

# Consumer, Building and Occupational Services

## Preliminary Permit Authority Audit

Summary Report

September 2022



Tasmanian  
Government

Consumer, Building and Occupational Services (CBOS)  
Department of Justice

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# 1. Summary

Consumer, Building and Occupational Services (CBOS) is an output located within the Department of Justice and regulates the Tasmanian building and construction sector.

The Executive Director of CBOS holds a number of statutory appointments, including the Director of Building Control (Director).

The Director has the power under section 22 of the *Building Act 2016* to arrange for an audit to be carried out in respect of the work of any person or body specified in section 16(g) of the Act, which includes permit authorities.

On 22 December 2021, the Director wrote to the General Manager of each municipal Council under section 22 of the Act requiring the provision of specific data and information pertaining to the performance of building, plumbing and demolition work and to better understand their exercise of compliance and enforcement powers during the last financial year. General Managers were also invited to provide their Council's feedback in relation to the operation of the Tasmanian building regulatory framework generally. The template requirement to provide information is attached to this report as "Appendix 1".

The purpose of this preliminary audit is to establish a baseline of activity undertaken by permit authorities. This will assist in understanding the performance of the regulatory system and enable the prioritisation of future compliance activity.

It was not the purpose of this audit to identify or determine non-compliance by any individual council. Accordingly, individual councils are not identified in the report.

All 29 councils responded to the request for data and information, and 5 provided their general feedback.

## 2. Regulatory Background

The *Building Act 2016* defines “*permit authorities*” as being a person who holds a relevant building services provider licence under the *Occupational Licensing Act 2005* and is appointed by the general manager of a municipal council to carry out the functions and exercise powers of a permit authority.

Permit authorities have a number of functions under section 25 of the *Building Act 2016* in relation to:

- receiving, assessing and approving or rejecting applications for building, plumbing and demolition work in line with categories of work which are defined by risk;
- ensuring that work performed under any permit is performed by appropriately qualified persons;
- promoting awareness of building and plumbing requirements under the *Building Act 2016*;
- keeping of registers as required under the *Building Act 2016*; and
- ensuring compliance with the requirements of the *Building Act 2016*.

In order to carry out these functions, permit authorities are also granted powers under section 26 of the *Building Act 2016* to:

- enter buildings or temporary structures at all reasonable times where building, plumbing or demolition work is being, has been, or is to carry out functions under the *Building Act 2016* and to gather evidence; and
- require provision of documents or records relating to the performance of building, plumbing or demolition work.

Should a permit authority fail to appropriately acquit their statutory functions, the Director of Building Control may consider compliance action against a permit authority under section 11(3) of the *Building Act 2016*.

Performance of permit authority functions are defined as ‘building services work’ for the purposes of the *Occupational Licensing Act 2005*, and permit authorities are subject to code of conduct expectations defined in the *Occupational Licensing (Building Services Work) Determination 2019*, which includes obligations to:

- perform their work in the public interest;
- abide by ethical standards expected by the community for compliance with the law and reputable conduct;
- not perform work where there is potential for conflict of interest; and
- comply with legislative requirements.

Where a licence holder fails to comply with a relevant code of practice under the *Occupational Licensing Act 2005*, the licence holder may be subject to compliance action under section 25(1) of that Act, and might also be subject to further disciplinary proceedings which could impact their ability to retain their occupational licence.

### 3. Data – Key Findings

The data received from each council is contained in the spreadsheet attached to this Report as “Appendix 2”.

Data captured by the Audit in relation to key plumbing activities is presented in Table 1, below:

| <b>Council</b> | <b>Plumbing CLCs (combined notifiable and permit)</b> | <b>Reported Inspections (combined notifiable and permit)</b> | <b>Average inspections per CLC</b> | <b>Plumbing Notices</b> | <b>Plumbing Orders not complied with</b> | <b>Actions for non-compliance with plumbing orders</b> |
|----------------|---|--|------------------------------------|-------------------------|--|--|
| Council 1      | 1235  | 2125   | 1.72                               | 45                      | 12                                       | 3  |
| Council 2      | 628   | 878  | 1.40                               | 69                      | 44                                       | 1  |
| Council 3      | 526   | 716  | 1.36                               | 41                      | 5  | 13   |
| Council 4      | 491   | 1376   | 2.80                               | 1                       | 0  | 2  |
| Council 5      | 305   | 966  | 3.17                               | 5                       | 3  | 0  |
| Council 6      | 303   | 828  | 2.73                               | 3                       | 2  | 0  |
| Council 7      | 301   | 752  | 2.50                               | 2                       | 2  | 3  |
| Council 8      | 485   | 515  | 1.06                               | 3                       | 0  | 0  |
| Council 9      | 284   | 865  | 3.05                               | 29                      | 15                                       | 0  |
| Council 10     | 259   | 378  | 1.46                               | 3                       | 0  | 0  |
| Council 11     | 217   | 440  | 2.03                               | 1                       | 1  | 0  |
| Council 12     | 215   | 524  | 2.44                               | 8                       | 0  | 0  |
| Council 13     | 196   | 299  | 1.53                               | 2                       | 0  | 0  |

|            |     |      |      |    |   |   |
|------------|-----|------|------|----|---|---|
| Council 14 | 190 | 346  | 1.82 | 4  | 2 | 1 |
| Council 15 | 183 | 336  | 1.84 | 4  | 1 | 0 |
| Council 16 | 179 | 264  | 1.47 | 0  | 0 | 0 |
| Council 17 | 173 | 67   | 0.39 | 1  | 0 | 0 |
| Council 18 | 101 | 0*   | 0.00 | 0  | 0 | 0 |
| Council 19 | 87  | 72   | 0.83 | 1  | 0 | 0 |
| Council 20 | 86  | 258  | 3.00 | 5  | 2 | 0 |
| Council 21 | 79  | 76   | 0.96 | 0  | 0 | 0 |
| Council 22 | 78  | 174  | 2.23 | 4  | 0 | 1 |
| Council 23 | 76  | 170  | 2.24 | 2  | 1 | 0 |
| Council 24 | 71  | 193* | 2.72 | 10 | 0 | 0 |
| Council 25 | 59  | 20   | 0.34 | 0  | 0 | 0 |
| Council 26 | 36  | 21   | 0.58 | 0  | 1 | 0 |
| Council 27 | 25  | 4    | 0.16 | 0  | 0 | 0 |
| Council 28 | 13  | 0    | 0.00 | 0  | 0 | 0 |
| Council 29 | 13  | 0    | 0.00 | 0  | 0 | 0 |

Table 1 – Data returned in relation to plumbing work, inspections undertaken and subsequent compliance actions.

Note: \* indicates further investigation required to establish actual figure

## Plumbing Inspections

Permit authorities have primary responsibility for ensuring that plumbing work is compliant with the *Building Act 2016*. This includes ensuring that plumbing work is completed in line with the National Construction Code (NCC). Compliant plumbing work is important for sanitation, environmental health and to prevent property damage.

In performing this function, the *Building Act 2016* provides permit authorities with responsibility for assessing and approving certain plumbing work, inspecting plumbing work, issuing notices and orders to enable the rectification of defective or illegal plumbing work and enforcement powers when orders are not complied with.

The [Director's Guidelines – Inspection of Plumbing Work](#) provides guidance to permit authorities regarding the frequency of plumbing inspections. When determining whether to inspect plumbing work, permit authorities are to have regard to the risk associated with the complexity of the work; the experience and compliance history of the plumber; the accessibility for site inspections and the consequences of failure.

For the purposes of this Audit, it was expected that the rate of inspections per Certificate of Likely Compliance would be broadly consistent across the State and reflective of the risk associated with the categories of plumbing work being undertaken.

The need to ensure inspections of plumbing work are carried out is vital in the appropriate management of risk associated with the works. Based on the data received providing figures for the inspection of plumbing work, there is no evidence of increased inspection rates of permit plumbing work over notifiable plumbing work for many councils, as represented in the table below.

| <b>Permit Authority</b> | <b>Av. Inspections per notifiable plumbing CLC</b> | <b>Av. Inspections per plumbing permit granted</b> |
|-------------------------|--|--|
| Council 1               | 1.95   | 1.66   |
| Council 2               | 1.50   | 1.26   |
| Council 3               | 2.85   | 2.67   |
| Council 4               | 0.82   | 1.59   |
| Council 6               | 1.64   | 4.98   |
| Council 7               | 2.24   | 3.70   |
| Council 9               | 1.26   | 1.64   |
| Council 10              | 1.53   | 1.51   |
| Council 11              | 1.43   | 2.42   |
| Council 12              | 2.00   | 2.22   |
| Council 13              | 2.71   | 1.55   |
| Council 14              | 2.03   | 1.52   |
| Council 16              | 1.24   | 1.90   |
| Council 17              | 1.66   | 2.40   |
| Council 18              | 3.00   | 3.00   |
| Council 19              | 0.50   | 0.21   |
| Council 20              | 0.81   | 0.84   |
| Council 21              | 0.69   | 1.67   |
| Council 22              | 0.27   | 0.41   |
| Council 23              | 2.28   | 2.16   |
| Council 24              | 0.00   | 0.17   |
| Council 26              | 2.62   | 1.84   |
| Council 27              | 0.43   | 0.68   |
| Council 28              | 0  | 0  |
| Council 29              | 0  | 0  |

Table 2 – Comparison of data relating to average inspection rates of notifiable and permit plumbing work by Tasmanian councils.

Although the Director's Guidelines does not establish a specific benchmark for rates of inspection of plumbing work by risk-category, the Regulator considers that where permit authorities conduct inspections of permit plumbing work at a lesser rate than notifiable plumbing work it appears the risk associated with the performance of the work is not being properly addressed.

This is evident in relation to Councils 1, 2, 3, 10, 13, 14, 18, 19, 20, 22, 23, 24 and 26, noting that Councils 3 and 18 performed inspections of both notifiable and permit plumbing work at comparatively high rates compared with other councils. Although Councils 3 and 18 conducted more inspections compared to others, the figures are still below the Regulator's expectations regarding the standard to be applied.

The Audit also notes that a number of councils (4, 15 and 25) reported an inability to differentiate between records for inspection of notifiable and permit plumbing work.

Additionally, nine councils (almost 30 per cent) have inspection rates below one inspection per Certificate of Likely Compliance or permit for both notifiable and permit work overall. This includes three councils who report undertaking no inspections, three councils who undertake inspections at under 0.5 inspections per Certificate of Likely Compliance and three councils who undertake inspections at a rate between 0.5 and 1 inspections per Certificate of Likely Compliance. It is noted that the nine councils in question have among the lowest volume of Certificates of Likely Compliance in the State and account for approximately 9 per cent of Certificates of Likely Compliance.

Of concern, a number of councils reported they do not perform any inspections of notifiable or permit plumbing work, despite issuing Certificates of Likely Compliance. Council 28 reported they did not perform any inspections of notifiable or permit plumbing work, despite issuing 6 Certificates of Likely Compliance (Notifiable Plumbing Work) and 7 plumbing permits. Council 29 also reported they did not perform any inspections of notifiable or permit plumbing work, despite issuing 5 Certificates of Likely Compliance (notifiable plumbing work) and 8 plumbing permits.

It is evident that councils 17, 19, 25 and 26 issued significantly more Certificates of Likely Compliance (Notifiable Plumbing Work) when compared to the number of notifiable plumbing work inspections that were carried out, and granted. These councils also issued significantly more plumbing permits than the number of inspections of permit plumbing work that was carried out. This suggests that some councils are not appropriately assessing or mitigating the level of risk associated with plumbing work in line with the expectations of the Regulator.

Council 21 issued 16 Certificates of Likely Compliance (notifiable plumbing work) but only carried out 11 inspections of notifiable plumbing work. Council 3 issued 156 Certificates of Likely Compliance (notifiable plumbing work) and carried out 128 inspections of notifiable

plumbing work which is, in the view of the Regulator, a more appropriate balance of certificates and inspections.

Failure to appropriately inspect the performance of notifiable plumbing work will result in uncontrolled risk to property owners and will result in detrimental impact to the amenity of buildings and council or TasWater infrastructure.

Failure to appropriately inspect the performance of high risk plumbing work, such as onsite wastewater management systems will result in uncontrolled risk to the health of property owners, owners of neighbouring properties and potentially others downstream from a failed or failing system.

## Plumbing Notices/Orders

Plumbing Notices and Orders are the mechanisms available to permit authorities when enforcing compliance with the Act. A Plumbing Notice is most likely to be issued when a permit authority inspects plumbing work and finds it defective. The purpose of a Notice is to provide a plumber with notice that defective work needs to be rectified. In the event that a Plumbing Notice is not revoked, the Act states that a permit authority “is to” issue a Plumbing Order. The Regulator notes anecdotal reports of plumbing inspection failure rates in some municipalities that exceed 90%, and while this may not be replicated generally in other municipalities around Tasmania, it does demonstrate the need for appropriate inspection and enforcement regimes for plumbing work.

The rate of Plumbing Notices per inspection should reflect the proportion of defective work undertaken for notifiable plumbing work. The Regulator’s expectation is that the rate would be broadly consistent across the State. While some variation might be expected due to differences in practice within permit authorities, this should be moderated by the requirement that councils apply the Director’s Guidelines.

On average, permit authorities issued 1.02 Plumbing Notices per 100 inspections. 16 permit authorities issued notices at less than half the State-wide average, including eight permit authorities which did not issue any notices. Of these, seven councils were identified as having a low rate of inspections.

Four permit authorities issued notices at a rate of more than double the State-wide average. This included the permit authorities with the three highest volumes of Certificates of Likely Compliance.

Of concern, Councils 16, 18, 19, 21, 25, 26, 27 and 28 did not issue any plumbing notices, however Council 2 issued 69 plumbing notices, Council 1 issued 45, Council 3 issued 41, Council 9 issued 29, and Council 12 issued 8. The balance of councils not mentioned above

issued between 1-5 plumbing notices. This again demonstrates a lack of consistency in approaching compliance by the majority of councils.

It should be noted that this audit omitted to ask specifically how many Plumbing Orders were issued, and that in many cases where actions might be commenced to proceed against persons who have failed to comply with plumbing orders, the actions taken may not have been commenced in the same financial year as the Order was issued.

Council 4 commenced one prosecution and sought one court order for non-compliance with Plumbing Orders. Council 1 issued three infringement notices for non-compliance with Plumbing Orders. Council 7 issued one infringement notice, commenced one prosecution and sought one court order for non-compliance with Plumbing Orders. Council 14 issued one infringement notice for non-compliance with Plumbing Orders. Council 3 issued twelve infringement notices and commenced one prosecution for non-compliance with Plumbing Orders. Council 2 and Council 22 each issued one infringement notice for non-compliance with Plumbing Orders.

Failure to detect and enforce compliance of defective plumbing work prior to completion of plumbing work contributes to risk for Tasmanians as this may lead to consequential financial loss for property owners and potential negative health and environmental impacts.

## **Building Notices/Orders**

Building Notices and Orders are essential elements of the building regulatory framework as they enable permit authorities to mandate compliance with the Act and manage risk for building owners, occupants, neighbours and members of the public arising from buildings during and after construction.

Council permit authorities are directed to issue Building Notices, and subsequently Building Orders in circumstances including where building work is performed without appropriate permits or authorisation, where building work fails to comply with permits or authorisation, the building is being used in contravention of its occupancy permit, the building is not fit for occupation or the building is dangerous to occupants, neighbours or members of the public.

Building Notices are intended to formally identify issues relating to the foregoing criteria, and to provide the recipient an opportunity to make representations in relation to the identified issues. Once issued, if a Building Notice is not revoked and the representation period has expired, the Act directs that a permit authority “is to” issue a Building Order. Building Orders can require that the subject building or temporary structure be prohibited from occupation, caused to evacuate, and to cause performance of building work or other work. Failure to comply with Building Orders is an offence against the *Building Act 2016*, and permit authorities are empowered by the Act to undertake other actions to enforce

compliance as well as by proceeding against the recipient of the Building Order for the offence of failure to comply.

Building surveyors have similar powers to permit authorities to issue Building Notices and Building Orders during construction, however if a Building Order issued by a Building Surveyor is not complied with, the Building Surveyor is required by section 265(1) of the *Building Act 2016* to refer the matter to the permit authority of the relevant council, and the permit authority is directed by section 265(2) to take all reasonable steps to enforce that Order, including by entering the property in question and performing the work subject of the Building Order if necessary.

Data relating to key building activities captured by the Audit is presented in Table 2, below:

| <b>Council</b> | <b>Applications for Building Permits granted</b> | <b>Building Notices issued by council</b> | <b>Building Orders issued by council or referred by Building Surveyors</b> | <b>Building Orders not complied with</b> | <b>Action taken for non-compliance with building orders</b> |
|----------------|--|---|--|--|---|
| Council 1      | 474  | 31  | 30   | 16                                       | 21  |
| Council 2      | 438  | 86  | 126  | 54                                       | 1   |
| Council 4      | 314  | 51  | 48   | 12                                       | 11  |
| Council 3      | 294  | 74  | 52   | 6  | 15  |
| Council 7      | 230  | 8   | 29   | 23                                       | 3   |
| Council 6      | 211  | 59  | 53   | 45                                       | 2   |
| Council 9      | 204  | 44  | 38   | 11                                       | 0   |
| Council 5      | 192  | 35  | 39   | 22                                       | 2   |
| Council 10     | 147  | 16  | 8  | 0  | 0   |
| Council 13     | 116  | 5   | 7  | 0  | 0   |
| Council 11     | 111  | 0   | 5  | 2  | 0   |
| Council 8      | 111  | 5   | 9  | 3  | 0   |

|                    |             |    |    |    |   |
|--------------------|-------------|----|----|----|---|
| Council 12         | 108         | 21 | 21 | 14 | 6 |
| Council 14         | 95          | 7  | 6  | 2  | 2 |
| Council 18         | 92          | 6  | 7  | 0  | 0 |
| Council 16         | 83          | 0  | 3  | 0  | 0 |
| Council 15         | 80          | 7  | 4  | 2  | 0 |
| Council 20         | 72          | 5  | 5  | 1  | 0 |
| Council 17         | 66          | 18 | 23 | 13 | 0 |
| Council 19         | 54          | 2  | 0  | 14 | 0 |
| Council 21         | 48          | 3  | 6  | 3  | 0 |
| Council 25         | 47          | 3  | 7  | 4  | 0 |
| Council 22         | 41          | 6  | 1  | 4  | 0 |
| Council 27         | 35          | 3  | 0  | 0  | 0 |
| Council 24         | 34          | 26 | 6  | 1  | 0 |
| Council 23         | 32          | 11 | 11 | 8  | 0 |
| Council 26         | 18          | 0  | 51 | 37 | 0 |
| Council 28         | 13          | 1  | 1  | 1  | 0 |
| Council 29         | 13          | 2  | 2  | 1  | 0 |
| <b>Grand Total</b> | <b>3773</b> |    |    |    |   |

*Table 3 – Data returned in relation to building activity, building orders issued by council or referred by Building Surveyors and subsequent compliance actions.*

Building Orders Notably, Councils 11, 16, and 26 reported that they did not issue any Building Notices in the period.

Council 2 issued 86 building notices, Council 3 issued 74, Council 6 issued 59, Council 4 issued 51, Council 9 issued 44, Council 5 issued 35, Council 1 issued 31, Council 24 issued 26, Council 12 issued 21, Council 17 issued 18, Council 10 issued 16 and Council 23 issued 11. The balance of councils not mentioned above issued between 1-8 building notices.

Council 2 issued 99 Building Orders relating to illegal work, Council 6 issued 53, Council 4 issued 48, Council 3 issued 47, Council 5 issued 33, Council 9 issued 32, Council 7 issued 29,

Council 17 issued 20, Council 1 issued 18 and Council 12 issued 17. The balance of councils not mentioned above issued between 1-11 building orders.

Council 4 issued three infringement notices, commenced four prosecutions and sought four court orders for non-compliance with Building Orders. Council 1 issued 21 infringement notices for non-compliance with Building Orders. Council 3 issued 12 infringement notices, commenced two prosecutions and sought one court order for non-compliance with Building Orders. Council 12 Council issued six infringement notices for non-compliance with Building Orders. Council 7 issued three infringement notices for non-compliance with Building Orders. Council 6 issued one infringement notice and commenced one prosecution for non-compliance with Building Orders. Council 14 and Council 5 each issued two infringement notices for non-compliance with Building Orders. Council 2 issued one infringement notice for non-compliance with a Building Order.

Both Councils 6 and 8 are performing work required by a Building Order after non-compliance with a Building Order.

It is clear that the approach taken by Tasmanian councils to enforce compliance with the *Building Act 2016* through Building Notices and Building Orders, including when referred by Building Surveyors, is inconsistent and in some cases fails to adequately address risk associated with the construction, alteration and occupation of buildings.

## Emergency Orders

The ability to issue Emergency Orders exists to protect individuals and the community, as the council and permit authority respond to a threat to life arising out of the condition/use of a building, temporary structure or plumbing installation. Emergency Orders have traditionally been a measure of last resort and are only issued where there is a significant threat to life and/or public safety. The Regulator is aware of a number of instances where Emergency Orders should have or could have been issued but councils have failed to do so.

Several councils report the issuing of Emergency Orders in the 2020-21 financial year. Council 6 issued 30; Council 8 and Council 25 both issued four; Councils 13, 26 and 29 each issued three; Councils 10 and 22 issued two, and Councils 1, 2, 3, 4, 21, 23 and 28 each issued one respectively.

## Fire upgrading/Dilapidated building

Fire upgrading reports contain information that indicate whether a building or temporary structure is a fire hazard. A permit authority can then issue a Fire Upgrading Notice if the report states that a fire hazard exists.

Dilapidated building reports contain information about whether a building may be a dilapidated building. The *Building Act 2016* defines a dilapidated building as “a building that, because of neglect, disrepair, defacement or damage, is of an appearance that is unsightly, particularly in comparison with its surroundings”. A general manager can issue a Dilapidated Building Notice if the report determines a building is dilapidated. Council 6 is the only council that prepared one fire upgrading report and subsequently issued a Building Order relating to fire hazards not complied with.

Councils 2 and 4 each prepared one dilapidated building report, and Council 2 subsequently issued a Building Order relating to dilapidated buildings not complied with.

## Possession/Demolition

Council 8 is the only council that took possession of a building or temporary structure. Council 8 is also the only council that issued a Demolition Order.

The ability of councils to commence proceedings to obtain possession of a building or temporary structure is essential in the circumstance where an occupier of a building fails to allow work to be done under an Emergency Order.

Where building work that is the subject of a Building Order does not comply with the Act and is detrimental to the safety and health of any occupant or future occupant of the building, or the public, a council “is to” issue the owner with a Demolition Order.

## 4. General Feedback

Five councils elected to provide general feedback about the Tasmanian building regulatory framework. Some of the feedback provided includes:

- issues with accuracy and/or completeness of documents lodged with council, as well as documents being omitted/missed;
- non-compliance with regulatory requirements having little or no consequences;
- a misunderstanding about the categories of work;
- a lack of knowledge or awareness of certain legislative requirements by licence holders; and
- a lack of resources for some smaller councils to undertake statutory functions required for plumbing work.

## 5. Permit Authorities who are also Building Surveyors

Five permit authorities were also licensed as Building Surveyors at the time of the Audit data being received. Although there is increasing confidence in the level of initiation and understanding of the National Construction Code by the relevant permit authorities, it also creates a potential for perceived or actual conflicts of interest to arise.

Avoidance of conflicts of interest is a Code of Conduct expectation expressed in both the *Occupational Licensing (Building Services Work) Determination 2019* and the *Occupational Licensing (Building Surveyor) Code of Practice 2018* applying to building services.

It is noted that each of the permit authorities mentioned above are part of a team at their respective councils, thus mitigating the risk of these individuals being both the permit authority and the Building Surveyor on a specific project.

## 6. Conclusions

Based on the data gathered, it appears that some councils (permit authorities) are failing to acquit their statutory functions to ensure compliance with the *Building Act 2016*, as required by section 25(2)(b) of that Act.

- 1. A number of councils are failing to inspect the performance of plumbing work with regard to the risks associated with the category of plumbing work, regardless as to whether it is notifiable or permit work. It is noted that some councils appear to be carrying out inspections of notifiable or permit plumbing work at a rate that exercises an adequate level of control over the performance of plumbing work in their municipal areas.**

It is noted that different types of plumbing work may require different inspection regimes (numbers of notification/inspection stages) in order to properly address risk associated with the work in question. It is also noted that there are a number of councils in Tasmania that did not provide data in their response on the basis that their records management systems could not differentiate between inspections of notifiable and permit plumbing work. The Regulator will seek further information from those councils, and will audit the records held by those councils as required.

Twenty councils reported statistics that indicate less than two inspections performed on average, per Plumbing Certificate of Likely Compliance issued for plumbing work (both notifiable and permit). These councils are councils 1, 2, 3, 8, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 29.

Nine councils report statistics indicating that more than two inspections were performed on average, per Plumbing Certificate of Likely Compliance issued for plumbing work (both notifiable and permit). These are councils 4, 5, 6, 7, 9, 11, 12, 22 and 23.

Some councils made representations in response to the Audit stating that their ability to conduct inspections is impinged when plumbers fail to report having achieved mandatory notification stages for plumbing work. The Regulator notes this, however this fails to acknowledge the council's obligations to enforce compliance with regulations 18 and 19 of the *Building Regulations 2016* in relation to mandatory notifications, and preventing progress of work which obstructs inspection and overlooks the guidance provided in the Director's Guidelines – Inspection of Plumbing Work.

Of significant concern is the apparent failure by some councils to ensure that higher risk plumbing work is subject to an escalated inspection regime to ensure that risk to current and future property owners, neighbours and the community are adequately controlled.

It is acknowledged that in some instances, only one inspection of a project may be deemed necessary and it is not always practical to inspect 100% of all plumbing work. Based on the

information provided, the position of the Regulator is that more plumbing inspections are required to be undertaken and in-line with risk associated with categories. The consequences of not performing inspections might include potential defective works not being identified meaning the issue will not be remedied which leads to risk of damage to the structure as well as risk to the health of both individuals and the public.

**2. Some councils appear to be taking insufficient actions to enforce compliance with the NCC and the *Building Act 2016* in relation to standards of plumbing work and/or performance of plumbing installations in their municipal areas. This is based on comparison of numbers of total plumbing Certificates of Likely Compliance issued in the reporting period with the numbers of plumbing notices issued.**

Seven councils reported not issuing any Plumbing Notices in the reporting period.

Council 2 reported having issued 628 Plumbing CLCs (total) and issued 69 notices (Notice to CLC rate of around 11%), Council 9 reported 284:29 (around 10%), Council 24 reported 71:10 (around 14%), and the remaining councils reported comparative rates between 0.1% and 5%.

While it is likely that a decreased inspection rate by councils would likely result in a lower rate of plumbing notices being issued, councils may also receive notification of defective plumbing installations through other means, such as complaints from property owners or referrals from the Regulator.

Of concern is the comparison between numbers of Plumbing Orders that were not complied with in comparison to actions taken by councils in response to the failure to comply with the order itself. Only seven councils report having taken compliance action in response to Plumbing Orders that had not been complied with. These councils were Councils 1, 2, 3, 4, 7, 14 and 22. However it is noted that Council 2 reported 44 plumbing orders that were not complied with, with one compliance action having been taken.

Fourteen councils report having no Plumbing Orders that had not been complied with.

The remaining eight councils report having issued at least one plumbing order that was not complied with, but taking no action in relation to that non-compliance.

One council (Council 14) reports having performed plumbing work where a Plumbing Order had not been complied with.

There will be some circumstances where a permit authority may not deem it necessary to take compliance action if a Plumbing Order is not complied with. It is the position of the Regulator however that appropriate compliance action needs to be taken by a permit authority to ensure a Plumbing Order is complied with. A failure to do so creates an unmanaged risk to the health of individuals and the public.

While it is acknowledged that circumstances arise where defective elements of plumbing work can be resolved without resorting to the issuing of Plumbing Notices or subsequently Orders, it is the view of the Regulator that by failing to issue, and enforce, plumbing Notices and Orders in a timely way can be damaging to the interests of individuals and the public and creates unmanaged risk for people and structures.

**3. Some councils appear to not be taking compliance actions where Building Orders (including where issued by Council) were not complied with, or referred by Building Surveyors.**

Nine councils report having taken compliance actions in relation to Building Orders that had not been complied with. These include councils 1, 2, 3, 4, 5, 6, 7, 12 and 14. It is notable that Council 2 reports having had 54 Building Orders that were not complied with and only two instances of compliance action being taken in response, Council 6 had 45 instances of Building Orders that were not complied with and only two instances of compliance action being taken.

Councils 13, 18 and 27 reported having not had any Building Orders that were not complied with.

The remaining councils reported having taken no such compliance action despite Building Orders not being complied with. These include Council 26 (37 Building Orders not complied with); Council 9 (17 Building Orders not complied with); Council 17 (13 Building Orders not complied with) and Council 23 (eight Building Orders not complied with).

There will be some circumstances where a permit authority may not deem it necessary to take compliance action if a Building Order is not complied with. It is the Regulators view that appropriate compliance action should be taken by a permit authority to ensure a Building Order is complied with. A failure to do so creates an unmanaged risk of damage to the structure as well as a risk to the health of individuals and the public.

**4. There is inconsistency in relation to the way that some councils address acute risk under the Tasmanian building regulatory framework, with one council (Council 6) having issued 30 Emergency Orders during the reporting period, but fifteen councils, being Councils 1, 5, 7, 9, 11, 12, 14, 15, 17, 18, 19, 20, 24, 25 and 27 reported having not issued any Emergency Orders. The remaining councils reported having issued between one and four Emergency Orders.**

It is apparent some councils are not utilising Emergency Orders at all. This raises a question of how councils regulate the performance of emergency work for the purposes of section 214 of the *Building Act 2016*. The Regulator is aware that some councils have determined to not issue Emergency Orders under section 245 of the *Building Act 2016*, preferring (where

circumstances permit) to refer persons responsible for the performance of emergency work to provide notice (Form 77) to the council after the emergency work has been performed under section 215(3) of the *Building Act 2016*.

While this process may be appropriate under some circumstances, it does not include any measure to cause a building to be evacuated nor to prevent occupation of the building until such time as building work or other work had been performed to make the building safe.

## 7. Recommendations

1. The Director of Building Control should provide feedback to all parties to the Audit, including all councils and the Local Government Association of Tasmania (LGAT) with regard to the performance of councils generally and each council specifically.
2. The Director of Building Control should undertake further and targeted auditing of the performance of permit authorities and general manager functions under the *Building Act 2016* with a specific focus on:
  - a. The inspection of plumbing work, including further examination of records held by councils that have failed to report plumbing inspection statistics, failed to report statistics clearly, or reported statistics that appear to be unreasonable. This includes Councils 1, 2, 3, 8, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 29.
  - b. Enforcement of compliance with the requirements of the *Building Act 2016* and the NCC in relation to the performance of plumbing work, particularly in relation to councils that appear to be failing to issue Plumbing Notices, or issue Plumbing Notices infrequently with comparison to the numbers of plumbing CLCs issued.
  - c. Enforcement of compliance with the NCC and the *Building Act 2016*, including the gathering of further data and/or representations about the circumstances where councils have issued Building or Plumbing Orders; where those orders have not been complied with and where further enforcement actions appear to have not been undertaken. This includes Councils 2, 6, 9, 17, 23 and 26.
  - d. Assessment of the provision of “Notice of Emergency Work” (Form 77) to councils and the ability of the Director of Building Control to undertake further investigations into the requirements for emergency work under the *Building Act 2016*.
3. The Director of Building Control should consider offering an ongoing compliance training program for council permit authorities to ensure that persons appointed as permit authorities are provided an opportunity to improve their understanding of their statutory functions and are able to carry out those functions appropriately.
4. The Director of Building Control should regularly collect data from councils and permit authorities in relation to their obligations under relevant Acts to ensure transparency and accountability.

<NAME>  
General Manager  
<COUNCIL>  
<STREET>,  
<SUBURB>, TAS <POSTCODE>

Dear <NAME>

## NOTICE – Section 22 Building Act 2016

### Why have I got this letter?

The Director of Building Control (Director) is undertaking a compliance audit of all permit authorities in relation to the exercise of their statutory functions and powers under the *Building Act 2016* (the Act) in the 2020-21 financial year.

### Why has this Requirement been made?

The Director is of the opinion that you, as a General Manager, are in possession of information, documents or materials relating to an occupation, trade or calling to which the Act applies or otherwise to the administration of the Act.

### The Authority to make this Requirement

Section 22 of the *Building Act 2016* states in part:

#### **22. Compliance audit by Director of Building Control**

**(1)** The Director of Building Control may arrange for an audit to be carried out in respect of the work of any person or body specified in [section 16\(g\)](#).

**(2)** As part of an audit under this section, the Director of Building Control may require, by written notice, a person to provide a record or document, or to make a written statement that is to be produced, at a time and place specified in the notice.

**(3)** A person must comply with a written notice given to them under [subsection \(2\)](#).

**(4)** If requested to do so by the Director of Building Control, a person must assist in, or cooperate with, an audit under this section as requested.

**(5)** If a record, document or written statement is provided as part of an audit under this section, the Director of Building Control—

**(a)** may make copies of the record, document or statement; and

*(b) must return the record, document or statement as soon as practicable after the Director has finished with the record, document or statement.*

## **The Requirement**

I, Peter Graham, Director of Building Control, have formed the opinion that you may be in possession of information, documents or materials relating to any occupation, trade or calling to which the Act applies or otherwise to the administration of the Act.

I hereby require you, pursuant to the power vested in me by section 22 of the Act, to provide answers to the following questions in a statement, as well as provide the documents requested.

1. Please confirm the names and Building Service Provider licence numbers for all persons employed by <COUNCIL> as permit authorities.

## **Notifiable Building Work**

2. During the 2020-21 financial year:
  - a. How many certificates of likely compliance (notifiable building work) have been received from building surveyors? (s 98(4))
  - b. How many certificates of completion (notifiable building work) have been received from building surveyors during the 2020-21 financial year? (s 104(4))

## **Notifiable Plumbing Work**

3. During the 2020-21 financial year:
  - a. How many certificates of likely compliance (notifiable plumbing work) have been issued? (s 109(3))
  - b. How many inspections of notifiable plumbing work have been performed by? (s 111(1))
  - c. How many certificates of completion (notifiable plumbing work) have been issued? (s 115(3))

## **Permit Building Work**

4. During the 2020-21 financial year:
  - a. How many applications for building permits have been refused? (s 142(1))
  - b. How many applications for building permits have been granted? (s 143(1))

## **Permit Plumbing Work**

5. During the 2020-21 financial year:
  - a. How many applications for certificates of likely compliance (permit plumbing work) have been refused? (s 159(1))

- b. How many applications for certificates of likely compliance (permit plumbing work) have been granted? (*s 160(1)*)
- c. How many certificates of likely compliance (permit plumbing work) have been revoked by? (*s 163*)
- d. How many applications for a plumbing permit have been refused? (*s 168(1)*)
- e. How many applications for a plumbing permit have been granted? (*s 169(1)*)
- f. How many inspections of permit plumbing work have been performed or caused to be performed? (*s 175(2)*)
- g. How many certificates of completion (permit plumbing work) have been issued? (*178(4)*)

### **Emergency Order**

6. During the 2020-21 financial year:
  - a. How many emergency orders have been issued by the general manager? (*s 245(7)*)

### **Building Notice/Order**

7. During the 2020-21 financial year:
  - a. How many building notices were issued to an owner? (*s 237(2)*)
  - b. How many building notices were revoked prior to the completion of the relevant representation period?
  - c. How many building orders have been served on a person who was not previously issued with a building notice? (*s 246(3)*)
  - d. How many building orders relating to illegal work have you served on owners? (*s 247(1)*)
  - e. How many building orders issued by council have not been complied with?
  - f. How many actions have been taken in relation to non-compliance with building orders, including by:
    - Issuing infringement notices under *s 246(8)*?
    - Commencing prosecutions under *s 246(8)*?
    - Seeking court orders under *s 251*?
  - g. How many building orders have been referred to council by building surveyors for enforcement? (*s 265(1)*)
  - h. How many times has council performed work required by an emergency order or building order after a building order has not been complied with? (*s 265(3)*)

### **Plumbing Notice/Order**

8. During the 2020-21 financial year:
  - a. How many plumbing notices have been issued to owners? (s 238(1))
  - b. How many plumbing notices were revoked prior to the completion of the relevant representation period?
  - c. How many plumbing orders have been served on a person who was not previously issued with a plumbing notice? (s 250(3))
  - d. How many plumbing orders have not been complied with?
  - e. How many actions have been taken in relation to non-compliance with plumbing orders, including by:
    - Issuing infringement notices under s 250(5)?
    - Commencing prosecutions under s 250(5)?
    - Seeking court orders under s 251?
  - f. How many times has council performed work required by a plumbing order after the plumbing order has not been complied with? (s 265(3))

### **Fire Upgrading Report/Notice/Order**

9. During the 2020-21 financial year:
  - a. How many fire upgrading reports have been prepared by council? (s 239(1))
  - b. How many fire upgrading notices have you issued to an owner? (s 240(1))
  - c. How many fire upgrading notices have not been complied with?
  - d. How many building orders relating to fire hazards have been served on owners? (s 248(1))
  - e. How many building orders relating to fire hazards have not been complied with?
  - f. What action has been taken for non-compliance with building orders relating to fire hazards (if any)?

### **Dilapidated Building Notice/Order**

10. During the 2020-21 financial year:
  - a. How many dilapidated building reports have been prepared by council? (s 241(1))
  - b. How many dilapidated building notices have been issued by council? (s 242(1))
  - c. How many dilapidated building notices have not been complied with?

- d. How many building orders relating to dilapidated buildings have been served on owners? (s 249(1))
- e. How many building orders relating to dilapidated buildings have not been complied with?
- f. What action has been taken for non-compliance with building orders relating to dilapidated buildings (if any)?

### **Possession of building**

11. How many buildings or temporary structures has council obtained possession of under, following failure to allow performance of work under s 265(3)? (s 266)

### **Demolition Order**

12. During the 2020-21 financial year:
  - a. How many demolition orders has council served on owners of premises? (s 267(1))

### **What must I do?**

You must comply with this requirement unless you have a reasonable excuse not to do so. Your reasonable excuse must be authorised, justified or excused for by law. You may commit an offence if you elect not to respond or are too busy to meet the requirements. If you believe you have a reasonable excuse as to why you cannot comply with the requirement, please provide your reasonable excuse in writing within 14 days of receipt of this notice.

### **When must I do it by?**

Your response to the requirement must be provided by COB 25 February 2022.

You can elect to provide you response by post or email.

Email – [CBOSinfo@justice.tas.gov.au](mailto:CBOSinfo@justice.tas.gov.au) – Reference [FOL/21/18520](#)

Post – Director of Building Control – Reference [FOL/21/18520](#)  
Consumer, Building and Occupational Services  
P.O. Box 56  
Rosny Park  
Tasmania 7018

The investigating officer, Georgia Newland may be contacted on (03) 6166 4700 or at [georiga.newland@justice.tas.gov.au](mailto:georiga.newland@justice.tas.gov.au) if you have any questions.

I look forward to receiving your response.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Peter Graham', written in a cursive style.

Peter Graham

**Director of Building Control  
Consumer, Building and Occupational Services**

**22/12/2021**

| Permit Authority  | Council 1 | Council 2 | Council 3 | Council 4 | Council 5 | Council 6 | Council 7 | Council 8 | Council 9 | Council 10 | Council 11 | Council 12 |
|---|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|------------|------------|
| CLCs (notifiable building work) received from building surveyors  | 479       | 304       | 339       | 239       | 238       | 177       | 108       | 254       | 106       | 195        | 174        | 164        |
| Certificates of Completion (notifiable building work) received from building surveyors                            | 146       | 196       | 220       | 65        | 95        | 48        | 68        | 64        | 53        | 54         | 47         | 36         |
| CLCs (notifiable plumbing work) issued  | 245       | 366       | 156       | 357       | 196       | 204       | 157       | 200       | 127       | 125        | 190        | 164        |
| Inspections of notifiable plumbing work   | 477       | 549       | 128       | 1018      | 966 -     | 335       | 752 -     | 485       | 284       | 158        | 380        | 445        |
| Certificates of Completion (notifiable plumbing work) issued  | 86        | 253       | 53        | 117       | 127       | 60        | 106       | 64        | 71        | 59         | 140        | 44         |
| Applications for building permits refused   | 0         | 0         | 36        | 0         | 0         | 1         | 0         | 0         | 0         | 0          | 0          | 0          |
| Applications for building permits granted   | 474       | 438       | 294       | 314       | 192       | 211       | 230       | 111       | 204       | 147        | 111        | 108        |
| Applications for CLCs (permit plumbing work) refused  | 0         | 0         | 33        | 0         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Applications for CLCs (permit plumbing work) granted  | 990       | 262       | 370       | 134       | 109       | 99        | 144       | 95        | 157       | 134        | 27         | 51         |
| CLCs (permit plumbing work) revoked   | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Applications for plumbing permit refused  | 0         | 0         | 33        | 0         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Applications for plumbing permit granted  | 990       | 262       | 370       | 134       | 109       | 99        | 144       | 95        | 157       | 134        | 27         | 51         |
| Inspections of permit plumbing work   | 1648      | 329       | 588       | 358       | 966 -     | 493       | 752 -     | 230       | 581       | 220        | 60         | 79         |
| Certificates of Completion (permit plumbing work) issued  | 259       | 315       | 284       | 34        | 242       | 26        | 190       | 31        | 257       | 41         | 20         | 11         |
| Emergency Orders  | 0         | 1         | 1         | 1         | 0         | 30        | 0         | 4         | 0         | 2          | 0          | 0          |
| Building notices issued   | 31        | 86        | 74        | 51        | 35        | 59        | 8         | 0         | 44        | 16         | 5          | 21         |
| Building notices revoked  | 0         | 0         | 2         | 0         | 0         | 6         | 0         | 0         | 6         | 0          | 0          | 0          |
| Building orders served on person who has not been previously issued with a building notice                        | 10        | 27        | 5         | 0         | 5         | 0         | 0         | 2         | 0         | 0          | 3          | 0          |
| Building orders relating to illegal work  | 18        | 99        | 47        | 48        | 33        | 53        | 29        | 2         | 32        | 7          | 6          | 17         |
| Building orders not complied with   | 16        | 54        | 6         | 12        | 22        | 45        | 23        | 2         | 11        | 0          | 3          | 14         |
| Action taken for non-compliance with building orders  | 21        | 1         | 15        | 11        | 2         | 2         | 3         | 0         | 0         | 0          | 0          | 6          |
| Building orders referred to Council by building surveyors   | 2         | 0         | 0         | 0         | 1         | 0         | 0         | 1         | 6         | 1          | 0          | 4          |
| Council performing work required by an emergency order or building order after non-compliance with building order | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 1         | 0         | 0          | 0          | 0          |
| Plumbing notices issued   | 45        | 69        | 41        | 1         | 5         | 3         | 2         | 3         | 29        | 3          | 1          | 8          |
| Plumbing notices revoked  | 0         | 0         | 2         | 0         | 0         | 1         | 0         | 0         | 5         | 0          | 0          | 0          |
| Plumbing orders served on a person who has not been previously issued with a plumbing notice                      | 3         | 24        | 0         | 0         | 0         | 0         | 1         | 0         | 0         | 1          | 0          | 0          |
| Plumbing orders not complied with   | 12        | 44        | 5         | 0         | 3         | 2         | 2         | 0         | 15        | 0          | 1          | 0          |
| Action taken for non-compliance with plumbing orders  | 3         | 1         | 13        | 2         | 0         | 0         | 3         | 0         | 0         | 0          | 0          | 0          |
| Council performing work required by a plumbing order after non-compliance with plumbing order                     | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Fire upgrading reports prepared   | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 0         | 0         | 0          | 0          | 0          |
| Fire upgrading reports issued to owner  | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 0         | 0         | 0          | 0          | 0          |
| Fire upgrading notices not complied with  | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 0         | 0         | 0          | 0          | 0          |
| Building orders relating to fire hazards  | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 0         | 0         | 0          | 0          | 0          |
| Building orders relating to fire hazards not complied with  | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 0         | 0         | 0          | 0          | 0          |
| Action taken for non-compliance with building orders relating to fire hazards                                     | 0         | 0         | 0         | 0         | 0         | Multiple  | 0         | 0         | 0         | 0          | 0          | 0          |
| Dilapidated building reports prepared   | 0         | 1         | 0         | 1         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Dilapidated building reports issued   | 0         | 1         | 0         | 1         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Dilapidated building notices not complied with  | 0         | 1         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Building orders relating to dilapidated buildings   | 0         | 1         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Building orders relating to dilapidated buildings not complied with   | 0         | 1         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Action taken for non-compliance with building orders relating to dilapidated buildings                            | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0          | 0          | 0          |
| Buildings or temporary structures taken possession of   | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 0          | 0          | 0          |
| Demolition orders   | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 0          | 0          | 0          |

