies, the Class 10b structure should be designed and constructed to ensure structural soundness.

Where a sign is to be attached to an existing Class 10b structure constructed for the purpose of displaying a sign, the structure should be assessed to ensure that it will structurally withstand the load of the new sign.

Real estate signs

A temporary free-standing sign such as a real estate for sale or lease sign that is self-supporting will usually be exempt from the requirement for a building permit on the basis that it is a **temporary structure** under item 7 of schedule 3.

Real estate signs that are attached to buildings that are not Class 10b structures are **not** exempted from the requirement to obtain a building permit.

What is building work?

A building permit is only required for building work. The Act defines building work as work for or in connection with the construction, demolition or removal of a building.

The word **construct**, in relation to a building is defined in the Act to include:

- build, re-build, erect or re-erect the building; and
- repair the building; and
- make alterations to the building; and
- enlarge or extend the building; and
- place or relocate the building on land.

Building work that falls within the above definitions, is building work that requires a building permit, except where specifically exempted under schedule 3

Excavation works

Excavation work that is being carried out in connection with and for the purpose of facilitating the construction of a building or structure on the land, is in connection with the construction of a building and is therefore building work.

A Building permit is not required for excavations that are not connected with building work and therefore do not come within the definition of building work.

Further, excavations that are connected with building work that is exempt from the requirement for a building permit, would also not require a building permit.

An example: Excavations associated with landscaping, retaining walls that are less than 1m in height, footings to sheds and pergolas or similar that are exempt from requiring a building permit do not require a building permit. (Refer to the table below)

Civil engineering and infrastructure work, carried out in relation to a subdivision that is comprised of earthworks, road works, installation of drainage, sewer and water reticulation infrastructure does not require a building permit. This work is also exempted from the requirements of the *Domestic Building Contracts Act 1995*.

Value of building work

The value of building work is not relevant to whether or not any of the exemptions in Schedule 3 apply.

If building work is exempt from the requirement for a building permit, it may still be subject to the *Domestic Building Contracts Act 1995*. Under that Act, if the contract price for carrying out of domestic building work is more than \$16,000 the builder:

- must enter into a major domestic building contract with the owner; and
- must be registered under the Building Act 1993; and
- must hold required insurance for the work.

The provisions of the *Domestic Building Contracts Act 1995* do not apply to an owner who carries out the work.

Case Studies - Solar roof PV panels

The following case studies describe examples of typical building work and whether they are exempt from the requirement for a building permit or any technical provisions.

Rooftop solar panels are considered attachments to a building and therefore they are not building work and do not require a building permit except where structural alteration to the roof frame is required to support the installation of the panels.

Where solar panels are proposed to be attached to a building on the Heritage Register, approval under the *Heritage Act 2017* or a planning permit may be required.

The installation of solar panels will impose additional loads on existing roof structures. Fixings may also adversely affect existing roof structures. Different onsite conditions including roof covering, roof pitch, type of framing and wind loads will need to be considered before solar panels are installed.

An assessment of the support structure by an engineer or other suitably qualified person should occur so that all loading conditions, installation and fixing methods are considered.

Table 1

Examples of common types of building work are included in the table below.

Note: A planning permit or approval may be required, regardless of whether a building permit is required.

Common types of building work	Building permit required?	Must still comply with (see notes)
<p><u>Additions</u> Additions to a dwelling or any other building.</p>	Yes	3
<p><u>Alterations</u> Structural alterations to a dwelling or any other building.</p> <p>Removal of or alteration to a load-bearing part or a part contributing to the support of a building. (e.g. a wall supporting a ceiling and /or roof propping or required for bracing the structure against wind or movement).</p> <p>Remodelling of a bathroom or kitchen, replacement of internal wall and ceiling linings and replacement of external wall cladding (like for like) that does not include structural alterations.</p>	Yes Yes No	3 3 6
<p><u>Carports/garages</u> Construction of a garage/carport.</p> <p>Demolition of freestanding garage/carport, not constructed of masonry, not more than 40m² in floor area, is not a building on the Heritage Register and the work will not adversely affect the safety of the public or occupiers of the building.</p>	Yes No	3 Nil
<p><u>Cubby house</u> Children's timber or plastic cubby or play house 10m² or less in area, 3m or less in height, setback 1m or more from the boundary and located no further forward than the front wall of the dwelling.</p>	No	4
<p><u>Decks</u> Attached to a building irrespective of size or forming part of a swimming pool surround.</p> <p>Detached timber deck constructed as part of the amenity of a dwelling.</p>	Yes Yes	3 9

Common types of building work	Building permit required?	Must still comply with (see notes)
<p><u>Fences</u></p> <p>Construction of a side or boundary fence 2m high and not within 3m of a street alignment.</p> <p>Construction of a brick front fence 1.2m high and not within 9m of a point of intersection of street alignments. (except where Regulation 89(1) and schedule 6 apply.)</p> <p>Construction of a timber front fence not more than 1.5m in height and not with 9m of a point of intersection of street alignments (except where Regulation 89(1) and schedule 6 apply.)</p> <p>Construction of a side or boundary fence more than 2m high.</p> <p>Construction of a fence that is more than 1.0m high, within 9m of the point of intersection of street alignments.</p> <p>Construction of a chain wire tennis court fence.</p>	<p>No</p> <p>No</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>No</p>	<p>2</p> <p>2</p> <p>2</p> <p>3</p> <p>3</p> <p>Nil</p>
<p><u>Hail netting</u></p> <p>Hail netting that is permeable and used for agricultural purpose supported on posts not greater than 3m in height with tensioned cables fixed to the ground.</p>	<p>No</p>	<p>Nil</p>
<p><u>Masts/antennas/satellite dishes</u></p> <p>Height more than 3m above the highest point of a building.</p> <p>Not attached to a building and height more than 8m above the ground.</p>	<p>Yes</p> <p>Yes</p>	<p>3</p> <p>3</p>
<p><u>Re-blocking</u></p> <p>Re-blocking, restumping or underpinning of an existing building.</p>	<p>Yes</p>	<p>3</p>
<p><u>Retaining Walls</u></p> <p>Constructed on or near site boundaries where there is a risk of damage to adjoining property.</p> <p>Construction of a retaining wall 1m or more in height.</p> <p>Construction of a retaining less than 1m not associated with other building work or with protection of adjoining property.</p>	<p>Yes</p> <p>Yes</p> <p>No</p>	<p>3</p> <p>3, 8</p> <p>Nil</p>

Common types of building work	Building permit required?	Must still comply with (see notes)
<p>Roofing</p> <p>Replacement of corrugated iron roofing with concrete or terracotta roofing tiles.</p> <p>Replacement of concrete or terracotta roofing tiles with corrugated iron roofing. (This can affect the wind uplift on the roof structure).</p> <p>Replacement of corrugated iron roofing with similar corrugated iron sheeting (e.g. Colorbond) and no replacement of structural battens.</p> <p>Replacement of corrugated iron roofing with another pre-finished metal sheeting which requires the installation of structural battens.</p>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p>	<p>3</p> <p>3, 6</p> <p>6</p> <p>3, 6</p>
<p>Sheds associated with a single dwelling</p> <p>Erection of a freestanding shed, 10m² or less in area, 3m or less in height, setback 1m or more from the boundary and located no further forward than the front wall of the single dwelling.</p> <p>Erection of a shed more than 10m² in area.</p>	<p>No</p> <p>Yes</p>	<p>4</p> <p>3, 7</p>
<p>Real estate agent signs</p> <p>Free standing, self-supporting for sale or lease sign not more than 6m² in area.</p> <p>For sale or lease sign located on a shop verandah.</p>	<p>No</p> <p>Yes</p>	<p>Nil</p> <p>3</p>
<p>Swimming pools/spas</p> <p>Construction of a swimming pool/or spa greater than 300mm in depth.</p> <p>A relocatable swimming pool that is erected temporarily in an area enclosed by an approved safety barrier.</p> <p><i>Note: All swimming pool safety barriers require a building permit.</i></p>	<p>Yes</p> <p>No</p>	<p>3</p> <p>Nil</p>
<p>Verandahs</p> <p>Construction of a verandah attached to any building.</p>	<p>Yes</p>	<p>3</p>
<p>Windows</p> <p>Replacement of windows with similar type windows, where no structural alterations are required.</p> <p>Installation of 'bay' or 'corner' type windows, where structural alterations are required.</p>	<p>No</p> <p>Yes</p>	<p>5</p> <p>3</p>
<p>Wood heater</p> <p>Installation of a wood heater (solid fuel burning appliances) – installation by a plumber is required.</p>	<p>No</p>	<p>6</p>

Reference notes

Note 1: NCC Series Volume One Building Code of Australia Class 2 – 9 buildings and Volume One Class 1 and 10 buildings (includes structural safety, fire rating and health and amenity requirements, as applicable).

Note 2: Must still comply with Regulation 89 (1) and Schedule 6. A building permit is required where the fence height does not comply with the maximum height specified in the schedule to a zone of a planning scheme and a report and consent is obtained.

Note 3: Must comply with all provisions of the Act and Regulations. The process of issuing a building permit determines this.

Note 4: Required Reporting Authority or other relevant consent obtained as part of a building permit where over an easement.

Note 5: Glass must be suitable for the particular use.

Note 6: Plumbing work needs to be undertaken by a licensed or registered plumber.

Note 7: The exemption contains a number of criteria which must all be met in order to gain the exemption. By complying with a single item noted in the example does not necessarily mean that an exemption would apply.

Note 8: Where a retaining structure is required under the planning scheme or a planning permit for a residential subdivision, the construction work is not domestic building work as the Domestic Building Contracts Regulations exempts such retaining structures.

Note 9: Must meet siting, safety and structural provisions.

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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