



Good Practice Guide for Asset Protection Permits in Local Government

April 2013

Acknowledgements

The Department of Planning and Community Development acknowledges the following organisations in developing this Guide and participation in the working group.

CT Management Group (lead consultants)

Municipal Association of Victoria

Boroondara City Council

Hume City Council

Darebin City Council

Wyndham City Council

Master Builders Association of Victoria

Housing Industry Association

Building Commission

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Glossary

The following are explanations of terms used within this Good Practice Guide:

Asset Protection Permit - a written permit issued by council for the protection of public infrastructure during building work.

Builder - A person who has applied to council (or any other person to whom such an application may be made) for a building permit; if no such application has been made, the person in charge of the building work being carried out.

Building - Includes any structure or building, whether temporary or permanent, or any part of such building or structure.

Building work - Work for, or in connection with, the construction, renovation, alteration, demolition, relocation or removal of a building, landscaping, concreting and subdivision road construction.

Contractor - A person who contracts to conduct building work, for example, excavators, tilers and concreters.

Council officer - Any person appointed in writing by council to be an authorised or delegated officer for specified purposes or functions in accordance with relevant legislation.

Latent defect - A flaw or fault in any article which is discovered after delivery; usually, latent defects are inherent weaknesses or flaws which normally are not detected by examination or routine tests, but which are present at time of construction and are aggravated by use.

Owner - In relation to a building, the owner of land on which the building is situated.

Public infrastructure - items, facilities or systems owned managed or otherwise controlled by council which provide or facilitate a public service, including (but not limited to) roads, bike lanes, bicycle and shared paths, bicycle road and footpath markings, footpaths, stormwater systems,

lighting, fencing, retaining walls, trees, landscaping, kerb and channel, traffic management devices, traffic signals, signs, line marking, nature strips, street furniture, car parks, bridges, buildings and structures.

Security - A payment or guarantee made to council for the purposes of securing public assets and infrastructure from the cost of damage during building work.

Supplier - A person responsible for delivering materials and/or equipment, for example, timber and brick deliveries.

Introduction

Scope & Purpose

This Good Practice Guide has been developed because councils and the development industry have difficulty preventing damage to infrastructure during building construction activity and recovering costs from those responsible for causing damage. Major types of infrastructure damage occurring within municipalities include:

- broken footpaths and kerb channels
- pavement damage of sealed and unsealed roads
- siltation on roads and in drainage systems.

Under the *Local Government Act 1989*, councils in Victoria have the ability to make local laws to protect infrastructure under their management. Several councils have established specific local laws to protect public infrastructure assets from damage caused by building work. These local laws are generally consistent in terms of their overall objectives and generally vary according to the methods of implementation and enforcement.

The Guide has been developed by a steering group comprising representatives from local government, State Government and the building industry. Its development was instigated from research into building site management local laws and consultation that highlighted asset protection as a priority.

Principles outlined within this Good Practice Guide are intended to complement councils' local laws and current administrative processes. The associated Practice Note provides more information on how these principles may be applied by the stakeholders.

This Good Practice Guide aims to:

- promote greater consistency in the application of local laws and improve compliance throughout the sector
- define standards that should be observed by parties undertaking building work
- reduce the extent of infrastructure damage and resultant costs to councils
- encourage owners, builders, contractors and suppliers to act responsibly when conducting building work
- define roles and responsibilities of respective parties
- reduce costs and increase certainty to the development sector, councils and the community.

This Good Practice Guide may be applied to commercial, industrial and residential building activities in both broad-acre and suburban infill developments. While it does not specify requirements nor is it compulsory for councils, it may be considered a reference point for councils and the building industry.

Stakeholders

The Good Practice Guide may be applied by all parties involved in building work including:

- owners
- builders
- contractors
- building surveyors
- councils
- developers
- servicing authorities.

Councils have discretion to vary operational provisions of this Good Practice Guide, depending upon circumstances that may arise. However, they should uphold the principles of this Good Practice Guide.

Related Legislation

This Good Practice Guide should be read in conjunction with relevant legislation, regulations and other codes of practice which apply to the building and construction industry.

The following legislation must be observed:

- *Building Act 1993*
- *Local Government Act 1989*
- *Planning and Environment Act 1987*
- *Subdivision Act 1988*
- *Occupational Health and Safety Act 2004*
- *Environment Protection Act 1970.*
- Each council's relevant local laws.

Where inconsistencies exist between legislation and this Good Practice Guide, the legislation will prevail.

Principles

The following principles should be applied to building work and public infrastructure asset protection processes.

Principle 1

The council's asset protection requirements should be known prior to commencing any building work in that municipality.

Application of the principle:

- Councils should establish appropriate methods of communicating to all parties involved in building work, the requirements for applying for an asset protection permit.
- Prior to commencing building work, all parties involved in the building work must be fully aware of the relevant council's requirements for protecting its infrastructure.
- Building surveyors should ensure that an asset protection permit has been obtained prior to issuing the building permit.
- Building work on site must not begin prior to the lodgement of the asset protection permit fees.

Principle 2

Council permit fees should be based on risk and proportionality of building works.

Application of the principle:

- Council officers will determine whether an asset protection permit needs to be issued, based on the type of development and assessed risk of potential infrastructure damage.
- Council officers may evaluate the condition of infrastructure surrounding a high risk building site, after being notified that a building surveyor has been appointed or that a building permit has been issued.

- Council officers should undertake risk assessments to select building works for which council inspections may be required.
- The asset protection permit fees to be levied should be based on this risk assessment and the number of council inspections that may be required.
- The permit fees should be limited to cover the cost of a maximum of two discretionary site inspections by council officers over the entire period of the building activity.

Principle 3

Parties accept that damage to adjacent council infrastructure is often unavoidable in the conduct of building works.

Application of the Principle:

- The asset protection permit should be linked to the associated building permit, so that all parties involved in the building work are aware that council infrastructure must be protected for the entire duration of the building activity.
- The builder who is in control of the proposed building works at the site should apply for the asset protection permit.
- Builders should inform all contractors and suppliers of their responsibility to protect infrastructure while on building sites.
- Builders should ensure that access to the building site is clearly defined and that suppliers know where materials and equipment should be set down.

Principle 4

Builders must be responsible for reporting and minimising damage to council infrastructure during building works.

Application of the principle:

- Prior to the start of building work, builders should inspect the site and provide a report to council on any existing infrastructure damage and latent defects identified.
- This report should be submitted in conjunction with the application for an asset protection permit.
- Failure to notify council of existing infrastructure damage or latent defects may result in the assumption of builder liability.
- Where builders have reported existing infrastructure damage or latent defects, council officers may at their discretion, inspect the damage or latent defect and endorse the report provided by the builder or amend the report as required, with the agreement of the builder.
- This report should be maintained on council records and may assist in the identification of those responsible for further damages to infrastructure.
- Builders must take preventative action to protect or minimise damage to council infrastructure during the building works.
- Owners and builders should monitor the condition of infrastructure throughout the building process and record any damage which may result from building work.
- Upon completion of all building work, the builder must undertake a final inspection of the site and provide a further report that all council infrastructure has been reinstated to the condition that existed prior to commencement of the building works.

Principle 5

The party responsible for damaging council infrastructure should pay for reinstatement to similar condition prior to building works.

Application of the principle:

- Builders must repair any damage to public infrastructure caused by building work.
- If suppliers or contractors have caused infrastructure damage, builders should inform them of their responsibility to conduct or meet the cost of repair works.
- Where contractors and suppliers have not repaired damaged infrastructure, builders should conduct repair works and recover costs from the contractors or suppliers who have caused the damage.
- Councils should establish and communicate a clear enforcement and debt collection process, in lieu of requesting a security deposit from builders, to cover the cost of any repair works that may need to be undertaken.
- If council officers consider that building work has caused infrastructure damage and has not been repaired, a notice may be issued to the builder in control of the site, requiring repair works be completed within a specified timeframe.
- If requested by the builder, council may repair the damaged infrastructure and charge the builder the cost of the repair works.
- On completion of all building work and repairs, council officers may inspect the site to ensure that appropriate care and reinstatement has been undertaken with regard to council infrastructure.
- Upon satisfactory completion of all building works, repairs to damaged infrastructure and submission of the required documentation, council should within seven days, issue its release on the asset protection permit.

Principle 6

Council should be responsible for rectifying any latent defects in council infrastructure adjacent to building works.

Application of the principle:

- On completion of building works, council should determine the necessity to rectify any identified latent defects.
- If latent defects need to be rectified, council may undertake the rectification or negotiate with the builder to undertake the works in conjunction with any repairs to damaged infrastructure.
- If the builder undertakes the rectification of the latent defects, council should contribute an agreed sum towards the cost of these works.
- Council should undertake an inspection to ensure that the quality of the works completed adhere to council's construction standards.

Review

It is intended to consult the Industry Steering Group and other users in approximately 12 to 18 months after the release of this Good Practice Guide, to assess its efficacy and make any amendments as deemed necessary.

Practice Note to

Good Practice Guide for Asset Protection Permits in Local Government

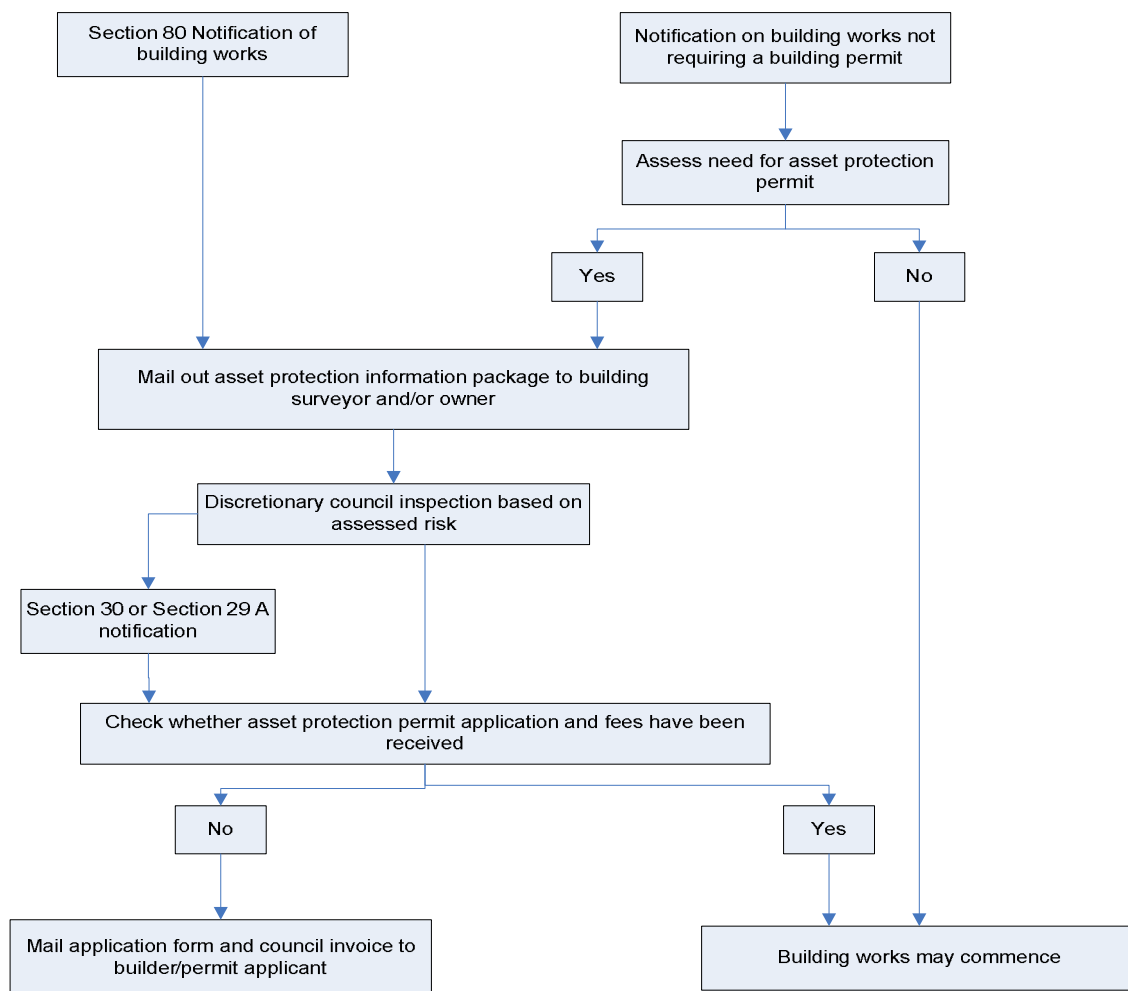
Process

Introduction

An asset protection permit helps a council to ensure that public infrastructure is not damaged due to building work in the municipality. It also protects owners/builders against paying for damage on public infrastructure that existed prior to commencement of proposed building

works. This document provides useful information on good practice processes that councils and the building industry should consider in relation to an asset protection permit. Builders and owners are advised to become familiar with council requirements before commencing any building works.

Pre-commencement



An application for an asset protection permit must be lodged prior to any:

- Building works
- Demolition works
- Construction of swimming pools
- Removal of dwellings
- Dwelling additions and alterations
- Commercial/large scale developments
- Re-blocking/re-stumping works
- Front fencing works
- Use of cranes and scissor lifts on footpaths.

When council is notified of proposed building works under section 80 of the *Building Act 1993*, a proactive approach may be adopted with an asset protection information package being mailed out to the applicant and building surveyor. This will ensure that all parties are aware of the need for an asset protection permit, along with the necessary building permits.

Some building work may be minor in nature and may not require a building permit. However it may still pose a risk of damage to public infrastructure and may require an asset protection permit. The builder/permit applicant should notify council of the intention to start minor building work at least 14 days prior to commencement. This will give the council an opportunity to make an assessment of the risk to its assets and advise whether a permit is required.

After the initial notification, council may wish to schedule an optional site inspection if proposed building works are deemed to be high risk.

An application for an asset protection permit may even be lodged with details of proposed building works, prior to a building permit being issued.

When a building permit is issued for building works or for demolitions or alterations to buildings subject to heritage controls, under section 30 or 29A of the *Building Act 1993*, the builder is considered to have commenced the project. Therefore the builder is required to have a valid asset protection permit and it must be in place before building works actually commence on site.

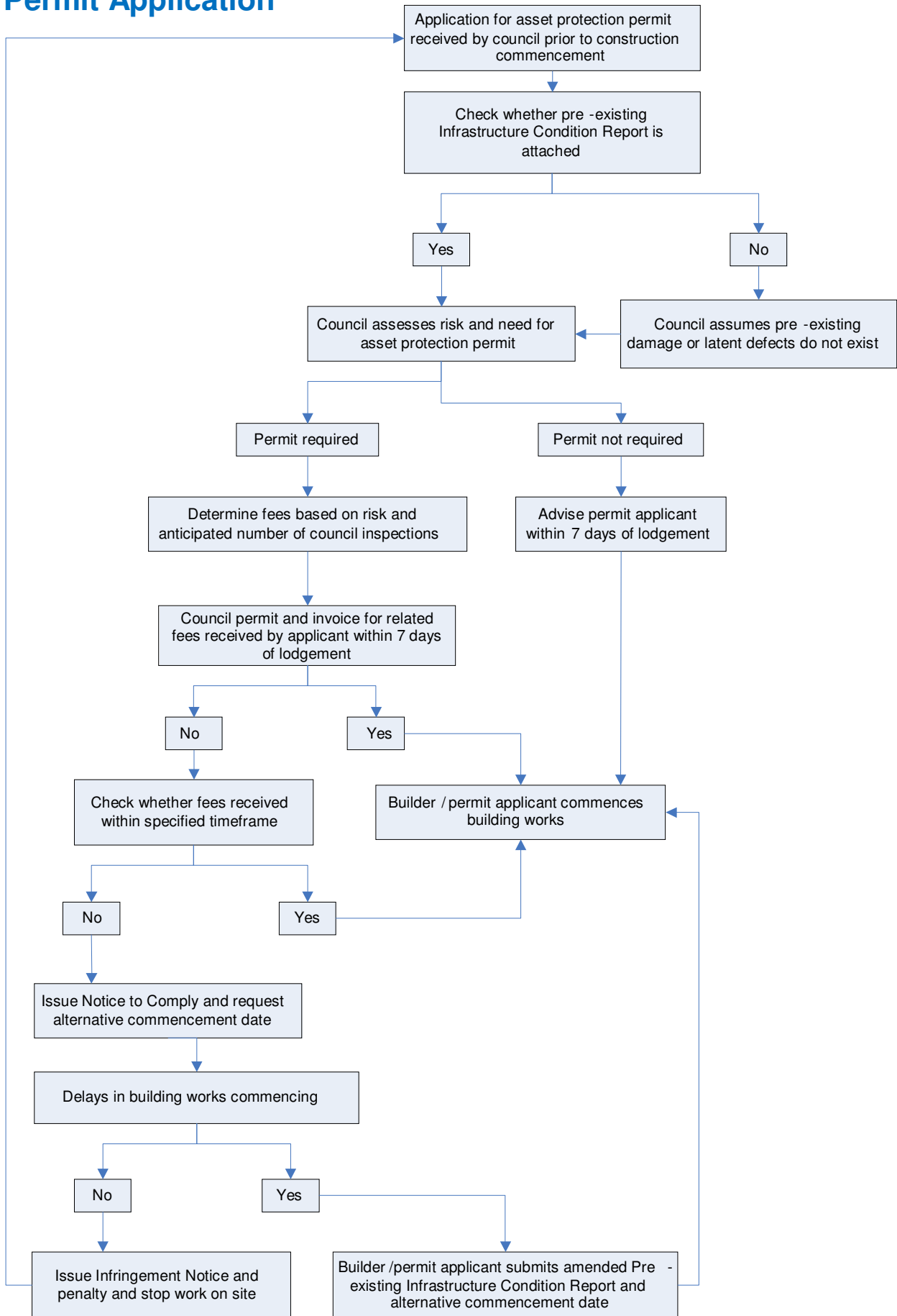
Building surveyors should ensure that an asset protection permit has been obtained, prior to the issue of the building permit.

If an application for the asset protection permit has not been lodged when council is notified of the issue of the building permit, council should automatically forward the asset protection permit application form, relevant conditions and invoice to the builder/owner outlining the relevant fees.

Protection of public infrastructure relates to built infrastructure as well as environmental assets. Building works in rural areas can contribute to problems such as litter and waste pollution on roads, open drains, creeks and waterways. For this reason, asset protection requirements are still relevant to rural building sites. Applications for exemption from these requirements should be made in writing to council prior to commencing building works.

Council may allow exemptions from the requirements of its Local Law and this Good Practice Guide in extenuating circumstances. Applications for exemption must describe the extenuating circumstances that underpin the reasons for the application. Applications received after the commencement of building works will not be considered.

Permit Application



The asset protection permit should be issued to the person in charge of the building site to be consistent with provisions of the *Building Act 1993*. There may be unusual or specific circumstances however where issuance may be to a property owner.

The permit should be issued to a natural person, to facilitate issuing of notices in the future, even if the applicant's company is liquidated.

Any application for an asset protection permit must be accompanied by a statement of pre-existing infrastructure asset condition, identifying any existing damage or latent defects of public infrastructure which:

- is on or adjacent to the land to which the building permit or building works are to be commenced relates; or
- may be affected by the building work.

The above report should also be supported by photographic evidence to help protect the person in control of the site being blamed for any pre-existing damage or latent defects.

If this statement is not received by council it is then deemed that there is no existing damage or latent defects in public infrastructure adjacent to the building site.

Council should generally issue an asset protection permit within a specified period of lodgement of the application (for example seven days).

If council does not advise the applicant that an asset protection permit is required within the specified period from lodgement and no further information has been requested by council to make its assessment, then it may be deemed that an asset protection permit is not required.

The permit expiry should be linked to the two years provided for the expiry of the building permit.

The asset protection permit fee should be a mandatory, non-refundable fee based on the assessed risk of the building works and hence the estimated number of asset protection related inspections estimated to be undertaken by council.

The asset protection permit is valid only when payment is receipted. If no payment is received within a specified period, a notice should be forwarded to the builder to pay or provide notification on proposed commencement date.

Failure to obtain an asset protection permit prior to works commencing may result in an infringement being issued and a cease works notice being issued on the site.

If there has been a time lapse between the initial lodgement of the report on Pre-existing Infrastructure Asset condition and actual commencement of building works on site, a further site inspection should be undertaken by the builder. Within a specified period prior to the commencement of construction, the builder/permit applicant should identify/mark the pre-existing damage on site and submit to council an updated version of the initial report.

There is no requirement to lodge a deposit or bond with the council in addition to the permit fee. However any costs that may be incurred by council due to worksite safety and/or traffic management issues may be invoiced separately to the permit holder.



Risk Assessment

Risk assessment needs to be undertaken in two stages, when processing an application for an asset protection permit:

- Stage 1 – Assessing necessity for an asset protection permit
- Stage 2 - If assessed as needing an asset protection permit, the required number of council inspections and related fees.

In the initial risk assessment, the necessity for issuing permits is based on the assessed risk of the building works causing damage to public infrastructure.

For example:

- High risk includes demolitions, building a house, swimming pools, multi-unit subdivisions, landscaping and construction of fencing abutting council controlled assets, commercial developments, etc.
- Medium risk includes additions/alterations, second storey for dwelling, decking, renovations, etc. (If the estimated costs of these works are high, they may be classified as high risk)
- Low risk includes internal fit outs, re-stumping, carports, sheds, smoke alarms, etc.

Asset protection permits may not be required for most building works assessed as being low risk.

The second stage of the risk assessment includes determining the number of council inspections to be undertaken for building works requiring asset protection permits. These inspections should be proportionate to the assessed risk of the building works and the likely costs of repairing any potential damage to public infrastructure arising from building works.

The following risk matrix may be used to assess the risk of significant damage to council assets. It may also be used to determine if an optional initial inspection by council is required, notwithstanding the requirement for the builder/permit applicant to carry out the mandatory initial pre-construction inspection.

RISK		Consequence: severity of damage		
		Minor	Moderate	Major
Likelihood: the chance that damages will occur	High	Medium 2	High 1	High 1
	Medium	Low 3	Medium 2	High 1
	Low	Low 3	Low 3	Medium 2

Council's approach to managing the risk can be determined by the information contained in the Section 80 or Section 30 notification or the asset protection permit application. For example:

1. Section 80 notification received for demolition
 - Risk Rating: Very likely to cause major damage – HIGH (1)
 - Council pre-construction inspection required.
2. Section 80 notification received for additions and alterations

Council unable to determine what the scope of work is, without further information.

 - Risk Rating: Likely that damage may occur - MEDIUM (2)
 - Pre-construction inspection by council is not required. Council is prepared to wait until the Section 30 notification or asset protection permit application has been received, before reviewing the need for any council inspections.

3. Application received for additions and alterations (kitchen renovation-internal works only)

- Risk Rating: Unlikely to cause minor damage- LOW (3)
- Pre-construction inspection by council is not required.

The following list suggests an indicative number of council inspections that may be required over the entire duration of a building works project and should be based on the assessed risk:

- Low risk – no council inspections
- Medium risk – 1 council inspection
- High risk – 2 council inspections

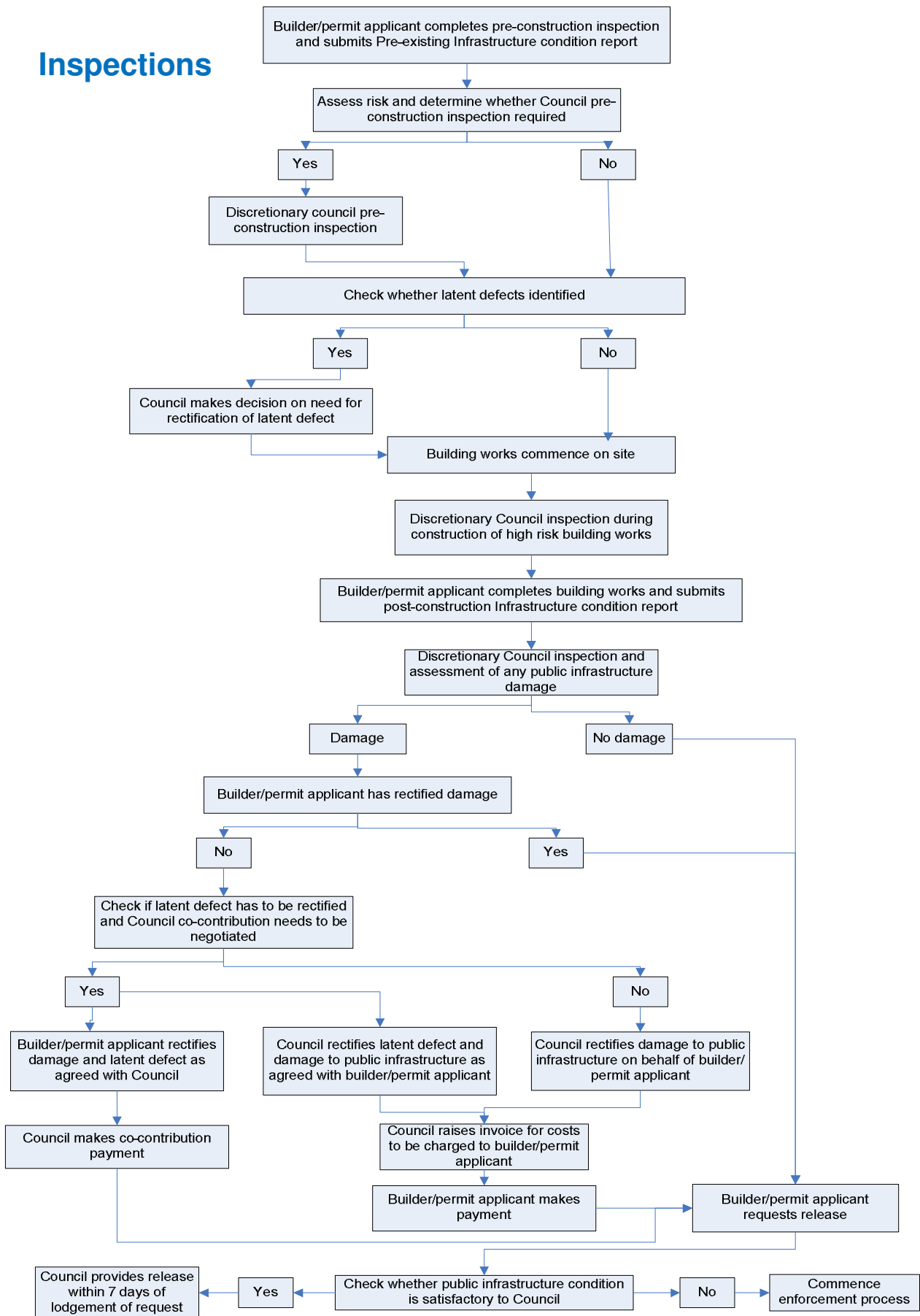
The asset protection permit fees should be based on this risk assessment and the number of council inspections deemed necessary to manage the risk of each building project.

Since the builder/permit applicant is also required to undertake a pre-construction and post-construction inspection and submit appropriate evidence, the council inspections should be limited to a maximum of two, as indicated above. The asset protection permit fee levied should cover all inspection and related administration costs. The maximum fee levied should be based on full cost recovery related to two council inspections.

Inspections to identify damage to existing infrastructure may be undertaken by different parties at various construction stages of the building works, as indicated in the table below:

Type of Inspection	Responsibility
Mandatory pre-construction	Builder/permit applicant
Discretionary pre-construction	Council
Discretionary during construction	Council
Mandatory post-construction	Builder/permit applicant
Discretionary post-construction	Council

Inspections



Pre-Construction Inspections

As part of the application for an asset protection permit, the builder/permit applicant must carry out a pre-construction inspection, as mentioned in the previous sections.

At least four photos should be taken, including house, crossover, nature strip, footpath and laneway. Any pre-existing damage or latent defect should be clearly indicated and extra photos taken if necessary.

A full report (with sketch) should also be completed showing all council assets on the plan (including street trees, signs, footpaths, crossovers, kerb and channel, storm-water drains, street signage and laneways), with locations of pre-existing damage and/or latent defects highlighted.

Based on the assessed risk of the building works or any latent defects identified by the builder/permit applicant, council may at its discretion, undertake a pre-construction inspection to verify the pre-construction inspection report submitted with the permit application.

The council may at this stage determine whether any latent defects need to be rectified on completion of the building works and may also agree in principle on any cost-sharing arrangements with the builder/permit applicant.

Inspections during Construction

Based on the original risk assessment carried out for the proposed building works, council may also carry out a further discretionary inspection during the actual construction stage of high risk building works, to monitor any potential damage to its existing infrastructure.

In accordance with the asset protection local law, evidence from these inspections will be used to determine if damage has occurred and is attributable to building works. The Pre-existing infrastructure asset condition report submitted by the builder/permit applicant may also be referred to, in determining any damage caused or disputed damages related to the building works.

Post-Construction Inspections

On completion of the building works, the builder/permit applicant must complete a post-construction inspection and submit a report with supporting photographs, identifying whether:

- Damage has been caused to council infrastructure
- Damage has been caused and rectified by builder/permit applicant
- Damage has been caused but not rectified by builder/permit applicant.

The builder/permit applicant may choose the last option in the following circumstances:

- Builder/permit applicant has requested the council to rectify the damage and invoice costs incurred.
- Latent defects previously identified, need to be rectified along with the damage repair and a cost-sharing arrangement and responsibility for rectification works needs to be negotiated with council.

If latent defects exist, the builder/permit applicant is only responsible for reinstating the infrastructure to the pre-existing condition.

If the builder/permit applicant is requested to rectify the latent defects along with the repair of damage caused by building works, the council may need to make the agreed co-contribution for rectification of the latent defect.

If the council rectifies one or both of the damages and latent defects, the council should invoice the builder/permit applicant for rectification of the relevant construction damages.

On completion of all rectification works, the builder/permit applicant must conduct a post-construction inspection and provide the necessary documentary evidence and request a release.

Council should respond to this release request within seven days. If there is no damage to existing infrastructure or the damage has been rectified to council's

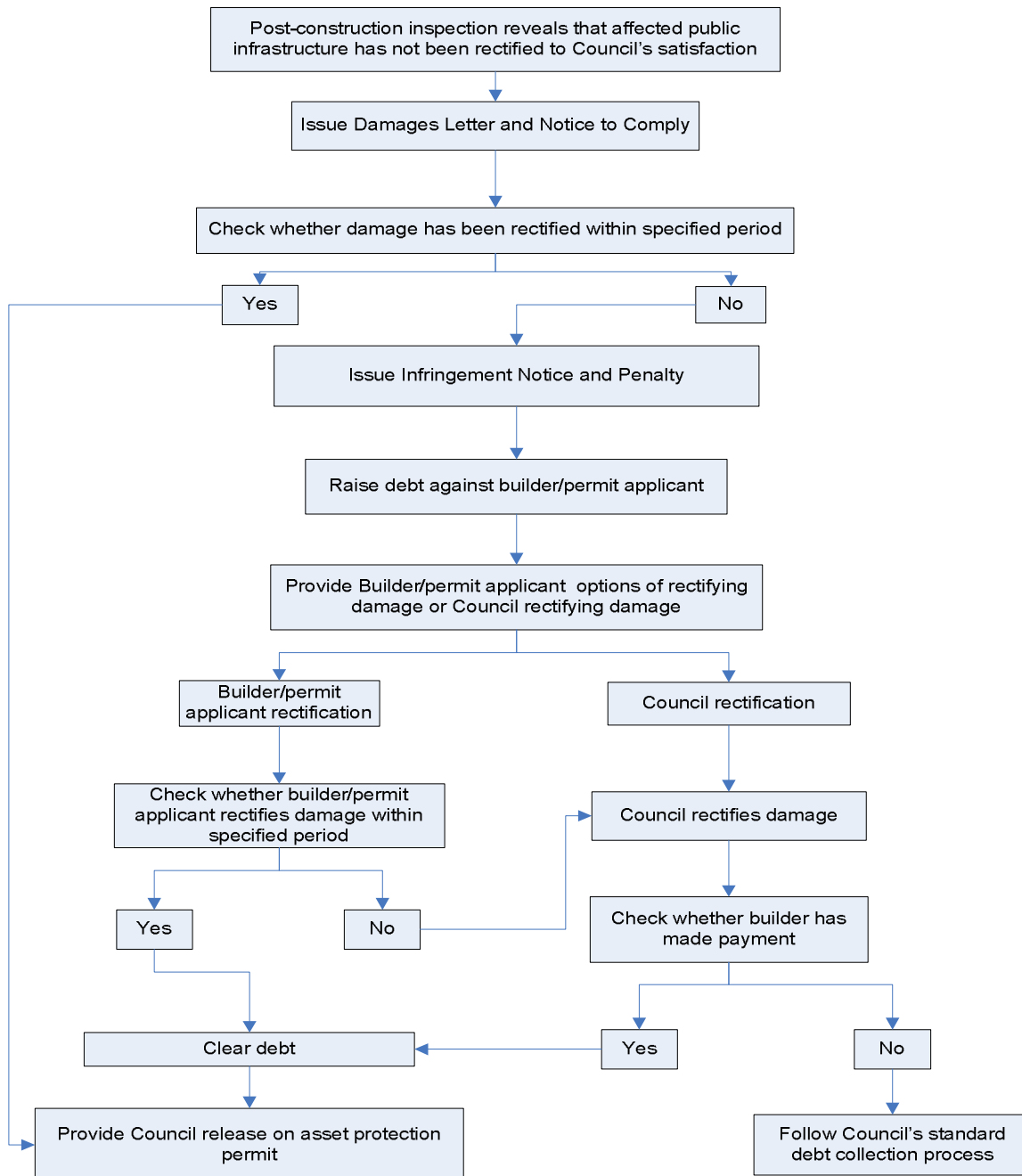
satisfaction, the asset protection permit may be closed and the builder/permit applicant advised accordingly.

Council may also undertake a discretionary site inspection to verify the

condition of its infrastructure prior to providing this release.

If any damages have not been rectified to council's satisfaction at this stage, the enforcement process will commence.

Enforcement



Council should adopt a structured enforcement process that will:

- Ensure timely and effective asset protection outcomes.
- Support cessation of the lodgement of security deposits to cover the cost of damage to existing infrastructure.
- Support the consistent application of discretion by local laws officers with delegated powers.
- Ensure transparency in the process and application of relevant local laws.

If damage to existing infrastructure is caused by a contractor or supplier related to the building works, the builder in control of the site is responsible for rectifying the damage and recovering the related costs from the contractor or supplier. The builder may re-allocate this responsibility for rectification to the relevant contractor or supplier, only after obtaining written agreement from the relevant party.

On receipt of this written agreement, council may then pursue any necessary enforcement action with the contractor or supplier.

If the outcome of a post-construction inspection indicates that the damages caused by the building works have not been rectified to council's satisfaction, a damages letter should be issued to the builder/permit applicant, outlining the required rectification works.

This damages letter will constitute a 'Notice to Comply' under the council's local laws and should indicate that the rectification work is to be carried out within a specified period (with the period depending on the type of rectification), and evidence provided back to the council that the work has been completed to an acceptable standard.

Failure to comply with the Notice to Comply within the required period will result in the issue of an Infringement Notice and associated penalty.

Certain cases may necessitate issuance of an Infringement Notice immediately, bypassing the issuance of a 'Notice to Comply'.

At this stage the builder/permit applicant should be provided with the following two options:

- Builder/permit applicant completes required rectification works within a specified timeframe
- Council completes required rectification works and invoices the builder/permit applicant.

For both options, as soon as the Infringement Notice is issued, council will raise a debt against the builder/permit applicant for the estimated cost of the rectification works.

Once the works have been completed by the builder/permit applicant the debt will be cleared.

If the works are not completed within the specified time, then the council will complete the works and follow its standard debt collection processes to recover the outstanding debt from the builder/permit applicant.

If the landowner is the permit applicant and is responsible for the rectification cost, the *Local Government Act 1989* provides that it will become a charge on the property and until paid will attract interest under the *Penalty Interest Rates Act 1983*.



Inclusion in Local Laws

Introduction

A council's general local laws outline the enforcement process to be adopted for all activities covered by the local laws. Hence it is suggested that the relevant local law be amended as necessary to ensure that the asset protection permit is also included and hence enforceable under the council's local laws. A separate section may be included in the council's local laws under the heading of 'Asset Protection' to define standards that need to be adhered to, in protecting public infrastructure assets adjacent to building sites from damage during the building process.

Sample Wording

Listed below is a generic example for inclusion in an 'Asset Protection' section in a council's relevant local law.

1. Compliance

The Person in Charge, in respect of building works or a building site, must comply with the 'Good Practice Guide for Asset Protection Permits in Local Government', as amended from time to time.

2. Asset Protection Permit

- a) A Person in Charge must obtain an Asset Protection Permit before:
 - i. entering a building site by means of a motor vehicle having a gross weight exceeding two tonnes;
 - ii. occupying a road for works;
 - iii. connecting any land to a storm-water drain;
 - iv. opening, altering or repairing a road;
 - v. opening, altering or repairing a drain;
 - vi. accessing a building site from a point other than a vehicle crossing;
 - vii. using land for the purposes of storing any material; or
 - viii. carrying out building works associated with the construction, extension or demolition of any dwelling, factory, office, warehouse, or health-care, educational or public building at a cost of more than(specify \$ amount).
- b) An application for an Asset Protection Permit must:
 - i. be in or to the effect of(insert schedule number);
 - ii. be accompanied by such fee as is fixed by council;
 - iii. include a statement from the Person in Charge of the location and the extent of any pre-existing damage and latent defects in public infrastructure assets adjacent to the building site; and
 - iv. be lodged with council prior to commencement of doing the thing for which the Asset Protection Permit is necessary.
- c) Any Asset Protection Permit issued by Council:
 - i. may be issued subject to conditions; and
 - ii. will not be operative until the applicant for the Asset Protection Permit has paid such permit fee as is fixed by Council.
- d) An Asset Protection Permit issued by Council is applicable for the entire validity period of any building permits issued for related building works.
- e) A person to whom an Asset Protection Permit has been issued must comply with any conditions contained in that Asset Protection Permit.
- f) Council may exempt any person from one or more of the obligations imposed by this Part subject to conditions it considers appropriate.

Communications

A sound process based on good communication and engagement with the building industry and community residents is required to minimise overall costs and damage to public infrastructure during building works. This should include but not be limited to the following:

- Extensive circulation of the Good Practice Guide on Asset Protection Permits in Local Government and associated Practice Note (this document or one derived from it) to all key stakeholders, including easy accessibility on council websites.
- Easy access to other asset protection requirements on council websites, including but not limited to:
 - Related local laws
 - Permit application forms and fees
 - Council specific procedures, flowcharts and checklists for builders and owners to follow
 - Frequently Asked Questions and responses.
- An asset protection information package, which may also include some of the above information, to be proactively forwarded by council when a Section 80 or Section 30 notification is received.
- Facilitation of forums with the building industry and building surveyors, particularly in municipalities with a relatively high incidence of asset protection activities. This will ensure:
 - That all parties are clear about their obligations and responsibilities.
 - Discussion and resolution of related issues with the building industry.
 - Effective communication of the needs of the community to the building industry.
- Provision of asset protection related information to residents of new housing developments to:
 - Ensure that residents understand that building activity can cause some disruption which is reasonable, as well as the requirements for builders to minimise damage to adjacent public infrastructure
 - Encourage residents to try to resolve issues directly with the builder and to contact council for advice or assistance.

**Authorised and published by
Local Government Victoria**

Department of Planning and Community
Development
1 Spring Street, Melbourne Victoria 3000
Telephone (03) 9208 3333

April 2013

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ISBN 978-1-921940-96-5

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