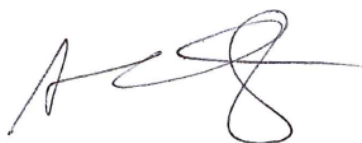


Building Act 2016

Director's Guidelines – Processes for changing building surveyor

I, Andrew Timothy Goldsworthy, in my capacity as Acting Director of Building Control, and acting pursuant to section 19(1)(f) of the *Building Act 2016* and regulation 7(c) of the *Building Regulations 2016*, hereby make the following guidelines:

Guideline title	Director's Guidelines – Processes for changing building surveyor
Description	Guidance on the processes to follow when changing the building surveyor for an ongoing project under the <i>Building Act 2016</i> .
Version	V1.0
Application	For the purposes of 19(3)(b) of the Act, this Guideline applies from the date of its approval until its revocation.
Date of Director's approval	23 July 2019



Andrew Timothy Goldsworthy
Acting Director of Building Control

1. Scope

This Guideline explains the processes under the *Building Act 2016* (the Building Act) for changing the building surveyor for an ongoing project. These processes might become necessary if a project is incomplete and the building surveyor engaged closes their business, is no longer licensed or is no longer suitable to be the building surveyor.

There are specific processes under the Building Act for changing the building surveyor for a project so that owners cannot remove their building surveyor without justification, and so that building surveyors cannot cease working on a project without good reason. This ensures that building surveyors can carry out their functions in the public interest.

2. Only one building surveyor to be engaged

Under section 35 of the Building Act, only one building surveyor can be engaged for a project at any one time. A new building surveyor cannot be engaged for a project where a building surveyor has already been engaged unless the previous building surveyor has:

- referred the work to a new building surveyor under section 38 of the Building Act (see clause 3 of this Guideline)
- resigned as building surveyor for the project under section 37 of the Building Act (see clause 4 of this Guideline), or
- been removed as building surveyor for the project at the owner's request under section 36 of the Building Act (see clause 5 of this Guideline).

These processes for changing the building surveyor are explained below.

A building surveyor must be engaged for notifiable and permit building and demolition work under the [Director's Determination – Categories of Building and Demolition Work](#). This work cannot be performed unless a building surveyor is engaged for the project.

3. Referral to a new building surveyor

The current building surveyor and the person who engaged them can agree to refer the work to a new building surveyor under section 38 of the Building Act. This process does not require consent from the Director of Building Control.

If a building surveying business is closing or has closed, all ongoing projects could be referred to a new building surveyor in bulk. To facilitate this, the current building surveyor would need to reach an agreement with a new building surveyor to take over the work. They would then communicate with their clients to ensure that they agree with the referral. This is the preferred option when a building surveyor closes their business as it minimises disruption for owners and the building industry. If a client does not agree with the referral, they can request that their project be referred to a different building surveyor.

When the referral occurs, the current building surveyor must provide all records for the project(s) to the new building surveyor, along with details of the current status of the project(s). . The new building surveyor should conduct an assessment of the project, including a risk assessment, to establish a point in time definition of the work of each

building surveyor. Once the new building surveyor is engaged, the previous building surveyor's engagement would cease.

The person who engages the new building surveyor must notify the permit authority within 7 business days under section 40 of the Building Act. The permit authority can then update their records as to who is engaged as the building surveyor for the project.

Building surveying files may also be transferred to a new building surveyor as part of the sale of the current building surveyor's business or a sale of the files as an asset of the business. This would be a commercial matter negotiated between the parties who would then inform their clients of the change. If the owner has an issue with the building surveying business that has purchased their file, they can write to the Director of Building Control and request a change of building surveyor as discussed under clause 5 of this Guideline.

4. Resignation of building surveyor

Building surveyors can resign from a project they are engaged for under section 37 of the Building Act.

If it has been at least 3 years since they were engaged as building surveyor, they can resign from the engagement by providing notice in writing to the person who engaged them. This does not require consent from the Director of Building Control, but the building surveyor must notify the Director within 7 business days after resigning.

All other resignations as building surveyor require consent from the Director. This consent can be requested by emailing CBOS.Info@justice.tas.gov.au attention the Director of Building Control and providing the following details: project address, project status, reason for requesting resignation, name and contact details. A letter can also be sent to the Director at PO Box 56, Rosny Park Tasmania 7018.

For business closures where no referral to a new building surveyor has occurred, the building surveyor should request the Director's consent to resign from all projects. This will enable their clients to engage a new building surveyor without having to request consent from the Director to change their building surveyor. This resignation can be done by sending in a resignation request to the Director as per the process above and attaching a list of ongoing projects that have not been referred to a new building surveyor.

Once a building surveyor the resignation has been approved by the Director of Building Control, the building surveyor is to forward to all documents relevant to the work to the council permit authority within 7 business days. The documents required to be forwarded are set out under section 37(3)(b) of the [Director's Specified List](#). Then, when the owner engages a new building surveyor, the permit authority can release the file to the owner, the new building surveyor or another person if listed in section 27(3) of the Act.

Until a new building surveyor is engaged for the project, work must cease. It is a breach of section 35(1) the Building Act for work to be performed on a premises where a building surveyor is required to be engaged if there is no building surveyor engaged. Fines may apply and any work carried out is illegal work and may be subject to compliance action.

5. Removal of building surveyor at owner's request

A person who engages a building surveyor must not remove their building surveyor from their engagement without consent from the Director of Building Control under section 36(1) of the Building Act. The Director can consent to the removal of the building surveyor from the engagement under section 36(2) if satisfied on reasonable grounds that the person:

- (a) is incapable of performing the functions of building surveyor for which they were engaged
- (b) is no longer the building surveyor, or no longer suitable to be the building surveyor
- (c) is no longer qualified to perform the functions of building surveyor they were engaged to perform, or
- (d) has engaged in professional misconduct.

If a person wishes to remove their building surveyor, they need to request consent from the Director of Building Control by emailing CBOS.Info@justice.tas.gov.au and providing the following details: project address, project status, their building surveyor's details, the reason for requesting that their building surveyor be removed based on the criteria above and their name and contact details. They can also write to the Director at PO Box 56, Rosny Park Tasmania 7018.

If the Director gives consent, then the person is free to engage a new building surveyor. The previous building surveyor is required to transfer specified documentation about the project to the new building surveyor in the period requested by the owner under section 39 of the Building Act.

Until a new building surveyor is engaged for the project, work must cease. It is a breach of section 35(1) the Building Act for work to be performed on a premises where a building surveyor is required to be engaged if there is no building surveyor engaged. Fines may apply and any work carried out is illegal work and may be subject to compliance action.

6. If no new building surveyor is available for an ongoing project

There may be some cases where a building surveyor resigns from a project, or an owner requests a change of building surveyor, and there is no new building surveyor available for engagement to complete the project. This might be due to the high workload in the industry, or the high-risk nature of the project means that building surveyors are not willing to accept the engagement.

If this is the case, there is a process by which the Director of Building Control can be appointed as the building surveyor under section 28(4) of the Building Act. The Minister for Building and Construction can appoint the Director to undertake the functions of the building surveyor by providing a notice in the Tasmanian Government Gazette. The terms of the engagement will be specified in the notice.

This process will only be utilised where there is no other suitable building surveyor who is willing to accept engagement for the project. The owner would need to supply evidence of this to the Director by emailing CBOS.Info@justice.tas.gov.au or writing to PO Box 56, Rosny Park Tasmania 7018.

Lack of availability of a building surveyor is not an excuse under the Building Act for not engaging one. It is still a breach of section 35(1) of the Building Act for work to be performed on a premises where a building surveyor is required to be engaged if there is no building surveyor engaged. Therefore a request needs to be submitted to the Director to be appointed as the building surveyor if there is no other building surveyor available. Until a building surveyor is engaged for the project, work must cease.

7. Responsibilities and liability for ongoing projects

As part of the transfer of work from a previous building surveyor to a new building surveyor, the new building surveyor will be provided with all the documentation that relates to the project and details of the status of the project. The new building surveyor should conduct an assessment of the project, including a risk assessment, to establish a point in time definition of the work of each building surveyor.

This will also occur when a file is retrieved from the council for a project where the previous building surveyor resigned. The new building surveyor can then familiarise themselves with the project documentation and carry out a risk assessment for the project if they consider this necessary.

Section 322 of the Building Act provides that if a building surveyor is engaged for work where another building surveyor was previously engaged, the new building surveyor can rely on the certification, reports and decisions of the previous building surveyor and is not required to undertake that work that has already been completed.. Therefore, there is no requirement for any documentation issued by the prior building surveyor under the Building Act to be re-issued.

The new building surveyor then carries out the functions of the building surveyor for the remainder of the project. For example, if a certificate of likely compliance was already issued for permit work by the previous building surveyor and a building permit was then issued by the permit authority, the new building surveyor can issue the start work authorisation, carry out inspections, issue an occupancy permit and a certificate of final inspection in accordance with the Building Act.

Section 326 of the Building Act provides that a building surveyor is not personally liable for acts done or omissions made in good faith when exercising their powers or performing their functions under the Act. This includes acts done or omissions made in good faith as a result of relying on a certificate provided under the Act or the valid performance of a function or exercise of a power by another person under the Act (such as the previous building surveyor).