

Lapsed building permits

This updates the previous *Practice Note 2005-35* issued June 2005.

1. Summary

The relevant building surveyor (RBS) must follow proper administrative procedures for lapsed building permits and those approaching their expiry date. The RBS and the owner of the building each have specific responsibilities, depending on the status of the permit and the building work. Where the RBS declines to grant an extension, the owner may apply to the Building Appeals Board (BAB) to overturn the decision.

2. Building permit about to lapse

An owner or agent on behalf of the owner may seek an extension of time from the RBS for the commencement and/or completion of the building work before the permit expires.

The RBS may grant this extension if the extent of the building work warrants an extension of time. If the RBS refuses to grant an extension of time for the permit, the owner may appeal the decision of the RBS through the BAB.

3. Where a building permit lapses and building work has not commenced or is incomplete

Where a building permit has lapsed the RBS remains responsible for administering any necessary enforcement procedures, under Part 8 of the Building Act 1993 (The Act).

The owner or agent on behalf of the owner, of building work not commenced or completed must obtain a new building permit from the RBS. Where a private or municipal building surveyor (MBS) is the RBS who issued the original building permit, he/she remains as the building surveyor for the functions related to the building permit and only the same building surveyor can issue a new building permit for those same functions. A building permit could only be issued by another private building surveyor (PBS) upon application of section 81 of the Act (termination of appointment) or if the entire design of the project differs from the original design approved under the original building permit issued. In such cases a new

building surveyor (private or municipal) can be engaged for the new works.

The owner must pay the building permit and HIH levies (domestic work only), building permit fee, prescribed lodgment fee and any other applicable fees relating to any new building permit application.

An owner may apply for a determination from the BAB to modify regulation 315(1)(b) to extend the time in which the building work must be completed. Application can be made to the BAB before or after a building permit has lapsed.

4. Where a building permit has lapsed and no building work remains to be completed

The person who is in charge of carrying out the building work must request the RBS to carry out a final inspection of the completed building work. Failure to notify the RBS after the completion of the building work is an offence and carries a \$1,000 fine.

If the completed building work is approved by the RBS, then a certificate of final inspection or occupancy permit can be issued following the receipt of an application for the occupancy permit to be issued.

If the final inspection of the completed building work is refused by the RBS, he/she can issue a building notice/order to the owner of the building. On the satisfactory resolution of the requirements of the building notice/order, the RBS may proceed with the issue of the final inspection certificate/ occupancy permit.

5. RBS responsibilities

The RBS clearly has a responsibility to address lapsed building permits and therefore it is important that office procedures be implemented to administer the requirements of the Regulations.

Building surveyors (and builders) are reminded that in regard to insurance cover, it is in their best interest

that building work for which they are responsible is completed and finalised; and either an occupancy permit or certificate of final inspection be issued by the required completion date nominated on the building permit.

Section 134 of the Act (Limitation on time when building action may be brought) states that - despite anything to the contrary in the Limitation of Actions Act 1958 or in any other Act or law, a building action cannot be brought more than 10 years after the date of issue of the occupancy permit in respect of the building work (whether or not the occupancy permit is subsequently cancelled or varied) or, if an occupancy permit is not issued, the date of issue under Part 4 of the certificate of final inspection of the building work. Note: "building action" means an action (including a counter-claim) for damages for loss or damage arising out of or concerning defective building work.

To assist proper administration of building permits and inspections, and reduce the number of lapsed building permits, the following procedures are suggested:

At the time of issuing the building permit it is recommended that the RBS highlight the important information regarding the building permit which the owner and builder has a responsibility during construction. Some matters to be highlighted may include;

- Commencement and completion dates;
- Mandatory inspections and procedure to request an inspection;
- Responsibility as an owner/builder (if applicable);
- Any additional administration fees if the building permit was to lapse or additional inspection fees not already accounted for. Eg building notices, building orders or extra inspections;
- Enforcement procedures when non-compliance matters are detected.

In addition to advising the owners and builders of the above, (particularly owner/builders) also provide a copy of the Community Information Sheet issued by the Building Commission, which explains the advantages of ensuring that building work is completed within the prescribed time.

Building surveyors must also maintain a record keeping system, so that owners can be reminded when their building permits are about to expire. At this stage the procedure, administrative fees and consequences relating to a lapsed building permit should not be a surprise if these matters were previously highlighted by the RBS at the time the building permit was issued.

An option for the RBS is to commence enforcement action by issuing a building notice under section 106. The requirements for a final inspection and the issue of a certificate of final inspection or an occupancy permit is clearly a condition of the building permit. Section 106(a) of the Act states that a building notice can be issued if building work has been carried out in contravention of the building permit. Failure to complete the building work within the time limits stated on the permit would be considered a contravention of the building permit. Details of lapsed building permits must be included on the "building work inspection, completion or permit lapse return", submitted monthly to the Building Commission.

6. MBS Responsibilities

Where a MBS becomes aware that a building permit issued by the RBS has lapsed, it is recommended that the RBS and owner be made aware of the lapsed permit and be advised that they need to resolve the matter promptly. The RBS failing to resolve the matter promptly may be referred to the Building Practitioners Board (BPB).

MBS should encourage a quick resolution to building work as this would in turn result in a revaluation of properties affected by the building work and hence generate additional rate revenue for council.