

Time limits & Lapsed building permits

Background

A building permit will lapse when building work is not commenced or completed within the times set out in regulations 53 and 54 of *Building Regulations 2018*. The building permit specifies the dates on which this will occur.

Lapsed building permits impose avoidable burden on consumers and building practitioners alike. It is estimated that approximately 8,500 building permits lapse every year which equates to a conservative cost of \$1.7 million a year, assuming all lapsed permit holders re-apply for a new permit. Time limits are required to ensure the prompt and predictable completion of building work. To add flexibility to the process, the Relevant Building Surveyor (RBS) may extend time limits prior to expiration.

Previously, proactive address of the issue of lapsed permits was a best-practice voluntary step undertaken by some building surveyors. New requirements make it mandatory for the RBS to notify the applicant for the building permit prior to it lapsing (regulations 56 and 57).

Aim

The number of lapsed permits appears to be increasing. Available evidence suggests that this increase relates to failure to finalise building work rather than failure to complete work within the prescribed times.

The requirement for an RBS to issue a notice of imminent lapse of building permit is intended to reduce the likelihood of a building permit lapsing inadvertently, consequently reducing unnecessary costs and enforcement activity. A notice of imminent lapse should trigger the applicant for a building permit to either begin or finalise building work or apply for an extension to the specified dates of the permit.

Building permit information

The building permit must provide clear statements that designate the commencement and completion dates and that an extension may be applied for, prior to the permit lapsing (regulation 24 and Form 1). Further advice to be discussed with the applicant of the building permit may include a description of consequences if the building permit lapses and reference to section 16 and 16B of the *Building Act 1993*. These sections state that the carrying out of building work for which a building permit is required but is not in force, is an offence which may attract substantial penalties. An owner should also be advised that an offence may be committed if the building is occupied without an occupancy permit and that home and contents insurance may be invalidated.

Notification requirements

The RBS is required to notify the applicant for the building permit, the owner and the builder prior to the lapsing of a building permit.

It is therefore important that the applicant for the building permit, the owner and the builder advise the RBS of any changes to their name or address (regulations 42 and 43).

Where an inspection of the building work for the first mandatory notification stage has not taken place 30 days prior to the commencement date specified in the building permit, the RBS must give a notice (Form 3) of imminent lapse of building permit. If work has commenced, the applicant may respond by advising the RBS accordingly.

Similarly, where an inspection of the building work for the final mandatory notification stage has not been carried out prior to 30 days of the completion date specified in the building permit, the RBS must give a notice (Form 4) of imminent lapse of building permit.

Subsequent to receiving a notice of imminent lapse (Forms 3 or 4), the applicant should consider whether the required building work can be commenced or completed within the remaining time and if not, apply in writing to the RBS for an extension of the building permit.

The RBS may only grant an extension prior to the building permit lapsing if the RBS considers that the extent of the work warrants an extension (regulation 59(3)).

If an extension is granted, the RBS must notify the applicant of the new commencement or completion date (regulation 59(4)).

Further information

Further information about the time limits and lapsed building permit process is provided in Practice Note 35-2018 Time limits for building work and lapsing building permits.

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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