



HOW DO I DEAL WITH MY ILLEGAL BUILDING WORKS?

Legislative Requirements.

Part 16 of the Building Act 1993 states:

“A person must not carry out building works unless a building permit in respect of the work has been issued and is in force under this Act and the work is carried out in accordance with this Act, the Building Regulations and the permit.”

Penalties for such breaches can range from 100 penalty units (\$12,519) for an individual to 500 penalty units (\$62,595) in the case of a body corporate.

A building permit cannot be issued retrospectively for the works already carried out.

Where illegal building works have occurred Council can issue a Building Notice giving you the opportunity to show cause (indicate in writing) why the works were carried out without first obtaining a building permit. You have 30 days from the date of the Notice to respond.

Included in your response above, should be an indication of whether you wish to retain the works or alternatively wish to demolish/remove the works carried out without a building permit.

At this point you are **not permitted** to do any further works including the demolition/removal of the illegal works. You must only respond in writing to the Municipal Building Surveyor within the 30 days.

What happens if I wish to demolish or remove the illegal works?

The Council (Municipal Building Surveyor) will issue a Building Order giving you directions as to what works need to be done to reinstate the building/land to its original condition. No work can be carried out until you have received this Building Order.

What are my alternatives to legitimise the illegal building works?

1. Once you have decided to retain the structure and you have responded to the Building Notice advising Council of your intention, you will need to engage the services of a Registered Building Surveyor ⁽¹⁾ to prepare a report to the Municipal Building Surveyor advising on the adequacy of the illegal building works. This will require the practitioner to inspect the works and he/she may then request additional information to support the retention of the works. In order to do so, you may be required to engage other consultants – registered building practitioners ⁽¹⁾ to prepare the architectural, structural plans, fire engineering reports, and/or others to justify/verify the illegal works. (Again no works can be carried out at this point and all costs associated with the above will be your responsibility)
2. The report returned to the Council (Municipal Building Surveyor) will need to include relevant plans showing the location and construction of the works (similar to plans required to be submitted with a Building Application). It will need to detail compliance with the Building Act, Building Regulations, National Construction Code (NCC) and Australian Standards. The Registered Building Practitioner ⁽¹⁾ will also need to provide a signed Certificate of Compliance – confirming inspection dates and compliance with the relevant NCC and Australian Standard(s). Should rectification works be required/recommended, a list of works will also need to be submitted for review, by the Municipal Building Surveyor. (Again all costs incurred to achieve the above will be your responsibility.)

- Upon receipt of the above report prepared by the Registered Building Practitioner ⁽¹⁾ the Municipal Building Surveyor will review the information and make a determination as to whether the illegal building works can be retained. If it is considered that the works are satisfactory then the Building Notice will be cancelled. If the illegal building works require rectification or are deemed unsuitable, the Municipal Building Surveyor will issue a Building Order to carry out a program of works. Any cost incurred to carry out the building works nominated on the Building Order will be your responsibility.

How long do I have to provide the report to the Municipal Building Surveyor?

The report and supporting information will need to be submitted within the date on the initial Building Notice. If you do not provide the above within the specified time frame the Municipal Building Surveyor may issue a Building Order to remove/demolish the illegal building works. However, if you have a legitimate reason for not being able to meet this time frame, you will need to request an extension of time in writing, from the Municipal Building Surveyor.

