

Memo



WORK INSTRUCTION (WI) PROCESS IN APPLYING s121 of the LG Act

To:	Statutory Building Team
From:	Matt Glover - MBS
CC:	Not Applicable
Date:	23 March 2023
Re:	Work Instruction – S121 of the Local Government Act 2020

OVERVIEW

The purpose of this Work Instruction is to provide guidance on when S121 of the Local Government 2020 Act should be applied to the building regulatory enforcement process as relevant to the statutory building team.

Due to the type of building works completed and/or certified and future liability of allowing the works to remain, it is essential to include unlawful works completed on any future Section 121 Land Information Certificate.

Land Information Certificates are produced by the Rates Department and are generally used to inform future owners of any important information during the sale of a property.

DECISION MAKING

S121 statements are to be considered in the following circumstances and generally limited to Class 1 and Class 10 buildings:

1. Old/stale enforcement matters that are unable to resolved in other methods and where council are satisfied that the structure can remain; OR
2. Where the owner is reasonably unable to source a Building Surveyor to complete certification documentation and where the structure is being retained; OR
3. When there is major building works completed without a Building Permit. I.e. Dwelling addition to a Class 1 building. A S121 statement is to be included with the cancellation of any notice/order and be inclusive of a certification package.

Contact the Mornington Peninsula Shire

1300 850 600
mornpen.vic.gov.au
customerservice@mornpen.vic.gov.au

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 90 Besgrove Street, Rosebud VIC 3939
 ABN: 53 159 890 143

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Prior to determining the suitability of a S121 statement, the officer must be satisfied and have documented their findings (via a detailed report) within the appropriate application. Matters to be considered (but not limited to) are as follows:

▪	General safety and condition of the building. Must be built to an acceptable standard (although it may not comply with relevant legislation) and pose no danger.
▪	Structural adequacy of the building. In most circumstances, a Structural Engineers report verifying suitability is to have been provided.
▪	The impact that retention of the building may have on any Building Permit Applications, including applications to adjoining properties.
▪	Generally, the impact that the retention of the building will have on adjoining properties.
▪	Compliance with Part 5 (Siting Provisions) of the Building Regulations 2018 has been achieved.
▪	Certification from the appropriately qualified and licensed Electrician for any electrical works completed
▪	Certification from the appropriately qualified and licensed Plumber for any plumbing work completed.
▪	Compliance Building Code Compliance matters such as: <ul style="list-style-type: none"> - Part 3.5.3 Gutters and downpipes. Discharge of any storm water drainage system and the impact it may have on an adjoining property. - Part 3.6 Glazing. Safety glazing where applicable. - Part 3.7 Fire Safety. - Part 3.8 Health and Amenity. Floor to ceiling heights, wet areas, etc. - Part 3.9 Safe movement and access. Riser, going, thresholds, etc.
▪	If the building is located within land liable to Flooding pursuant to Building Regulation 154 and Flooding consideration pursuant to Regulation 153 and 154.
▪	If the building is located within land subject to Termite Infestation pursuant to Building Regulation 151.
▪	The building is not permitted to constructed over an easement or any existing septic tanks.

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Examples of standardised wording to be used within a S121 Statement:

<p>■</p>	<p>Council is aware that building work has been carried out on this land without a building permit contrary to section 16 of the Building Act 1993 and without the required mandatory inspections required by regulation 167 of the Building Regulations 2018. These works include the construction of the dwelling extension at the rear of the existing dwelling. It is possible that such building work may not comply with the Building Act 1993 and if so may result in damp and subsidence issues to the structure resulting in cracking to building elements or other similar issues.</p> <p>Persons relying on this certificate should make their enquiries with the owner of the land in relation to this notification and be aware that building insurance may not support claims resulting from these works. Council reference BCW0001/17</p>
<p>■</p>	<p>The American Barn type structure located to the rear of the existing dwelling is not permitted to be used for habitable purposes in any capacity. This building is permitted to be used as a Class 10a (as defined by the National Construction Code only). Council is aware that building work has been carried out on this land without a building permit contrary to section 16 of the Building Act 1993 and without the required mandatory inspections required by regulation 901 of the Building Regulations 2018. It is possible that such building work may not comply with the Building Act 1993 and if so may result in damp and subsidence issues to the structure resulting in cracking to building elements or other similar issues.</p> <p>Persons relying on this certificate should make their enquiries with the owner of the land in relation to this notification or the Statutory Building Team at Mornington Peninsula Shire on 5950 1060.</p>
<p>■</p>	<p>The body of water located the rear of the existing dwelling is not permitted to be used as a swimming pool or spa pursuant to the National Construction Code of Australia. This area is permitted to be used as a pond/dam only. This area is not intended for swimming or wading. Any current or future owners are required to obtain a Building Permit for the structure should it be intended to be used as a swimming pool/spa</p>

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PROCESS

A step-by-step procedure is located with the *Master Procedures Manual Compliance*. This procedure provides guidance on how to execute the required process in CI.

REASON

If due to the type of building works completed and/or certified and the future liability of allowing the works to remain, it is essential to include works completed without a building permit on any future Section 121 Land Information Certificate.

Effective Date: 23 March 2023

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