

Building Practice Note BP-06: Building permit and planning permit consistency

This Practice Note provides guidance for Relevant Building Surveyors when implementing the requirements of section 24 of the Building Act 1993 (the Act).

The context below provides guidance on:

- Integration of building and planning permit systems
- Importance of a planning scheme and planning permit Insert header here
- Establishing whether a planning permit is required for proposed building work
- Consistency between a building and planning permit
- Inconsistency between the Regulations and a planning scheme (regulation 68)
- When the RBS proposes to amend a building permit

Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993 (the Act) or the Building Regulations 2018 (the Regulations).

- **Act** – The Building Act 1993
- **MBS** – Municipal Building Surveyor
- **MG-11** – Minister Guideline 11
- **PEA** – Planning and Environment Act 1987
- **RBS** – Relevant Building Surveyor
- **Regulations** – The Building Regulations 2018
- **VCAT** – Victorian Civil and Administrative Tribunal

Integration of building and planning permit systems

Section 24(1)(c) and (d) of the Act requires the RBS, before issuing a building permit, to be satisfied that any relevant planning permit or other prescribed approval that may be required for proposed building work has been obtained and is consistent with the building permit.

It is the intention that the integration of the building and planning systems will ensure consistency between what is permitted to be built by the building permit and the planning permit.

What is the importance of a planning scheme and a planning permit?

A planning scheme is a legal document prepared by the local council or Minister of Planning. It sets out policies, provisions and requirements that control the use and development of land:

- without the need for a planning permit, if conditions specified in the planning scheme are met; or
- in accordance with a planning permit, which will usually include conditions.

Conditions are included in planning schemes and planning permits to ensure new developments:

- will fit into their locality
- will not cause adverse impacts on the environment
- will not adversely affect nearby activities; and
- will not create traffic hazards.

Construction of a building or works without a planning permit, when a planning permit is required or failure to comply with any requirements in a planning permit or in the planning scheme, is an offence against the PEA

How do I establish whether a planning permit is required for proposed building work?

To comply with the requirements of the Act and before issuing a building permit, the RBS needs to establish whether a planning permit is required to carry out the proposed building work. One or more of the following steps must be followed depending on the circumstances of the case, its complexity, and the implications of wrongly concluding a planning permit is not required.

In deciding which steps to take, the RBS must consider the responsibility for compliance with section 24 of the Act that rests with the RBS.

Step 1: Refer to the Planning Scheme

The provisions of the relevant planning scheme will determine whether a planning permit is required for proposed building work. All provisions of the relevant planning scheme must be considered.

Step 2: Submit an enquiry to the Municipal Council

The RBS may make an enquiry to the relevant municipal council to establish if a planning permit is required for the proposed work.

If the council is not prepared to provide this advice in response to an enquiry, the RBS will need to take additional steps to establish whether a planning permit is required for the proposed building work

Step 3: Consult with the relevant responsible authority

An officer familiar with the planning scheme should confirm if the development:

- does not require a planning permit (this may be subject to other conditions being met); or
- requires a planning permit; or
- is prohibited by the planning scheme.

If the RBS relies on such advice, it is important to note:

- the officer's name and position
- the date on which the advice was given

- the details of the building work proposed (this may include reference to specific plans discussed); and
- details of the advice given, including any qualifications on that advice, such as conditions which must be complied with or matters which must be considered to the satisfaction of the responsible authority.

Detailed notes of any discussion should be made and agreed between the RBS and the officer providing the advice at the time of the discussion. Notes should be kept as a file record.

Step 4: Obtain independent professional advice

The RBS can obtain advice from a person qualified and experienced in reading planning schemes – for example, a solicitor or qualified town planner with experience in planning matters, or alternatively an independent building surveyor with the appropriate qualifications and experience.

Step 5: Obtain a certificate of compliance from the responsible authority

A certificate of compliance issued under section 97N(1)(b) of the PEA is the most definitive statement a RBS may rely on to determine if a particular building project may be undertaken without or without a planning permit.

This certificate will state whether at the date of the certificate:

- an existing use or development of land complies with the requirements of the planning scheme; or
- a proposed use or development (or part of a use or development) of land would comply with the requirements of the planning scheme.

The responsible authority would require full details, including appropriate plans of what is proposed, and payment of the prescribed fee for an application for a certificate of compliance.

Where there is an inconsistency between a planning scheme and the Act or the Regulations, the RBS must attempt to resolve this inconsistency.

In responding to an application for a certificate of compliance referred to in section 97N(1)(b) PEA in respect to proposed use of land, building or other work, the responsible authority:

- may specify in a certificate any part of the use or development which would require a planning permit or is prohibited under the planning scheme at the date of the certificate; and
- must refuse to issue a certificate if the whole of the use or development would require a planning permit or is prohibited under the planning scheme.

An applicant for a certificate of compliance may apply to VCAT for review if a certificate is not issued within 30 days or if a certificate is refused, (Refer to section 97P(1) of the PEA).

However, if the application for a certificate is refused on the ground that a planning permit is required; the RBS must advise the applicant in writing to apply for a planning permit.

Consistency between a building and planning permit

In determining whether the proposed building work will be consistent with any relevant planning permit and associated documents, the RBS must have regard to the requirements of the planning permit, including conditions, commencement, completion dates and endorsed plans.

Section 188(7) of the Act provides that MBS and private building surveyors must have regard to a relevant Minister's guideline in carrying out a function under the Act. Minister's Guideline MG-11 sets out steps to be followed to determine whether a planning permit has been obtained and ensuring the proposed building work is consistent with the relevant planning permit.

Where a planning permit is required for the proposed building work and has been obtained, the RBS must obtain copies of the following:

- the planning permit
- endorsed and dated plans by the responsible authority as part of that planning permit; and
- any documents referred to in the planning permit (including plans, reports, drawings, plans of subdivision or agreements under section 173 of the PEA).

In determining whether the building permit will be consistent with the planning permit, the RBS must:

- compare the building permit application drawings with those plans endorsed by the responsible authority as part of the planning permit and any documents referred to that have a direct bearing on the proposed building permit, to ensure they are consistent; and
- confirm all planning permit conditions relevant to the building permit that are required to be completed prior to commencement of the development have been complied with.

The RBS's assessment of consistency between the building permit and the relevant planning permit must include, but is not limited to:

- the height, area, form, and configuration including external materials of the proposed building work or any part of the building work
- the location of the proposed building on the land, including setbacks from boundaries; the location of windows, doors, and privacy screens
- any conditions of the planning permit that have specific construction requirements or that require specification construction details; and
- the proposed use of the building work.

Where the RBS is unsure if the proposed building permit will be consistent with the relevant planning permit, before deciding the application for the building permit the RBS could request a written report confirming consistency or identification of any inconsistency between the planning permit and the proposed building permit from any one of the following:

- the responsible authority (in most cases, the relevant council)
- an appropriately qualified and experienced planning consultant
- an architect experienced in planning matters; or
- an independent registered building surveyor.

The appropriate steps to be followed or source of advice to resolve doubt must be determined by the RBS depending on the circumstances of the case.

If the RBS seeks a written report before issuing a building permit, in accordance with regulation 39, a copy of the report should be provided to the relevant council with the building permit documentation within 7 days of issuing the building permit.

Consistency between a building and planning permit

Under regulation 68 of the Regulations, a note references section 11 of the Act for circumstances where there is an inconsistency between a planning scheme and a building regulation in relation to a siting matter.

Section 11 provides that if a planning scheme contains a provision that regulates the siting of buildings, and the provision or provisions are inconsistent with the Regulations and the inconsistency cannot be resolved, then the regulation ceases to have effect.

The council must publish a notice in a newspaper to the effect that a regulation has ceased to have effect in that municipal district or part of it.

How to resolve minor inconsistencies?

Where the RBS proposes to issue a building permit that incorporates minor inconsistencies with the planning permit and do not breach planning permit conditions noted under the 'Importance of a planning scheme and planning permit' section of this Practice Note, the RBS must provide written advice to the responsible authority on the nature and extent of those inconsistencies.

The RBS should obtain confirmation from the responsible authority that construction of the building in accordance with the proposed building permit would not breach the requirements of the PEA. If this confirmation cannot be given, the RBS should advise the applicant to resolve the inconsistency before issuing a building permit.

Consistency between a building and planning permit

The provisions of the Act apply to an amended building permit in the same way as a new permit. If the RBS proposes to amend a permit, it is important to check the permit will be consistent with the requirements of a relevant planning permit and does not otherwise breach the planning scheme.

The steps described above to ensure consistency and to resolve potential inconsistency, are equally applicable to amendments to building permits. For further information refer to PN 21 – Building Permit Amendment.

Related Documentation

- Building Act 1993 (VIC)
- Building Regulations 2018 (VIC)
- Planning and Environment Act 1987 (VIC)
- MG-11: Ministers Guideline 11- Building permit and planning permit consistency
- Practice Note BP-02: Requirements for Amending a Building Permit

Version History

- Version 2.0, published 28 June 2021, supersedes Practice Note 44: Building permit and planning consistency

Contact Us

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