ITEM UNDER SEPARATE COVER

FOR THE
PLANNING AND
DEVELOPMENT SERVICES &
ADMINISTRATION AND
COMMUNITY SERVICES
COMMITTEE MEETING

19 SEPTEMBER 2011

Item 1.19

Building Bill
1.19 Building Act 2011

Attachments: No. 1 - 'Building Act 2011 - The New Terms'
No. 2 - 'The Building Act 2011 has Arrived'
No. 3 - Building Permit Approvals Process - Uncertified Applications
No. 4 - Building Permit Approval Process - Certified Applications
No. 5 - Occupancy Permit /Building Approval Certificate Process
No. 6 - Table of Proposed Delegations for the New Building Act 2011
No. 7 - Proposed Fee Structure under the New Building Act 2011

Officer: Director of Planning and Development Services
Refer: Item 11.1.15: OCM 29.03.2011

Application

To update Council on the new Building Act 2011 and to advise of the processes and implications relating to the City upon the introduction of the Act on 31 October 2011. Council consideration is also sought on delegation of powers and fees associated with the new building legislation.

Updates relating to the new building control legislation have previously been presented to Councillors at Councillors Workshops, Council meetings and memorandums.

Background

Currently the State Government is in the process of passing through Parliament, legislation that will change the future of the building approvals process throughout Western Australia (WA).

The Building Act 2011 was given Royal Assent on 11 July 2011 and is expected to be proclaimed together with supporting Regulations on 31 October 2011.

The new Act aligns with the following recently proclaimed complementary Acts:

- Building Services (Registration) Act 2011;
- Building Services (Complaint Resolution & Administration) Act 2011; and
- Building Services Levy Act 2011.

The Building Act 2011 will replace Parts VII, IX and XV of the current Local Government (Miscellaneous Provisions) Act 1960 as the building control legislation. The existing Building Regulations 1989 will also be amended to complement the new Act.

With the introduction of the new Building Act 2011 there will be key changes that will affect local governments as it will introduce changes such as:

- Private Certification.
- Permit Authorities.
• Timeframe for approvals.
• Occupancy Permits and Building Approval Certificates.
• Applying for Building Permit when ready to build or occupy.
• Consent to affect other land.

The Act will also set out the role of local government (Permit Authority) which can be categorised into the following three (3) main functions:
1. Building Approval Certificates (Uncertified Applications);
2. Permit approval and issue (Building and Occupancy Permits); and
3. Enforcement.

Within the Act there are new terms used and the Building Commission has released a paper with the common terms used in the Act (Refer to Attachment No. 1).

The intent of the Act is to give the head of power to enable matters to be done and the Regulations will deal with the day to day operation of the Act.

Comment

Overview

The Building Act 2011 will replace much of the Local Government (Miscellaneous Provisions) Act 1960, and amends a range of associated Acts. The key objectives of the new Act are:
• To provide a comprehensive system of building control in WA;
• Reduce building approval times;
• Set standards for building and demolition work in WA; and
• Deal with building or demolition work that affects other land.

The Act will bring significant changes to the building approvals process, from the design stage through to the occupation of a building and covers all types of buildings within WA. It will establish Permit Authorities, to issue permits and notices/orders, ensure enforcement of permits and retain building records. A Permit Authority can be a local government, Special Permit Authority (a group of local governments) or State Government.

The Building Act 2011 enables local governments to deal with issues it cannot deal with under existing legislation, for example, the removal of fences without consent. In addition, the penalties for non-compliance are quite severe in that there are in some offences with escalating penalties up to gaol terms for repeat offenders. This enables the local government to take a more proactive role in enforcement of the building control legislation to ensure buildings are constructed in compliance with legislative requirements and appropriate standards within the community.

The main concern is that there is still confusion as to the actual role of the Permit Authority (local government), particularly in the enforcement area as the amendments to the Regulations have not been completed at this point of time. It is anticipated that there will be an additional role for the local government to undertake audits of applications being submitted for accuracy and compliance with the relevant codes and standards. Also there is expectation that the local government will be carrying out routine inspection to ensure compliance with building standards and procedures in accordance with the Act.
The Building Commission has circulated a document outlining the above areas (Refer to Attachment No.2).

Under the Act, a local government will be a Permit Authority and this is a separate function to that of a certifier. The Permit Authority checks that the application is complete and has the associated certificate (Certificate of Design Compliance) included within the application. The required permits and supporting certificates are:

<table>
<thead>
<tr>
<th>Permit</th>
<th>Certificate Required with Permit Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Permit</td>
<td>Certificate of Design Compliance</td>
</tr>
<tr>
<td>Demolition Permit</td>
<td>Nil</td>
</tr>
<tr>
<td>Occupancy Permit</td>
<td><strong>New Buildings (with a current Certificate of Design Compliance)</strong></td>
</tr>
<tr>
<td></td>
<td>Certificate of Construction Compliance</td>
</tr>
<tr>
<td></td>
<td><strong>Existing Buildings</strong></td>
</tr>
<tr>
<td></td>
<td>Certificate of Building Compliance; or Building Approval Certificate</td>
</tr>
</tbody>
</table>

The above certificates will only confirm that the building conforms to building regulations and requirements. It may, but does not have to, certify that the building meets other laws or requirements such as the City's Town Planning Scheme, environmental health and engineering requirements, heritage requirements or Swan River Trust requirements. It will be the role of the Permit Authority to ensure that the application is consistent with these requirements, including any other that are specific to the local government - such as footpath deposits, and the Permit Authority will also be required to ensure that all levies and fees are paid.

The Permit Authority will be responsible for issuing all relevant permits under the Act, including:

1. Building Permits;
2. Demolition Permits;
3. Occupancy Permits; and
4. Building Approval Certificates.

The local government as the Permit Authority will be required under the Act to still provide a certification service for Class 1 and 10 buildings (single house on a single lot and incidental structures to dwellings) where it will be required to issue a certificate that the building complies with the Building Code (Certificate of Design Compliance) and other associated legislation.

The local government as a service to the community may also provide a certification service for all other classifications of buildings (commercial) where certification from a registered building surveyor is required under the Act.
To provide this service all necessary requirements under the *Local Government Act 1995* are required to be met, in particular:

- Section 3.18 Performing executive functions; and
- Section 3.59 Commercial enterprises by local government.

Certification documents can only be signed by a registered building surveyor. On the other hand, Permits can only be signed by 'authorised persons'.

Registered building surveyors are those who are accredited through the Building Commission and at the time of the proclamation of the Act hold a current accreditation.

The powers that the local government has can be delegated to the Chief Executive Officer through Section 5.42 of the *Local Government Act 1995*. The Chief Executive Officer can then in turn sub-delegate those powers to an authorised person through the delegation of Section 5.44 of the *Local Government Act 1995*.

As one of the principles of the Act is to provide a reduction in the approval times for building approvals, the timeframes specified for processing applications will be tight and require local governments to perform at the most efficient level.

Applications can be either 'uncertified' or 'certified'. Uncertified applications will be required to be determined in 35 days *(Refer to Attachment No. 3)*. Certified applications are required to be determined in 14 days *(Refer to Attachment No. 4)*. The timeframes as specified is calendar days and includes weekends and public holidays. Failure to achieve the specified timeframes will result in the application being deemed refused and the full application fees refunded to the applicant. Notwithstanding the refund and the refusal the application will still be required to be determined for no fee and the determination is appealable through the State Administrative Tribunal (SAT).

During the assessment if there is any additional information required the local government may 'stop the clock' and request the additional information to be provided within 21 days. Upon the receipt of the additional information within the specified timeframe the 'clock is reset' and the local government is to continue to assess the application within the specified timeframe. If the additional information is not received within the specified timeframe then the application is deemed refused and the fees are retained.

The local government as the Permit Authority is also responsible to issue the Occupancy Permit which will enable a building to be occupied *(Refer to Attachment No. 5)*. Occupancy permits are required for all other classification of buildings (commercial premises - Class 2, 3, 4, 5, 6, 7, 8 and 9) and replace the now Certificate of Classification.

The issuing of an Occupancy Certificate requires an inspection to be undertaken by a registered building surveyor and if the building is compliant with the Building Permit issued by the Permit Authority a Certificate of Construction Compliance can be issued. The owner of the building is then required to apply through the Permit Authority for an Occupancy Permit. The timeframe for determining the Occupancy Permit application is 14 days with the ability to request for additional information to be provided within 21 days. Applications not determined in the specified timeframes require the application fees are to be refunded to the applicant.
Essentially, the implications of the Act on the City's current procedures relating to the processing of building applications is that the applicant when applying for a building permit (building licence) must ensure that all relevant approvals applicable to the development have been obtained before making the application to the local government for a building permit. This effectively ceases the common practice of lodging simultaneous applications for building and planning, or the local government holding applications for an extended period of time until the applicant finalises all outstanding requirements. The key differences between the existing and new building processes can be summarised as follows:

**Current Process for Residential Class 1 and 10 and Commercial 2 to 9**
- Application lodged with local government.
- Assessed for Building Code Australia compliance.
- External referrals to other agencies (FESA, Water Corporation, etc.).
- Internal assessment for compliance with Planning, Environmental Health and Technical Services requirements.
- Approval issued.

**Under the Building Act 2011**

**Uncertified Application Class 1 and 10**
- Applicant to obtain external approvals from FESA, Water Corporation, Heritage Council, Swan River Trust, etc.
- Application lodged with local government.
- Assessed for Building Code Australia compliance.
- Internal assessment for compliance with Planning, Environmental Health and Technical Services requirements.
- Approval issued.

**Certified Application Class 1 and 10 and 2 to 9**
- Applicant to obtain all required approvals necessary from FESA, Water Corporation, Heritage Council, Swan River Trust, and the City's Planning, Environmental Health and Technical Services.
- Application lodged with local government.
- Internal assessment for compliance with Planning, Environmental Health and Technical Services requirements.
- Approval issued.

**Delegation of Powers**
A Special Permit Authority or a local government will be able under section 127 of the Building Act 2011 to delegate any of its powers or duties as a Permit Authority to an employee of the Special Permit Authority or a local government (under the Local Government Act 1995 - section 5.36). The power and the duties of the Permit Authority in relation to both the approval or enforcement roles cannot be delegated to the private sector. The delegation is to be in writing, executed by, or on behalf of, the Special Permit Authority or local government. The person that has the delegated power cannot on delegate those powers to someone else.
The areas in the Act where reference to the local governments having the ability or requirements to perform tasks and delegation from the Council to employees is required are set out as follows *(Refer to Attachment No. 6)*:

- Section 20 - Grant of building permit;
- Section 21 - Grant of demolition permit;
- Section 22 - Further grounds for not granting an application;
- Section 58 - Grant of occupancy permit, building approval certificate;
- Section 96 - Authorised persons;
- Section 110 - Building orders; and
- Section 139 - Presumptions about authority to do certain things.

Currently there are 16 delegations relating to Building Control under the City's Delegation Authority Register. It is recommended that the existing delegations remain in place and be reviewed in six (6) months to ensure that any existing actions under the jurisdiction of the *Local Government (Miscellaneous Provisions) Act 1960* can still be administered.

Nevertheless, it is recommended that the following new delegation statements be added to the current City's Delegation Authority Register:

**Grant of Building Permit**

This delegation is required to enable the City to effectively and efficiently fulfil its obligations under the Act in relation to the issuing of building permits to ensure good governance in building control.

<table>
<thead>
<tr>
<th>Delegation Number</th>
<th>Grant of Building Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BD - 17</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Chief Executive Officer**

- Sub-Delegated to:
  - Director Planning and Development Services,
  - Manager Building Services,
  - Principal Building Surveyor

**Delegation**

- Authority to grant or refuse to grant building permits.

**Reference**

*Building Act 2011 Section 20*

**Grant of Demolition Permit**

This delegation is required to enable the City to effectively and efficiently fulfil its obligations under the Act in relation to the issuing of demolition permits to ensure good governance in building control.

<table>
<thead>
<tr>
<th>Delegation Number</th>
<th>Grant of Demolition Permit</th>
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<tbody>
<tr>
<td><strong>BD - 18</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Chief Executive Officer**

- Sub-Delegated to:
  - Director Planning and Development Services,
  - Manager Building Services,
  - Principal Building Surveyor

**Delegation**

- Authority to grant or refuse to grant demolition permits.

**Reference**

*Building Act 2011 Section 21*
Further Grounds Not to Grant a Permit

This delegation is required to enable the City to effectively and efficiently fulfil its obligations under the Act in relation to refusing permits due to incorrect or inconsistent applications to ensure good governance in building control.

<table>
<thead>
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<th>Delegation Number</th>
<th>Not to Grant a Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>BD - 19</td>
<td></td>
</tr>
<tr>
<td><strong>Officer</strong></td>
<td><strong>Delegation</strong></td>
</tr>
<tr>
<td>Chief Executive Officer - Sub - Delegated to:</td>
<td>Authority to refuse to grant Building Permits or Demolition Permits if it appears:</td>
</tr>
<tr>
<td>Director Planning and Development Services, Manager Building Services, Principal Building Surveyor</td>
<td>1. There appears to be an error in the documents or information provided in the application; or</td>
</tr>
<tr>
<td></td>
<td>2. If an application is inconsistent with:</td>
</tr>
<tr>
<td></td>
<td>• A function that the Permit Authority has under written law; or</td>
</tr>
<tr>
<td></td>
<td>• An agreement between the Permit Authority and the applicant.</td>
</tr>
</tbody>
</table>

Reference

Building Act 2011 Section 22

Grant of Occupancy Permits, Building Approvals/Certificates

This delegation is required to enable the City to effectively and efficiently fulfil its obligations under the Act in relation to issuing Occupancy Permits and Building Approval Certificates for existing buildings to ensure good governance in building control.

<table>
<thead>
<tr>
<th>Delegation Number</th>
<th>Grant of Occupancy Permits, Building Approval Certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>BD - 20</td>
<td></td>
</tr>
<tr>
<td><strong>Officer</strong></td>
<td><strong>Delegation</strong></td>
</tr>
<tr>
<td>Chief Executive Officer - Sub-Delegated to:</td>
<td>Authority to grant, modify or refuse to grant Occupancy Permits or Building Approval Certificates.</td>
</tr>
<tr>
<td>Director Planning and Development Services, Manager Building Services, Principal Building Surveyor</td>
<td></td>
</tr>
</tbody>
</table>

Reference

Building Act 2011 Section 58

Authorised Persons

This delegation is required to enable the City to effectively and efficiently fulfil its obligations under the Act in relation to the appointment of officers to conduct the duties of the Act to ensure good governance in building control.

<table>
<thead>
<tr>
<th>Delegation Number</th>
<th>Authorised Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>BD - 21</td>
<td></td>
</tr>
<tr>
<td><strong>Officer</strong></td>
<td><strong>Delegation</strong></td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td>Authority to appoint authorised persons for the purpose of the</td>
</tr>
<tr>
<td></td>
<td>Building Act 2011</td>
</tr>
</tbody>
</table>

Reference

Building Act 2011 Section 96
Building Orders

Currently this year the City has received over 113 non-compliance building matters which have required follow up action. The non-compliance matters mostly relate to technical issues set out in the relevant building control legislation; and in some cases they are of a public safety and urgent nature. In many situations the offending person is willing to address issues of non-compliance, however on other occasions when the offender chooses not to adhere to the instructions of the City then these matters currently require referral to Council for consideration of further legal action to be taken.

Within the Act permit authorities including local governments, will have the necessary power to ensure that work complies with a building or demolition permit, that buildings are used in accordance with an occupancy permit and that buildings comply with the building code and standards. The local government may take enforcement action when a building is built or demolished without a building or demolition permit. A permit authority that issued the permit may take enforcement action if building work:

- Contravenes a building, demolition or occupancy permit;
- Is unfit for use or occupancy;
- Is a danger to occupants or adjoining owners; or
- Is used in contravention of the Act or regulations.

The Building Act therefore provides greater power and expectations of local government in the role of building enforcement. This delegation will enable the City to deal with non-compliance matters in an effective and efficient manner to enable the City to fulfil its obligations under the Act in relation to issuing of orders to ensure good governance in building control.

<table>
<thead>
<tr>
<th>Delegation Number</th>
<th>Building Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>BD - 22</td>
<td>Officer</td>
</tr>
<tr>
<td><strong>Chief Executive Officer - Sub-Delegated to</strong> Director of Planning and Development Services, Authority to issue Building Orders in relation to:</td>
<td></td>
</tr>
<tr>
<td>Stop work, demolish/remove a building, alter a building or evacuate a building, where there is a contravention of a provision of the Building Act;</td>
<td></td>
</tr>
<tr>
<td>Take specific action to prevent contravention of the Act;</td>
<td></td>
</tr>
<tr>
<td>Finish an outward facing side of a wall;</td>
<td></td>
</tr>
<tr>
<td>Buildings which are considered as being unsafe or not fit for human habitation.</td>
<td></td>
</tr>
</tbody>
</table>

Reference

Building Act 2011 Section 110
**Presumptions about Authority to do Certain Things**

This delegation is required to enable the City to have an appropriate person appointed under the Act to sign prosecution documentation as required.

<table>
<thead>
<tr>
<th>Delegation Number</th>
<th>Presumptions About Authority to do Certain Things</th>
</tr>
</thead>
<tbody>
<tr>
<td>BD - 23</td>
<td>Officer Delegation</td>
</tr>
<tr>
<td></td>
<td>Chief Executive Officer</td>
</tr>
</tbody>
</table>

**Reference**

Building Act 2011 Section 139

**Building Act Fee Structure**

**Statutory Fees**

Statutory fees are fees prescribed by the state government and are set out in Regulations. The prescribed building fees as set out in the Building Regulations 1989 are statutory fees imposed by the state government. Given these fees are not a fee charge by or a fee that the 'local government wishes to impose', the local government is not required to advertise these statutory fees under the Local Government Act 1995.

The Building Act 2011 statutory fees have been set for applications for building (Section 16 (l)), demolition (Section 16 (l)), and occupancy permits (Section 54(4) (d)). The Act also introduces a number of other applications which fees can now be charged for.

Currently, statutory building fees are set in Regulation 24 of the Building Regulations 1989. This Regulation will be amended to reflect the new rates and the various types of applications and permits that statutory fees will be applied to (Refer to Attachment No. 7). Additional permits and applications to which new statutory fees will be applied are as follows:

- Application for Occupancy Certificate;
- Application for temporary Occupancy Permit;
- Application for modification of an Occupancy Certificate; and
- Application for a replacement of an Occupancy Permit (or Certificate of Classification).

**Non-Statutory Fees**

Non-statutory fees are those which are imposed by the local government for a service which it has chosen to offer without any legislative requirement to do so. Under Section 6.19 of the Local Government Act 1995, non-statutory fees imposed by the local government after the adoption of the City's budget are required to be advertised. When advertising the fee, the local government is required to advertise the fee charged and the service being delivered for the fee.

Under the Building Act, the local government has the opportunity to provide a service to the community to carry out inspections for the purpose of either obtaining appropriate certificates to enable applications to be made to the local government for building related permits to be issued, or to carry out inspections for the builder if required under the issued Certificate of Design Compliance for the Building Permit.
Also the builder is required to submit a Certificate of Completion to the local government within seven (7) days of completing the works.

The Certificate of Completion is to note that any inspections that were required (as stated on the Design Compliance Certificate) during construction have been carried out and that the required certificates of inspection have been attached to the Certificate of Completion. The inspections required during the construction can be carried out by any competent person and the local government may be requested or offer to undertake these inspections for the builder and as such charge the appropriate fee for this service.

As this is a non-statutory fee which is imposed by the local government it is required to be advertised in accordance with Section 6.19 of the Local Government Act 1995.

Based on the current salaries and overheads for the current building staff the recovery rate for a staff member is approximately $60.00 per hour. When considering the fee for the service of doing inspections, allowances for the following provision should be taken into account:

1. Travel time - minimum 30 minutes (15 minutes each way);  
2. Inspection time - minimum 30 minutes; and  
3. Administration and preparation of documentation - minimum 30 minutes (preparation, report, printing, registering and storage).

The minimum cost for an inspection would be 1.5 hours at $60.00 per hour, therefore it is recommended that the building inspection fee be a minimum of $90.00, and an hourly rate of $60.00 for any time over the above 1.5 hours period.

Based on the above recommended inspection fees and the expected amount of inspections, the total revenue would not be a major trading activity in relation to the Local Government Act 1995 and the Local Government (Function and General) Regulations 1996.

Summary

The Building Act 2011 establishes Permit Authorities with the power to administer building control and issue permits within its district and introduces reform in the processing and documentation in applying and issuing permits for building, demolition and occupancy. Provisions have been made in the Act to ensure appropriate delegations and appointments are adopted to ensure the City's obligations under the Act are complied with.

Fees for existing statutory applications have been amended and additional statutory fees for new application types have been included. Also under the Act there is the ability for the local government to provide additional services such as building inspections.

Local governments still maintain the responsibility for enforcement of non-compliance matters, with some increased powers to assist in the gathering of evidence and increased penalties for severe breaches of the Act.

It is recommended that Council adopt new delegations to enable the City to effectively and efficiently fulfil its obligations under the Act; and introduce fees for the City to undertake building inspections.
Policy Implications

The City's building policies may be required to be reviewed following the promulgation and operation of the Building Act.

Financial Implications

Modelling on the impact of the Building Act on the City's income from building application fees suggests that approximately 30% of residential applications and 100% of commercial and industrial applications will become privately certified applications. Based on the 2010/11 data, the potential financial impact of this model is that the annual income could be reduced by approximately $200,000. Although there is the potential of further income in the form of additional prescribed fees for the issuing of additional permits introduced into the new Act, this additional income is expected to be minimal, in the vicinity of only $17,000. The inspection service noted above has no cost benefit as it is a fee for service and based on recovery cost only.

Changes to the current building application tracking systems will be required to accommodate the changes in the workflow process of the new applications and permits that are required to be issued. At this stage it is only envisaged that this will be in the Building Services section but may have an impact on other department processes in the future.

Voting Requirements

**ABSOLUTE MAJORITY REQUIRED.**

Officer's Recommendation

That Council:

1. **Note the comments contained in this report relating to the Building Act 2011.**
2. **Adopt the following new delegation statements to the Delegation Authority Register:**

<table>
<thead>
<tr>
<th>Delegation Number</th>
<th>Grant of Building Permit</th>
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<tbody>
<tr>
<td>BD - 17 Officer</td>
<td>Delegation</td>
</tr>
<tr>
<td><strong>Chief Executive Officer -</strong></td>
<td>Authority to grant or refuse to grant building permits.</td>
</tr>
<tr>
<td><strong>Sub-Delegated to:</strong></td>
<td></td>
</tr>
<tr>
<td>Director Planning and Development Services,</td>
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<tr>
<td>Manager Building Services,</td>
<td></td>
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<td>Principal Building Surveyor</td>
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Reference

*Building Act 2011 Section 20*
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<td>Chief Executive Officer - Sub - Delegated to:</td>
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*Building Act 2011 Section 21*

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**Reference**

*Building Act 2011 Section 58*

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<td><em>Building Act 2011</em></td>
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**Reference**

*Building Act 2011 Section 96*
Delegation Number | Building Orders
--- | ---
BD - 22 | Authority to issue Building Orders in relation to:

- Stop work, demolish/remove a building, alter a building or evacuate a building, where there is a contravention of a provision of the Building Act;
- Take specific action to prevent contravention of the Act;
- Finish an outward facing side of a wall;
- Buildings which are considered as being unsafe or not fit for human habitation.

Reference

Building Act 2011 Section 110

Delegation Number | Presumptions About Authority to do Certain Things
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BD - 23 | Authority to commence prosecution.

Reference

Building Act 2011 Section 139

3. Note that the Schedule of Fees and Charges will be amended to incorporate the new statutory building fees set in the Building Regulations 1989 as amended and gazetted.

4. Approve the intention to introduce a building inspection service fee of $90.00, plus $60.00 per hour thereafter.

5. Authorise the City to advertise the proposed building inspections service fee pursuant to Section 6.19 of the Local Government Act 1995.

Moved:  
Seconded: