

When is a building permit not required?

Construction Update

The new *Building Act* came into effect in April 2012. It identifies a number of exceptions to the general rule that you cannot carry out building works without a building permit [s.9]. These exceptions include the following:-

- a) Temporary buildings: where a building or structure is only going to remain erected for one month [s.69(1)].
- b) Buildings incidental to infrastructure: where the building or structure is, or is proposed to be used in the construction, operation or maintenance of road, rail, port, harbour, airport, water, sewerage, electricity, oil or gas supply infrastructure [s.70(1)].
- c) Buildings incidental to shipping and boating facilities: where the building or incidental structure is, or is proposed to be used in the construction, operation or maintenance of a facility of the kind mentioned in the *Marine and Harbours Act 1981* s.5(1)(i) [s.71(1)]. The facilities contemplated by the *Marine and Harbours Act 1981* are:

"... facilities and services, both on land and water, that are desirable to meet the needs of effective and efficient shipping and boating, both recreational and commercial, including – port works, jetties, landing places, slips, platforms, grids, breakwaters, depots, and sheds ..."
- d) Buildings incidental to mining operations: where the building or incidental structure is, or is proposed to be used in the construction, operation or maintenance of a place at which 'mining operations' are carried on [s.72(2)]. The definition of "mining operations" is broad and includes amongst other things, exploration operations; developmental and construction work associated with opening up or operating a mine and the operation of privately owned railways to transport ore or other mining products, or to provide related services.

Who does this affect?

- Construction companies
- Mining operators
- Transport providers
- Governments
- Building contractors

Article Highlights

- Building permits are only exempt if your temporary buildings and incidental infrastructure have no public access.
- Operators must obtain permits if structures are for residential or recreational use.



The above exemptions do not apply, however, when the building or structure is, or is proposed to be a residential or recreational facility. There is no definition of residential or recreational facility in the Act but the Users Guide refers to accommodation and recreation facilities typically provided for fly-in fly-out workers. These buildings will require a building permit; notwithstanding some might think they are incidental to mining operations.

Even if the building or structure seems to be caught by one of the above exceptions, the Act says the exceptions don't apply where the building or structure has public access. This will capture buildings such as railway stations and airport terminals, visitor centres and general office buildings (for example where visitors might attend). Where a facility has control over who has access to, or is allowed in the facility, the building or structure is more likely to be considered one to which public cannot gain access. e.g. when a facility is only accessed by staff, contractors and visitors with specific business at the facility, this would not be considered to be "public access".

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