



## **Private Building Surveyors Premature ceasing of functions**

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## **1. PURPOSE**

To highlight the consequences of private building surveyors not being able to complete appointed functions and specify the approach to be taken by Council's Building Service Unit in dealing with these matters.

## **2. OBJECTIVE**

The objective of this policy is to that a standard approach is taken when considering take on applications for the completion of a private building surveyor's functions in circumstances where the private building surveyors registration has been cancelled or suspended and to minimise the exposure to risk for Council.

## **3. SCOPE**

This policy applies to all buildings located with in the City of Darebin where a Private Building Surveyor has been appointed pursuant to Section 76 of the Building Act 1993.

## **4. Background**

Since 1994 the building control system in Victoria has been administered by a combination of Council, private building surveyors and the Victorian Building Authority. A summary of how the system works is explained in appendix A.

There have been recent cases of private buildings surveyors being de-registered for unprofessional work practices and the issuing of questionable building permits. Upon losing registration these building surveyors are not permitted to practise. This leaves thousands of unfinished building permit projects up in the air because there is no longer a building surveyor assigned to carry out checking of plans inspection of the work and issuing occupancy permits or certificates of final inspection.

More private building surveyors are in line for disciplinary action or de-registration which is likely to add to the number of building projects without administrative authority. All council districts can be affected as private building surveyors typically cover large areas in their operations and issue a significant proportion of building permits.

Councils should prepare in advance for potential new cases and the implications. Council insurers have also raised concerns about future liability should councils take on the completion of a private building surveyor's functions in circumstances where the professional practices of the private building surveyor are such that their registration has been cancelled or suspended.

There are various circumstances in which private building surveyors are not able to complete their appointed functions:-

- cancellation or suspension of registration
- retirement
- death
- illness
- insolvency
- disappearance

- lack of insurance.

## Core Issues

What does this mean to:

- Council?
- the property owner?
- the builder?
- the private building surveying industry
- the Victorian Building Authority?

If a private building surveyor is unable or unwilling to complete functions, there is a question as to how the project will be finalised (the work needs to be inspected at mandatory inspection stages and 'signed off' by a certificate of final inspection or an occupancy permit). As the Building Act allows the owner of the land a choice between using a private or municipal building surveyor at the outset of the process, it is in keeping that the same choice should apply for any take-over of functions that cannot be completed by the first building surveyor.

Although this sounds straight forward, a number of issues arise. The owner of the land may not be aware that the private building surveyor is no longer capable of or willing to act (many owners are not even aware that a private building surveyor has been appointed). Even if the owner becomes aware there may not be incentive for the owner to appoint a new building surveyor especially if new fees are needed to complete the functions. The Building Act does not prevent building work from continuing despite the appointed building surveyor being unable to act. Then there is the possibility that, if the first private building surveyor has been de-registered for poor practice, any new building surveyor may not be prepared to take over the functions.

From a consumer perspective a private building surveyor contracts with the owner to undertake and complete the functions involved with the building permit process including the carrying out of inspections, the issuing of any occupancy permit and generally ensuring the building work complies with the requirements of the building regulations. Failure to meet these principle functions leaves a liability with the owner and the community. Ideally, the private building surveyor's insurance should indemnify against such cases, however, the impropriety of the conduct may nullify insurance cover. Action could be taken against the private building surveyor personally, however litigation costs would be high and the private building surveyor may have limited assets.

There is legal advice that Councils do not have a legal obligation to take on the functions of private building surveyors who can no longer act. This is based on the Act generally as well as the wording of section 212 of the Building Act, which lists Council as being responsible for the administration and enforcement of various parts of the Act and the Building Regulations but specifically excludes Part 6 of the Act which relates to the appointment and functions of private building surveyors.

Should a council choose to take on completion of functions it would need to consider the potential liabilities, especially if the conduct of a private building surveyor has been found to be so unprofessional that it warranted the suspension or cancellation of that person's registration. It follows therefore that it is possible that the building designs approved and the building work carried out may not comply with the Building Regulations.

Regardless of whether Council takes over the functions, the Municipal Building Surveyor may still act, using the *building control intervention filter criteria (BCIFC)* as policy where

there is a known danger that requires enforcement action. The BCIFC sets out a risk matrix as to when to intervene in private building surveyor functions which can be extended to cases where the building surveyor cannot act.

Given their quasi public office role, the integrity of private building surveyors should be equivalent to that of municipal building surveyors. However, because private surveyor accountability and management differ greatly from local government the Building Act relies on:

- the Victorian Building Authority's powers to supervise and direct private building surveyors in performance of their functions
- the Building Practitioners Board's ability to hold Inquiries and take various actions from reprimand to cancellation of registration of building practitioners.

It is arguable that the Victorian Building Authority (BC) has neglected to sufficiently use its supervisory powers even when it has been given detailed evidence of poor practice and failures. In numerous instances, the Victorian Building Authority has deflected site work complaints back to councils and, rather than issuing directives to the private building surveyor involved, has either simply investigated professional standards involving cumbersome evidence gathering, or carried out random performance audits of administrative matters. It could also be argued that the lack of supervision and direction has contributed to the current situation where there are a number of private building surveyors potentially facing disqualification.

The result of the termination of functions of a rogue private building surveyor leaves an administrative hole in the system. The builder has no-one to call for inspections, the owner cannot obtain finalisation of the work, Council does not have acknowledgement of completion and subsequent re-valuation, the capped liability period for insurance does not commence and there is potential that the building design and work is faulty.

Currently there are 160 building permits that are outstanding within the municipality due to the deregistration of private building surveyors. All of the owners of these properties have been notified as to the status of their permits and a number have already obtained permits to complete the outstanding works through other private building surveyors.

Council's Building Service Unit has been referring affected owners and developers to private building surveyors for completion of building permits and inspections. The unit is not taking on these permits due to the associated risks and issues including:

- potential for inheriting liabilities surrounding earlier sub-standard work for which the MBS may personally become liable and could be subject to sanction by the Building Practitioners Board (BPB) (eg loss of registration) or civil litigation
- substantial work and effort to resolve non-compliant issues, including potential for destructive testing to inspect building work already carried out
- lack of existing records making completion of functions very difficult
- negative impact on existing Council workload, risk and resources
- costs and cost-shifting from the agency with supervisory responsibility (Victorian Building Authority) to local government
- undesirable precedent that local government will bail out situations which are the result of failings in other sectors of government
- potential insurance premiums increase due to additional risk exposure and
- conflict of charging the owner new fees and then carrying out enforcement.

This is the standard approach adopted where a private building surveyor has had their registration cancelled or suspended or where the Victorian Building Authority has neglected

to supervise the private building surveyor under section 198 of the Building Act. This is consistent with the following principles of the *Building Control Intervention Filter Criteria*:  
*...a private building surveyor, appointed under the Building Act, is responsible for ensuring that the Act and Regulations are complied with in respect of the building, land or place in relation to which he or she is appointed*  
*.. In recognising the above, the VMBSG recommends to councils that... if it becomes apparent there has been a lack of action or inappropriate conduct or practice by any practitioner the matter will be referred to the BPB/BC as appropriate.*

## **4. POLICY**

Council's Building Service Unit will not take on applications for the completion of a private building surveyor's functions in circumstances where the professional practices of the private building surveyor are such that their registration has been cancelled or suspended.

Council's Building Service Unit will refer affected owners and developers to private building surveyors or the Victorian Building Authority for completion of building permits and inspections.

Council may taking on incomplete building permits, where for instance a building surveyor has to finish up their practice for reasons other than compliance issues. These circumstances will be considered on a case by case process by the Municipal Building Surveyor.

## **6. ENFORCEMENT**

The Municipal Building Surveyor may act, using the *building control intervention filter criteria (BCIFC)* as policy where there is a known danger that requires enforcement action. The BCIFC sets out a risk matrix as to when to intervene in private building surveyor functions which can be extended to cases where the building surveyor cannot act.

## **7. Relevant Legislation**

- Building Act 1993
- Building Regulations 2006

## **8. Cross references to other policies/ documents**

- The Building Permit System in Victoria - Appendix A
- Building Control Intervention Filter Criteria