

COUNCIL POLICY

Council Policy Title:	Municipal Building Control Intervention Filter Criteria Guideline Policy For Council's Administration and Enforcement of Parts 3,4,5,7 & 8 of the Building Act 1993 and Building Regulations 1994 in circumstances where a private building surveyor has been appointed to carry out function
Council Policy ref. no:	19.1
Responsible Department:	Sustainable Planning and Development
Date of adoption/review:	23 October 2013

ADMINISTRATION AND ENFORCEMENT

1. PURPOSE

To inform Council of its responsibilities under the *Building Act 1993* ("the Act") in circumstances where a private building surveyor has been appointed by or on behalf of the owner of a property to issue a building permit or carry out other functions in respect of building work being carried out or proposed to be carried out at the property.

2. BACKGROUND

Council is required by section 212 of the Act to administer and enforce specified parts of that Act and the whole of the *Building Regulations 1994* ("the Regulations") within its municipal district. As with many other responsibilities, Council has the ability to determine how it will carry out these functions having regard to competing obligations and limited resources.

Since the introduction of the Building Act in June 1994 property owners have had a choice between using Council services (through the municipal building surveyor) to obtain a building permit and using a private building surveyor. The building surveyor (private or municipal) who issues the building permit is generally responsible for ensuring that the building work complies with the requirements of the Act and the Regulations.

Council through the operation of section 212 of the Act retains the ability to enforce the Act and the Regulations even if a private building surveyor has been appointed. Section 212 provides as follows:

“212. Council to administer building provisions in its municipal district

- (1) *Except where otherwise expressly provided in this Act or the building regulations, a council is responsible for the administration and enforcement of Parts 3, 4, 5, 7 and 8 and the building regulations in its municipal district.*
- (2) *Nothing in this section limits a council's powers to act outside its municipal district.”*

There is no express provision in the Act removing Council's responsibilities where a private building surveyor has been appointed.

The Building Commission is a state statutory authority which has various powers under the Act to intervene in circumstances where a private building surveyor is appointed. These powers include the ability to issue directions to the private building surveyor, enforce orders made by the private building surveyor, prosecute persons for non compliance with orders issued by the private building surveyor in addition to being able to utilise all the powers that a municipal building surveyor has in certain circumstances.

The Building Practitioners Board is the registration body for persons working in the building industry. All building surveyors (both private and municipal) must be registered with that Board. The Building Practitioners Board is empowered to conduct disciplinary proceedings in respect of any registered building practitioner who may have not carried out their responsibilities correctly.

The legislative framework clearly shows that responsibility for supervising private building surveyors rests with the Building Commission and the Building Practitioners Board. This responsibility includes those bodies taking appropriate action to resolve matters (which may include rectifying any action/inaction taken by a private building surveyor that is/was contrary to the Regulations or the Act or conducting a disciplinary Inquiry) where a private building surveyor has not carried out their work in a competent manner and to a professional standard.

Council frequently receives complaints from members of the public regarding building work that is being or has been carried out, for which a private building surveyor has been appointed. The complaints may include situations in which there is a real risk of danger to persons or property or may be regarding administrative matters or matters relating to the siting of buildings and /or structures.

The handling of these complaints can represent a significant expenditure of Council resources.

Since the introduction of the private permit issuing system in July 1994 the ongoing problems associated with handling such complaints has generally been carried out by Council's municipal building surveyor and its building department on an ad hoc basis. The **Victorian Municipal Building Surveyors Group Inc.** ('the VMBSG') at its 2002 conference overwhelmingly recognised the need for adopting a uniform approach across the State when dealing with complaints of that nature. As a result of that conference, the VMBSG, working in consultation with the Municipal Association of Victoria ('the MAV') undertook to develop a system to classify and manage those complaints.

The **Building Control Intervention Filter Criteria** ('the Filter Criteria'), utilising a risk assessment matrix, identifies standardised responses to complaints from the public where a private building surveyor has been appointed. The Filter Criteria have been developed through consultation with municipal building surveyors throughout metropolitan and regional Victoria.

The Filter Criteria recognises that Council has obligations to the public with regard to dangerous situations which it can remedy or cause to be remedied. Where a danger exists and Council officers are aware of that danger, a lack of action on the part of Council could result in a claim against Council if innocent persons were to suffer loss or injury. This is regardless of whether a private building surveyor is or has been appointed. In those circumstances the Filter Criteria recommends Council staff taking action to remove the danger.

The Filter Criteria also recognises that not all complaints received at council relate to dangers and many relate to matters stemming from administrative neglect or error by private building surveyors. In those circumstances the Filter Criteria recommends that the matter be referred to the private building surveyor for remedial action failing which the matter be referred to the Building Commission or Building Practitioners Board (or both) as appropriate.

In some circumstances it may be that the complaint is of a trivial or minor nature in which case the Filter Criteria may recommend merely referring it back to the private building surveyor for action.

It is anticipated that the Filter Criteria will streamline the complaint handling processes and provide a level of uniformity across all councils. The referral of appropriate cases to the Building Practitioners Board and the Building Commission will also allow those bodies to more readily carry out their functions under the Act.

3. BUILDING CONTROL INTERVENTION FILTER CRITERIA

STEP 1 – Determine the possible consequences of the matter being complained of:

Table E1 Qualitative measures of consequence or impact

Level	Descriptor	Example detail description
1	Insignificant	No injuries, low financial loss, no detriment to health, no damage to property, siting.
2	Minor	Injury (self-treatable e.g. minor cuts or abrasions), medium financial loss, minimal detriment to health, minor damage to property.
3	Moderate	Injury (medical treatment required by other), high financial loss, moderate detriment to health, moderate damage to property.
4	Major	Serious non-permanent injury, major financial loss, major detriment to health, major damage to property.
5	Catastrophic	Permanent injury or death, huge financial loss, irreparable damage to property.

STEP 2 – Determine the likelihood of the event in Step 1 occurring

Table E2 Qualitative measures of likelihood

Level	Descriptor	Description
A	Almost certain	Is expected to occur in most circumstances
B	Likely	Will probably occur in most circumstances
C	Possible	Might occur some time
D	Unlikely	Could occur at some time
E	Rare	May occur only in exceptional circumstances

STEP 3 – Locate the issue on the risk matrix by comparing the likelihood to the consequence

Table E3 Qualitative risk analysis matrix – level of risk

Likelihood	Consequences				
	Insignificant 1	Minor 2	Moderate 3	Major 4	Catastrophic 5
A (almost certain)	M	H	E	E	E
B (likely)	M	H	H	E	E
C (Possible)	L	M	H	H	E
D (unlikely)	L	L	M	H	E
E (rare)	L	L	M	H	H

STEP 4 – Identify action to be taken

Table E4 Legend for Risk Analysis Matrix and Treatment

E	Extreme risk: immediate action required	Refer to PBS without delay	Council/MBS takes immediate action to suitably reduce risk	If there is evidence of conduct by any building practitioner such that a finding under section 179(1) of the Building Act 1993 could be made by the Building Practitioners Board the matter, with supporting evidence, will be referred to that Board for Inquiry.
H	High risk, attention needed in reasonable time	Refer to PBS without delay	Council/MBS takes action if PBS is not taking action to suitably reduce the risk within reasonable time	
M	Moderate risk, treatment by PBS	Refer to PBS without delay	No other action by Council/MBS	
L	Low risk, manage by referral	Refer complainant to PBS without delay	No other action by Council/MBS	If there is a suspicion that any practitioner has engaged in conduct that may amount to illegal conduct or conduct as set out in section 179(1) of the Act the matter will be referred to the Building Commission for investigation. AND if it is necessary to do so for the proper administration of the Act refer the matter of RBS to the Building Commission for the exercise of its directive powers under s198 of the Building Act 1993.

Note: PBS – Private Building Surveyor

STEP 5 – Take the action as required by the matrix

4. RELEVANT LEGISLATION REGARDING REFERRALS

BUILDING ACT 1993

179. Inquiry into conduct

- (1) On an inquiry into the conduct of a registered building practitioner, the Building Practitioners Board may make any one or more of the decisions mentioned in sub-section (2) if it finds that the registered building practitioner--
- (a) is guilty of unprofessional conduct; or
 - (b) has failed to comply with this Act or the regulations; or
 - (c) has failed to comply with a determination of the Building Appeals Board or a direction of the Commission; or
 - (d) has been guilty of conduct in relation to his or her practice as a building practitioner which--
 - (i) is constituted by a pattern of conduct or by gross negligence or gross incompetence in a particular matter; and
 - (ii) shows that he or she is not a fit and proper person to practise as a building practitioner; or
 - (da) has shown in the information provided to the Board under section 172A that he or she is not a fit and proper person to practise as a building practitioner; or
 - (e) has employed or engaged to do, on his or her behalf, work of a kind that can only be done by a person registered under this Part in a particular category or class, a person who is not so registered; or
 - f) has obtained his or her registration under this Part or any required insurance by fraud or misrepresentation; or
 - (fa) has failed to comply with a reasonable direction of an insurer in respect of the completion or rectification of defective building work or any payment to be made to the insurer in respect of the completion or rectification of defective building work in accordance with required insurance or in accordance with a guarantee under the **House Contracts Guarantee Act 1987** or has failed to comply with a direction under section 44 of the **House Contracts Guarantee Act 1987**; or
 - (fb) has failed to carry out a recommendation contained in an inspector's report under section 48 of the Domestic Building Contracts Act 1995;
 - (fc) has failed to comply with the Domestic Building Contracts Act 1995; or
 - (g) has had his or her authority to practise as a building practitioner in a place outside Victoria cancelled or suspended otherwise than for failure to renew that authority; or
 - (h) has failed to comply with an undertaking given to the Board under this Division.

BUILDING REGULATIONS 2006

1502 Professional standards

A registered building practitioner must-

- (a) perform his or her work as a building practitioner in a competent manner and to a professional standard; and
- (b) immediately inform the client in writing if a conflict of interest arises or appears likely to arise between his or her interest as a building practitioner and that of his or her client; and
- (c) receive remuneration for his or her services as a building practitioner solely by the professional fee or other benefits specified in the contract of engagement or by the salary and other benefits payable by the building practitioner's employer.

NOTE: A building practitioner who contravenes the requirements of regulation 1502 may be the subject of an inquiry under section 179 of the Act.

5. IMPLEMENTATION AND REVIEW

This policy will be implemented by the Manager Building and Planning and is subject to periodic review.

ADOPTED/AMENDMENT OF POLICY

Policy Review Date	Reason for Amendment
24 May 2006	Adopted by Council
28 October 2009	Review
23 October 2013	Review