



## **Building Investigation and Enforcement Policy**

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## **1. PURPOSE**

To set policy as to:

- (1) how and when Council and its Municipal Building Surveyor will administer and enforce the Building Act 1993 with relation to complaints including where a private building surveyor has been appointed and is responsible to carry out functions under the Act. and
- (2) when matters will be referred to the Victorian Building Authority and/or Building Practitioners Board for their administration and enforcement of the Building Act 1993.

## **2. OBJECTIVE**

The objective of the policy is to reasonably ascertain that buildings in the municipality meet the relevant legislative requirements to achieve acceptable levels of safety, health and well being for users of these buildings whilst managing community expectations within the context of available resources.

This policy applies to all class of buildings classifiable in accordance with Clause A3.2 of Volume 1 of the Building Code of Australia with in the City of Darebin.

## **3. DEFINITIONS**

### **PBS**

Private Building Surveyor

## **4. POLICY**

In the State of Victoria, the Building Act 1993 (the Act) and the Building Regulations 2006 (the Regulations) legislate building construction and safety standards for the built environment.

Numerous incidents involving fatalities or injuries have occurred over the years due to the inadequate condition or safety of the built environment. Some of the more notable incidents as a result of lack of adequate building safety provisions have been the Moreland boarding house fire, Kew cottages, Leige Court, Athol Lodge and Childers Backpackers in Queensland.

Council therefore has a general responsibility to administer and enforce building-related matters under the Act and Regulations within its municipal district to ensure than adequate level of safety, health and amenity of the built environment maintained. This is particularly relevant to general concerns (complaints) presented to Council by the general public. In this context, Council must provide a suitable response, according with the level of risk the matter in question may represent to the personal safety, property damage and/or financial loss of the people involved.

Therefore Council must determine the level of administration and enforcement of its community and public safety responsibilities and the extent of resources to commit to satisfy their statutory responsibilities. In doing so, Council must also assume a level of risk that needs to be minimised by the implementation of an appropriate strategy.

To this effect, Council must ensure that its statutory functions are carried out in accordance with an appropriate plan, keeping in mind that in the event of any illness, injury or death occurring in or around an existing building as a result of a failure to act, Council may be drawn into legal proceedings which may find it liable if appropriate administrative and enforcement provisions had not been implemented.

This policy establishes the extent and methodology to which Council will ensure that buildings meet the obligations under Section 212 of the Act, within the context of available resources and in accordance with the Best Value Process.

#### **4.1 Council's Intervention where a private building surveyor (PBS) is appointed**

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 or using a private building surveyor (PBS). 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.

With the establishment of the privatised building approval system, the PBS retains the responsibility and adequate provisions under the Part 8 of the Act to address matters of an administrative or minor nature for which they have been appointed. Where these matters escalate or closure can not be achieved, they must then be referred to the Victorian Building Authority in accordance with Part 8 of the Act.

The Victorian Building Authority is responsible for monitoring and enforcing compliance of the Building Act and Regulations relating to buildings and building practitioners and to promote the resolution of customer complaints about work carried out by builders pursuant to Sections 196(a) (j) and 198 of the Act.

Section 198 of the Act provides the Victorian Building Authority to investigate concerns raised with it and where appropriate direct the PBS to carry out their functions required by the Act or Regulations in an appropriate and timely manner. Section 198 of the Act is only available to the Victorian Building Authority.

As Council does not have the ability to issue a private building surveyor with such a direction, it is often incumbent on Council to refer these matters to the Victorian Building Authority for review.

Council receives on average 44 queries a week from the public in response to building permits that have been issued by PBS. These queries range from administrative neglect or error to matters of risk or danger to persons or property or siting of buildings and /or structures.

The principal question for Council is to determine when to exercise the provisions available under the Act, as intervention in matters where a PBS has been appointed and has the legislative provisions to address these matters without Council intervention can represent a significant expenditure of Council resources and can increase Council's exposure to risk.

It is critical where a query is received by Council relating to a private appointment to determine the nature of the matter and not simply refer the matter to the PBS. This may require additional ground work including reviewing documentation or site inspections prior to providing a response.

Where it is determined that the matter is of an administrative or minor nature it may be referred back to the private building surveyor for their action however in the circumstances where there is a real risk of danger to persons or property or the siting of buildings and /or structures there may be a need for Council to intervene.

When advising a resident that the matter is best dealt with by the PBS, it is essential that the Permit process is explained including the roles of Council, PBS, Victorian Building Authority and BPB and also as to how Council has arrived at this decision. It should also be considered, where practical to contact the PBS and draw their attention to the issue prior to responding to the resident.

This policy adopts the Municipal Building Control Intervention Filter Criteria Guideline, to assess and respond to complaints from the public where a private building surveyor has been appointed. The full Filter Criteria document is presented in Appendix H of this policy document, as a procedural reference. Associated letter formats presented in the Guideline are also to be adapted for use by Council.

## **4.2 Council's Intervention in Other Cases**

Council's building regulatory responsibility and the fundamental objective of the Building Services Unit is to oversee the proper observance of building construction and safety maintenance standards to safeguard the health, safety and amenity of occupiers and users of buildings within the Municipality. This is achieved through the administration of the provisions of the Act and the Regulations. The Municipal Building Surveyor, by appointment, has delegated power to administer and enforce such provisions.

It is incumbent upon Council to determine the level of administration and enforcement of its community and public safety responsibilities. In determining the amount of resources to commit to satisfy their statutory responsibilities, Council has to assume a level of risk that needs to be minimised by the implementation of an appropriate strategy.

To this effect, Council must ensure that its statutory functions are carried out in accordance with an appropriate plan, keeping in mind that in the event of any illness, injury or death occurring in or around an existing building as a result of a failure to act, Council may be drawn into legal proceedings which may find it liable if appropriate administrative and enforcement provisions had not been implemented.

A well-known legal case - *Shire of Pyrenees v Day and Coronial inquest in to boarding house deaths of Leigh Sinclair and Christopher Giorgi* - highlights the need for a Council, once made aware of a breach of the Act or Regulations, to ensure that adequate measures are taken to exercise their statutory duty and enforcement measures under the Act.

## **5. POLICY CONFIGURATION**

**5.1** When a complaint is received, the Municipal Building Surveyor will use the Building Control Intervention Filter Criteria ('the Filter Criteria') to determine when to intervene using the powers under the Building Act. The filter uses a risk assessment matrix to classify the method of response based on the level of risk to life and property.

- 5.2** The filter criteria provides for a range of actions - from immediate action by the Municipal Building Surveyor to referring the complainant to the relevant building surveyor (for him or her to attend to the matter) in the case of low risks.
- 5.3** Serious misconduct by any building practitioner will be referred to the Building Practitioners Board or the Victorian Building Authority for supervision, direction and/or discipline.

## **6. PROCEDURE**

Requests for council to investigate specific matters should be submitted in writing giving details on the matter of concern, personal and contact details. The process should be carried out in accordance with Diagram 1 and as outlined in 6.1 & 6.2 below.

# Reactive Compliance Procedure

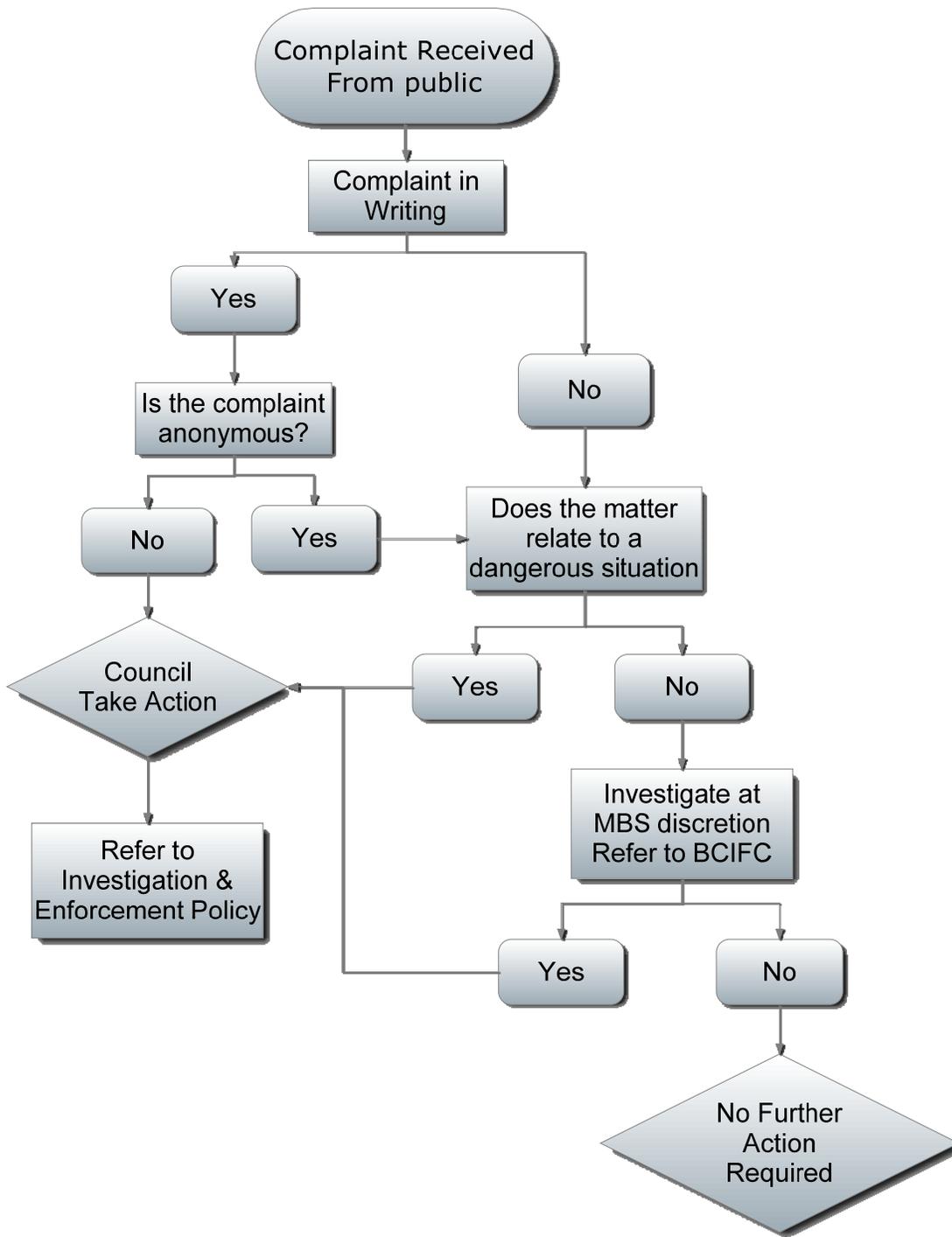


Diagram1

## **6.1 PBS Procedure**

For a given matter of complaint where a PBS is appointed, Council will use the Municipal Building Control Intervention Filter Criteria to identify the appropriate line of action through the following steps:

- a) Determine the possible consequence of the matter being raised (Table H 1)
- b) Determine the occurring likelihood of the matter (Table H 2)
- c) Identify the level of risk generated by the matter (Table H 3)
- d) Identify action to be taken (Table H 4)

(Refer to Appendix H for tables)

Once the required action is identified, Council will proceed to:

- 1) Refer the matter to PBS without delay in the case of Extreme or High or Moderate levels of risk
- 2) Taking immediate action to suitably reduce risk in the case of Extreme level of risk;
- 3) Taking action if PBS is not taking action to suitably reduce the risk within reasonable time, in the case of High level of risk
- 4) Refer the matter to PBS within 7 days in the case of Moderate and low levels of risk

### **NOTES:**

1. No further action will be required by Council after the matter has been referred to the PBS in the case of Moderate and Low levels of risk
2. For matters with a Low level of risk, the complainant will be referred to the PBS without delay and no further action by Council will be required.
3. In all cases, referral and/or response letters will be produced at the earliest possible time, according with standardised letter formats provided by the Filter Criteria document.
4. 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.
5. 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 Victorian Building Authority for investigation.

## **6.2 Council Intervention Procedure**

The Filter Criteria presented above is an appropriate means to determine the gravity of any identified building control situation that may represent a risk to personal safety or financial loss, in general. For that reason, this policy adopts the Filter Criteria's methodology to identify the level of risk generated by any such matter before deciding on a line of action.

## 6.2.1 IDENTIFICATION OF THE LEVEL OF RISK

Reported matters considered of a potentially urgent nature will trigger an immediate site inspection. Less urgent matters will be investigated within 5 to 7 days from reporting.

Once a physical inspection of the building/land/place concerned has been carried out, the level of risk is to be identified using the Filter Criteria's methodology, as presented in 6.1 (a-d), above. Council will then take the appropriate action as described below.

### 6.2.1.1 Extreme level of risk – Issuing of Emergency Orders

Extreme danger exists to life or property exists, arising out of the condition or of a building, the land on which building work is being or is proposed to be carried out or a place of public entertainment.

Council must issue an emergency order which must be served on the owner and the occupier of the building, land or place concerned without delay after it is made,

Where an owner fails to carry out work as required by an emergency order, Council may cause that work to be carried out, under Section 121 of the Act. In circumstances where immediate danger exists and the owner cannot immediately be contacted or is unable or unwilling to take immediate action to comply with the emergency order, Council may seek authorisation from the Minister to take any necessary action, under Section 122 of the Act. In such cases, Council may seek recovery of any associated costs.

Council may request the assistance of a member of the police force to evacuate a building, land or place of public entertainment, in accordance with an emergency order, under the provisions of Section 124 of the Act.

### 6.2.1.2 High level of risk

Council has the option to either issue an emergency order or a building notice or a building order to stop building work or a building order for minor work or a combination of them.

In the case that an emergency order is required, its procedure is to be as described in 6.2.1.1.

Timeframes for compliance may be relaxed according with particular circumstances.

### 6.2.1.3 Moderate level of risk

This level of risk involves consequences to personal safety or property damage ranging from insignificant to moderate. The likelihood of moderate consequences is from unlikely to rare and likely to almost certain for minor and insignificant consequences.

A complaint within these ranges may be a genuine concern for an individual but it may represent a very lean chance for Council to undertake successful legal action at the end of a process of

enforcement under the Act and the Regulations. On this basis, a three step process is to be followed to deal with complaints of this level which consists of:

- Provision of information – objective building control information; clarification on points of concern that may be irrelevant under building legislation; unlikely success for legal action.
- Negotiation between parties (if necessary).
- Enforcement action (only as a last resort). A building notice or a building order for minor works may be the best options in these cases, if negotiations fail. These instruments are to be issued and served according with the processes described in 7.2.1.2, above.

#### 6.2.1.4 Low level of risk

This level of risk involves unlikely, minor or insignificant consequences to personal safety or property damage. Council's action is to be limited to an advisory role. The following points have to be explained to a complainant when advising that Council will take no action on the matter:

- Clear and concise information on any building control aspects that may be involved.
- The minimal level of risk involved gives Council virtually no chance to take any effective action.
- A written request has to be made if further clarification is required.

#### NOTES:

- 1- Complainant to submit a written request for the complaint to be investigated, giving details on the matter of concern, personal and contact details.
- 2- The complainant has to be informed that where the priority level for the complaint is LOW it will be attended to within the next two-three weeks.

## 7. ENFORCEMENT

Where, in the opinion of the Municipal Building Surveyor, a significant breach of the Act or Regulations has occurred or compliance can not be achieved through the provisions available under Part 8 of the Act, enforcement action shall be taken through the Magistrates Court with application for orders without undue delay.

Where the MBS is of the opinion that any Registered Building Practitioner (Building Surveyor, Building Inspector, Engineer, Designer or Builder) has engaged in unprofessional conduct pursuant to Section 179(1) of the Building Act 1993, details of the matter, with supporting evidence, will be referred to that Building Practitioners Board for Inquiry.

## **8. ROLES OF RELEVANT AUTHORITIES**

### **8.1 Council**

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 2006* (“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.

### **8.2 The Victorian Building Authority**

The Victorian Building Authority 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 pursuant to *Sections 196(a) (j) and 198* of the Act..

*Section 198* of the Act provides the Victorian Building Authority to investigate concerns raised with it and where appropriate direct the PBS to carry out their functions required by the Act or Regulations in an appropriate and timely manner. *Section 198* of the Act is only available to the Victorian Building Authority.

### **8.3 The Building Practitioners Board**

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 Victorian Building Authority 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.

## **9. RELEVANT LEGISLATION**

- Building Act 1993
- Building Regulations 2006
- Building Code of Australia

## **10. CROSS REFERENCES TO OTHER POLICIES/ DOCUMENTS**

Building Control Intervention Filter Criteria and supportive letters.  
Powers of Entry Procedures Policy

## **11. FORMS AND ATTACHMENTS**

**Attachment 1 – Administration Flowchart**

**Attachment 2 – Building Notice Flowchart**

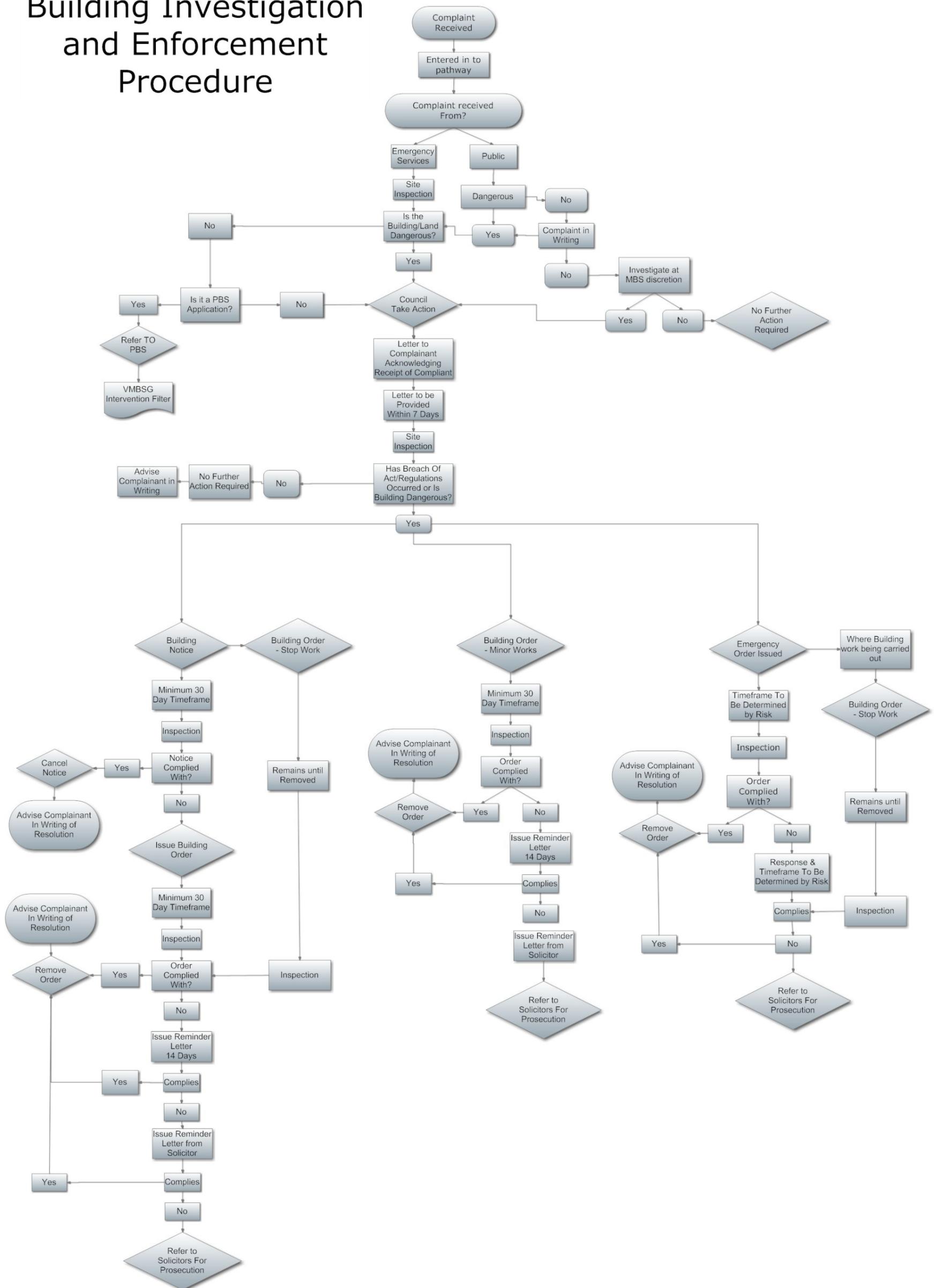
**Attachment 2 – Owners Option Flowchart**

**Attachment 3 – Municipal Building Control Intervention Filter Criteria**

**FLOWCHART FOR ADMINISTRATION AND ENFORCEMENT PROCESS**

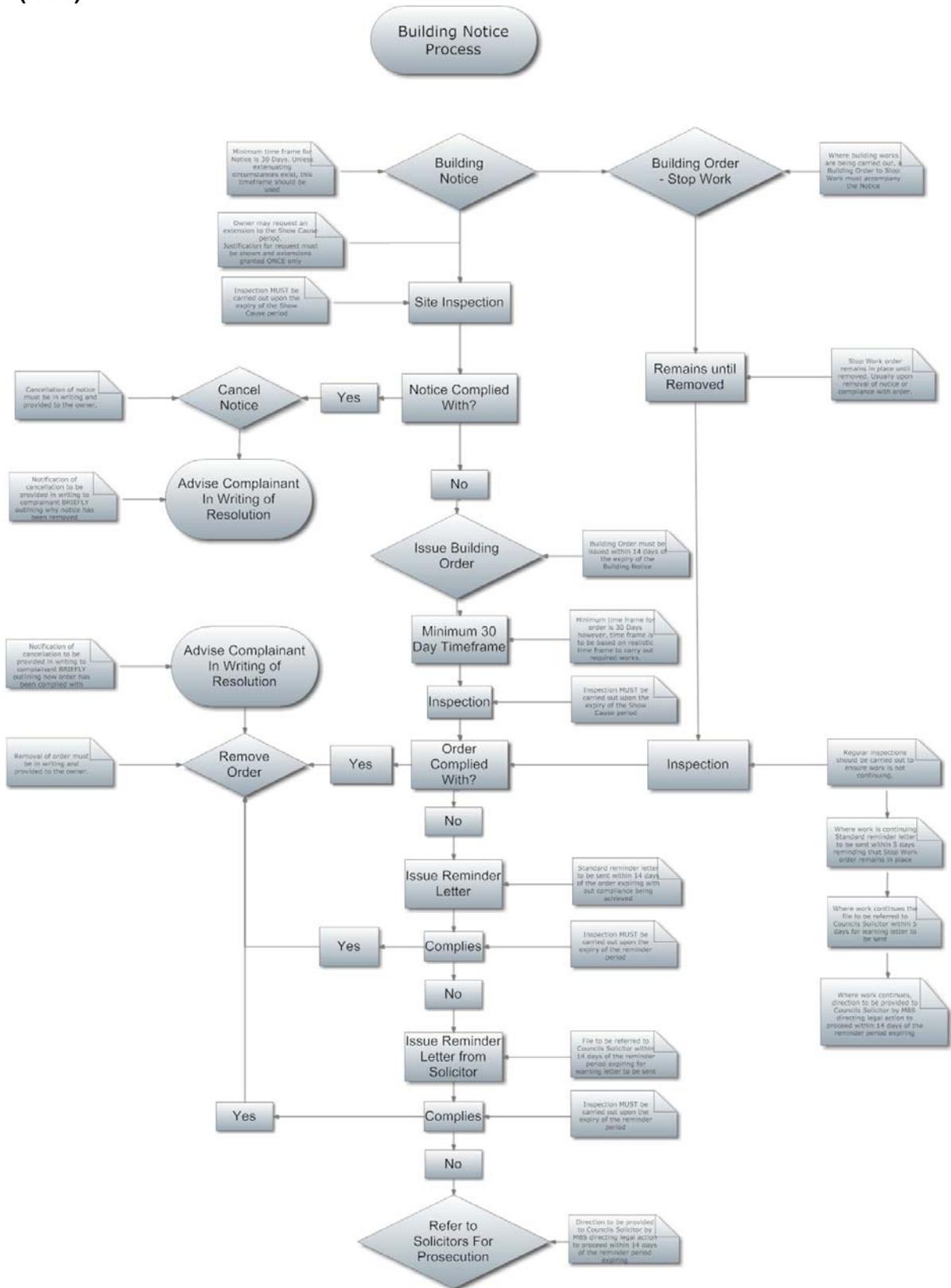
(Att 1)

# Building Investigation and Enforcement Procedure



# FLOWCHART FOR ADMINISTRATION AND ENFORCEMENT PROCESS

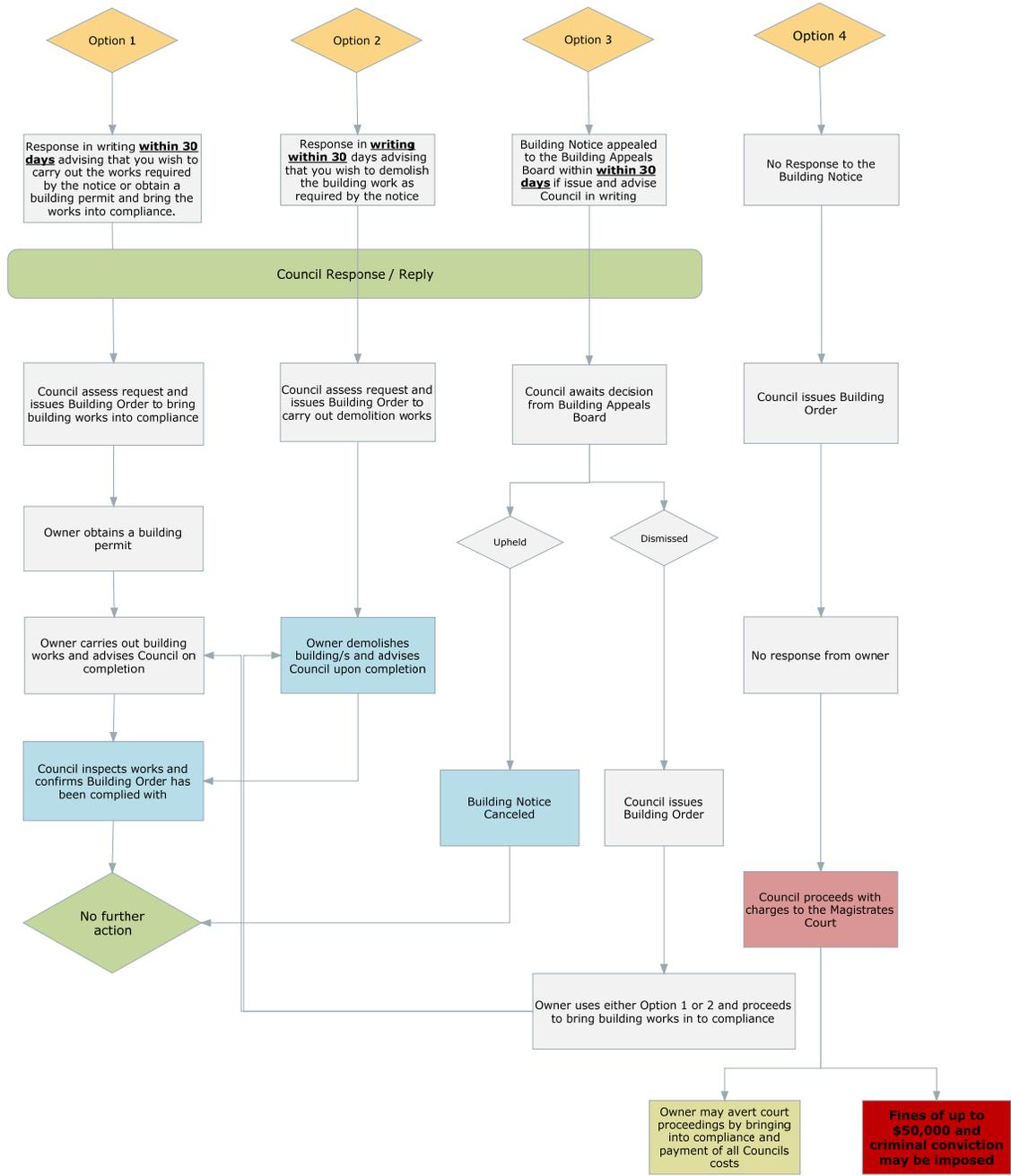
(Att 1)



# Owners Option Flow Sheet (Att 3)

**You have received a Building Notice  
What do you do now?**

## Owner Response Options



**Municipal Building Control Intervention Filter Criteria**  
**(Att 4)**