

# Building Regulations 2018

## Building Permit Documents

### How are building permit documents to be kept on site?

Documents can be either in a hardcopy or electronic format. Where documents are kept in an electronic format, the format needs to be agreed by all parties requiring access to the documents.

### When do documents need to be kept on site?

Regulation 41 requires the building permit and associated documents to be *'at the allotment while the building work to which the building permit applies is being carried out on that allotment'*.

### Where are the documents to be kept?

The documents may be kept in a container, site power box, or another secure location as agreed by all parties. It is a matter for the builder to determine depending on the site and type of building work being undertaken. However, the documents **must be** able to be accessed even when the builder is not present, while building work is being carried out.

### Who are the documents available for?

Documents are to be available for inspection. Therefore, the documents are for Inspectors, Surveyors, VBA Inspectors, Municipal Building Surveyors, and any other parties who have an inspection right under the Building Act 1993.

## Protection Work Process

### Can dual certification still be applied?

Yes, what we have commonly called dual certification can still be applied in determining whether the proposed building work complies with the Act and Regulations and whether protection work is required. The BR 2018 have no direct equivalent to BIR 2017 regulation 603 exceptions from having to provide protection work.

Section 238 certification of compliance certificates are now incorporated into matters the RBS must have regard to under regulation 112 when determining if protection work is required.

In some circumstances, an RBS may still require protection work even when dual certification has been provided.

### Do you need to make a determination when protection work is not required?

No. A Form 6 Determination that Protection Work is required is only applicable if the RBS determines that protection work is required. However, it should be noted that the Form 2 Building Permit requires completion of a statement to the effect that protection work either is, or is not required.

## Section 10(2)

### When can an RBS apply section 10(2) of the Act?

An RBS can consider the application of section 10(2) where substantial progress on the design of the building was made before the commencement of the operation of a building regulation or amendment (*refer to Ministers Guideline 13*).

Section 10(2) applies to the carrying out of building work and **must not** be applied to the administration processes. Section 10(2) applies to individual regulations and as a consequence, a building permit may include assessment under the new or amended regulations and under the preceding regulations.

### **What happens when a permit has some co- mingled processes from BIR 2017 and BR 2018?**

There will be circumstances where permits issued after 2 June 2018 will include documentation and/or consents issued prior to the change in legislation.

There is no need for the RBS to undertake a section 10 decision when issuing a building permit after 2 June 2018, where property information and/or a report and consent has been issued under the BIR 2017. The only time section 10(2) should be considered is when the RBS is satisfied that substantial progress was made on the design of the building prior to commencement of the new or amended regulation. For example, a siting matter that is more onerous than the previous regulation.

Where a building permit application is lodged prior to 2 June 2018 and the RBS has determined protection work is required, Form 3 and 4 (BIR 2017) may have been issued prior to the legislation change.

In this instance when the building permit is issued after 2 June 2018, the new Form 2 Building Permit will need to be used and therefore any determination in relation to protection work will need to be identified. However, section 10(2) does not apply, the permit will simply be a co-mingled one which incorporates processes from the new building regulations and the preceding regulations.

Where the Form 3 and 4 processes have been undertaken, it is recommended that when stating that protection work is required on the Form 2, a note be included to identify that the decision and process was undertaken under the BIR 2017 for clarity.

Similarly, if a combined allotment determination has been made after 2 June 2018, Form 2 requires the documenting of the determination and the RBS should complete Form 5.

### **Essential Safety Measures**

#### **What is a maintenance determination?**

A maintenance determination made by the RBS lists new or altered ESM's within a building. It lists the level of performance, the frequency, type of inspection and the testing and maintenance required.

#### **When does a maintenance determination need to be made?**

The BR 2018 require a maintenance determination to be made whenever an ESM is required to be provided or altered as part of building work carried out under a building permit that does not require an occupancy permit, or as a result of an emergency or building order.

#### **What is a maintenance schedule?**

A maintenance schedule consolidates maintenance requirements for ESM's in the subject building. There are two types of maintenance schedule. One may be requested by the owner under regulation 219. This type of schedule must list all ESMs required to be provided in the building or POPE.

The other type of maintenance schedule must be prepared by the RBS under regulation 218. This must be prepared by the RBS if an ESM is required to be provided or altered in a building or POPE. The schedule must list **ALL** ESM's required to be provided in the building or POPE by a condition of an occupancy permit or maintenance determination. This will generally be limited to ESM's that have been documented since 1 July 1994.

### **When does a maintenance schedule need to be completed?**

Under regulation 218, the RBS is required to prepare or update a maintenance schedule for an existing building whenever an ESM is required to be provided or altered by a condition on an occupancy permit or a maintenance determination.

For example, an RBS issues a building permit for a shop fit-out in a large shopping centre which requires alteration of an ESM. This will trigger the requirement for a maintenance determination, and the requirement to prepare or update the maintenance schedule for the building or POPE.

### **Can an owner request a maintenance schedule even when there is no building work to be carried out?**

Yes. Regulation 219 allows for an owner to apply to an MBS or PBS to prepare a schedule that complies with regulation 222.

## **Prescribed matters – regulation 31**

### **What process applies where a fire hose reel varies from the DTS provisions of the BCA?**

Schedule 5, Part 1 of BR 2018 does not list fire hose reels as a prescribed matter to be referred to the Chief Officer if they do not meet the DTS provisions of the BCA. Therefore, where a variation to the DTS provisions occurs in relation to fire hose reels, the RBS will need to consider the variation via a Performance Solution or BAB determination.

## **Form 2 – Building Permit**

### **Can the type of construction (*nature of building work*) information be deleted for Class 2 – 9 buildings when building work on an existing building is of a minor nature?**

The type of construction must be specified on Form 2 Building Permit issued for a Class 2 – 9 building regardless of the nature of the building work.

### **Why have the notations from the Form 2 Building Permit been removed?**

The RBS may choose to include any notes as an appendix to the building permit should they wish to provide this information with the permit.

## **Building Notices and Orders**

### **Why have the notations from the enforcement forms been removed?**

Although prescribed, these forms are non-mandatory. The RBS may include relevant information contained within the notes of the old form when creating a new template. Prescribed information must still be provided.

### **Why does the new regulation 180 and 182 state that the enforcement forms 'may' be in the form in lieu of 'must'?**

The enforcement forms (including Building Notice, Order etc) are non-mandatory forms. The BR 2018 prescribe the information to be contained within the form. Therefore, an RBS can create their own form should they wish to however, they must ensure the prescribed information is contained within their form.

## **Time limits for commencement and completion of building work (lapsing of building permits)**

### **How does the lapsing process apply to stage building permits?**

When issuing a subsequent stage building permit, the completion dates need to remain aligned to the first stage permit (refer to regulation 54(2)). The commencement date will be as per regulation 53 for each stage. The building permit will lapse if the building work does not commence by that date. However, the completion date must remain consistent with the stage 1 permit unless an extension of time has been requested.

Under regulation 56, the 30-day notice of imminent lapse of building permit process applies to each stage permit relating to the commencement date of that permit.

**Do the notice of imminent lapse of a building permit provisions apply to building permits issued before 2 June 2018?**

Yes. Regulations 56 and 57 commence on 2 June 2018 and apply to all current building permits at that time.

**Inspections and Inspection Records**

**What type of inspection is required to be recorded and how is it to be recorded?**

An RBS can undertake mandatory notification stage inspections under section 34 of the Act and/or inspection of building work that the RBS deems required at any time under section 35 of the Act.

Section 35A(1) requires the RBS on completion of an inspection (*mandatory or non-mandatory*) to ensure that a record of the inspection is completed containing the prescribed information.

Regulation 173 outlines the prescribed information required for a record of inspection under section 34 or 35 of the Act. The information required is the:

- date and time of inspection
- purpose of inspection
- building permit number of the permit relating to the building work
- address of the site
- name and registration number of the person who carried out the inspection
- stage of the building work inspected (if applicable)
- outcome of the inspection.

**Does a copy of the inspection record need to be lodged with council?**

Regulation 203 outlines the documents prescribed for the purposes of section 73(1A) that **must be** lodged with council when issuing an occupancy permit. These documents include a record of inspection of building work made under section 35A(1) of the Act (mandatory and non-mandatory inspection of building work for which a building permit has been issued).

**Does the RBS need to provide the approved dates of inspections carried out for mandatory notification stages?**

Yes. Regulation 205 requires the RBS, in addition to the requirements of section 73 of the Act, to provide a copy of the Certificate of Final Inspection to the council, and the approved dates of the inspections related to the mandatory notification stages for the building work.

**Fees**

**What fees are applicable to be paid on what dates?**

Fees are charged at the date of application for the particular service except for lodgement fees.

**Is the building permit council lodgement fee based on the date the RBS gives copies of the permit and other documents to council or the day the owner applied for a building permit?**

The lodgement fee is assessed at the time of application for a building permit, and must accompany an application to the RBS for a building permit. It is this fee that the RBS transmits to a council when he or she gives copies of permits and documents under section 30 of the Act.

**If a permit is for government owned property is there still no fee?**

The Crown is not liable to pay fees or charges under the Building Act 1993 except the building permit levy and Building Appeals Board fees payable under Part 10 of the Act.

**Why are there two new fees for Report and Consent applications**

The four maximum fees for report and consent set out in regulation 36 have been based on the cost of providing this service, as set out in the regulatory impact statement published in May 2017.

**Definitions**

**BAB** – Building Appeals Board

**BIR 2017** – Building Interim Regulations 2017

**BR 2018** – Building Regulations 2018

**DTS** – Deemed-to-Satisfy

**ESM** – Essential Safety Measures

**MBS** – Municipal Building Surveyor

**PBS** – Private Building Surveyor

**POPE** – Place of Public Entertainment

**RBS** – Relevant Building Surveyor

**Further Information**

**Want to know more?**

If you have a technical enquiry, please email [technicalenquiry@vba.vic.gov.au](mailto:technicalenquiry@vba.vic.gov.au) or call 1300 815 127.

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