

When is a Building Permit Required?

This updates the previous Practice Note 2014-32 issued May 2014

1. SUMMARY

A Building permit is required for most building work, however some building work is of such a minor nature that the protections and advantages that a building permit can provide are not necessary, or will not be achieved. In these cases, Schedule 8 of the *Building Regulations 2006* (the Regulations) exempts owners from having to obtain a building or occupancy permit.

2. BACKGROUND

The *Building Act 1993* (the Act) requires that building work must be subject to the issue of a building permit prior to that work commencing. The Act prescribes a penalty of 500 penalty units for a natural person and 2500 penalty units for a company for any work done without a building permit. The amount of penalty unit is prescribed in the Regulations.

The building permit ensures that the building work when constructed complies with the Act, Regulations, National Construction Code and relevant Australian Standards and the building or structure is suitable to occupy or use.

3. EXEMPTIONS

Under the Regulations, owners may be exempt from having to obtain a building permit or occupancy permit for minor building work. The exemptions legitimise certain building work which the building permit process would add little value or benefit.

Schedule 8 of the Regulations describes buildings, structures and building work that do not require a building or occupancy permit to be issued.

Column 2 of the table in Schedule 8 describes the type of building or building work which is exempted from a building or occupancy permit.

Items 3 and 4 includes the limiting conditions that 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 apply to the construction process and the completed building, and must be applied to both situations.

For example, even if the finished building will comply and be structurally sound, if at any stage of the proposed construction there will be an adverse effect, then the exemption does not apply. This generally means that any structural work to an existing building, regardless of cost, will require a building permit.

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Column 3 of Schedule 8 describes the Parts of the Regulations that are exempted. For example a reference to “all Parts except regulation 424(1)” means that no building permit is required, but that compliance with the fence height requirements of regulation 424(1) is still required. Additionally, where Column 3 references “Parts 2 to 20”, although a building permit is not required the building work must still comply with Part 1 of the Regulations which calls up the Building Code of Australia (BCA) for construction requirements.

3.1 Exemptions from the building permit system include:

3.1.1 Pergolas (open structure that is unroofed but may have a covering of open weave permeable material), providing the pergola:

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

Note: A shade structure / shade sail that has a permeable roof covering (open weave shade cloth) that satisfies the above criteria is considered a pergola and is exempt from requiring a building permit. Subject to the shade structure being constructed to resist the applied loads and to ensure it does not adversely affect a building to which it is attached.

3.1.2 Repair, renewal or maintenance of a part of an existing building, (such as replacing rotted weatherboards) providing 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
- is done using 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.

3.1.3 Alterations to a building 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.

3.1.4 Construction of a freestanding Class 10a building (such as a shed, carport or garage) 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 1 m of the boundary; and

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- is appurtenant to a building of another Class on the same allotment; and
- is located no further forward on the allotment than the front wall of the building to which it is appurtenant; and
- is not constructed of masonry.

Where a free standing Class 10 building is to be located over an easement or Relevant Authorities service pipe consent from the Relevant Authority should be sought prior to the construction of the building.

3.1.5 Demolition of a freestanding Class 10 building (such as a shed, carport or garage) that:

- 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.

4. OTHER WORK THAT DOES NOT REQUIRE A BUILDING PERMIT

A building permit is required where excavation work is being carried out that is in connection with and for the purpose of facilitating the construction of a building or structure on the land, it is considered that such work 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”.

For example: Excavations associated with landscaping, retaining walls (less than 1m in height), footings to sheds and pergolas or the like that are exempt from requiring a building permit. (Refer to 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. The work is also exempted from the requirements of the Domestic Building Contracts Act 1995.

5. CASE STUDIES

The following case studies describe examples of typical building work and whether they are subject to a building permit or any technical provisions.

Re-blocking (restumping) of an existing building.

Requires a building permit as it involves the removal and replacement of an element that is contributing to the support of another element and is also replacing a footing.

Construction of a 3m high freestanding shed setback 1m from the boundary.

Building permit not required, providing that:

- the floor area is not more than 10m²; and
- it is not constructed of masonry; and
- it is appurtenant to a building of another Class on the same allotment; and
- it is located no further forward on the allotment than the front wall of the building to which it is appurtenant.

Consent of a service authority may be required if the shed is to be constructed over an easement.

Replacement of an existing kitchen that does not involve any structural work.

Building permit not required providing it is not in relation to a building included on the Heritage Register, as there would generally not be any adverse effect at any stage.

Construction of a pergola associated with a house

Building permit is not required if the pergola does not exceed 20m² in area and is located no further forward on the allotment than 2.5m forward of the front wall of the building to which it is appurtenant and is no more than 3.6m in height.

Note: pergola means an open structure that is unroofed but may have a covering of open weave permeable material

Signs Including Real Estate Agent signs

A building permit is required for signs that are attached to any building or structure that a building permit was required that puts additional dead and live (wind) loads and forces on the building or structure that hasn't been designed for those additional loads.

For structures that are exempt from a building permit (I.e. boundary fence / wall) that have a sign attached to them the wall or fence will need to be assessed for structural soundness and be structurally certified to ensure it can withstand the additional forces imposed by the sign.

A temporary free standing sign such as a real estate for sale or lease sign that is self-supporting may be considered to be a 'temporary structure' under item 7 of schedule 8 and are exempt from the requirement to obtain a building permit.

Solar roof PV Panels

Rooftop solar panels are considered attachments to a building as opposed to being part of a building and therefore are exempt from requiring a building permit (apart from when attached to a building included on the Heritage Register).

However adequate consideration must be made concerning the additional loadings and fixings from the rooftop solar panels onto the roof framing. In other words, the roof frame must be able to support the additional loads associated with the proposed rooftop solar panels and its associated method of fixing. Also importantly they must not adversely affect the safety of the public or occupiers of the building.

A site specific determination will need to be made to ensure all criteria listed in 3.1.3 are fulfilled given the different circumstances that may arise. These include the potentially different loads associated with types of solar panels to be installed, their extent of application on a roof, their method of fixing/support, the different roof framing types (I.e. conventional or truss), etc.

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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></p> <p>Additions to a dwelling or any other building.</p>	Yes	3
<p><u>Alterations</u></p> <p>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. (I.e. a wall 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 included structural alterations.</p>	Yes Yes No	3 3 6
<p><u>Carports/Garages</u></p> <p>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>Decks</u></p> <p>Attached to a building irrespective of size or forming part of a swimming pool surround.</p>	Yes	3
<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.</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.</p>	No No No	2 2 2

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Common types of building work	Building permit required?	Must still comply with (see notes)
Construction of a side or boundary fence more than 2m high.	Yes	3
Construction of a fence that is more than 1.0m high, within 9m of the point of intersection of street alignments.	Yes	3
Construction of a chain wire tennis court fence.	No	Nil
<u>Hail Netting</u> 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.	No	Nil
<u>Masts/Antennas/Satellite dishes</u> Height more than 3m above the highest point of a building.	Yes	3
Not attached to a building and height more than 8m above the ground.	Yes	3
<u>Re-blocking</u> Re-blocking, restumping or underpinning of an existing building.	Yes	3
<u>Retaining Walls</u> Constructed on or near site boundaries where there is a risk of damage of adjoining property.	Yes	3
Construction of a retaining wall 1m or more in height.	Yes	3, 8
Construction of a retaining less than 1m not associated with other building work or with protection of adjoining property.	No	Nil
<u>Roofing</u> Replacement of corrugated iron roofing with concrete or terracotta roofing tiles.	Yes	3
Replacement of concrete or terracotta roofing tiles with corrugated iron roofing. (This can affect the wind up lift on the roof structure).	Yes	3
Replacement of corrugated iron roofing with similar corrugated iron sheeting ('Colorbond') and no replacement of structural battens.	No	Nil

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Common types of building work	Building permit required?	Must still comply with (see notes)
Replacement of corrugated iron roofing with another pre-finished metal sheeting which requires the installation of structural battens.	Yes	3
<u>Sheds associated with a single dwelling</u>		
Erection of a freestanding shed, 10m ² 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.	No	4
Erection of a shed more than 10m ² in area.	Yes	3, 7
<u>Real Estate Agent Signs</u>		
Free standing, self-supporting sign not more than 4.6m ² in area.	No	Nil
<u>Swimming pools/spas</u>		
Construction of a swimming pool/or spa greater than 300mm in depth.	Yes	3
A relocatable swimming pool that is erected temporarily in an area enclosed by an approved safety barrier.	No	Nil
Note: All swimming pool safety barriers require a building permit		
<u>Verandahs</u>		
Construction of a verandah attached to any building.	Yes	3
<u>Windows</u>		
Replacement of windows with similar type windows, where no structural alterations are required.	No	5
Installation of 'bay' or 'corner' type windows, where structural alterations are required.	Yes	3
<u>Wood heater</u>		
Installation of a wood heater (solid fuel burning appliances).	No	1, 6

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

Note 2. Must still comply with Regulation 424(1) and Schedule 5. This may mean that the maximum fence height exempted may be less than that in the Table.

Note 3. Must comply with all provisions of the Act and Regulations including those above. 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.

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

Note 6. Needs to be installed by a licensed plumber.

Note 7. The exemption contains a number of criteria which must be met in order to gain an exemption. By complying with the 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 Domestic Building Contracts Regulations 2007 exempts such retaining structures

If you have a technical enquiry please email:
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