

ADMINISTRATION & ENFORCEMENT OF BUILDING LEGISLATION

PURPOSE

Direction on Compliance Priorities

The Shire has significant functions under the *Building Act 1993 (Act)* - Section 212 makes Council responsible for the administration and enforcement of Parts 3, 4, 5, 7 and 8 of the *Building Act 1993* and the *Building Regulations 2018* within its municipal district. These functions ensure the health and safety of people in the Shire.

One significant responsibility of Council relates to Essential Safety Measures (ESMs), which are the safety features required in a building to protect occupants in the event of a fire. ESMs may include fire detection and alarm systems, fire doors, emergency lighting and fire hydrants, and are associated with commercial and accommodation buildings (eg apartments, motels, bars/hotels, restaurants, shops, offices, aged care, child care, schools, industry and public buildings).

Although building owners have an obligation to ensure that ESMs and other safety measures are maintained and operate satisfactorily Councils have a responsibility under the legislation for enforcement of building safety.

Another significant responsibility is the enforcement of standards applied to swimming pools and spas to limit the incidence of drownings. Under the Regulations, all swimming pools and spas containing water greater than 30cm must have a compliant safety barrier to restrict access by young children. Legislation places various obligations on swimming pool/spa owners including the need for a building permit to install a swimming pool/spa or construct or alter a pool safety barrier, the need to register a swimming pool/spa with Council, and the need for regular inspection and certification of pool safety barriers.

Councils do not have the resources required to perform all of their broad responsibilities for permits and consents under the legislation, respond to general complaints and investigate known safety risks and illegal structures, and proactively ensure that ESM and swimming pool barrier requirements are being met by land owners. However the use of policies and procedures by Councils is recognised by the courts as a means of Councils determining how limited resources are to be allocated. This policy aims to both reduce Council's exposure to risk and provide guidance to officers on how the legal provisions will be administered.

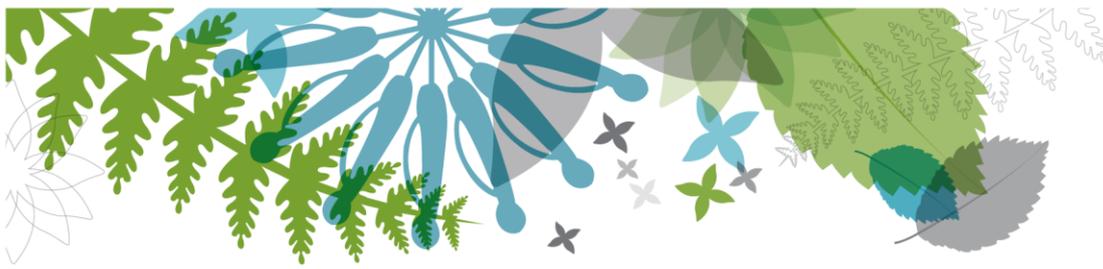
Council intervention enforcing permits issued by Private Building Surveyors

Property owners have a choice between using Council (through the MBS) or a Private Building Surveyor (PBS) to obtain a building permit. The building surveyor (private or municipal) who issues the permit is generally responsible for ensuring that building work complies with the Act and Regulations.

PBSs have essentially the same enforcement powers afforded to an MBS, save the issuing of Emergency Orders. The responsibility for supervising PBSs rests with the Victorian Building Authority (VBA). Despite the responsibilities of a PBS to achieve compliance with and to enforce the *Building Act* and *Building Regulations*, Council retains an overarching responsibility to enforce these provisions.

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Council frequently receives complaints from the public regarding building work for which a PBS has been appointed, including situations where there is a risk of danger to persons or property or matters relating to the siting/design of buildings and/or structures. The handling of these complaints can represent a significant expenditure of Council resources.

This policy aims to clarify the circumstances when Council's MBS will carry out his/her responsibilities under the Act in response to complaints from the public where a PBS is responsible for a building permit or other functions in respect of building work being carried out.

Approach to Compliance Activities

The MBS has a responsibility to respond to illegal building work and unsafe buildings under the *Building Act* and *Regulations*. This includes the issue of Building Notices and Orders, and Minor Works Orders specifying works to be completed within specified time frames, and the issue of Emergency Orders specifying immediate actions to be taken where there is a more imminent/higher risk threat to public safety. In respect of ESM and swimming pool/spa barrier non-compliance, infringements can be issued for an offence. These actions are taken under the authority of the *Building Act*, which sits separately to other delegated powers from the CEO or Council. Council further reserves the option to prosecute land owners in the Magistrates Court where Building Orders have not been complied with.

Whilst formal tools such as Building Orders, Infringement Notices and prosecution may be necessary in various circumstances, it is recognised that the works required to rectify illegal building work or unsafe buildings can have significant economic and social impacts for land owners. Council has a strong preference for resolving building non-compliance co-operatively, with punitive measures being a last resort. Council also has a preference for achieving building compliance where possible in the first instance through effective public education. This policy gives direction on how officers will undertake building enforcement activities to achieve these goals.

OBJECTIVE

The objectives of this policy are to:

- Support the MBS and building staff to meet their responsibilities for maintaining public safety under the *Building Act* and *Building Regulations*, and provide direction on setting priorities/allocating resources.
- Formalise expectations as to how and when the MBS is to use his/her powers
- Recognise education as a critical means to reduce building non-compliance in the first instance.
- Emphasise the importance of communication and a facilitative approach to achievement of compliance outcomes.
- Recognise the inability of Council to resource building enforcement to achieve full compliance with the Building Act and Regulations, particularly in the area of Essential Safety Measures, but that some resourcing will be provided to enable proactive auditing of premises through a risk based approach as the best way of managing risk to human life and safety.
- To provide direction on when Council's MBS will intervene in a building matter, in response to complaints, that is being handled by a PBS.

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SCOPE

This policy applies to all Colac Otway members of staff (including contract staff) that perform tasks in respect of the administration and enforcement of Parts 3, 4, 5, 7, and 8 of the *Building Act 1993* and the *Building Regulations 2018*, in the municipal district, excluding indictable offence(s) against the Act.

DEFINITIONS

The definitions used in the Building Act 1993, Building Regulations 2018, National Construction Code (BCA Volumes 1 and 2) and referenced Australian Standards, apply to this policy.

REFERENCES

Building Act 1993 (“Act”)
Building Regulations 2018 (“Regulations”)
Local Government Act 1989 (“Local Government Act”)
Municipal Building Surveyor (MBS)
Private Building Surveyor (PBS)
Victorian Building Authority (VBA)

STATEMENT OF POLICY

Approach to Compliance (General)

The MBS and other delegated building staff will respond to illegal building work and unsafe buildings as required under the *Building Act* and *Regulations* to address public safety risk. This policy does not seek to direct building staff on their actions in this regard, noting that these functions are performed under the independent authority of the Act.

In exercising its compliance powers however, Council is committed to the following principles:

- Provide a fair, consistent and predictable approach to all building compliance and enforcement activities
- Take proactive steps to educate the community on building standards/permit requirements, and processes to achieve legal building work in the first instance (eg media releases, Facebook posts, information sessions).
- Prioritise actions based on the degree of risk to public health, safety and amenity, via the use of a risk matrix. Efforts will be directed to addressing higher risk non-compliance as a priority.
- Work co-operatively with land owners to advise of identified non-compliance and provide reasonable time frames for a response.
- Deliver information and advice in plain language as appropriate, avoiding unnecessary technical terms, and communicating clearly the various options available to rectify an identified issue.
- Be facilitative and constructive in discussions with land owners to help them achieve an outcome that is acceptable to their needs and satisfactorily addresses building requirements.
- Provide clear contact information and encourage land owners to seek further advice/information from Council.

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- Contact land owners in person/by telephone where possible to explain the implications of formal notices and orders or Infringements where these are deemed necessary to ensure there is a clear understanding of what is required.
- In cases where disputes cannot be resolved, provide details of any appeal process to a Government statutory body.
- Ensure that the level of enforcement undertaken is proportionate to the nature and seriousness of the offence.
- Achieve an appropriate balance in terms of proactive and reactive compliance work to ensure that Council's legislative responsibilities, strategic objectives and priorities are achieved.

Prosecution in the Magistrates Court will be considered where there has been blatant/intentional non-compliance that is not rectified in a timely manner following the normal Notice and Order process. It will also be considered where any significant public safety risk caused by on-going non-compliance from these processes has not been appropriately mitigated.

The decision on whether to initiate prosecution proceedings will be made by the CEO upon receipt of advice from the MBS (or delegate), and relevant management responsible for the Building function. Factors that will be taken into account include:

- Degree of unresolved public safety risk and non-compliance with building requirements (ie is it a serious offence and/or high safety risk?)
- Whether the non-compliant building work was deliberate (ie undertaken with knowledge of building permit requirements/standards)
- Any prior record of non-compliant building work
- The capacity of a land owner to respond to the requirements of Building Notices/Orders (ie financially or socially), and whether some effort has been made to respond
- Whether there has been regular communication with the property owner by building staff to explain the requirements and processes
- Whether adequate/reasonable time has been given to comply

Operational Procedures will further explain the compliance approach.

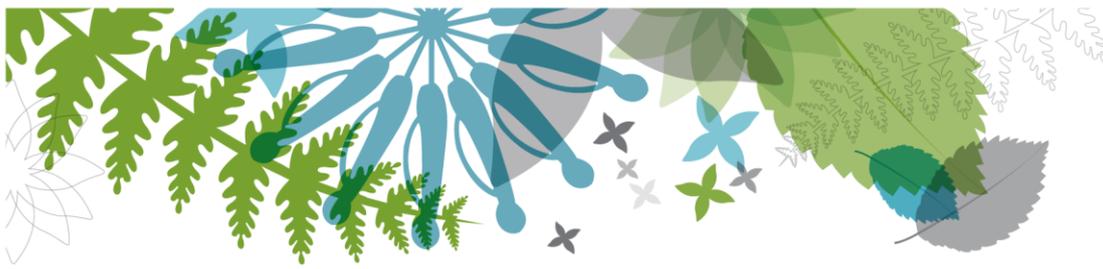
Council may resolve to levy an administrative charge to be invoiced to a land owner at the time of issuing a Building Order as a means of recovering part of the cost incurred of the compliance process. Should this occur, the amount would be determined by either a stand alone Council resolution or via the annual review of Fees and Charges in the budget process. No fee would be charged for the issue of a Building Notice.

Any administrative fee associated with Building Orders, should it be introduced, may be waived and/or reduced upon request by a land owner at the discretion of the Manager/General Manager responsible for the Building Department function. Requests may be considered favourably if an owner can demonstrate that:

- Any illegal works were undertaken without knowledge of building permit requirements/standards, and there has been action taken in a timely and co-operative manner to achieve compliance; or
- There has been legitimate social or financial circumstances which have prevented them from responding in a timely manner.
- Significant costs are being incurred by the owner to respond to the Order which presents financial hardship and limits the capacity of the owner to complete the required works.
- The Building Order was issued in error and has since been withdrawn.

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- There is sound reason why the fee is not reasonable or proportionate to the very minor nature of the works involved.

Municipal Building Control Intervention – Private Building Surveyor issued permits

Where a complaint is received by Council or a situation arises that relates to building work being overseen by a PBS, Council's MBS will determine the risk being presented to the public before intervening. A risk matrix will be used to clarify the degree of public safety risk and to apportion the compliance responsibility between the PBS and Council. The risk determination will direct the MBS to a predetermined course of action, whether this be:

- Referring the matter onto the PBS for their action; or
- Intervening and taking responsibility for compliance where a PBS has not appropriately responded to a request for action; or
- For high or extreme risk matters, intervening immediately to instigate compliance action to remedy the risk; and
- Referring the PBS to the VBA if the conduct of the PBS in responding to the matter has been called into question.

An Operating Procedure will detail this risk assessment.

Essential Safety Measures (ESM)

In recognition of the importance of maintained Essential Safety Measures (ESMs) to preserving human life, Council will dedicate resources to the specific task of proactively monitoring compliance of buildings with the ESM requirements of Regulation Part 12, Division 1 of the *Building Regulations*. Whilst Council does not have the resources required to ensure all buildings are compliant in the short term, funding will be allocated annually to enable the MBS and building staff to undertake a risk based program of audits of properties to which ESM requirements apply.

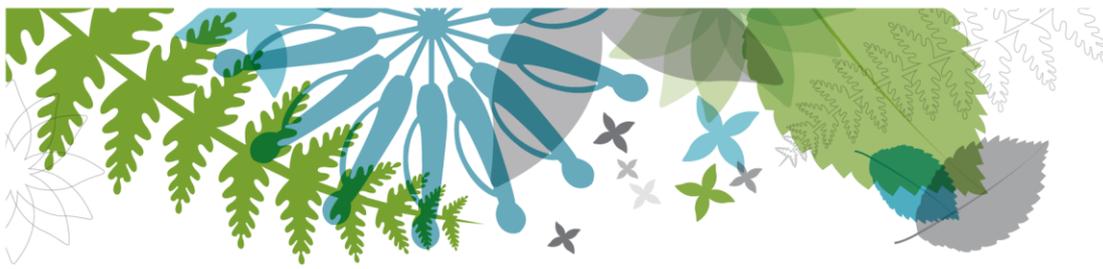
The audit program will be undertaken over a period of years, according to the degree of risk relating to land use that prioritises audits in the highest risk category. For example, accommodation (including motels, backpackers, apartments and bed and breakfasts), hotels, night clubs, take away food premises and the like will be considered a higher risk to human safety than shops or offices. These buildings will be audited as a high priority. This will assist in ensuring that all relevant buildings in the municipality will be compliant with the *Regulations* over the medium to long term.

A live database of properties in the municipality that are subject to ESM requirements will be kept and updated as changes in land use occur over time, and with the results of audits and enforcement activity as it is conducted. This data base will be used to assess risk to human life using a risk matrix, and will be reviewed annually to establish the intended audit program to be undertaken each year.

The MBS will respond to the results of building audits using the same compliance tools and processes as those used for broader compliance activities under the Act and Regulations. The MBS will also respond to identified ESM non-compliance that becomes evident via other means (eg site inspections associated with building permit applications or other compliance inspections).

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Infringement Notices can be issued under the *Act* for non-compliance with ESM requirements, however these will only be issued where the MBS is of the opinion that a property owner, following a reasonable period of encouragement and direction from Council, is not taking active steps to address identified non-compliance. In particular, Infringement Notices will generally only be used for the higher risk premises, and not for minor/lower risk non-compliance.

A key emphasis of the ESM audit program will be placed on education of land owners as a first priority, with a series of proactive measures being implemented to make building owners aware of their responsibilities (eg direct mail outs to owners of buildings identified in the data base, web site information, media articles and information sessions).

The results of the ESM audit and compliance program will be reported to the Risk Management Committee every six months. This reporting will detail the audits undertaken, outcomes achieved, and any issues that have arisen in the course of the program.

An Operating Procedure documents the way in which this audit program will be conducted to achieve compliance with this policy objective.

Swimming Pool/Spa Barrier Compliance

Recognising the importance of compliant pool safety barriers to preserving human life, Council will dedicate a proportion of its resources to the ongoing and effective administration and enforcement of legislation pertaining to swimming pools / spa pools.

Whilst it is the responsibility of pool/spa owners to register their pools and spas with Council, and to lodge inspection Certificates of Compliance every four years, Council will allocate some of its Building resources to enable officers to proactively review the Pool Register over time to follow up owners who have not lodged the required Certificates, to ensure that pool and spa safety barriers are compliant.

Where compliance activity arises from failure to comply with swimming pool/spa barrier requirements, officers will apply procedures in the Building Regulations, which include the issue of a Barrier Improvement Notice or Building Order, whichever is deemed more appropriate based on the circumstances. No compliance related fees (should these be introduced by Council) would be charged to a swimming pool owner in association with a Building Order issued by Council, unless the compliance action is unrelated to the lodgement of a Certificate of Non-compliance where a fee has been paid to Council through that process.

Infringement Notices can be issued under the *Act* where Certificates of Compliance or Non-Compliance are not lodged with Council by the due date, or if an owner fails to comply with a Barrier Improvement Notice issued by Council, however these will only be issued where the MBS is of the opinion that a property owner, following a reasonable period of encouragement and direction from Council, is not taking active steps to address identified non-compliance.

Operating Procedures will detail how these activities will be undertaken.

SUPPORTING PROCEDURES / GUIDELINES

- Building Compliance – Compliance Response – Non Council Issued Permit
- Building Compliance – Swimming Pool & Spa Barrier Compliance
- Building Compliance - Essential Safety Measures Audit & Compliance

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DOCUMENT CONTROL

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