

## Building Practice Note NO-01: Building Notices and Building Orders

This Practice Note provides guidance on building notices and building orders.

The content below provides guidance on:

- Role and responsibilities of Building Surveyors
- Serving of Building Notice, Building Order and Emergency Order
- Building Notices
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- Appeals

### Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993 (Act) or the Building Regulations 2018 (Regulations).

- **Act** – Building Act 1993
- **MBS** – Municipal Building Surveyor
- **PBS** – Private Building Surveyor
- **RBS** – Relevant Building Surveyor (a PBS or MBS)
- **Regulations** – Building Regulations 2018

### Role and Responsibilities of Building Surveyors

Building surveyors play an important role in the enforcement of the Act and Regulations and in maintaining the system's integrity.

There are various means of enforcement for building surveyors to use under Part 8 of the Act:

- Building notices
- Building orders – general
- Building orders to stop building work
- Building orders – minor building work
- Emergency orders (an emergency order can only be made by an MBS and only within their municipality)

Section 118A of the Act states building notices and orders are to be a last resort where a direction to fix has not been complied with, or a direction to fix is not appropriate or possible.

Pursuant to section 125 of the Act, the RBS must give to the relevant council a copy of a building notice or building order or emergency order within 7 days of serving the building notice or making the building order or emergency order, and similarly, provide written notice to the council within 7 days after it has been fully complied with, amended or cancelled.



Pursuant to section 107 of the Act, a PBS may only serve a building notice or make a building order if they have been appointed as the RBS. This power continues after the building work is complete.

## Serving of Building Notice, Building Order and Emergency Order

Building notices, building orders and emergency orders may be served in accordance with the methods listed under section 236 of the Act. Calculation of the period to determine the date to take further actions should be considered as per section 44 and 49 of the Interpretation of Legislation Act 1984.

A building order to stop building work may be served on any person apparently in charge of the building site.

If a building notice or building order is to be served on an owner of a lot affected by an owners corporation, the notice or order may be served on the owners corporation. An owners corporation served with a building notice or building order must provide a copy to each affected lot owner within a reasonable time.

### Building Notices

A building notice is an opportunity for the owner of a building or land on which building work is being, or is proposed to be carried out, or a place of public entertainment to make representations before further enforcement action is taken. A building notice must be in the form of Form 11 under Schedule 4 of the Regulations and must include information set out in regulation 179 of the Regulations.

A building notice can only be served if any one of the following circumstances exists:

- (a) Building work that requires a building permit has been carried out without a building permit or in contravention of the building permit, Act or Regulations;
- (b) The use of the building or place contravenes the Act or Regulations;
- (c) Safety or emergency services, installations or equipment have not been maintained in accordance with the occupancy permit and the Regulations;
- (d) The building or place is unfit for occupation;
- (e) The building, land, place or building work is a danger to life, safety or health.

Once a building notice is served on an owner, they may make representations to the RBS within the time and manner specified in the building notice.

When the RBS receives representations from the owner within the specified time, they may cancel the building notice if appropriate to do so after considering the representations. If the RBS is not satisfied that the representations are sufficient to cancel the building notice, the RBS may proceed with making a building order.

### Building Orders

A building order is an order to do or refrain from doing a certain action set out under section 111 - 113 of the Act. Building orders must be in the form of Form 12, 13 or 14 under Schedule 4 of the Regulations and must include information set out in regulation 181 of the Regulations.

A building order – general made under section 111 of the Act can only be made after considering any representations made by the owner and at the end of the specified time to make representations in the building notice. It is essential that the building notice and building order are consistent in subject matter. If the building order contains additional matters which were not specified in the building notice, then the owner may not have been given an opportunity to make representations on those additional matters and therefore the validity of the building order can be challenged.

A building order to stop building work made under section 112 of the Act can be made without first serving a building notice and can also be made in addition to a building order – general. Certain building work may be exempt from a building order to stop building work if the RBS considers that the building work to be carried out is—

- in the interests of the safety or security of the building, land or place where the building work is being carried out;
- in the interests of the safety or health of the public;

- required to prevent a nuisance to members of the public or occupiers of nearby properties.

A building order – minor building work made under section 113 of the Act can be made without first serving a building notice only if the building surveyor is of the opinion that the work to be carried out under the order is of a minor nature.

When making a building order, the RBS should consider if the work to be carried out under the order should be subject to a building permit or compliance with the building regulations as per section 119 of the Act and specify this in the order, including any relevant conditions.

The amendment or cancellation of building orders can be requested by the owner if there is a change in circumstances. On a request being made, the RBS may amend or cancel the building order or refuse the request.

A building order remains in force until complied with or cancelled by the RBS or the Building Appeals Board. Building orders are binding on every subsequent owner or occupier of the land subject to being properly served on the owner or occupier as per section 236(6) of the Act.

## Non-compliance with Building Orders

If a person fails to comply with a building order made by a PBS, then pursuant to section 115 of the Act, the PBS must refer the matter to the VBA within 14 days after the final date for compliance specified in the order and must take no further action in respect of the matter.

Guidelines on how to refer a building order to the VBA can be found on the [VBA website](#).

## Emergency Orders

An emergency order is an order to do or refrain from doing certain actions set out under sections 103 and 104 of the Act.

An emergency order can only be issued by the MBS if the MBS is of the opinion that there is a danger to life or property. A PBS can notify the MBS of a situation where there is a danger to life or property so that the MBS can consider making an emergency order.

Section 228J of the Act allows an authorised person (e.g. MBS) to enter a building or land without a search warrant. This power can be used to ascertain that there is a danger to life or property that justifies making an emergency order.

Emergency orders must be in the form of Form 10 under Schedule 4 of the Regulations and must include information set out in regulation 177 of the Regulations. The MBS must give a copy of the emergency order to any PBS appointed to perform a function in relation to the building, land or place.

The duration of emergency orders is 48 hours. The 48 hour period may be extended if the MBS issues a building notice asking the owner to show cause why entry into, or the use or occupation of, the building or place should not be prohibited, before the end of the 48 hour period. The emergency order then remains in force until the earlier of 14 days or the end of the specified period for the building notice.

Subject to section 105A, an emergency order remains in force until it is complied with or cancelled by the MBS under section 105B of the Act or the Building Appeals Board under section 142 of the Act.

## Appeals

Section 142 of the Act allows the owner to appeal to the Building Appeals Board against a building notice, building order, emergency order for a variety of reasons such as the decision to serve a building notice, the making of a building order, a condition of a building order or the refusal to cancel a building notice or building order. The prescribed appeal periods (30 days) are under regulation 271(1)(o)-(s) of the Regulations.

## Related Documentation

- Building Act 1993 (VIC)
- Building Regulations 2018 (VIC)

## Contact Us

If you have a technical enquiry, please email [technicalenquiry@vba.vic.gov.au](mailto:technicalenquiry@vba.vic.gov.au) or call 1300 815 127.

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