

The Perils of Permits

Building permits are required for almost all building and demolition works. The *Building Act 1993* and the Building Regulations 2006 set out when and if a building project will require a permit.

Permit applications must be made to a building surveyor (either private or via council). The application must be made by or on behalf of the owner of the affected building or land. Who is responsible for obtaining the permit should be clearly established prior to signing a building contract if no permit has yet been obtained. It is important to clarify if the owner will be performing the work as an "owner-builder" or if they will be nominating a builder on the permit.

Permit applications must be in an approved form and accompanied by:

- three detailed copies of the plans
- three copies of the specifications
- a statement of the use or intended use of all the buildings
- a copy of computations and reports to demonstrate that building will comply with the Act and Regulations

Building surveyors have wide discretionary powers when considering an application and may require further information before issuing a permit. The surveyor must ensure the builder is registered, holds the necessary insurances and that the construction plans comply with the legislation.

Once a permit is issued, works must commence within prescribed times (generally 6 or 12 months). The expiry date will vary depending on the type of work, but must generally be completed within 24 months. Extensions of time can be approved by the surveyor.

A copy of the building permit and one set of the approved plans and specifications must be available on-site for inspection at all times, otherwise the person in charge of the works can be investigated and fined.

Construction cannot proceed without a building permit having been issued. Fines of up to \$10,743 may apply. An offending builder may also be disciplined by the Building Practitioners Board or the Courts.

On completion, the surveyor who issued the building permit must again inspect the construction to issue a Certificate of Final Inspection or, more commonly, an Occupancy Permit.

An Occupancy Permit is required before the building can be occupied. It is not evidence that the works are "complete". It can be issued where works are defective or even incomplete, so long as the construction meets the building permit's minimum standards. Builders and owners often believe an Occupancy Permit grants more rights than the contract allows. It does not automatically signal the end of construction. An owner can refuse to pay the final claim until an Occupancy Permit is issued. Builders cannot issue final claims until it is obtained – to do so may put a builder in breach of the contract.

Building and Occupancy Permits are public safety mechanisms to ensure that building works have been approved for construction. To ignore the legal requirements of these permits is to do so at your own peril.

This article contains general information and should not be acted upon without specific professional advice based on your own circumstances.

Building disputes

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Contract advice

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