TABLE OF CONTENTS

PREAMBLE ............................................................................................................................ 2
PURPOSE .............................................................................................................................. 2
SCOPE ................................................................................................................................... 3
DEFINITIONS ......................................................................................................................... 3
POLICY STATEMENT ............................................................................................................ 4
POLICY REVIEW .................................................................................................................... 8
VERSION HISTORY ............................................................................................................... 8
ANNEXURE 1 ......................................................................................................................... 9
PREAMBLE
This Policy is mandatory under Section 71A(1) of the Development Act 1993.

Pursuant to Section 71A(2) this Policy must (and does) specify:
(a) a level or levels of audit inspections to be carried out by the Council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12) involving classes of buildings prescribed by the regulations; and
(b) the criteria that are to apply with respect to selecting the buildings that are to be inspected under the policy.

Pursuant to Section 71A(4a) this Policy complies with any regulation prescribing a minimum level of inspections to be carried out by the council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12 of the Development Act). As of writing, the only regulation to do so is Regulation 80AB of the Development Regulations 2008.

This Policy does not apply to the appropriate authority constituted under Section 71(19), commonly known as the Building Fire Safety Committee, nor does it apply to an inspection under Section 71(1).

In accordance with Section 71A(4) this Policy has been prepared taking the following matters into account:
(a) the financial and other resources of the council, and of its local community; and
(b) the impact that a failure to inspect a certain number of buildings of the relevant classes over a period of time may have on its local community; and
(c) past practices of the council with regard to inspections and the assessment of building work in its area; and
(d) whether the area, or a particular part of the area, of the council is known to be subject to poor building conditions; and
(e) information in the possession of the council on poor building standards within its local community; and
(f) the public interest in monitoring the standard of building work within the community and in taking steps to provide for the safety and health of people who use buildings.

PURPOSE
The Council is empowered by Section 19 of the Development Act to inspect building work within its area. Such inspections aim to:
1. detect building work which does not accord with a development approval (or exemption),
2. detect building work or practices which do not accord with the requirements of the Development Act,
3. detect buildings and building work which are unsafe, and
4. gather the evidence necessary (a) to correct situations 1, 2 and 3 above, and (b) to punish those responsible.
By undertaking such inspections, the Council aims to deter persons from undertaking building work except in accordance with a development approval (or exemption) and the requirements of the Development Act.

In addition, the Council intends that where such inspections reveal problems (that is, one or more of situations 1 – 3 above exist), the evidence gathered by such inspections will permit the Council to take action to correct those problems.

This Policy provides general guidance as to when and what corrective action may be taken when problems are detected.

Further, the Council intends that the evidence gathered by such inspections will permit persons responsible for detected problems to be punished, if appropriate. This Policy does not address what such punishment might be nor when it might occur.

**SCOPE**

This Policy applies to all built development within the City of Mitcham.

**DEFINITIONS**

Words and phrases defined by the Development Act and the Development Regulations have the same meaning when used in this Policy. For convenience, an extract setting out the definitions of commonly used terms has been annexed to this Policy. It is correct as at the date of writing but does not take into account any subsequent changes to the Act or Regulations.

In addition, the following words and phrases are defined:

- **audit inspection** an inspection which determines (within the scope of the inspection and only insofar as the inspection is able to do so) whether or to what degree the inspected building work complies with:
  - the relevant development approval or any applicable exemption
  - if applicable, any other relevant documents (for example a required checklist)

  An audit inspection does not involve any assessment of building work against the building rules at large, nor any assessment of the structural or functional adequacy of any building work.

- **inspection** a comparison by an inspector (with or without assistants) of
  (a) visual observations of that building work, and
  (b) measurements of selected parts\(^1\) of that building work, with:
  - the plans and details (if any) which form part of a development approval (or exemption) which relates to that building work, and
  - if applicable, any other relevant documents (for example a required checklist)\(^2\)

  And may include the interview of any person associated with the building work.

---

\(^1\) How such parts are to be selected is dealt with later in this Policy.
an authorised officer of the Council, appointed under Section 18 of the Development Act, who holds a current accreditation as a building surveying technician (or equivalent or greater accreditation), or who has been approved by the Minister under Regulation 87(3)(c)

includes all legal persons including bodies corporate

*Except within the above table, where this Policy refers to an inspection, that is a reference to an audit inspection as defined above. Where this Policy uses the word “inspect”, that means “undertake an audit inspection”.

POLICY STATEMENT

SELECTION OF BUILDINGS FOR INSPECTION

The Council does not have the resources to inspect all buildings.

Buildings will be selected for inspection in accordance with the following criteria (in descending order of preference):

1. buildings which appear to be unsafe;
2. buildings which ordinarily present a high risk to life safety, and in particular swimming pools;
3. buildings which are used by many people, particularly where many people do so simultaneously;
4. buildings which involve roof framing;
5. buildings which are obliged to provide access to disabled persons;
6. buildings in respect of which a complaint has been made; and
7. in the event that inspection of the foregoing buildings does not result in the prescribed minimum inspection levels being met, any other buildings.

Where a building is selected for inspection it may be inspected at any stage of construction, and may be inspected more than once (i.e. it may be inspected at different stages of construction).

LEVELS OF INSPECTION

Prescribed Minimum Levels

In accordance with Section 71A(4a) and Regulation 80AB(2) this Policy specifies the following minimum inspection levels for all classes of buildings, other than Class 10 buildings which are not attached to any part of the roof framing of a building of another class:

where the building work involves the construction of any roof framing within the area of the Council:

(a) a number of inspections equal to 66% of the building rules consents\(^3\) issued over the course of the year\(^4\) for building work involving the construction of any roof

---

\(^2\) At present a supervisor's checklist is prescribed in relation to roof framing under Regulation 74(5), and the Minister’s Schedule 5 roof framing checklist is prescribed under Regulation 74A in relation to the provision of truss information by a truss manufacturer.

\(^3\) For the purposes of this Policy, a variation to an operative building rules consent does not, itself, count as a building rules consent and nor does the extension of the operative period of any building rules consent (whether operative or lapsed).
framing where a licensed building work contractor is responsible for the relevant building work5; and

(b) a number of inspections equal to 90% of the building rules consents issued over the course of the year for building work involving the construction of any roof framing where a licensed building work contractor is not responsible for the relevant building work6.

NOTE: The number of buildings rules consents issued over the course of the year will not be known until the end of the year. By that time it will be too late to determine whether there is a shortfall between the number of inspections conducted and the prescribed minimum levels.

To minimise any possible shortfall, the number of inspections undertaken by the Council will be reconciled with the prescribed minimum levels on a month-by-month basis. The Council aims to make up for shortfall: (a) in any month by additional inspections in the subsequent month, and (b) at the end of any year by additional inspections in the first three months of the subsequent year.

Counting Inspections

Inspections must be counted to determine whether the minimum inspection levels are met and will be reported on a quarterly basis to Council.

The first inspection of the building work forming part of any particular building is counted as one inspection.

Where building work forming part of a building is inspected at a particular stage, and problems are found, any re-inspection undertaken to determine whether the problems have been corrected does not count as an inspection. Rather, it is taken to be part of the immediately-prior inspection. The follow up inspections will be recorded and reported separately.

However, inspection of building work forming part of a building at a later stage is counted as a separate inspection, even if the building was inspected at an earlier stage.

Target Inspection Levels

In addition to7 the prescribed minimum levels, the Council aims to inspect:

(a) 100% of building work which relates to or affects swimming pool safety, including the construction of all swimming pools

(b) in relation to building work which relates to a residential building or buildings (but excluding free-standing Class 10 buildings), a number of inspections equal to 20% of all notifications received by the Council under Section 59(1) and Regulation 74(1)(a) for the intended commencement of such building work

(c) in relation to building work which relates to a non-residential building or buildings (but excluding free-standing Class 10 buildings), a number of inspections equal

---

4 For the purposes of this Policy, “the year” is the relevant calendar year.

5 Regulation 80AB(2) does not identify what “the relevant building work” is. For the purposes of this Policy “the relevant building work” is the entirety of the building work to which the relevant approval or exemption relates.

6 See above note. Adopting this interpretation has the effect that paragraph (b) applies to “owner-builder” situations. This is consistent with the recommendations of the October 2008 Report of the Ministerial Taskforce on Trusses.

7 But recognising that inspections undertaken to satisfy the prescribed minimum levels may also wholly or partially satisfy the target inspection levels.
to 10% of all notifications received by the Council under Section 59(1) and Regulation 74(1)(a) for the intended commencement of such building work

(d) all buildings constructed\(^8\) by a person who is not a licensed building work contractor holding the appropriate licence

(e) Council will prioritise inspections of buildings constructed by a person who has previously constructed a building which has been inspected where that inspection has detected non-compliance, [except where such inspection occurred 5 or more years prior].

**Selection of Parts of Building Work for Measurement**

An inspection will not involve the measurement of all parts of the inspected building work. The inspector will select which parts of the building work to measure in accordance with ordinary building inspection practice, and taking into account the following factors:

(a) the possible and likely consequence(s) of failure of the part;

(b) whether the part is representative of similar or identical parts; and

(c) whether parts of that kind are known or suspected to be incorrectly built, constructed or installed more often than parts of other kinds.

**INSPECTION PROCEDURE**

The Team Leader – Building Services will, in consultation with the Council's Development Officers - Building, prepare an inspection procedure.

The inspection procedure will:

- include a standard-form inspection checklist;
- identify what evidence should be gathered during an inspection so as to permit punishment of any person found to be responsible for any breach of the Act or Regulations arising from, or in connection with the inspected building work;
- set out what record keeping will occur, including how evidence gathered in the course of an inspection is to be filed; and
- set out what statistics must be identified and reported, including to whom and how such reports will be made.

All inspections will comply with the inspection procedure insofar as is reasonably practicable and the inspector in each case will complete the inspection checklist.

**ENFORCEMENT & DISPUTE RESOLUTION**

All inspectors will hold current delegations which permit directions to be given under Section 84(2) by the inspector.

Where an inspection reveals a problem the inspector will determine what action to take to correct the problem or may refer the matter to a superior officer (who will then determine what action, if any, to take). In determining what action to take, the inspector will not permit a problem to be fixed in manner which prevents the inspector from reasonably observing that the problem has been fixed unless the inspector considers exceptional circumstances apply.

---

\(^8\) Using “construct” in its defined sense, and including alterations etc
Possible actions include:

(a) (i) obtaining a verbal or written assurance from the person responsible for the building work (for convenience called “the builder”) that the problem will be corrected by a particular date and will be left in a state so that the correction can be inspected, and (ii) scheduling a follow-up inspection on that date to verify that has occurred;

(b) in the case of a breach of the Act or Regulations, giving a direction\(^9\) to a person under Section 84(2) to
   i. refrain (for a specified period or until further notice) from the act or course of action that constitutes the breach; and/or
   ii. make good any breach in a manner, and within a period, as specified;

(c) taking, or arranging to be taken in the name of the Council, such urgent action as is required because of any situation resulting from the breach pursuant to Section 84(2)(c);

(d) in the case of a threat to safety arising out of the condition or use of a building or an excavation, or a threat to any State or local heritage place, an officer holding the necessary qualifications making an emergency order under Section 69(1) which requires the owner of any land or building to:
   i. evacuate the building or land;
   ii. not to conduct or allow a specified activity;
   iii. immediately terminate a specified activity; and/or
   iv. carry out building work or other work;

(e) also in the case of a threat to safety arising out of the condition or use of a building or an excavation, or a threat to any State or local heritage place, making an emergency order under Section 69(1) which:
   i. prohibits the occupation a building or land; or
   ii. prohibits the use of a building or land for a specified activity, or an activity of a specified class;

(f) expiating a breach of Regulation 74 (the notification, supervisor’s checklist and non-concealing requirements), pursuant to sub-Regulation 74(8).

Legal Proceedings

Legal proceedings, including civil or criminal proceedings, will not be commenced by an inspector.

Where the correction of a problem becomes a dispute between the Council and another party, the Council will first attempt to resolve the dispute without use of legal proceedings.

Attempts which may be made to resolve such disputes include:

(a) in the case of a dispute as to the meaning of a building rules consent, referring the matter to a building assessor;

\(^9\) A direction can be given verbally, but will lapse if not confirmed in writing by 5 pm on the next business day by the authorised officer who gave the direction. Owing to the inherent difficulty of “confirming” verbal directions (there is rarely a verbatim record of the verbal direction), verbal directions will ordinarily be limited to directions to refrain from further building work (commonly known as a “stop work” direction) and will, before the verbal direction lapses, be followed by fresh directions in writing which supersede the verbal direction.
(b) involving other Council officers and inspectors for clarification and/or a second opinion of the dispute; and 

(c) consulting an independent professional with expertise in the relevant area.

LIABILITY

The Council inspects building work in accordance with the objectives of this Policy and for the public good. Inspections are undertaken by the Council solely as a result of its duties under the Policy. Inspections are not carried out for the benefit of any past, current or future owner, occupier or neighbour of any building work and no legal relationship is created between the Council and any other such person as a result of the conduct of the inspections. The Council does not accept that it owes a duty to such persons or indeed any particular person in relation to any inspection.

Section 99 provides that no act or omission in good faith in relation to a particular development by a council or an authorised officer after the development has been approved subjects that person or body to any liability.

The Council does not accept any liability in relation to any inspection. In the event of any dispute with the Council as a result of an inspection, any conduct engaged in or statements or comments made by an officer of the Council with the intent of resolving or otherwise managing the dispute are not intended as, and are not to be taken as, any admission of responsibility or liability on the part of the Council.

IMPLEMENTATION

The Manager Planning and Building Services and the Team Leader – Building Services will implement this Policy.

POLICY REVIEW

This Policy will be reviewed once during each term of Council.

VERSION HISTORY

<table>
<thead>
<tr>
<th>VERSION</th>
<th>AUTHOR(S) POSITION</th>
<th>CHANGES</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Team Leader, Building Services</td>
<td>New Policy</td>
<td>23 October 2012</td>
</tr>
</tbody>
</table>
ANNEXURE 1
Common Terms defined by the Development Act and Regulations
Current as at 09 August 2012

building
a building or structure or a portion of a building or structure (including any fixtures or
fittings which are subject to the provisions of the Building Code of Australia), whether
temporary or permanent, moveable or immovable, and includes a boat or pontoon
permanently moored or fixed to land, or a caravan permanently fixed to land

Building Code
an edition of the Building Code of Australia\textsuperscript{10} published by the Australian Building
Codes Board, as in force from time to time and as modified (from time to time) by the
variations, additions or exclusions for South Australia contained in the code, but
subject to the operation of subsection (7) of the Act\textsuperscript{11}

building owner
the owner of land on or in relation to which building work is or is to be performed

the Building Rules
any codes or regulations under the Act (or adopted under the Act) that regulate the
performance, standard or form of building work and includes any standard or
document adopted by or under those codes or regulations, or referred to in those
codes or regulations

building rules consent
a consent granted under section 33(1)(b)

building work
means work or activity in the nature of—
(a) the construction, demolition or removal of a building (including any
incidental excavation or filling of land); or
(c) any other prescribed work or activity,\textsuperscript{12}
but does not include any work or activity that is excluded by regulation from the ambit
of this definition

construct
in relation to a building, includes—
(a) to build, rebuild, erect or re-erect the building;
(b) to repair the building;
(c) to make alterations to the building;
(d) to enlarge or extend the building;
(e) to underpin the building;
(f) to place or relocate the building on land

structure
includes a fence or wall

supervisor’s checklist
a checklist published by the Minister in the Gazette for the purposes of Regulation
74(5)\textsuperscript{13}

swimming pool
an excavation or structure that is capable of being filled with water and is used
primarily for swimming, wading, paddling or the like and includes a bathing or wading
pool or spa pool (but not a spa bath)

swimming pool safety features
a fence, barrier or other structure or equipment prescribed by regulation, namely,
(insofar as are relevant to the particular circumstances taking into account the
provisions of the Building Code): (a) fences; (b) barriers; (c) water recirculation
systems; (d) secondary outlets from a swimming pool; and (e) warning notices.

\textsuperscript{10} Now known as Volumes 1 and 2 of the National Construction Code.
\textsuperscript{11} Subsection (7) provides that any alteration to the Building Code will not take effect for the purposes of this Act (a)
before a day on which notice of the alteration is published by the Minister in the Gazette; and (b) if the Minister so
specifies in a notice under paragraph (a), until a day specified by the Minister.
\textsuperscript{12} At present, only Regulation 6B prescribes additional work or activity constituting building work, namely, the
construction of an aboveground or inflatable swimming pool which is capable of being filled to a depth exceeding 300
millimetres (subject to certain exclusions).
\textsuperscript{13} as of writing, see the 19 January 2012 Gazette, p 207.