



DEVELOPMENT ASSESSMENT GUIDELINE

OPERATIONAL WORKS
& BUILDING WORKS

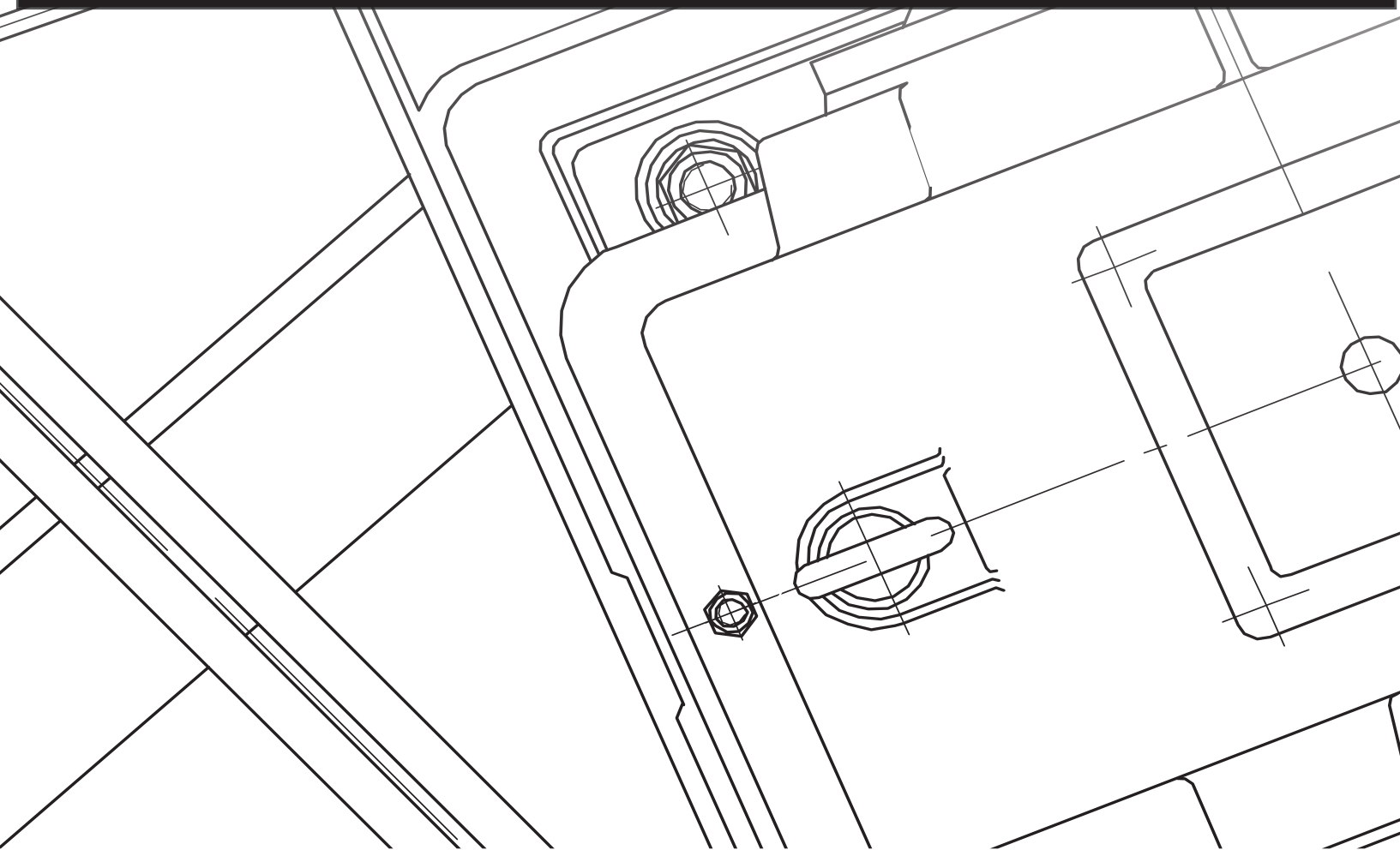


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ABOUT DEVELOPMENT ASSESSMENT

The Development Assessment team manages development applications for material changes of use, reconfigurations of lots, operational works and building works assessable against the Planning Scheme through the development assessment process under the *Planning Act 2016* and Development Assessment Rules. The team supports this primary role with services such as pre-lodgement meetings, negotiating decision notices and issuing infrastructure charges notices.

If you are proposing development on your property, clearly identify what you would like to do and make a free appointment to speak to Council's Duty Planner. The Duty Planner will be able to assist with general advice about which Council development provisions apply to your proposal and answer questions you may have about the development process.

The Duty Planner Office is located at Rockhampton City Hall and is available between the hours of 9am to 12pm and 2pm to 4pm weekdays. To book an appointment, contact Council on (07) 4932 9000 or 1300 22 55 77. Alternatively, email the Duty Planner on dutyplanner@rrc.qld.gov.au.

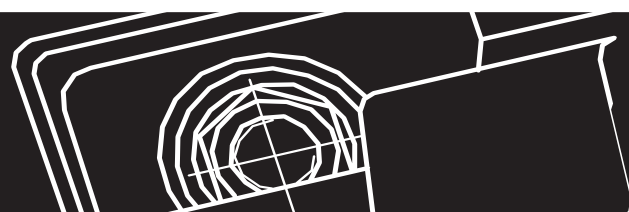
PURPOSE OF THIS GUIDELINE

This guideline provides general information and practical guidance about where excavation or filling works requires an operational works development permit and the limited circumstances where excavation and filling can be authorised by a building works permit. Other forms of operational work cannot be considered building works.

This guideline is for guidance only and landowners or applicants should refer to the relevant planning legislation and planning instruments and/or seek appropriate independent advice prior to carrying out any works.

LEGISLATION/ INFORMATION SOURCES

- *Building Act 1975* (Qld)
- *Building Regulation 2006* (Qld)
- *Planning Act 2016* (Qld)
- *Planning Regulation 2017* (Qld)
- Rockhampton Region Planning Scheme 2015



WHEN IS A DEVELOPMENT PERMIT REQUIRED?

The *Planning Act 2016*, identifies five types of development, namely:

- Carrying out building work;
- Carrying out plumbing or drainage work;
- Carrying out operational work;
- Reconfiguring a lot;
- Making a material change of use of premises.

Some development is made 'assessable' by the Rockhampton Region Planning Scheme 2015, a planning instrument or the *Planning Regulation 2017* (Qld).

Assessable development requires a development permit and it is an offence under the *Planning Act 2016* to carry out assessable development without an effective development permit authorising development.

Importantly, a development permit only authorises development to take place to the extent stated in the development permit. Any development which extends beyond the scope of the permit requires a separate development permit.

A failure to properly identify separate development can have significant implications, such as:

- Delaying your private building certifier from assessing your proposal;
- Requiring further development approvals to be obtained to authorise the development;
- Works may be carried out unlawfully; or
- A development offence may be committed, for which compliance action may be instituted and penalties may apply.

OPERATIONAL WORK - EXCAVATION & FILLING

Operational work is defined broadly to include most activities which might be carried out to change the physical character of land. Operational works means work in, on, over or under premises that naturally affects premises or the use of the premises. Operational work does not include, amongst other things, building work, drainage work or plumbing work.

The Rockhampton Region Planning Scheme 2015 defines excavation and filling to be the 'removal or importation of material to, from or within a lot that will change the ground level of the land'.

Excavation and filling does not extend to the construction of paving, hardstand or similar surfaces and those improvements are likely to be categorised as operational works.

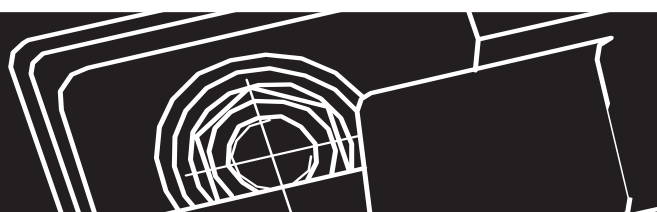
The *Planning Regulation 2017* and the Rockhampton Region Planning Scheme 2015 identifies when operational work is assessable development.

The Rockhampton Region Planning Scheme 2015 generally makes filling and excavation work 'code assessable' development where:

- within 1.5m of a lot boundary and of a height of 300mm or greater;
- of a height or depth of one metre or greater or of a volume of one hundred cubic metres or greater; or
- for land within a flood hazard overlay, refer to Planning Scheme Policy SC6.11.4.3 which identifies that any filling which exceeds a height of 100mm above ground level.

Where required, a development application must be lodged with Council for assessable operational works, unless the *Planning Regulation 2017* appoints a different authority to assess the application.

Advice from a suitably qualified consultant should be obtained to determine if earthworks can be properly considered to be incidental to building works. Check the Rockhampton Region Planning Scheme 2015 and the *Planning Regulation 2017* to determine the triggers for assessable development.



WHEN IS EXCAVATION & FILLING WORK BUILDING WORK?

Information about when a building works development permit is required is dealt with on Council's website and in other fact sheets. Sometimes building work can encompass excavation or filling and a building work permit may be sufficient to authorise the works.

That only occurs in the following two circumstances:

- The excavation or fill is for, or incidental to, building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or
- Where the excavation or filling may adversely affect the stability of a building (or other structure) on land or adjoining land.

Where the work involves operational works which are not excavation or filling, the work cannot be encompassed by a building work permit and will be different development which may require a separate development permit.

EXCAVATION OR FILL INCIDENTAL TO BUILDING

An assessment of the particular facts and circumstances is necessary to determine whether excavation or filling work is properly regarded as being for or incidental to building, repairing, altering, underpinning, moving or demolishing a building or other structure.

Generally, for the excavation or filling to be properly regarded as being incidental to building works:

- The carrying out of the building works must be the dominant purpose of works;
- The excavation and filling must not be the secondary or incidental purpose for the works; and
- The excavation or filling must be occasioned by or necessarily associated with the building, repairing, altering, underpinning, moving or demolishing of the building or structure.

Factors which may be relevant to determining whether excavation or filling is incidental to building work may, amongst other factors, include:

- The identification of the dominant purpose of works;
- Whether the building works could be performed without the excavation or filling occurring;
- The proximity or separation of the proposed excavation or filling and the building works;
- The physical connection between the relevant earthwork and the building or structure;
- The timing of the earthworks in relation to the building work; and
- Whether the excavation or filling is shown on plans associated with the proposed building work.

Whilst each proposal must be considered having regard to the individual circumstances, set out below are some practical scenarios with some indicative comments about whether excavation or filling may be considered incidental to building works.

EXCAVATION OR FILL AFFECTING STABILITY

Excavation and fill may also be building work if the earthworks may adversely affect the stability of a building or other structure on the land or adjoining land.

Considerations under this scenario may include:

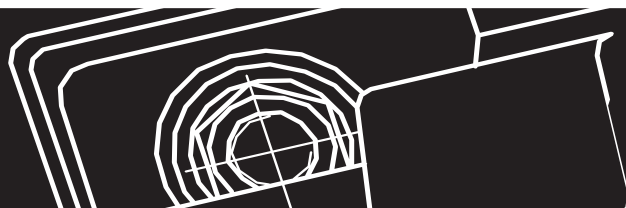
- The prior existence of a building or structure;
- Proximity of the works to the building or structure;
- The earthworks are proposed within a 'zone of influence' of the building or structure;
- Whether a qualified person has identified that the earthworks may adversely affect the stability of the building or structure.

Examples of such works may include, amongst others:

- Underpinning works below an existing building;
- Installing rock anchors for an existing wall or under an existing building; and
- Excavation or filling which may interfere with an existing retaining wall.

This is a question of fact and degree and will require an assessment of the nature and extent of the excavation or filling and a consideration of the impacts of any works on the relevant building or structure.

Advice from a suitably qualified consultant should be obtained to determine if earthworks may have an affect on the stability of a building or structure.



WHAT CAN A PRIVATE CERTIFIER APPROVE?

The complexity of identifying different 'development' and its level of assessment is often dealt with by private building certifiers.

Private certifiers can only assess and approve 'building work'.

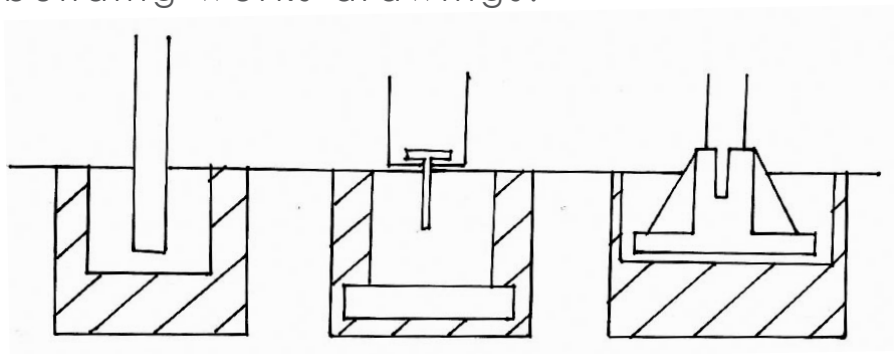
A certifier cannot issue a building work permit if the development application includes development other than building work unless and until all necessary development permits or compliance permits are in place and effective for the other development.

SCENARIOS

To assist with an understanding of the legal requirements for when filling and excavation works can be considered building works, some scenarios are provided. The scenarios work through the practical application of the legal requirements. In circumstances where filling and excavation works relate to retaining walls, if an operational works permit is deemed necessary for the earthworks, a development permit for building works for the retaining wall is still required.

SCENARIO 1

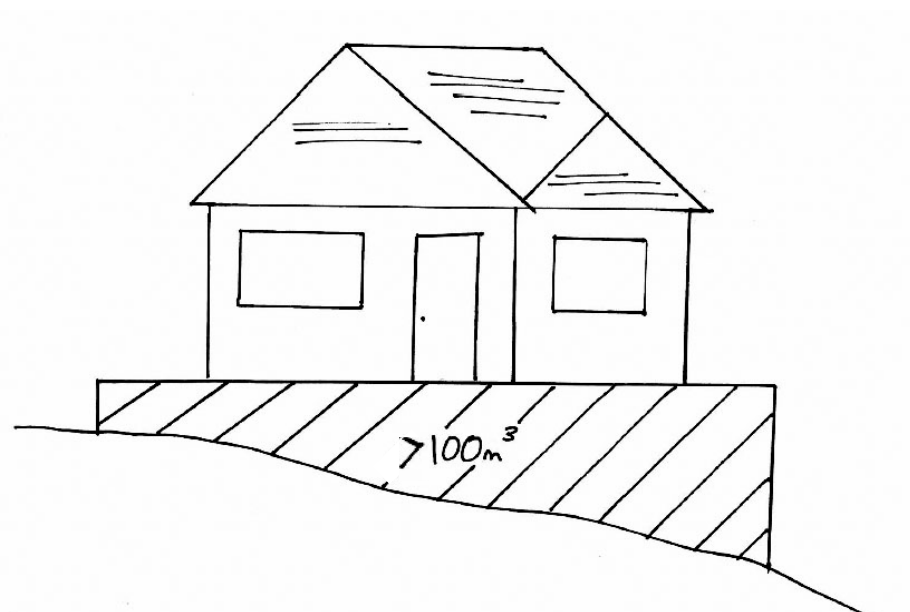
Excavation associated with construction of building footing identified on approved building works drawings.



The excavation would generally be regarded as being for building work and a building work permit ought to address those works.

SCENARIO 2

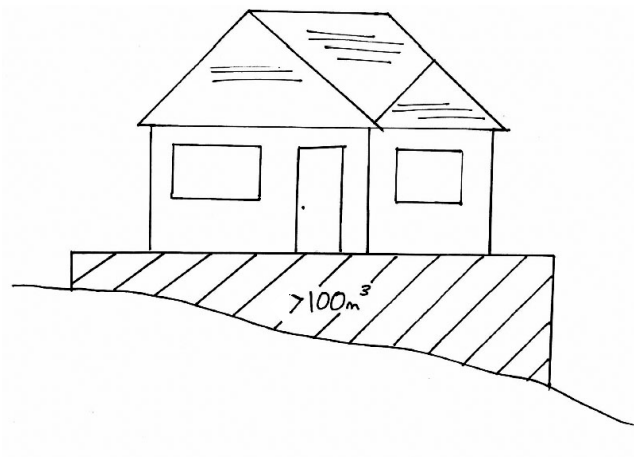
Placing over 100m³ of fill on land for the creation of a building pad, if the changed ground level is identified on the approved building works drawings.



Generally regarded as incidental to building works and a building works permit ought to address those works.

SCENARIO 3

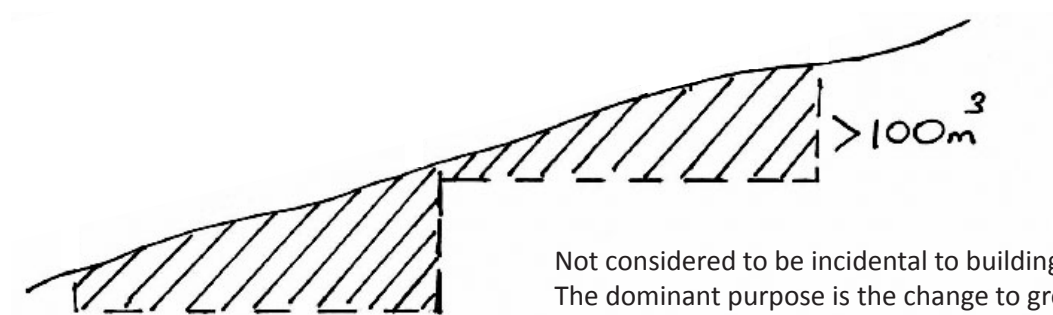
Placing over 100m³ of fill on land for the creation of a building pad, where the changed ground level is **not** identified on approved building works drawings.



May not be considered as incidental to building works. Some other connection between the works may need to be demonstrated. An operational works permit is likely to be required to authorise these works.

SCENARIO 4

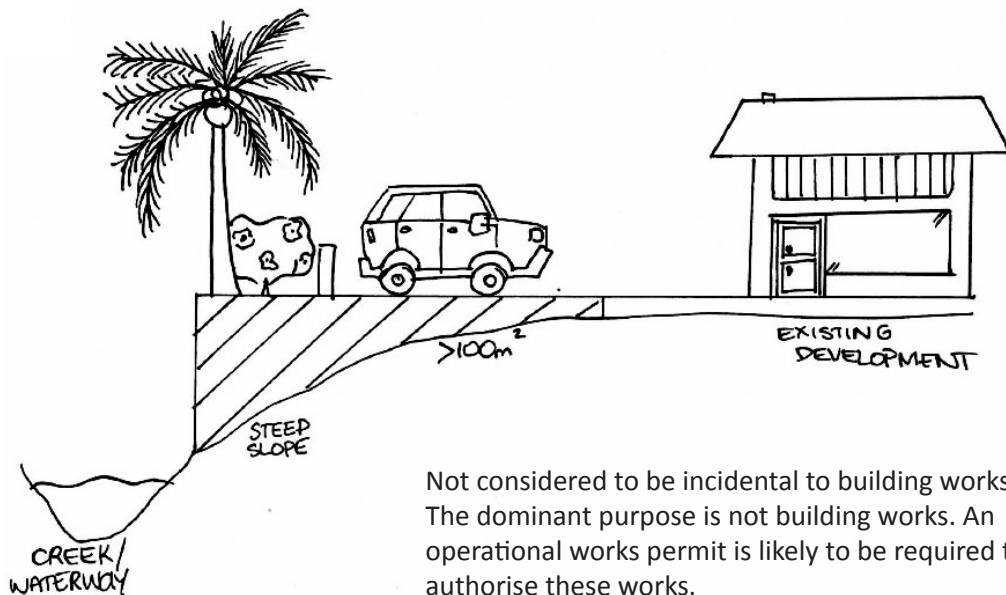
Prior to a building being proposed on land (where not included on plans for building work), excavation of more than 100m³ of earth to create a pad on a sloping site.



Not considered to be incidental to building works. The dominant purpose is the change to ground levels. An operational works permit is likely to be required to authorise these works.

SCENARIO 5

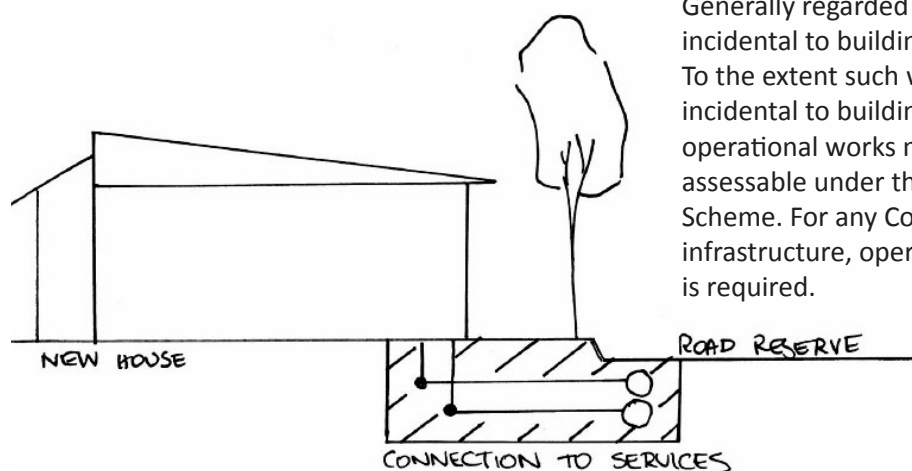
Placing more than 100m³ of fill on land to create a flood free area to benefit associated uses for a proposed building but not within direct proximity of the building works e.g. car park, vehicle turning area or garden.



Not considered to be incidental to building works. The dominant purpose is not building works. An operational works permit is likely to be required to authorise these works.

SCENARIO 6

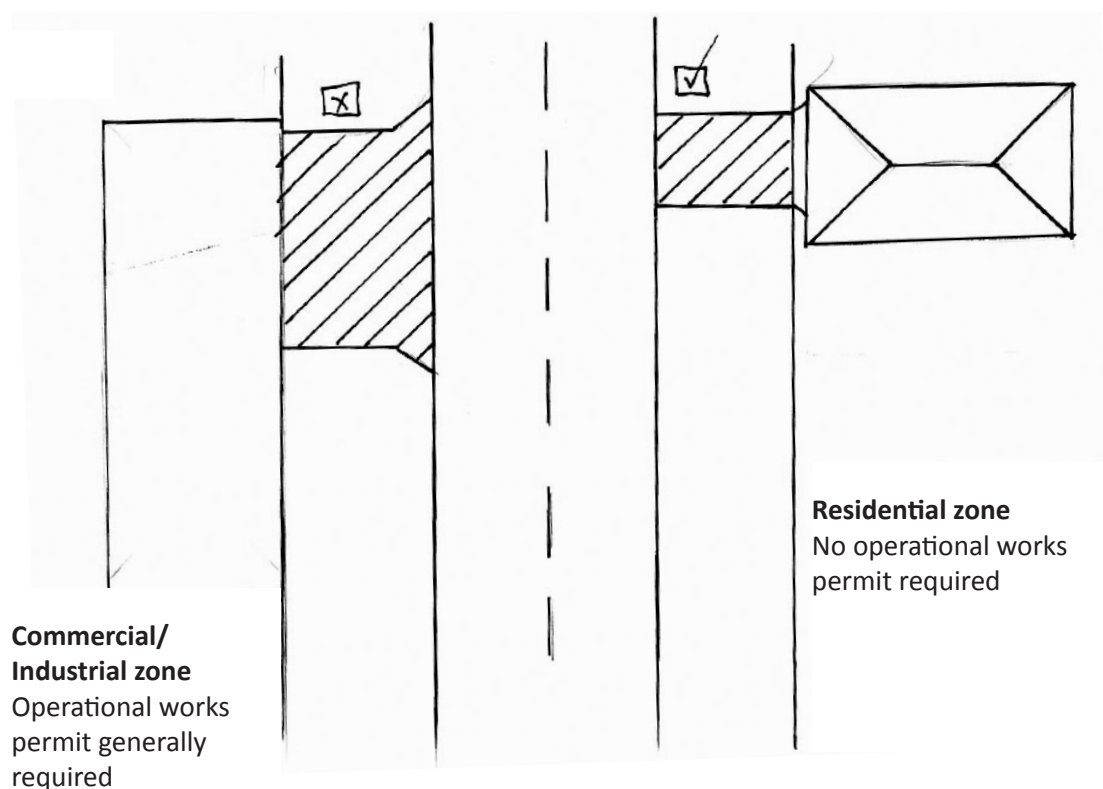
The installation of services for a new dwelling under construction, including underground services for water, sewerage, drainage, telephone, power.



Generally regarded as incidental to building works. To the extent such works are not incidental to building works, such operational works may be self assessable under the Planning Scheme. For any Council owned infrastructure, operational works is required.

SCENARIO 7

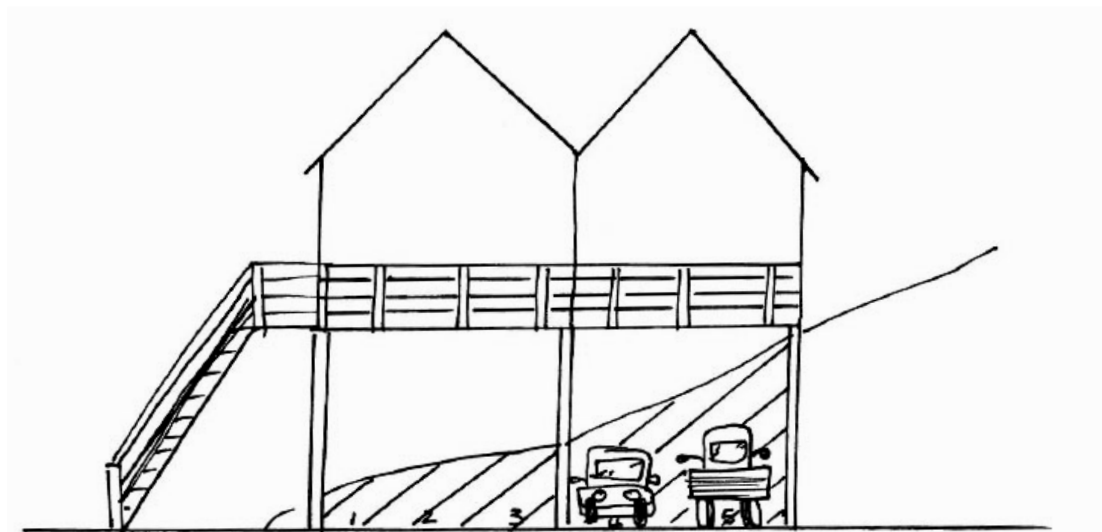
Excavation/fill for works associated with the construction of a driveway to service a new building.



Not generally considered incidental to building works. The dominant purpose is the construction of the driveway. If the building is a dwelling or a dual occupancy and the lot is in a location which has kerb and channelling, such operational work may be self-assessable under the Planning Scheme. Council may accept a Works in Road Reserve permit instead of operational works.

SCENARIO 8

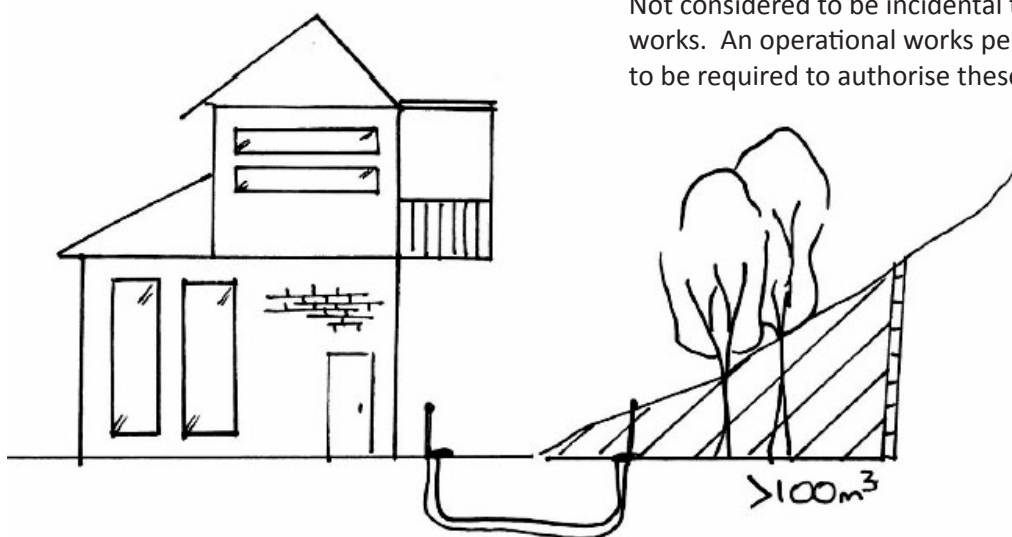
Excavation and works for the construction of a car park to service a new building.



Not considered to be incidental to building works. The dominant purpose is the construction of a car park. An operational works permit is likely to be required to authorise these works. Also the construction of a paved or hardstand area is not excavation and filling and is not a 'structure' or a 'building' so that work does not fall within the definition of building works. The creation of a hardstand area is operational works.

SCENARIO 9

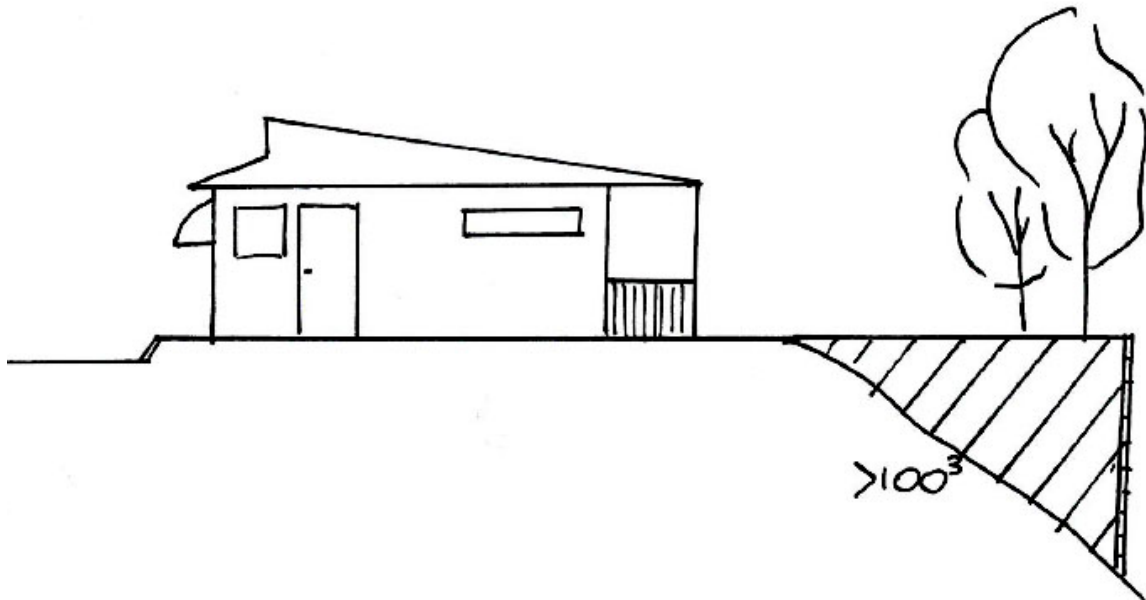
Over 100m³ of excavation or filling for completion of landscaping.



Not considered to be incidental to building works. An operational works permit is likely to be required to authorise these works.

SCENARIO 10

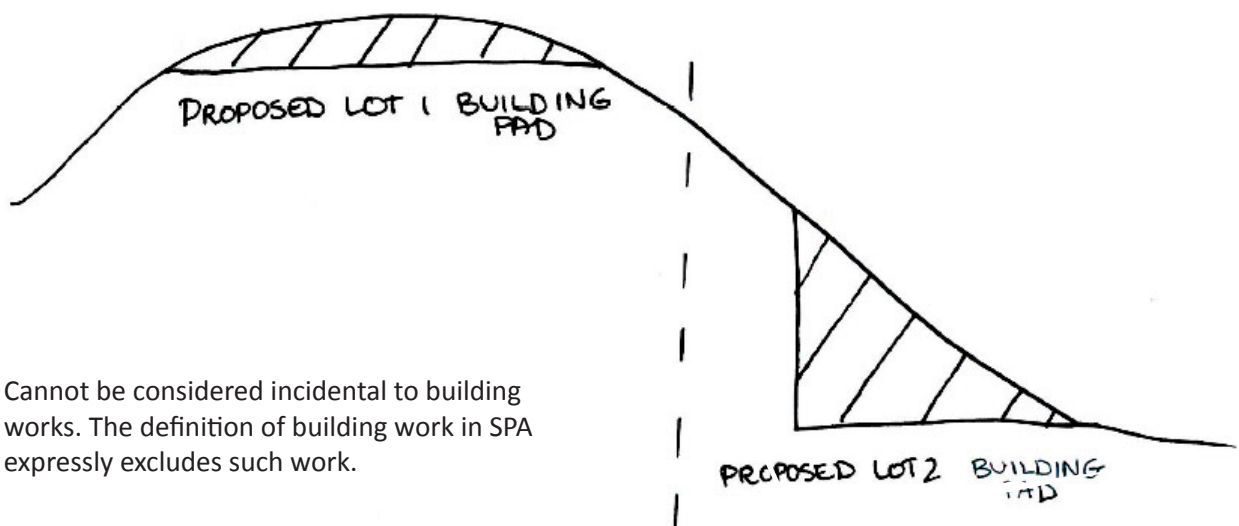
Placing over 100m³ of fill to create a garden area and courtyard outside of a new or proposed dwelling on an existing lot.



May not be considered as incidental to building works. Some other connection between the works may need to be demonstrated. An operational works permit is likely to be required to authorise these works.

SCENARIO 11

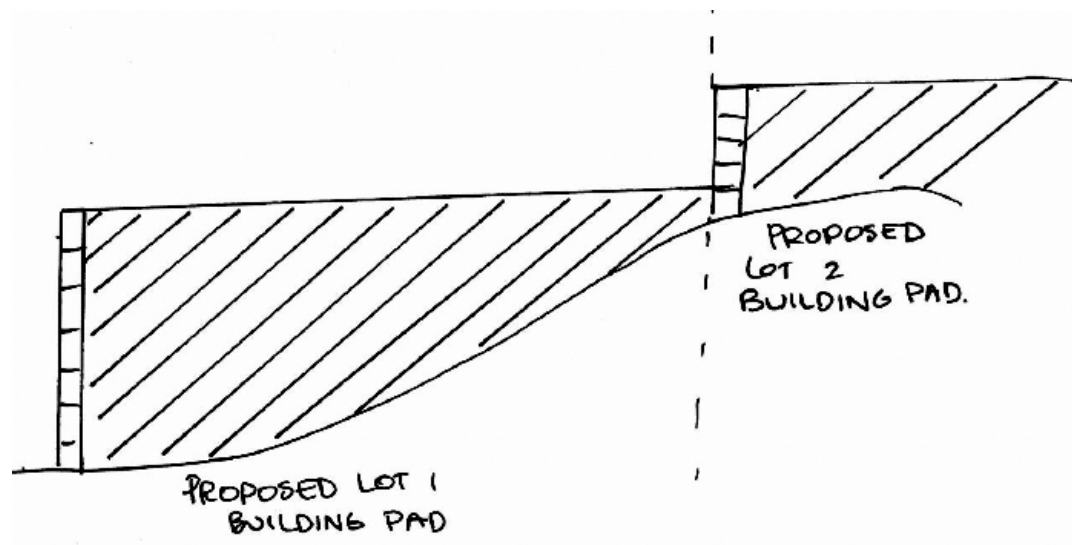
Excavation deeper than 1m below ground level associated with a reconfiguration of a lot.



Cannot be considered incidental to building works. The definition of building work in SPA expressly excludes such work.

SCENARIO 12

Construction of a retaining wall for the purpose of creating boundaries of a new lot.



Cannot be considered incidental to building works. The *Sustainable Planning Act* definition of building work expressly excludes such work. An operational works permit is necessary for the earthworks and a building works permit is necessary for the retaining wall.

SCENARIO 13

Cut or fill more than 100m³ to change the ground level which necessitates or incorporates a retaining wall with a height of 1.5m above natural ground level.

Operational works not incidental to building works. The dominant purpose is the change to ground levels. An operational works permit is necessary for the earthworks and a building works permit is necessary for the retaining wall.

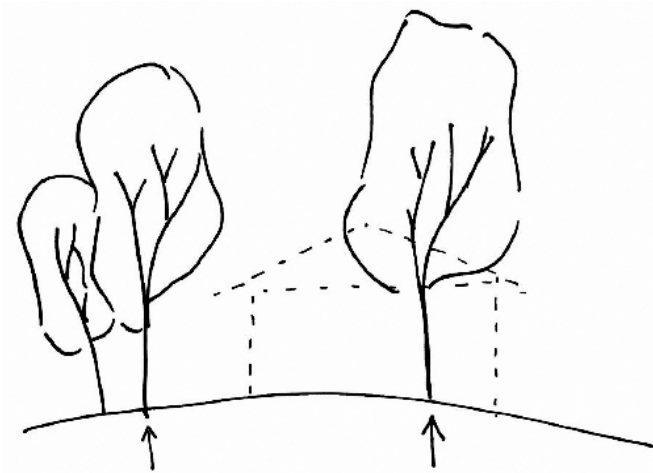
SCENARIO 14

Construction of a retaining wall **not** associated with a reconfiguration of a lot.

If retaining wall construction is the dominant purpose, generally associated earthworks may be regarded as incidental to building works and a building works permit ought to address those works.

SCENARIO 15

Vegetation clearing prior to building work commencing.



Does not involve excavation or fill and cannot be considered incidental to building works. An operational works permit may be necessary if the vegetation clearing is assessable development.



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