



# Building Control Intervention Policy

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<b>Responsible officer</b>	Manager Compliance
<b>Policy owner</b>	Building Services Coordinator

## 1. Purpose

To state the responsibilities of the **private building surveyor** and determine when Melton Shire Council (Council) will take action where there is a real risk of danger to persons or property when a private building surveyor has been appointed for building work to be carried out.

## 2. Scope

This policy applies to discharge of Council responsibilities under **the Act** in circumstances where a **private building surveyor** has been appointed to carry out functions in respect to building work.

## 3. Definitions

Word/Term	Definition
The Act	Building Act 1993
The Filter Criteria	Building Control Intervention Filter Criteria
Private Building Surveyor	Private Building Surveyor as per section 3 of the Building Act 1993

## 4. Policy

Melton Shire Council is committed to providing the community with safe built environments at home, work and in all public areas.

### 4.1 Policy Objectives

- Direction of matters/complaints to appropriate bodies.
- Risk management and accountability in building control.
- Mitigating unnecessary Council liability.
- Consistency and transparency of Council's approach to the administration and enforcement of the Building Act.
- Deterrence of improper actions by building practitioners through referral to the Building Commission.

### 4.2 Policy Principles

- a) When an investigation request is received, the Municipal Building Surveyor will have regard to **the Filter Criteria** to determine when to intervene when a **Private Building Surveyor** is appointed for building work using the powers under the building act. The filter criterion uses

a risk assessment matrix to classify the method of response based on the level of risk to life and property.

- b) The filter criteria provide a range of actions – from immediate action by the Municipal Building Surveyor to referring the matter to the relevant building surveyor in the case of low risk.
- c) Serious misconduct by any building practitioner will be referred to the Building Commission for supervision, direction and/or discipline.

## 5. Responsibility /Accountability

<b>5.1</b>	<b>Building Surveyors</b>
	<ul style="list-style-type: none"><li>• Responsible for the provision of professional advice to public, employees and authorised delegates regarding this policy.</li></ul>

## 6. References and links to legislation and other documents

<b>Name</b>	<b>Location</b>
<i>Building Act 1993 Building Regulations 2006</i>	<a href="http://www.legislation.vic.gov.au">www.legislation.vic.gov.au</a>
<i>Building Regulations 2006</i>	<a href="http://www.legislation.vic.gov.au">www.legislation.vic.gov.au</a>
Procedure for building complaints where a Private Building Surveyor has been appointed	Council Website <a href="http://www.melton.vic.gov.au">www.melton.vic.gov.au</a>
Building Control Intervention Filter Criteria Matrix	
Procedure for investigating illegal building work	
Standard letters amended from time to time used by Building Services Unit	

## 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	M	E	E	E
B (likely)	M	M	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

<b>E</b>	<b>Extreme risk: immediate action required</b>	Refer to PBS without delay*	Council/MBS takes immediate action to suitably reduce risk**	<p>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, may be referred to that Board for Inquiry.</p> <p>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 may be referred to the Victorian Building Authority for investigation;</p> <p><b>AND</b></p> <p>if it is necessary to do so for the proper administration of the Act, may refer the matter of RBS to the Victorian Building Authority for the exercise of its directive powers under s205M of the Building Act 1993.</p>
<b>H</b>	<b>High risk, attention needed in reasonable time</b>	Refer to PBS without delay*	Council/MBS takes action if PBS is not taking action to suitably reduce the risk within reasonable time	
<b>M</b>	<b>Moderate risk, treatment by PBS</b>	Refer to PBS without delay*	No other action by Council/MBS	
<b>L</b>	<b>Low risk, manage by referral</b>	Refer to PBS without delay*; or, Refer complainant to PBS without delay	No other action by Council/MBS	

# When the MBS forms an opinion that an emergency order is required then these matters are automatically 'Extreme Risk' (see notes on emergency orders on next page)

\* Consider the privacy of the complainant when referring the matter to the PBS.

\*\* s89(1) The Victorian Building Authority, on the application of an owner or adjoining owner may declare that emergency protection work is required in respect of a particular adjoining property.

**STEP 5 – Take the action as required by the matrix**

## Emergency Orders

An emergency order may be issued pursuant to section 102, Division 1, Part 8 of the Building Act. Section 102 provides an MBS with the power to deal with urgent safety matters in a timely and efficient manner.

Surprisingly, an emergency is not an essential condition for the issuing of an emergency order. However, the heading of Division 1, Part 8, "Emergencies", does give some guidance as to the context in which the words in that Division are to be interpreted.

The important feature of an emergency is that there is a need for urgency in taking action to avoid a danger.

An emergency order should be used where, in the circumstances described in section 102, the MBS forms the view that there is a danger to life or property.

Typically, an emergency order should be issued where there is a sense of urgency in the situation and immediate action is warranted. It should be noted that a building notice under section 106 cannot compel the owner or occupier to take immediate action.

## RELEVANT LEGISLATION REGARDING REFERRALS

### ***Building Act 1993***

s179. 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 subsection (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 Authority; 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; or
  - (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**

Regulation 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.

### **Building Act 1993**

s205M Directions and recommendations in relation to building surveyors

- (1) If it considers it necessary for the purposes of this Act or the regulations, the Authority may direct a municipal building surveyor or private building surveyor to carry out his or her functions under this Act or the regulations—
  - (a) in accordance with this Act or the regulations; or
  - (b) within a period specified in the direction.
- (2) The Authority, in giving a direction under subsection (1)(b), must not vary a time limit prescribed by this Act or the regulations.
- (3) If it considers it necessary for the purposes of this Act or the regulations, the Authority may recommend to the person who appointed a municipal building surveyor or private building surveyor that the person take action specified by the Authority.
- (4) Before giving a direction or making a recommendation under this section, the Authority must give the municipal building surveyor or private building surveyor concerned—
  - (a) written notice of the Authority's intention; and
  - (b) a reasonable opportunity to make a submission about the matter to the Authority.
- (5) The Authority must give a copy of any direction or recommendation under this section to the municipal building surveyor or private building surveyor concerned.