

## **What are the Responsibilities of a Council in Relation to Administration of the Building Act 1993 Within its Municipality?**

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Section 212 of the *Building Act 1993* places a broad range of responsibilities on municipal Councils in relation to the administration of Building standards in their municipality. Section 212(1) states as follows:

*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.*

This statement places a broad responsibility on Councils in relation to administration and enforcement of the said Parts of the Act and Building Regulations. The responsibility is all encompassing save for where it is expressly limited. The words '*responsible for*' seem to be used in an imperative tense, implying an obligation on Councils to enforce and administer the said Parts within the relevant municipal district. Councils are not merely given an *ability* to administer and enforce the Act, they are given a *responsibility*.

Logically then if there is any failure to administer or enforce a relevant Part of the Act, and the Act and/or Regulations do not expressly preclude the responsibility of the Council, then the failure should be construed as a failure on the part of the relevant municipal Council.

By further logical extension, if this hypothetical failure to enforce or administer the Act causes loss or damage to some third party, that third party may have a cause of action accruing against the relevant municipal council.

### **What are some of Council's Responsibilities?**

Part 3 of the Act relates to Building Permits. Pursuant to this section a number of activities are prohibited, and a number of procedures are mandated.

Section 16 of the Act prohibits the carrying out of building works by any person unless a building permit has been issued in respect of those works. Substantial fines may be issued for breach of this section.

Similarly s25B prohibits the carrying out of domestic building works to a value greater than \$12,000.00 by an owner builder unless the requirements of s25B are met including the issuing of a certificate of consent to the owner-builder.

Potentially if works were carried out in contravention of these sections, and the Council had actual knowledge, or constructive knowledge of this, but failed to take reasonable steps, it may be construed as a failure to comply with its responsibility to administer and enforce the Act. If loss or injury was caused to a third party as a result, the Council may find itself being drawn in as party to an action claiming damages or compensation.

Administration of many other matters relating to building permits is stated to be the responsibility

of the 'relevant building surveyor' which may absolve the Council of responsibility in the case where a private building surveyor has been appointed.

Part 4 primarily places responsibilities on the relevant building surveyor in relation to inspection of works which are underway. This in itself raises an interesting question: assuming the relevant building surveyor is private, if he/she should fail to comply with the inspection obligations under Part 4, does it fall to the Council to take steps to force the private building surveyor to comply with the Act? Enforcement may include referring a private building surveyor to the Building Practitioners Board in the event that Council becomes aware that a private building surveyor is not fulfilling his/her duties under Part 4.

Part 5 of the Act looks at occupation of buildings. One section which may require Council enforcement is section 39, which makes it an offence to occupy a building requiring an occupancy permit unless that occupancy permit has been issued.

Similarly sections 49 and 50 prohibit public entertainment being conducted at place of public entertainment without occupancy permit has been issued permitting this use. Breach of this section could have potentially dire consequences for public safety, hence the large maximum fines apply in the event of breach. The gravity of responsibility which falls to Council to administer and enforce this important section, is particularly sobering. As part of fulfilling their duty, Councils are given a power of inspection under s63 of the Act.

The municipal building surveyor of a Council is given fairly broad powers under Division 4 of Part 5. Under s70 of the Act the MBS may amend a permit or approval under Part 5 if the amendment is necessary in the public interest. The MBS also has the power to cancel an occupancy permit if the building is no longer suitable for occupation, if the use of the building has changed from what is permitted on the permit, and/or if the strength of the building has become less than required to bear the loads stated on the permit.

Part 7 of the Act deals with Protection Works. Section 88 is perhaps the most relevant to municipal Councils, as it prohibits an owner from carrying out building works prior to carrying out any required protection works. Again public safety is at risk if this section is not complied with, yet residual responsibility for administration and enforcement falls to the Council.

Division 1 of Part 8 is particularly important as Councils, through their municipal building surveyor, are bestowed with the power to issue emergency orders, in the event that the condition or use of a building or land gives rise to a danger to life or property. Municipal building surveyors also have the ability to issue a building notice or building order under division 2 of Part 8. Municipal building surveyors also hold the power to cause work to be undertaken to comply with an emergency order or building order which it has issued, should the owner fail to comply.

### **Observations:**

There are some very serious requirements which are contained the Building Act which are primarily intended to protect public safety. On top of this Council is specifically given a number of powers to enforce compliance, notably the powers to issue emergency orders and building orders, and the powers to amend building permits under Division 4 of Part 5. Furthermore they have the power to prosecute owners who breach a penalty provision of the Act.

These powers combined with the positive duty on Councils from s212 of the Act to administer and enforce the Act, make it appear that the responsibilities weighing on Council are quite significant. Perhaps they are more significant than many Councils are aware.

Typically where a body is charged with the responsibility of administering and enforcing numerous provisions, where the consequences of failure could include death or serious injury, we would inspect to see large investigation and enforcement teams. This would be firstly to ensure that the public are actually protected, and secondly to avoid any assertion that a Council was inadequately performing its duty of administration and enforcement.

It begs the question why many Councils have teams of roaming enforcement inspectors for things like parking infringements, unsightly gardens, and the like, but generally do not have such teams to locate and discover breaches of the Building Act. Clearly the potential dangers to the public are much greater for a violation of the Building Act, than for a typical parking violation. Extrapolating from this, the potential liability of a Council is much greater in the event that it is deemed to have failed in its duty to administer and enforce the Act, and this is deemed to have contributed to a serious injury or death.