

RESPONDING TO A BUILDING NOTICE RECEIVED FROM COUNCIL

BUILDING INFORMATION SHEET (2022)



What is a Building Notice

A Building Notice is a legally regulated document issued under the *Building Act 1993* which identifies compliance or safety issues for a property or building. All building work within Victoria must comply with the *Building Act 1993* (the Act) and *Building Regulations 2018* (the Regulations). If you get a Building Notice from Council's Municipal Building Surveyor (MBS), works on your property are suspected to not comply with the Act and Regulations and may be unsafe or illegal. This includes work undertaken without a permit or works that do not comply with an issued Building Permit.

A Building Notice will be issued to the owner of the property, not against the builder, developer, or other contractors. In the case of alleged illegal building work, the owner will need to justify (show cause) why the building work should remain.

A Building Notice is the first step in the enforcement process. Council encourages you to respond to the Building Notice. If you don't respond to a Building Notice in time, you may be given a Building Order.

What it Means to Show Cause

The Building Notice sent to you requested that you 'show cause' as to why you should not do something described in the Building Notice. For example, why you should not demolish a building.

The term 'show cause' is a legal term which means:

'to give a person the opportunity to explain or provide a reason to either do or not do a requested action.'

The Building Notice is in essence an invitation for you to put your case forward. You may choose to provide reasons why your building work currently complies with the Regulations and Act and should stay as it is.

You may also choose to propose corrective work, including partial or complete demolition. The work you propose may require a Building Permit. We highly recommend that you seek advice about your intended project from an architect, building designer or other registered Building Practitioner.

Your response to the Building Notice must be in writing addressed to the MBS.

Demolishing a Non-Compliant Structure

You may choose to demolish your non-compliant building work. Before undertaking any demolition, you should discuss the matter with the Building Surveyor who issued the Building Notice. A Building Permit or a Building Order may be required to be issued prior to any demolition work being undertaken.

Building Work Done Without a Building Permit

The MBS may give you the option on the Building Notice to apply to retain any structures or buildings that are alleged to be built without a Building Permit. If you choose to apply, you will be required to provide evidence that the building complies with the requirements of the Regulations and Act. We highly recommend that you seek independent advice from a registered Building Practitioner, Architect or Engineer. They can assess the illegal work and determine the level of rectification work required to achieve compliance.

Failure to comply with a Building Notice

A Building Notice is the first step in the enforcement process. If you don't respond to a Building Notice in time, or if the MBS is still convinced that the issues outlined in the Building Notice are valid and have not been addressed, a Building Order may be issued to the owner.

A Building Order requires you to do the things outlined in the Building Notice. See Council's building information sheet, *Responding to a Building Order Received From Council* for further information. Failing to comply with a Building Order may result in legal action against the owner.

Your Appeal Rights

You may choose to appeal the MBS's decision to issue a Building Notice to a tribunal which is independent of Council. The Building Appeals Board (BAB) is the statutory venue for hearing disputes under the Act.

For more information go to www.buildingappeals.vic.gov.au.

Seeking Independent Legal Advice

You should seek independent legal advice to clarify your rights and responsibilities under the Act.

The following sources may assist you in seeking independent legal advice:

The Law Institute Victoria: www.liv.asn.au

Victoria Legal Aid: www.legalaid.vic.gov.au

Fitzroy Legal Service: www.fl.s.org.au

Further Information

The following sources provide key information that explains your rights and obligations in relation to Building Notices.

Building Act and Building Regulations:

www.legislation.vic.gov.au/in-force

Access to the Act and Regulations.

Victorian Building Authority:

www.vba.vic.gov.au.

Access practice notes, ministerial guidelines, and other technical information.

Contact Council

If you have any further questions or would like to know more about the Building Notice process, please contact the Council Building Services team. You may also make an appointment to speak in person should you require additional information.

Council Building Services Team:

Email: building@cgoldshire.vic.gov.au

Phone: (03) 5461 0627