

# Building Surveyors

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The recent decision of *Moorabool Shire Council & Anor v Taitapanui & Ors* in the Victorian Supreme Court has thrown a spotlight onto building surveyors and their obligations and duties under the *Building Act 1993*.

A surveyor's duties include issuing permits, performing mandatory inspections of various stages of works and issuing Occupancy Permits once works are complete.

In this case, the builder of a house in Torquay engaged a private building surveyor, who informed the Council of his appointment and also issued a Building Permit for the construction.

After completion, the property was sold and then on-sold to Mr & Mrs Taitapanui. Some time later, the new owners became aware of cracks in the property and other significant structural defects. They issued proceedings in VCAT seeking damages against the building surveyor who, they alleged,

should not have approved aspects of the drawings, particularly the stump footing system.

**VCAT found in favour of the Taitapanuis and held that a Building Permit was issued in circumstances where the plans were in breach of various building regulations and were inadequate. The Council appealed to the Trial Division of the Supreme Court – this appeal was dismissed. A subsequent appeal to the Court of Appeal was also unsuccessful.**

The Court of Appeal upheld VCAT's decision and further held that the building surveyor owed a subsequent purchaser a duty to exercise reasonable care in the granting of a building permit for building works which were the subject of an application for a permit. This extends the traditional

duty of care thought to exist by a building surveyor to a subsequent owner.

The Court held the building surveyor was under a statutory duty to inspect the permit application and had a further duty to decide whether a permit ought to be issued or refused. The Act imposes a duty on building surveyors to be satisfied that building works comply with the Act and Regulations and they are not able to limit their duty of care in these circumstances.

This case demonstrates that private building surveyors and local councils owe a duty of care to inspect plans and specifications for proposed building works before issuing permits. If they neglect this duty and defects do occur, they may have a liability to owners and subsequent purchasers of such properties.

*This article contains general information and should not be acted upon without specific professional advice based on your own circumstances.*

## Building disputes

Are payments overdue?  
Has construction come to a halt?  
Is VCAT or Court the next step?

## Contract advice

What is your risk allocation?  
Are you SOP compliant?  
Will your contract conditions stand up?

## Rigby Cooke Lawyers

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