

Council Building Fire Safety Committees

Guide

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Attorney-General's Department

Planning and Land Use Services

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Introduction

Local government councils play an important role in protecting the ongoing safety of building occupiers and users through the provisions of the *Planning, Development and Infrastructure Act 2016* (the PDI Act).

Section 157 of the PDI Act establishes the power for a council to investigate whether building owners are maintaining proper levels of fire safety in their buildings for the protection of all occupiers, whether they be residents and workers who use them regularly, or clients and visitors who only use them occasionally.

An appropriately qualified 'authorised officer' from a council or a member of a Building Fire Safety Committee, as an 'appropriate authority' under the PDI Act, can inspect existing buildings to check if the fire safety is adequate. If not, a Building Fire Safety Committee can take action to require the owner to upgrade the fire safety of the building to an appropriate level.

For the purposes of this Guide, the term 'Building Fire Safety Committee' means an 'appropriate authority' under section 157 of the PDI Act.

This guide is designed to -

- Assist councils and Building Fire Safety Committee members to understand their roles and responsibilities with regard to fire safety of existing buildings; and
- Outline suggested procedures and protocols that a Building Fire Safety Committee may follow.

Building Fire Safety Committee Protocols

What is the role of a Building Fire Safety Committee?

The role of a Building Fire Safety Committee includes -

- Developing appropriate building fire safety inspection policies for existing buildings based on the likely fire safety risks that could arise depending on the building use and occupant characteristics;
- Scrutinising the fire safety of buildings that have been identified as having fire safety provisions that are not adequate;
- Issuing of a notice to the building owner (where a Building Fire Safety Committee determines that the fire safety of a building is not adequate) identifying inadequacies that need to be addressed or rectified to an extent that will provide an adequate level of safety for the occupants;
- Forwarding information on any fire safety notices issued by the Building Fire Safety Committee to council administration for Section 7 enquiries (made by a vendor when a building is available for sale or lease - refer Appendix D);
- Where appropriate, negotiating a cost effective solution with a building owner that will reduce fire safety risks to an acceptable level and meet the required fire safety performance;
- Issuing notices that schedule rectification work that must be carried out in order to raise the building fire safety to an adequate level of safety or in high risk situations issuing notices that prohibit the occupation or use of a building until a fire hazard no longer exists;
- Initiating enforcement or other action to ensure a building owner complies with a section 157 notice; and
- Revoking or varying fire safety notices when appropriate.

How does Council establish a Building Fire Safety Committee?

The process for a council to establish a Building Fire Safety Committee is generally as follows -

1. Decide whether to have a stand-alone Building Fire Safety Committee to serve its council area, or to have an agreement with one or more adjoining councils to form a regional Building Fire Safety Committee;
2. Select and appoint appropriate Building Fire Safety Committee members;
3. Appoint the Building Fire Safety Committee under Section 157 of the PDI Act;
4. Note and support council inspection policies for building fire safety;
5. Appoint one or more appropriately qualified authorised officers, who may enter and inspect the fire safety of existing buildings; and
6. Provide administrative support to the Building Fire Safety Committee.

If a regional Building Fire Safety Committee is appointed, agreement will need to be reached on matters such as cost sharing arrangements for legal proceedings etc.

Who can be a member of a Building Fire Safety Committee?

A Building Fire Safety Committee is required to have at least 3 members, of whom-

- (a) One must be a person with prescribed qualifications in building surveying appointed by the council or councils;
- (b) One must be an authorised officer under Part 3 Division 5 or section 86 of the *Fire and Emergency Services Act 2005* who, depending on the location of the council or areas, has been approved by the Chief Officer of the relevant fire authority to participate as a member of the Building Fire Safety Committee; and
- (c) One must be a person with expertise in the area of fire safety appointed by the council or councils.

Councils have the option of appointing a fourth member to a Building Fire Safety Committee, who may be-

- (d) Any person the council or group of councils considers appropriate to nominate.

In relation to member (b) from the Fire Services, the council or group of councils will need to write to the Chief Officer relevant to its area of jurisdiction, asking that an officer be nominated for appointment to its Building Fire Safety Committee.

For areas under the jurisdiction of the Metropolitan Fire Services (MFS) contact -

The Chief Officer
SA Metropolitan Fire Service
GPO Box 98 ADELAIDE SA 5001
www.mfs.sa.gov.au

For areas under the jurisdiction of the Country Fire Services (CFS) contact -

The Chief Officer
SA Country Fire Service
GPO Box 2468 ADELAIDE SA 5001
www.cfs.sa.gov.au

For areas with dual jurisdiction (MFS and CFS), it would be advisable to contact both jurisdictions and ask that they collaborate with each other and nominate the most appropriate officer.

In relation to member (c), '*a person with expertise in the area of fire safety*', this person would be expected to have significant practical and technical knowledge and experience in the principles of building fire safety, including (but not limited to) -

- Detection;
- Communication;
- Evacuation;
- Containment; and
- Extinguishment.

With regard to member (d), the Council has the option of appointing any person it considers appropriate under their particular circumstances. In some cases the Council may decide to appoint a fourth member on an as needs basis. For example, using a fire engineer or other expert to match knowledge with building types and complexity of fire safety issues.

The council may also specify a term of office of a member of a Building Fire Safety Committee.

Deputy members

Deputies can be appointed and it is recommended that a deputy for each member is nominated when the Building Fire Safety Committee is established to ensure that meetings are held at the appropriate times.

Conflict of interest

Under the PDI Act, a member of a Building Fire Safety Committee who has a personal interest or a direct or indirect pecuniary interest in any matter before the Building Fire Safety Committee must not take part in any deliberations or decisions of the Building Fire Safety Committee in relation to that matter.

What policies and procedures need to be considered and/or established by a Building Fire Safety Committee?

Once established, a Building Fire Safety Committee will need to determine its procedures and protocols. These are likely to include -

- Where and how often it will meet;
- How many members constitute a quorum;
- Who will chair the meetings;
- Who will act as the minute secretary;
- How records are to be kept, filed and stored;
- What types/classes of buildings are to be scrutinised;
- Who the Council has appointed as authorised officer to undertake inspections;
- Procedures for Building Fire Safety Committee inspections;
- Appropriate formats for fire safety notices, correspondence etc;
- Procedures for issuing, varying and revoking notices; and
- Procedures for prosecutions/appeals.

Meeting procedures and protocols

A Building Fire Safety Committee will need to meet on a regular basis to consider and determine matters such as -

- Appropriate action to take following a fire safety inspection;
- Whether upgrading works outlined in a fire safety report submitted by an owner are appropriate;
- Negotiating and agreeing appropriate performance solutions with building owners;
- Issuing, varying or lifting fire safety notices;
- Monitoring progress and checking if owners are complying with fire safety notices; and
- Procedures for instigating prosecution and/or enforcement action.

The Building Fire Safety Committee may decide to meet monthly until it has had an opportunity to assess the particular needs of the area.

Quorum

It is recommended that for a 3-member Building Fire Safety Committee, two members should constitute a quorum and that one of those members be the Fire Services representative.

For a 4-member Building Fire Safety Committee, it is recommended that three members should constitute a quorum and that one of those members be the Fire Services representative.

Each Building Fire Safety Committee will need to determine what to do if a majority decision cannot be reached. Some options include-

- Provisions for one particular member (e.g. the Chair) to have a second or casting vote; or
- Deferral until a majority decision can be reached.

Chair

It is recommended that each Building Fire Safety Committee has a Chairperson to preside at meetings. It may be that member (a) who has building surveying qualifications would be the most appropriate person for this role, however, this is not mandatory. In the absence of the Chair, the Committee should appoint the next most appropriate person to preside at meetings.

Secretarial and administrative support

A council or group of councils may provide a staff member to act as secretary to the Building Fire Safety Committee, or the Building Fire Safety Committee may decide that one of its members will undertake this function.

Regardless of the administrative support, it is important that proper, accurate minutes and records be kept of Building Fire Safety Committee proceedings and actions, as they may later form the basis of -

- Legal proceedings should an appeal be made against a decision of the Building Fire Safety Committee; or
- A history of sites with recurrent issues over long periods of time.

Irrespective of who will take minutes, additional administrative support will need to be provided by council(s) to -

- Prepare and issue correspondence and notices;
- Co-ordinate information for Section 7 enquiries;
- Track progress of actions; and
- File, store and retrieve records.

[Refer to Appendix D for details of Section 7 statements and Appendix E for examples of standard letters that may be useful]

Specialist support

The Building Fire Safety Committee will need to check if the council(s) has appointed an appropriately qualified authorised officer to undertake fire safety inspections of buildings in its area, and if procedures are in place for forwarding fire safety reports to the Building Fire Safety Committee.

Inspection policy

Once appointed, a Building Fire Safety Committee will need to develop a broad policy that sets out the basis for undertaking building inspections for fire safety purposes. Inspections must be carried out at the request of the fire authority, but may also be carried out when -

- (a) A complaint is received;
- (b) On an audit basis; or
- (c) On a targeted high risk basis.

In determining its policy, a Building Fire Safety Committee should have regard to the types of buildings and/or occupancies within its area of jurisdiction to identify those that may constitute a high fire safety risk and need to be systematically inspected. For instance-

- Buildings that provide overnight accommodation for unrelated persons; or
- Buildings where large crowds congregate during operating hours, such as shops or assembly buildings might be identified as a high-risk priority.

When a Building Fire Safety Committee has determined its policy on buildings to be scrutinised, it would be good practice to have that policy noted by the elected council member..

A fire safety inspection policy also needs to address how the policy is to be monitored.

What does a Building Fire Safety Committee consider when assessing if the fire safety of an existing building is adequate?

If an authorised officer or a fire authority has inspected a building and considers the fire safety is not adequate, the Building Fire Safety Committee will then need to identify what features of the building make the fire safety inadequate. Section 157 of the PDI Act, sets out the priorities for assessing and upgrading the fire safety risks of an existing building (in order of priority) as-

- Firstly, a reasonable standard of fire safety for the occupiers of a building
- Secondly, the minimal spread of fire and smoke
- Thirdly, an acceptable fire-fighting environment,

in accordance with the fire safety objectives and performance criteria of the *Building Code*.

The fire safety of an existing building is not considered adequate if-

- (a) building occupants are not able to evacuate safely during a fire, due to-
 - (i) blocked or obstructed exits;
 - (ii) obstructions in exits and paths of travel to exits;
 - (iii) width of exits and paths of travel to exits are not adequate to cater for the number of occupants;
 - (iv) fire and/or smoke spreading to exits and evacuation routes through unprotected openings, damage to fire resisting building elements or lack of smoke control features;
 - (vi) fire hazards or excessive fire loads that could impede evacuation (which may include combustible floor coverings, ceilings, wall linings and wall claddings);
 - (vii) insufficient exits to cater for the number of occupants;
 - (viii) excessive travel distances to exits;
 - (ix) door hardware and/or direction of door swings in exits that are likely to impede safe evacuation;
 - (x) inadequate lighting is available for occupants to locate and use exits during an emergency;
 - (xi) no first attack fire-fighting facilities available for occupant use; or
 - (xii) building occupants will not receive adequate warning of a fire or other emergency to enable them to evacuate to a safe place;
- (b) occupants using exits and paths of travel to exits are not protected from the effects of smoke and fire (e.g. by fire resisting construction, by use of non-combustible materials, by use of materials that have low fire hazard properties, by use of a smoke control system or fire suppression system), and/or

- (c) the fire brigade cannot access or use existing fire services and equipment needed for fire-fighting operations and to assist safe evacuation.

When the fire safety of a building is not adequate, the role of a Building Fire Safety Committee is to work with the building owner to develop a cost effective solution that will make the fire safety of the building adequate.

Ministerial Building Standard MBS 001 – Upgrading health and safety in existing buildings outlines the general requirements for fire safety in existing buildings. Sections 301 to 331 of that Standard have performance requirements and deemed-to-satisfy provisions for fire safety in existing buildings and Appendix B4 of the Standard expands on the fire safety priorities required by the PDI Act, which are-

1. A reasonable standard of fire safety for the occupiers of a building

A reasonable standard of fire safety can be achieved where occupants are alerted to a fire in the building and are able to find and use exits and evacuation routes to evacuate to a safe place before being overcome by the effects of smoke or fire.

Safe evacuation can be achieved if-

- Occupants, particularly sleeping occupants, are alerted to a fire in the building as soon as possible;
- The number, dimensions, location, operation and visibility of exits and evacuation routes are sufficient to enable the number of occupants to evacuate safely;
- Occupants using exits and evacuation routes to evacuate are protected from the effects of smoke and/or fire during the time needed for safe evacuation; and
- The building will maintain structural stability for the period of time needed for building occupants to evacuate to a safe place before being overcome by smoke or fire.

Occupants can be protected during evacuation through the use of-

- non-combustible and/or fire or smoke resisting building elements where necessary to-
 - delay or prevent fire from damaging structural elements in exits and evacuation routes;
 - prevent smoke and/or fire spreading to exits and evacuation routes;
 - reduce travel distances and allow occupants more time to reach exits and evacuation routes;
 - contain or separate special fire hazards from exits and evacuation routes.
- additional exits to decrease travel times needed to reach an exit;
- fire extinguishers for occupants to use to undertake initial fire attack;
- fire hose reels where appropriate and available for occupants to use to undertake initial fire attack;
- fire hazard reduction strategies (eg reducing fire loads that could arise from storage of highly combustible materials or goods);
- early fire suppression systems such as sprinklers where appropriate to-
 - delay or prevent fire from damaging structural elements in exits and evacuation routes;
 - prevent smoke and/or fire spreading to exits and evacuation routes;
 - permit extended travel distances and still allow occupants time to reach exits and evacuation routes;
 - suppress a fire arising from an identified fire hazard;
- a smoke extraction system to keep smoke above a safe level within exits and evacuation routes.

2. Minimal spread of fire and smoke

Minimal spread of fire and smoke can be achieved if smoke and fire spread to evacuation routes is minimised to the extent necessary to enable occupants to reach exits and evacuation routes before being overcome by the effects of smoke or fire.

Smoke and fire spread can be minimised through the use of-

- fire or smoke resistant construction where necessary to-
 - delay or prevent fire from damaging structural elements in evacuation routes;
 - prevent smoke and/or fire spreading to and within evacuation routes, from one fire compartment to another, or from one storey to another storey;
 - allow occupants more time to use evacuation routes to reach exits.
- an early fire suppression sprinkler system where necessary to-
 - delay or prevent fire from damaging structural elements in evacuation routes;
 - reduce fire and/or smoke spreading within evacuation routes, from one fire compartment to another fire compartment, or from an identified fire hazard;
 - allow occupants more time to use evacuation routes to reach exits.
- a smoke extraction system to keep smoke above a safe level within evacuation routes, or from spreading from one fire compartment to another fire compartment.
- early fire brigade intervention where fire-fighting facilities are available and where the building or occupant characteristics are such that they need to rely on fire brigade intervention for safe evacuation.

3. An acceptable fire-fighting environment

An acceptable fire-fighting environment can be achieved if the fire brigade is able to safely access and use facilities needed for its fire-fighting operations.

Safe access and facilities needed for fire-fighting operations may include-

- Where provided, a fire hydrant system or other water supply system for fire-fighting purposes that is suitable for use by the fire brigade
- Where provided, fire monitoring connections to the fire brigade are working as required
- Where provided, a fire control centre/room is protected from fire/smoke spread and has working equipment suitable for use by the fire brigade for its fire-fighting operations
- The building maintaining structural stability and resisting the spread of fire and smoke to the extent necessary for the fire brigade to safely access and use facilities provided for its fire-fighting operations.

Issuing of Notices

A Council Building Fire Safety Committee can serve a notice under section 157(3) of the PDI Act on the owner of the building (in a form similar to the Notice of Fire Safety Defect as provided in Appendix A of this Standard) if it believes that the fire safety of a building is not adequate.

It is advisable for a Building Fire Safety Committee to inspect a building before issuing a Section 157(3) notice so that it can make better informed decisions regarding the fire safety adequacy and extent of upgrading work it may require.

Before undertaking an inspection, the Building Fire Safety Committee should advise the building owner in writing of its intention to do so, to give the owner the opportunity to be present during the inspection.

Under the PDI Act, the Building Fire Safety Committee can authorise the following fire safety notices to be served on a building owner -

- Section 157(3) Notice of Fire Safety Defect; and
- Section 157(7) Notice of Building Work or Other Actions Required.

In order to reduce exposure to criticism or legal challenge it would be advisable to have at least two members of a Building Fire Safety Committee sign notices issued under Section 157 of the PDI Act.

It may also be appropriate to seek legal advice regarding any notices before they are issued to ensure technical and procedural soundness and avoid exposure to actions in relation to due process.

The Building Fire Safety Committee can vary or revoke a fire safety notice at any time if it is satisfied that it is appropriate to do so. For example, the Building Fire Safety Committee should revoke a Notice of Building Work or Other Actions Required once it is satisfied that the prescribed works scheduled in the notice have been completed.

Both the building owner and the council administration responsible for providing information for Section 7 enquiries must be notified of any change to a fire safety notice.

Why are Fire Safety Notices issued and what should they include?

Section 157(3) Notice of Fire Safety Defect

A Notice of Fire Safety Defect (as issued under section 157(3) of the PDI Act) is issued to alert the building owner that the building fire safety is not considered adequate, and that certain work needs to be undertaken to rectify the situation.

The PDI Act stipulates that such a notice may require -

- The owner to report to the Building Fire Safety Committee on building work or other measures necessary to ensure that the fire safety of the building is adequate; or
- In the case of an emergency, require the owner to carry out a program of work, or other measures to overcome any fire hazard, which may include evacuation of the building or part of a building until the Building Fire Safety Committee is satisfied that the fire hazard no longer exists.

A list of building fire safety matters that the Building Fire Safety Committee considers are not adequate may be attached as a schedule to the Notice of Fire Safety Defect. The maximum amount of time allowed for an owner to report to council (as required by a Notice of Fire Safety Defect) is two months unless the Building Fire Safety Committee specifically agrees to a longer period. During this time the building owner can make representations to the Building Fire Safety Committee about the fire safety of the building and work or other measures to be carried out.

The Notice of Fire Safety Defect should also inform the owner of his/her right to appeal within 14 days to the Environment, Resources and Development (ERD) Court if he or she disputes anything in the notice or schedule.

A suggested format for a Section 157(3) Notice of Fire Safety Defect can be found in Appendix A.

Information regarding fire safety notices must be declared by the council if a Section 7 enquiry is made to the council. *[Refer to Appendix D]*

Section 157(7) Notice of Building Work or Other Actions Required

A Notice of Building Work or Other Actions Required (as issued under section 157(7) of the PDI Act) is issued to require a building owner to undertake appropriate upgrading work to rectify the fire safety of the building.

The PDI Act stipulates that such a notice may -

- Require the owner to seek development authorisation to carry out a program of work or other measures to make the fire safety of the building or structure adequate; or
- Prohibit occupation of the building, or part of the building, until the Building Fire Safety Committee is satisfied that the fire hazard no longer exists.

Ministerial Building Standard MBS001 – Upgrading health and safety in existing buildings provides performance requirements and deemed-to-satisfy provisions for achieving acceptable levels of fire safety in existing buildings, against which a program of work or other proposed measures can be assessed.

In addition, a schedule detailing the program of work or other measures to be undertaken must be attached as a schedule to a section 157(7) Notice of Building Work or Other Actions Required.

A section 157(7) Notice of Building Work or Other Actions Required must also stipulate a period of time in which the prescribed works are to be completed. The specified time period may include time for the owner to obtain development approval (if required).

It is recommended that when issuing a section 157(7) Notice of Building Work or Other Actions Required, the Building Fire Safety Committee informs the owner of the right to appeal within 14 days to the ERD Court if they disputes anything in the notice or schedule.

A suggested format for a section 157(7) Notice of Building Work or Other Actions Required is included in Appendix B.

Information regarding fire safety notices must be declared by the council in Section 7 statements. *[Refer to Appendix D]*

Prescribed building work

When determining what work is appropriate to include in a schedule or program of prescribed building work (forming part of a section 157(7) Notice of Building Work or Other Actions Required), it is recommended that the Building Fire Safety Committee take a performance approach and take the following into consideration-

- Any representation made by the building owner;
- Any report/s submitted by the building owner;
- Any risk analysis undertaken of the building by the building owner;
- Any action plans previously prepared by the building owner to eliminate or minimise identified risks at the earliest opportunity, including those identified by the Building Fire Safety Committee; and
- The possible staging of the work to minimise possible financial hardship for the building owner.

Staged works

A Building Fire Safety Committee may allow an owner to undertake fire safety rectification work in stages, provided that the agreed program of work eliminates or minimises risks that threaten the life safety of occupants as a first priority.

Staging the works can reduce the cost burden for an owner to a manageable level. It may also be useful in cases where the building owner elects to take the opportunity to progressively upgrade the whole building to meet current Building Code requirements (i.e. over and above the elimination of urgent high priority risks).

What rights and obligations does a building owner have in relation to actions by a Building Fire Safety Committee?

Fire safety notices

A building owner served with a Section 157(3) Notice of Fire Safety Defect has two months (or a longer period if a time extension is negotiated with the Building Fire Safety Committee) in which to develop an appropriate upgrading proposal and report to the Building Fire Safety Committee on work or measures proposed to be undertaken to make the fire safety of the building adequate.

A building owner can -

- During that period make representations to the Building Fire Safety Committee about the fire safety of the building and the work or other measures that need to be carried out;
- Apply to the Building Fire Safety Committee at any stage to have a fire safety notice varied or revoked; or
- Appeal to the ERD Court against the service of a notice under Division 6 of the PDI Act.

An owner must comply with a fire safety notice or risk prosecution and/or enforcement action through the ERD Court.

On completion of any work required by a fire safety notice, the owner must notify the Building Fire Safety Committee in writing that the work has been completed.

Appeals with the ERD Court

Appeals are lodged with and determined by the ERD Court.

An appeal must be lodged within 14 days after a notice is given unless the Court allows longer time.

The operation of a fire safety notice is not suspended pending the determination of an appeal, unless the ERD Court orders otherwise.

To initiate an appeal the applicant must -

- Submit a notice of appeal with the ERD Court; and
- Pay the prescribed fee.

A notice of appeal must be in writing, in a form determined by the ERD Court, setting out the grounds of the appeal, with a copy of the disputed notice attached.

The Building Fire Safety Committee may only become aware of the appeal when the notice of appeal is served on them by the ERD Court.

What does a Building Fire Safety Committee do if a building owner fails to comply with a notice?

If a building owner fails to comply with a notice, the Building Fire Safety Committee can apply to the ERD Court for an enforcement order, and/or apply for a summons to be issued for the defendant to appear at a prosecution hearing (both procedures can run concurrently).

Prosecution

A building owner is guilty of an offence if he/she contravenes or fails to comply with a fire safety notice. The maximum penalties are -

- Failure to comply with a notice under section 157(4)(b) or 157(7) is an offence with a maximum penalty of \$20,000 and a default penalty of \$200 (payable for every day that the owner continues to fail to comply).
- A maximum penalty of \$2500 applies for-
 - failure to comply with a notice and provide a report within 2 months to the Building Fire Safety Committee as required under section 157(4)(a) of the PDI Act; and
 - failure to notify the Building Fire Safety Committee that the work has been completed as required under section 157(8) of the PDI Act.

Offences under the PDI Act lie within the criminal jurisdiction of the ERD Court. A prosecution may be commenced within 3 years after the date of the alleged offence or at a later date with the authorisation of the Attorney General.

With any ERD Court activities the Building Fire Safety Committee must provide reasonable information to the Court as to the nature of the charge including a statement of the specific offence with reference to the relevant section of the PDI Act.

A summons for appearance of defendant (in duplicate) will -

- Be directed to the defendant charged by the information;
- State shortly the matter charged; and
- Require the defendant to appear before the Court at a specified time and place to answer the charge.

Enforcement of notices

The Building Fire Safety Committee may apply to the ERD Court for an order to remedy or restrain a breach of the PDI Act.

If the Court is satisfied on the balance of probabilities that the respondent has breached the PDI Act, the Court may make an order requiring the respondent to comply with the order or take any other action as the Court thinks fit under the circumstances. This can include ordering the respondent to pay penalties for failing to comply with a notice as prescribed in the regulations.

Application to Court for an enforcement order

A Building Fire Safety Committee can commence proceedings for an enforcement order by filing the following documents with the ERD Court -

- (a) An application seeking leave to serve a summons;
- (b) The summons in respect of which leave is sought;
- (c) One or more supporting affidavits; and
- (d) Where the applicant brings the proceedings in a representative capacity, a memorandum.

Every application must -

- Be in writing and give the full name of the applicant;
- Identify the person or persons on whom it is sought to serve the summons;
- Specify the address for service of the applicant and, if available, the telephone and facsimile numbers of the applicant; and
- Be signed by the applicant, or on his or her behalf by a solicitor, agent or other representative.

Every summons must be in a format prescribed by the ERD Court Rules. An example of a summons is given in Appendix C.

Every accompanying affidavit must set out -

- The facts and circumstances upon which the applicant relies; and
- The name, address, telephone and facsimile numbers of any person who, in the opinion of the deponent, either has or might reasonably be expected to have a legal or equitable interest in the land the subject of the application.

Every memorandum must specify all the people or organisations upon behalf of whom or which the proceedings are brought and signed by all the people or organisations in such manner as shows that all the people or organisations consent to the proceedings being brought on their behalf.

Leave to serve a summons

On hearing an application to serve a summons, the ERD Court may refuse to grant the application or amend or strike out part of the summons.

If leave is granted by the Court to serve a summons it must be issued within one month of the leave being granted, and once issued it remains in force for three months unless the Court extends such period.

As soon as is reasonably practicable after a summons and accompanying affidavits have been served, the applicant must file an affidavit verifying such service.

Non Compliance with Court order

A person who fails to comply with a Court order shall be guilty of contempt of Court and be liable to imprisonment or a fine or both.

Appendix A

Example of a Section 157(3) Notice of Fire Safety Defect

Section 157(3) NOTICE OF FIRE SAFETY DEFECT

In the matter of the *Planning, Development and Infrastructure Act 2016* and the premises situated at *[insert name and location of premises]*

TO: The Owner/s

[Insert name of premises]

c/-*[Insert name of owner's representative]*

[Insert postal address of owner's representative]

TAKE NOTICE that whereas the *[insert name of council or council region]* Building Fire Safety Committee (hereinafter referred to as 'the Committee') or an authorised officer of the council has inspected the building situated at *[insert location details of premises]*;

TAKE NOTICE that the said Committee is satisfied that the fire safety of the building so inspected is not adequate and, pursuant to Section 157(3), (4) and (5) of the said *Planning, Development and Infrastructure Act 2016*, hereby gives notice that you are required to report within two months to the Committee on the work or other measures necessary to ensure that the fire safety of the building is adequate.

PURSUANT TO the provisions of Section 157(6) of the said *Planning, Development and Infrastructure Act 2016* you may, during the period of two months commencing upon the date of issue of this notice, make representations to the Committee about the fire safety of the building and the work or other measures to be carried out or taken.

PURSUANT TO the provisions of Section 157(10) of the said *Planning, Development and Infrastructure Act 2016*, if you dispute the propriety of any requisition contained in this notice, you have 14 days in which to lodge an appeal with a registry of the Environment, Resources and Development Court.

Dated at.....thisday of.....in the year two thousand and.....

CHAIR:

MEMBER:

MEMBER:

Appendix B

Example of Section 157(7) Notice of Building Work or Other Actions Required

SECTION 157(7) NOTICE OF BUILDING WORK OR OTHER ACTIONS REQUIRED

In the matter of the *Planning, Development and Infrastructure Act 2016* and the premises situated at *[insert name and location of premises]*

TO: The Owner/s

[Insert name of premises]

c/- *[Insert name of owner's representative]*

[Insert postal address of owner's representative]

TAKE NOTICE that whereas the *[insert name of council or council region]* Building Fire Safety Committee (hereinafter referred to as 'the Committee') did, by notice dated *[insert relevant date]* advise that it considered that the fire safety of the building situated at *[insert location details of premises]*, was not adequate, and required you to report to the Committee on the work or other measures necessary to ensure that the fire safety of the building is adequate; and

TAKE NOTICE that during the period of two months, commencing upon the date of issue of the said notice, such representations as were made on your behalf were considered by the Committee, now therefore

TAKE NOTICE that pursuant to the provisions of Section 157(7) of the said *Planning, Development and Infrastructure Act 2016*, the Committee hereby gives you notice of building work or other measures, which it requires you to carry out within *[insert appropriate period of time]* from the date of issue of this notice. The building work or other measures required are set out in the attached schedule.

The building work required is to be completed in the following stages-

Stage 1 *[insert date by which stage 1 must be completed]*

Stage 2 *[insert date by which stage 2 must be completed]*

Stage 3 *[insert date by which stage 3 must be completed]*

Before commencing any building work you are required to obtain a development approval from the council. Time has been allowed in the program of work for obtaining development approval.

PURSUANT TO the provisions of Section 157(10) of the said *Planning, Development and Infrastructure Act 2016*, if you dispute the propriety of any requisition contained in this notice, you have 14 days in which to lodge an appeal with a registry of the Environment, Resources and Development Court.

Dated at.....thisday of.....in the year two thousand and.....

CHAIR:

MEMBER:

MEMBER:

Appendix C

Information required in an application to the ERD Court to serve a summons:

SOUTH AUSTRALIA
FDN
IN THE ENVIRONMENT, RESOURCES & DEVELOPMENT COURT
No of 20.....
BETWEEN
.....
Applicant
-and-
.....
Respondent

SUMMONS

Summons issued at the request of the Applicant (Name of applicant)
Solicitor for the Applicant: (Law firm's name)
..... (Law firm's address)
..... (Telephone) (Email)
Date of filing:

Summons issued at the request of the Applicant, (Name of applicant)
of (Address), South Australia.
To: (Name of Responder) of
..... (Address)

[Set out text of relevant judgment/order] [If applicable specify grounds in successively marked and numbered paragraph]
[Set out relief sought in successively numbered paragraphs]

The facts upon which the applicant relies are set out in the affidavit of
(Name of the person on the Affidavit) served with this Summons.

If you wish to be heard or to oppose the making of any of these orders, you or your solicitor must file a Notice of Address for Service within 14 days after service of this Summons on you. This Notice of Address for Service must be filed at a Registry of the Court. If you do not have a solicitor, you may attend personally at a Registry to do this. If a Notice of Address for Service is not filed within the time stated, orders may be made against you in your absence.

DATED the day of

This summons remains in force for three months only after its date of issue unless it has been extended by order of the Court.

.....
Registrar

Appendix D

Land and Business (Sale and Conveyancing) Act 1994 - Section 7 enquiry

Under Section 12 of the *Land and Business (Sale and Conveyancing) Act 1994*, if a council receives a Section 7 enquiry from a vendor, requesting information regarding any charge or prescribed encumbrance over land within the council area, or regarding insurance under Division 3 of Part 5 of the *Building Work Contractors Act 1995*, the council must provide the information to the applicant within eight clear business days after receiving the request.

Form 1 of Schedule 1 of the *Land and Business (Sale and Conveyancing) Regulations 2010* lists information relating to property and land for sale that must be provided by a council to the vendor for inclusion in a Section 7 statement provided to the purchaser, which includes -

4.10 Fire safety notice under section 157 of the *Planning, Development and Infrastructure Act 2016*.

Date of notice:

Name of authority giving notice:

Requirements of notice:

Building work (if any) required to be carried out:

[attach in a schedule if appropriate]

Amount payable (if any):

4.13 Proceedings under Division 1 of Part 16 (disputes, reviews and appeals) of the *Planning, Development and Infrastructure Act 2016*.

Date of commencement of proceedings:

Date of determination or order (if any):

Terms of determination or order (if any):

Appendix E

Standard Letters

1. Letter to owner that the Building Fire Safety Committee wishes to inspect premises

Date

[Insert name of property owner] [Insert name of property]

[Insert postal address for property owner]

Dear Sir/Madam

[Insert property name, and property location] – **Building Fire Safety Inspection**

[Insert as appropriate - 'an authorised officer from the council' or 'an authorised officer from the Fire Services'] has inspected the fire safety of the above premises and reported to the *[insert name of council or regional council area]* Building Fire Safety Committee that the fire safety of the building is not considered adequate to protect the safety of the occupants should a fire occur in the building.

Where the fire safety of a building is not considered adequate, a Building Fire Safety Committee is empowered under Section 157 of the *Planning, Development and Infrastructure Act 2016* to serve notice on the building owner requiring the owner to undertake actions to improve the fire safety to an adequate level.

Before serving any such notice, the Building Fire Safety Committee wishes to undertake its own inspection of fire safety of the above premises. Could you please contact *[insert details]* on *[insert details]* to arrange a convenient time for this inspection.

Yours sincerely

[Insert name of Chairperson]

CHAIR

BUILDING FIRE SAFETY COMMITTEE

[Insert name of council or regional council area]

2. Letter associated with issuing a Section 157(3) Notice of Fire Safety Defect

Date

*[Insert name of property owner] [Insert name of property]
[Insert postal address for property owner]*

Dear Sir/Madam

[Insert property name, and property location] – **Building Fire Safety**

The *[insert name of council or regional council area]* Building Fire Safety Committee inspected the fire safety of the above premises on *[insert date]*. The Building Fire Safety Committee determined that the fire safety of the building is not adequate to protect the safety of the occupants should a fire occur in the building.

Where the fire safety of a building is not considered adequate, a Building Fire Safety Committee is empowered under Section 157 of the *Planning, Development and Infrastructure Act 2016* to serve notice on the building owner requiring the owner to undertake actions to improve the fire safety to an adequate level.

The *[insert name of council or regional council area]* Building Fire Safety Committee met on *[insert date]* to consider appropriate action. In this case the Building Fire Safety Committee resolved to serve you with the attached Section 157(3) Notice of Fire Safety Defect.

This notice requires you to report within two months to the Building Fire Safety Committee on the work or other measures necessary to ensure that the fire safety of the building is made adequate. During that period, you may make representation(s) to the Building Fire Safety Committee about the fire safety of the building and the work or other measures to be carried out.

If you dispute any of the details of this notice, you have 14 days in which to lodge an appeal with the Registrar of the Environment, Resources and Development Court. For more information contact the Court administration on 8204 0289 or by email at erdcourt@courts.sa.gov.au

Yours sincerely

[Insert name of Chairperson]

CHAIR
BUILDING FIRE SAFETY COMMITTEE
[Insert name of council or regional council area]

3. Letter associated with issuing a Section 157(7) Notice of Building Work or Other Actions Required

Date

[Insert name of property owner] [Insert name of property]

[Insert postal address for property owner]

Dear Sir/Madam

[Insert property name, and property location] – **Building Fire Safety Notice**

In accordance with the *Planning, Development and Infrastructure Act 2016*, a Section 157(3) Notice of Fire Safety Defect was issued on the above premises on *[insert date]*. The notice required that you report to the Building Fire Safety Committee on work or other measures necessary to ensure that the fire safety of the building is made adequate.

Following an inspection of the above premises on *[insert date]* the *[insert name of council or regional council area]* Building Fire Safety Committee met on *[insert date]* to consider appropriate action. The Building Fire Safety Committee has considered all reports or representations made by you, or on your behalf, in relation to the fire safety of these premises, and has resolved to serve you with the attached Section 157(7) Notice of Building Work or Other Actions Required. This notice requires you to undertake the scheduled building work within the time prescribed, to ensure that the fire safety of the building is made adequate.

If you dispute any of the details of this notice, you have 14 days in which to lodge an appeal with the Registrar of the Environment, Resources and Development Court. For more information contact the Court administration on 8204 0289 or by email at erdcourt@courts.sa.gov.au.

Yours sincerely

[Insert name of Chairperson]

CHAIR

BUILDING FIRE SAFETY COMMITTEE

[Insert name of council or regional council area]