

Practice Note BP-01: When is a building permit required

This Practice Note provides guidance on when a building permit is not required for the proposed building work.

The context below provides guidance on:

- When is a building permit required?
- What is building work
- Exemptions from building permit requirements

Abbreviation and 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), Building Regulations 2018 (the Regulations) or the National Construction Code 2019 (NCC).

- **Act** – The Building Act 1993
- **BCA** – Building Code of Australia (Vol 1 and Vol 2)
- **NCC** – National Construction Code 2019
- **RBS** – Relevant Building Surveyor
- **Regulations** – The Building Regulations 2018

When is a building permit required?

Section 16 and 16B of the Act requires that any proposed building work must have a building permit prior to construction, unless exempted, and it meets minimum standards of safety and amenity pursuant to the Act, the Regulations and the NCC.

Some building work, however, is of such a minor nature that the protections and advantages a building permit provides are not necessary or will not be achieved.

Schedule 3 of the Regulations specifies buildings and building work that is exempt from the building permit or occupancy permit.

What is building work

Unless otherwise exempt, pursuant to Section 16 of the Act, a building permit applies to a building work that is in connection with the construction, demolition, or removal of a building.

To construct in relation to building means:

- build, re-build, erect or re-erect the building;
- repair the building;
- make alterations to the building;
- enlarge or extend the building; and
- place or relocate the building on land.



It is an offence to carry out building work without a building permit being issued and in force. Building work conducted without a permit will result in heavy penalties, as prescribed under sections 16 and 16B of the Act.

Schedule 3 of the Regulations specifies the building work and buildings exempt from the building permit requirements. It is important to refer to the schedule to fully understand the provisions relating to the exemption. While some building work is exempt, the proposed building work may still be required to comply with the NCC.

The examples provided below are for guidance only. They are not intended to vary those prescribed within the Act or the Regulations. All building practitioners must determine if the proposed building work falls within one of the exemptions.

Construction of a freestanding Class 10a building

The construction of a freestanding Class 10a building (e.g. private garage, carport and shed) is exempt from requiring a building permit providing that:

- (a) it has a floor area not exceeding 10 m²; and
- (b) is not more than 3 m in height, or if situated within 1 m of a boundary, is no more than 2.4 m in height; and
- (c) if appurtenant to a building of another Class on the same allotment, it is located no further forward on the allotment than the front wall of the building to which it is appurtenant; and
- (d) if it is not appurtenant to a building of another Class on the same allotment, it is the only Class 10a building on the allotment and is set back at least 9 m from the front street alignment and at least 2 m from each side street alignment; and
- (e) it is not constructed of masonry.



A planning permit may be required for the construction of a Class 10a building.

Where a freestanding Class 10a building is proposed to be located over an easement or an asset of a relevant authority, legislation may require that consent is obtained from the relevant authority prior to the construction of the building.

Demolition of a freestanding Class 10 building

Demolition of a freestanding Class 10 building (e.g. private garage, carport, shed, fences, retaining walls, swimming pools and private bushfire shelters) is exempt from requiring a building permit provided that:

- (a) it is not constructed of masonry; and
- (b) does not exceed 40 m² in floor area; and
- (c) will not adversely affect the safety of the public or occupiers of the building; and
- (d) is not work carried out on, or in connection with, a building included on the Heritage Register within the meaning of the Heritage Act 2017.

Example

The proposed demolition is a 5 m² freestanding shed that is situated adjacent to a right of way easement. In this example because the proposed demolition will likely result in the safety of the public being adversely affected, it does not meet the exemption requirements.



A planning permit may be required for the demolition of a Class 10 building.

Repair, renewal, or maintenance of an existing building

Repair, renewal, or maintenance of a part of an existing building is exempt from requiring a building permit provided the building work:

- (a) will not adversely affect the structural soundness of the building, and does not include:
 - (i) an increase or decrease in the floor area or height of the building;
 - (ii) underpinning or replacement of footings; or
 - (iii) the removal or alteration of any element of the building that is contributing to the support of any other element of the building; and
- (b) is done using materials commonly used for the same purpose as the material being replaced; and
- (c) will not adversely affect the safety of the public or occupiers of the building; and
- (d) will not adversely affect an essential safety measure relating to the building.

Examples of exempted building work:

- Replacing or repairing damaged weatherboards
- Repairing or replacing non-fire rated wall, ceiling, or floor linings
- Retiling a bathroom or kitchen
- Reglazing or replacing a window without structural modifications
- Replacing roof tiles with roof tiles or roof sheeting with roof sheeting.

Alterations to a building

Alterations to a building are exempt from requiring a building permit provided the building work:

- (a) will not adversely affect the structural soundness of the building, and does not include:
 - (i) an increase or decrease in the floor area or height of the building; or
 - (ii) underpinning or replacement of footings; or
 - (iii) the removal or alteration of any element of the building that is contributing to the support of any other element of the building; and
- (b) will not project beyond the street alignment; and
- (c) will not adversely affect the safety of the public or occupiers of the building; and
- (d) is not work carried out on, or in connection with, a building included on the Heritage Register within the meaning of the Heritage Act 2017; and
- (e) is not work in relation to, and will not adversely affect, an essential safety measure relating to the building.

Class 10b structure for the purposes of displaying a sign

A Class 10b structure that is built for the purpose of displaying a sign is exempt from requiring a building permit provided the structure:

- (a) is less than 3 m from a street alignment and does not exceed 1 m in height above ground level; or
- (b) is not less than 3 m from a street alignment and does not exceed—
 - (i) a height of 8 m above ground level; and
 - (ii) 6 m² in display area.

Construction of a pergola

A pergola is defined in the Regulations as an open structure that is unroofed but may have a covering of open weave permeable material.

Pergolas are exempt from requiring a building a permit providing that it:

- (a) is not more than 3.6 m in height; and
- (b) in the case of a pergola that is appurtenant to a Class 1 building, is located no further forward on the allotment than 2.5 m forward of the front wall of that building; and
- (c) in any other case, is located no further forward on the allotment than the front wall of that building to which it is appurtenant; and
- (d) has a floor area not exceeding 20 m².



Any building work that is exempt, must still be designed and constructed to resist applied loads and to ensure it does not adversely affect any building to which it is attached.

Real estate signs

A temporary freestanding sign such as a real estate sign that is self-supporting will generally be exempt from a building permit as it can be classified as a temporary structure under item 7 Schedule 3 of the Regulations.

Real estate signs that are attached to buildings that do not meet the exemptions under item 4 or 12 of Schedule 3 of the Regulations are not exempt from the requirement to obtain a building permit.

Excavation and infrastructure work

Excavation work being carried out in connection with and for the purpose of constructing a building is building work and requires a building permit. For example, excavating the land to specified levels for a building.

A building permit is not required for excavations that are not for or in connection with a building. For example, land clearing to remove vegetation and to create flat land. A building permit is also not required for building works that are exempt such as excavating for retaining walls less than 1m in height and excavating for the construction of an exempt free-standing class 10a building.

Solar panels and other roof mounted objects

The installation of rooftop solar panels and other roof mounted plant or equipment installed on a building is classified as building work because it involves the alteration of an existing building.

Fixings for the installation may also adversely affect an existing roof structure. Different onsite conditions including roof coverings, roof pitch, type of framing, bracing and wind loads will need to be considered prior to the installation.

An assessment of the support structure by a registered civil engineer should be obtained so that all loading conditions, installation, and fixing methods are considered.

An exemption can be applied if the building work meets the exemption for alterations under item 4 Schedule 3 of the Regulations.

Example

The proposed installation of rooftop solar panels will require additional framing to the roof structure to support the additional loads due to the rooftop solar panels. In this example, a building permit is required because the rooftop solar panels will adversely affect the structural stability of the building.

Decks and verandahs

A building permit is required for decks and verandahs that are attached to a building such as a house or swimming pool, irrespective of size.

A building permit is required for detached decks as part of the amenity to a building.

Fences

Fences other than fences forming part of a swimming pool or spa barrier or forming part of an outdoor play space associated with a children's services, are exempt from a building permit if:

- (a) is not more than 2 m in height; and
- (b) If within 3 m of a street (except a lane, footway, alley or right of way) is a maximum of 1.5 m high and not constructed of masonry, concrete or similar; and
- (c) If within 3 m of a street (except a lane, footway, alley or right of way) is a maximum of 1.2 m high constructed of masonry, concrete or similar; and
- (d) If within 9 m of a point of intersection of street alignment (e.g. corner blocks) is a maximum of 1 m high above the footpath.

A chain wire fence surrounding a tennis court is exempt from a building permit.

Retaining walls

Any retaining wall less than 1 m in height is exempt from a building permit unless it is associated with other building work or with protection of adjoining property.

Swimming pools spas and associated barriers

Assembling, erecting or installing a swimming pool or spa and associated barrier that is all capable of being relocated is exempt from a building permit.

Swimming pools or spas and associated barriers that are not relocatable require a building permit.

A building permit is not required for replacing or altering any part of a barrier to rectify the non-compliance identified in an inspection by a swimming pool and spa inspector unless the building work involves:

- (a) Replacing or altering more than 50% of the existing length of the barrier; or
- (b) Replacing or altering the posts or footings of the barrier; or
- (c) Using materials that are not commonly used for the same purpose as the material being replaced; or
- (d) Increasing or decreasing the length or area enclosed by the barrier; or
- (e) Replacing or altering a retaining wall that forms part of the barrier.

Note:

- a) A swimming pool means any excavation or structure (including a spa or relocatable structure) that is capable of containing 300 mm depth of water and is principally used, designed, manufactured or adapted to be principally used for swimming, wading, paddling, bathing or similar activities.
- b) A relocatable swimming pool or spa must have a compliant barrier and must be registered with the council if erected for 3 or more consecutive days.
- c) Swimming pools that do not consist of multiple components and do not require any assemble such as small inflatable pools that require no assemble other than inflation, do not require a building permit as they are not considered buildings.

Related Documentation

- Building Act 1993 (VIC)
- Building Regulations 2018 (VIC)
- National Construction Code 2019 Amendment 1
- Heritage Act 2017 (VIC)

Contact Us

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