

When is a building permit required?

This updates the previous *Practice Note 2006-32* issued June 2006.

1. Summary

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 100 penalty units for any work done without a permit.

The building permit ensures that certain practitioners are registered and carry insurance, that adequate documentation is prepared to correctly construct the building, an independent review of that documentation occurs, key stages of the work are independently inspected and the completed building is independently assessed as being suitable for occupation. There is certainty of compliance for owner builders and building insurers before building commences, and ease in preparing compliance reports, which may be required at sale of the property.

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 permit process added 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.

Exemptions from the building permit system include:

- ▶ Pergolas (open structure that is unroofed but may have a covering of open weave permeable material), providing the pergola:
 - ▶ is not more than 3.6m in height; and
 - ▶ is not more than 20m² in area; 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.
- ▶ 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, 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
 - ▶ is not work carried out on, or in connection with, a building included on the Heritage Register; and
 - ▶ will not adversely affect an essential safety measure.
- ▶ 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;
 - ▶ 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 in relation to essential safety measure; and
 - ▶ is not work carried out on, or in connection with, a building included on the Heritage Register.

- ▶ 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
 - ▶ 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.

- ▶ 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.

Column 2 of the table in **Schedule 8** describes the type of building or building work which is exempted.

Items 3 and 4 includes the limiting conditions that the 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 affect, 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.

Column 3 of **Schedule 8** describes the Parts exempted. For example a reference to “all Parts except reg. 424(1)” means that no permit is required, but that compliance with the fence height requirements of reg. 424(1) is still required.

4. Other work that does not require a building permit

- ▶ A building permit is not required for excavations alone. Although an excavation may be done with the expectation that buildings will eventually be built, if the excavation is not done to accommodate a specific footing design for a proposed building the excavation will not be connected with building work and will therefore not come within the definition of “building work.”

However, where the excavation work is carried out specifically 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.”

- ▶ Civil engineering and infrastructure work, carried out in relation to a subdivision that is comprised of earthworks, roadworks, 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*.

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.

Reblocking (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 replacement of footings.

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 affect at any stage.

Construction of a freestanding pergola associated with a house

Building permit is not required if the pergola does not exceed 20m² in area, 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.

Examples of common types of building work are included in the following pages:

Common types of building work	Building permit required ¹ ?	Must still comply with (see notes)
<p>Additions Additions to a dwelling or any other building.</p>	Yes	3
<p>Alterations Structural alterations to a dwelling or any other building.</p> <p>Removal of or alteration to a load-bearing part of a building.</p>	Yes Yes	3 3
<p>Carpports/Garages Construction of a garage/carport larger than 10m² in area.</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, 7 Nil
<p>Fences 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 not more than 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 within 9m of a point of intersection of street alignments.</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>	No No No Yes Yes No	2 2 2 3 3 Nil
<p>Masts / Antennas 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>	Yes Yes	3 3

¹ A planning permit or approval may be required, regardless of whether a building permit is required.

Practice Notes

Common types of building work	Building permit required ¹ ?	Must still comply with (see notes)
<p>Pergolas Not more than 3.6 m high, 20m² in area, and located at the rear of the building to which it is appurtenant.</p> <p>Construction of a pergola located further forward than 2.5m forward of the front wall of the single dwelling.</p>	<p>No</p> <p>Yes</p>	<p>1</p> <p>3, 7</p>
<p>Reblocking Reblocking or restumping of an existing building.</p>	<p>Yes</p>	<p>3</p>
<p>Retaining Walls Constructed on or near site boundaries where there is a risk of damage of adjoining property.</p> <p>Construction of a retaining wall 1m or more in height.</p>	<p>Yes</p> <p>Yes</p>	<p>3</p> <p>3, 8</p>
<p>Roofing Replacement of corrugated iron roofing with concrete or terracotta roofing tiles.</p> <p>Replacement of corrugated iron roofing with 'Colorbond' or other pre-finished sheeting.</p>	<p>Yes</p> <p>No</p>	<p>3</p> <p>Nil</p>
<p>Shed associated with a single dwelling 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>Signs More than 1m in height and within 3m of the street alignment.</p> <p>More than 8m above ground level and 6 m² in display area.</p>	<p>Yes</p> <p>Yes</p>	<p>3</p> <p>3</p>
<p>Swimming pools/spas Construction of an in-ground swimming pool greater than 300mm in depth.</p>	<p>Yes</p>	<p>3</p>

¹ A planning permit or approval may be required, regardless of whether a building permit is required.

Common types of building work	Building permit required ¹ ?	Must still comply with (see notes)
Verandahs Construction of a verandah attached to any building.	Yes	3
Windows Replacement of windows with the same size windows, where no alteration to the opening is required. Installation of 'bay' or 'corner' type windows, where structural alterations are required.	No Yes	5 3
Wood heater Installation of a wood heater (solid fuel burning appliances).	No	1, 6

Note 1. Building Code of Australia (includes structural safety, fire rating, 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.

¹ A planning permit or approval may be required, regardless of whether a building permit is required.