



Powers of Entry Policy

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1. OBJECTIVES

To ensure that the Municipal Building Surveyor or an Authorised Person carry out inspections of premises or land for the purpose mandatory inspection requirements and to investigate breaches of the Act and Regulations in accordance with the provisions of the Building Act 1993.

2. SCOPE

This policy applies to all properties within the City of Darebin and those external of the municipality where the Municipal Building Surveyor is acting as the Relevant Building Surveyor.

3. DEFINITIONS

Authorised Person	An authorised person is either listed in the Act or authorised by a listed person
Listed Person	municipal building surveyor; or a private building surveyor appointed under Part 6; or the Victorian Building Authority; or the Plumbing Industry Commission; or a Minister, public authority or person who is authorised or required by the building Act or the regulations to carry out any work or inspection or any other function other than the Building Practitioners Board; or a plumbing inspector appointed under Part 12A; a compliance auditor appointed under Part 12A;
Occupier	A person physically using or taking up a place on land. Occupation encompasses a degree of control. A caretaker, resident, manager, or other person in charge of the land can be an occupier while the employer is not in occupation. A resident of premises. A person in charge of premises by reason of office or position. A person or entity that fills a space

4. POLICY

Under part 13, Division 2 of the Building Act, a municipal building surveyor (MBS) is an authorised person with the power to enter premises to carry out any inspection, authorised or required by the Act and Regulations and/or to investigate breaches of the Act and Regulations (enforcement). The MBS may also authorise (in writing) any person to exercise a power under part 13, Division 2 of the Act on its behalf.

Notice of entry must be given to the occupier of a building, land or place of public entertainment by the MBS or any authorised person in accordance with the requirements described below, according with the circumstances of each case.

4.1 Power of Entry – Inspection

The MBS or a person properly authorised by the MBS may, on giving the occupier no less than 24 hours notice, enter any residence or land upon which a dwelling is located between 8:00 am and 6:00 pm and any other building or land at any reasonable time for the purpose of inspecting a building or building work. Prior to exercising this power, the authorised person must give the occupier at least 24 hours notice of the intention to enter at a particular time. Such notice should be in writing and delivered by hand or certified mail so that evidence can be given, if required, of compliance with this requirement.

IMPORTANT: Unless agreement is otherwise reached with the occupier, 24 hours notice of intended entry must be given. A failure to comply with the notification requirement may render any entry unauthorised and consequently a trespass.

4.2 Power of Entry - Enforcement

An authorised person may also enter and search a building or land to obtain evidence on the commission of a breach against the Act or the Regulations. This power of entry may be exercised with the written consent from the occupier or under the authority of a search warrant issued by a Magistrate.

In the case of an occupier who consents in writing to entry and search of his/her building or land, the occupier must be given copy of the signed consent immediately.

If a search warrant has been issued by a magistrate the authorised person named in the warrant or a person assisting the authorised person must announce that he or she is authorised by the warrant to enter the building or land and give any person in the building or land an opportunity to allow entry to the building or land. The authorised person or a person assisting the authorised person needs not to make such announcement if he or she believes on reasonable grounds that immediate entry to the building is required to ensure the safety of any person or to ensure the effective execution of the search.

4.3 Power of Entry – Emergency

Despite the requirements to give notice of entry presented in 4.1 and 4.2 above, an authorised person may enter a building without a search warrant at any time if the safety of the public or the occupants is at risk or an emergency order applies to the building or land.

5. POLICY PROCEEDURE

Having considered the content of this document, this Policy adopts the Powers of Entry Procedure as outlined in Attachment 1.

11. RELEVANT LEGISLATION:

- Building Act 1993
- Building Regulations 2006

12. CROSS REFERENCES TO OTHER POLICIES/ DOCUMENTS:

Building Control Intervention Filter Criteria and supportive letters.

13. FORMS AND ATTACHMENTS

Attachment 1 – Powers of Entry Procedure