



GUIDELINE

**Developers and owner's corporations to
appoint building inspectors
from**

**Authorised professional associations
(Strata inspector panel)**

for

Strata building bond and inspections scheme

Secretary of the Department of Customer Service's guideline for the appointment of building inspectors by developers and owners corporation for the Strata building bond and inspections scheme (SBBIS).

Published by

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Introduction

This Guideline sets out the requirements:

1. that an authorised professional association must have regard to in exercising its functions under clauses 45 and 45A of the *Strata Schemes Management Regulation 2016* (the Regulation), and
2. for developers to nominate and appoint, and owners corporations to approve or refuse to appoint, a qualified person as a building inspector to carry out an inspection of, and report on, the building work in accordance with Part 11 of the *Strata Schemes Management Act 2015* (NSW) (the Act).

The process includes the Secretary's expectations of:

- the authorised professional associations that provide a strata inspector panel for the purposes of the Act, and
- the qualified persons that may be appointed building inspectors for the purposes of the Act.

Part 11 of the Act and Part 8 of the *Strata Schemes Management Regulation 2016* (NSW) (the Regulation) contain the requirements for the operation of the Strata building bond and inspections scheme (the Scheme).

Part 11 of the Act and Part 8 of the Regulation apply to building work carried out on a building, or part of a building that is included in a strata scheme. This applies to residential building work including buildings for mixed use purposes that include residential purposes.

A building inspector means a person appointed for the purposes of this Scheme as a building inspector for building work. A member of the panel is qualified to be appointed as a building inspector only if the association is satisfied that the individual is appropriately qualified to carry out building inspector functions for the purposes of the Scheme.

The developer means the developer of a strata scheme by whom or on whose behalf building work to which Part 11 applies, was carried out.

The owners corporation means an owners corporation constituted under section 8 of the Act.

The process the Secretary will follow to arrange a building inspector is located on Fair Trading's [website](#) in the publication 'Secretary's process: Arranging the appointment of building inspectors for Strata building bond and inspections scheme.'

The requirements for the interim and final reports are located on Fair Trading's [website](#) in the Secretary's approved guideline publication 'Combined interim and final inspection report for Strata building bond and inspections scheme.'

The written notices required under the scheme have been developed for all stakeholders and can be accessed on the Fair Trading [website](#).

This Guideline outlines the requirements the authorised professional associations must have regard to when exercising its functions under clause 45 and 45A of the Regulation, and how developers and owners corporations are to appoint a qualified person as a building inspector for the purposes of the Scheme.

Overview of this Guideline

Part 1 sets out **who** the Authorised professional associations are and **who** the qualified persons are.

Part 2 sets out the **process** to appoint a qualified person as the building inspector.

Part 3 sets out a **glossary** of key terms used in the Guideline

Part 4 sets out the **versions** and updates to this Guideline

Part 1: Authorised professional association and qualified person

In exercising its functions under clauses 45 and 45A of the Regulations, an authorised professional association must have regard to these guidelines.

An authorised professional association may establish and maintain a strata inspector panel for building work of a particular kind (strata inspector panel [SIP]). Strata inspector panels are provided by authorised bodies that are listed in the Regulation (Part 8, Clause 44). These bodies are responsible for all aspects of their strata inspector panel (co-regulatory approach).

Each of the authorised professional associations may have individual members with different attributes such as varying qualifications, skills, and experience.

1.1 Authorised professional associations administer the Strata inspector panel

Part 8, Clause 44 of the Regulation contains the following authorised professional associations:

- (a) the Housing Industry Association Limited
- (b) the Master Builders Association of New South Wales Pty Ltd
- (c) the Australian Institute of Building
- (d) the Australian Institute of Building Surveyors
- (e) the Australian Institute of Building Consultants Pty Ltd
- (f) the Australian Society of Building Consultants Incorporated
- (g) the Institute of Building Consultants Inc
- (h) Engineers Australia Pty Limited
- (i) the Association of Accredited Certifiers Incorporated
- (j) the Australian Institute of Quantity Surveyors Ltd
- (k) RICS Australasia Pty Ltd.

1.1.1 Strata inspector panel

Each authorised professional association may appoint an individual to be a member of the strata inspector panel (SIP) if satisfied that the individual is appropriately qualified to carry out building inspector functions to perform building inspections and produce reports for the purpose of the Strata building bond and inspections scheme (the Scheme).¹

¹ Strata Schemes Management Regulation 2016: cl45(2) – person to be appropriately qualified to carry out building inspector functions in relation to the SBBIS

The management and administration of these panels should be such that promotes self-governance in an accountable and transparent way. The authorised professional association is required to keep a register of members on their respective websites to outline what they are doing to achieve self-governance and information about the members included in their strata inspector panel.²

The following is a summary taken directly from clause 45A of the Regulation:

1.1.2 Register of members of strata inspector panel

- (1) An authorised professional association must keep a register of members of a strata inspector panel established by the association that contains the following particulars in relation to each member—

	The register <u>must</u> contain:
(a)	the member's name,
(b)	any registered business name under which the member carries on business as a building inspector, together with the related Australian Business Number,
(c)	the address of the member's principal place of business,
(d)	the member's telephone number and other particulars (such as an email address) for contacting the member for business purposes,
(e)	any formal qualifications held by the member that are relevant to the individual's business as a building inspector
(f)	any conditions in force under clause 45C in relation to the member that the association has been made aware of as a result of notification to the association under that clause.

	The register <u>may</u> contain:
(2)	any other particulars that the association considers appropriate, including particulars of project experience that have been provided by the member to the association and that the association considers relevant.

An authorised professional association that is required to keep a register under this clause must retain the register and its contents for at least 7 years after the date on which the last entry was made in it.

An authorised professional association that is required to keep a register under this clause must ensure that the register is made available free of charge for inspection by the public—

- (a) at the professional association's offices during ordinary office hours (in

² Strata Schemes Management Regulation 2016: cl45A – person to be appropriately qualified to carry out building inspector functions in relation to the SBBIS

paper or electronic form), and
(b) on the internet.

1.1.3 Liability of professional associations in respect of accreditation functions

A matter or thing done or omitted to be done by a professional association, or an individual acting under the direction of a professional association, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing functions under this Part, subject the professional association or individual so acting to any action, liability, claim or demand.

1.1.4 Written notices

The written notices required under the scheme have been developed for all stakeholders and can be accessed on the Fair Trading [website](#).

1.2 Qualified person

The authorised professional association may appoint an individual to be a member of that SIP in Part 8 of the Regulation, if satisfied that the individual is appropriately qualified to carry out building inspector functions in relation to that kind of building work.

The building inspector functions include but are not limited to carrying out interim and final inspections and the provision of reports as mandated in the Act.

The individual needs to be appointed by the authorised professional association's strata inspector panel. No other industry specific membership is required to perform strata building inspections for the purposes of the Scheme.

The building inspector must act within their competencies and engage additional specialists required (not required to be sourced from the SIP) to inspect and report on the areas outside of the building inspector's competencies. Any person engaged by a building inspector must be independent of the stakeholders in the construction of the relevant building work. Any reports produced by an additional specialist are to be included in and form part of the interim and final reports. These will be composite and not separate reports.

1.2.1 Obligations of building inspector

A building inspector carrying out functions under this Part cannot and does not represent the interests of the developer of a strata scheme and has a duty to act impartially in carrying out the functions of a building inspector under this Part. This subsection has effect despite any condition of the appointment of the building inspector and whether or not the inspector was appointed by the developer.

A building inspector must act impartially in the course of the building inspector's functions as a building inspector under this Act. They must not seek or accept, or offer or agree to accept, any benefit of any kind, whether on the building inspector's own behalf or on behalf of any other person.

A person must not, on an understanding that a building inspector will act otherwise than impartially in the exercise of the building inspector's functions as a building inspector under this Act, give, or offer to give, any benefit of any kind, whether to the building inspector or any other person.

1.2.2 Conditions imposed on building inspectors by Secretary

The Secretary may impose a condition on the exercise of building inspector functions by a building inspector. Conditions may be imposed on a specified building inspector or a class of building inspectors by written notice—

- (a) in the case of a specified building inspector—given to the building inspector and to the authorised professional association that established the strata inspector panel of which the building inspector is a member, or
- (b) in the case of a class of building inspectors—given to each authorised professional association and published in the Gazette.

The imposition of a condition under this clause takes effect on the date specified in the notice concerned. A building inspector exercising building inspector functions must comply with any applicable conditions imposed, varied or removed.

1.2.3 Liability of inspectors and persons acting under direction of inspectors

A matter or thing done or omitted to be done by a building inspector, or a person acting under the direction of a building inspector, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing functions under this Part, subject the building inspector or person so acting personally to any action, liability, claim or demand.

1.2.4 Inspections and reports

1.2.4.1 Interim report

A building inspector appointed is to carry out an inspection of the building work, and provide an interim report, not earlier than 15 months and not later than 18 months after the completion of the building work.

The requirements of the interim report are contained in the Inspection report for Strata building bond and inspections publication on Fair Trading's [website](#).

1.2.4.2 Final report

A building inspector appointed to carry out a final inspection is to carry out a final inspection of the building work, and provide a final report, not earlier than 21 months and not later than 2 years after the completion of the building work.

The requirements of the final report are contained in the Inspection report for Strata building bond and inspections publication on Fair Trading's [website](#).

1.2.5 Copies or notices of reports

A building inspector must give a copy of an interim report or final report to the following persons not later than 14 days after completing the report:

- Developer,
- Owners corporation, if the initial period has ended
- Secretary,
- The builder responsible for any defective building work identified in the report.

1.2.6 Powers of a building inspector

A building inspector appointed to prepare a report may enter and inspect any part of the parcel of the strata scheme.

The building inspector must give at least 14 days written notice to the owners corporation and the owner and any occupier of any affected lot of an intention to enter any part of the parcel of the strata scheme.

The owners corporation, any person who has exclusive use of common property, a strata managing agent, any building manager or manager of the common property and any owner or occupier of a lot must provide any assistance that is reasonable to enable an inspection to be carried out in accordance with this Division.

A person must not, without reasonable excuse, refuse a building inspector access to any part of the parcel of a strata scheme or a lot in the strata scheme, or obstruct or hinder a building inspector, in the exercise of the inspector's functions under this Act.

1.2.7 Written notices

The written notices required under the scheme have been developed for all stakeholders and can be accessed on the Fair Trading [website](#).

Part 2: Process to appoint the qualified person as the building inspector

Part A: Interim inspection and report

2.1 Developer to appoint qualified person as building inspector

The developer must appoint a building inspector, however, if the developer fails for any reason, the Secretary will arrange the building inspector.

2.1.1 Initial period of a strata scheme – ends within 12 months after the completion of building work

The *initial period of a strata scheme* (initial period) in general begins when the owners corporation is constituted and ends on the day there are owners of lots in the strata scheme (other than the original owner) the sum of whose unit entitlement is at least one-third of the aggregate unit entitlement.

If the initial period of a strata scheme ends within 12 months of the occupation certificate being issued, the developer of the strata scheme must appoint a qualified person as a building inspector to carry out an inspection of, and report on, the building work.

2.1.2 Disclosures by the developer and/or the building inspector

If a building inspector proposed to be appointed by a developer to carry out an inspection has been employed by, or by a contractor of, the developer at any time within 2 years (the *prescribed period*) preceding the proposed appointment, the developer and the proposed building inspector must disclose that fact to the owners corporation before the owners corporation determines whether or not to approve the appointment.

The developer of a strata scheme must not appoint a building inspector to inspect building work for the scheme if the building inspector is, or was at any time in the 2 years immediately before the appointment, connected with the developer.

In addition to the circumstances set out in *connected persons*, a building inspector is connected with a developer if the inspector:

- has been involved in the design or any aspect of the construction or certification of the building work or any part of the building work to be reported on, or
- is connected with any person who has been so involved, or
- has a pecuniary interest in any aspect of the building work.

A building inspector is not connected with a developer merely because the inspector has been or is appointed by the developer to carry out a report under this Part on other building work.

A person who is connected with a developer of a strata scheme and who is proposed for appointment as a building inspector under this Part in connection with that scheme must give written notice of the connection to the person making or arranging the appointment, and to the owners corporation before the appointment.

2.1.3 Owners corporation must approve the building inspector

The developer of a strata scheme must not appoint a building inspector to carry out an inspection and to report on building work unless the appointment is approved by the owner's corporation.

The developer must advise the owners corporation and give the owners corporation enough time to make that decision at general meeting/s within 12 months of the initial period ending. The developer must give written notice to the owners corporation at least 14 days before the general meeting. Form 2A is available on the Fair Trading's [website](#) and includes the following:

- the name of the authorised professional association that established the strata inspector panel of which the building inspector is a member,
- the particulars required to be kept in relation to the building inspector under clause 45A(1),
 - the member's name,
 - any registered business name under which the member carries on business as a building inspector, together with the related Australian Business Number,
 - the address of the member's principal place of business,
 - the member's telephone number and other particulars (such as an email address) for contacting the member for business purposes,
 - any formal qualifications held by the member that are relevant to the individual's business as a building inspector,
 - any conditions in force under clause 45C in relation to the member that the association has been made aware of as a result of notification to the association under that clause
- particulars of project experience that have been provided by the member to the developer or that appear on the register.

It is the owner's corporation responsibility to perform any enquiries as to whether the appointment of the qualified person to be the building inspector, as proposed by the developer, will be approved or refused.

If the owner's corporation refuses the developer's proposed qualified person, the process may be repeated until the owners corporation approves a proposed building inspector or the 12 month timeframe expires – whichever occurs first.

2.1.3.1 Owners corporation refuses the building inspector

The owner's corporation must provide written notice to both the developer and the Secretary informing of their decision to refuse the appointment of the developer's proposed building inspector. The notice is to be provided no later than 14 days following the decision being made.

The appointment of a building inspector arranged by the Secretary is not required to be approved by the owner's corporation.

This is the same outcome if the Developer fails to appoint a building inspector (below) – the Secretary will arrange for the building inspector.

2.1.3.2 Owners corporation approves the building inspector

The owner's corporation must provide written notice to both the developer and the Secretary informing of their decision to approve the appointment of the developer's proposed building inspector. The notice is to be provided no later than 14 days following the decision being made.

2.1.3.3 Owners corporation approves the building inspector – owner objects

When an owner's corporation approves the proposed qualified person as the building inspector but an owner of a lot in the subject strata scheme objects to the appointment of that qualified person, that owner may give the Secretary written notice of their objection and the grounds for the objection, no later than 14 days after the approval of the appointment. The Secretary will consider an objection received by written notice if received within the legislated timeframe.

If the Secretary determines it to be reasonable and appropriate in the circumstances, they will then arrange for the appointment of another qualified person as the building inspector to carry out an inspection of, and to report on, the building work. The Secretary will make the decision as soon as reasonably practicable.

The appointment of a building inspector arranged by the Secretary is not required to be approved by the owner's corporation.

2.1.4 Written notices

The written notices required under the scheme have been developed for all stakeholders and can be accessed on the Fair Trading [website](#).

2.2 Developer failed to appoint qualified person as building inspector

If a building inspector fails to be appointed through this process the Secretary will then arrange for the appointment of a qualified person as a building inspector to carry out an inspection of, and to report on, the building work.

The process the Secretary will follow to arrange a building inspector is located on Fair Trading's [website](#) in the publication 'Secretary's process: Arranging the appointment of building inspectors for Strata building bond and inspections scheme.'

2.2.1 Initial period of a strata scheme – ends within 12 months after the completion of building work

If the appointment of a building inspector is not agreed to by both parties or the developer does not appoint a building inspector for any reason, the Secretary will arrange for the appointment of a qualified person as a building inspector to carry out an inspection of, and to report on, the building work.

On notification by a developer that the developer has not appointed a building inspector, the Secretary will then arrange for the appointment of a qualified person as a building inspector to carry out an inspection and report on the building work.

2.2.2 Initial period for a strata scheme - ends later than 12 months after the completion of building work

If the initial period for a strata scheme ends later than 12 months after an occupation certificate being issued, the developer of the strata scheme must give the Secretary written notice of that fact not later than 21 days after the end of that period.

The Secretary will then arrange for the appointment of a qualified person as a building inspector to carry out an inspection and report on the building work.

2.2.3 Secretary otherwise becomes aware that a developer has not appointed a building inspector

The Secretary will arrange for the appointment of a qualified person as a building inspector to carry out an inspection of, and to report on, the building work.

2.2.4 Written notices

The written notices required under the scheme have been developed for all stakeholders and can be accessed on the Fair Trading [website](#).

Part B: Final inspection and report

2.3 Developer to arrange final inspection.

2.3.1 Interim report is the final report

The developer may apply to the Secretary to determine that the developer is not required to arrange for a final inspection if the interim report did not identify any defective building work.

The Secretary must give written notice of any decision that a final inspection and report is not required to the owner's corporation and the developer not later than 28 days after the decision is made.

In any case in which a final report is not required, the interim report is taken to be the final report.

2.3.2 Interim is not the final report

The developer, must no later than 18 months after the completion of the building work, perform one of 2.3.2.1, 2.3.2.2 or 2.3.2.3:

2.3.2.1 The building inspector who prepared the interim report – is available for final report

The developer must arrange for the building inspector who prepared the interim report on the building work to carry out a final inspection of, and provide a final report on, the building work and give written notice to the Secretary of the arrangement not later than 14 days after making the arrangement.

There is not a requirement for the owner's corporation to approve this building inspector.

2.3.2.2 The building inspector who prepared the interim report – is not available for final report

If the original building inspector is not available, the developer must give the Secretary written notice of that fact not later than 14 days after becoming aware that the building inspector is not available.

The Secretary will arrange for the appointment of a qualified person as a building inspector to carry out the final inspection of and provide the final report on, the building work.

2.3.2.3 Make an application to the Secretary to appoint

Make an application to the Secretary.

The Secretary will arrange for the appointment of a qualified person as a building inspector to carry out the final inspection of and provide the final report on, the building work.

Part C: Additional information

2.4 The specialist and additional inspector's reports

A person who has been appointed as a building inspector may engage additional specialists to inspect and report on the areas outside of the building inspector's skillset (not required to be sourced from the SIP). That additional person must be independent of the stakeholders in the construction of the relevant building work. Any reports produced by an additional specialist are to be included in and form part of the interim and final reports. These will be composite and not separate reports.

2.5 The costs of appointments and reports

The costs of obtaining an inspection and report by a building inspector under the Scheme are to be borne by the developer, irrespective of whether the building inspector was appointed by the developer.

The parties to the inspection agreement will be the developer and the building inspector only, even when additional specialists are engaged. The costs incurred from the additional specialists by the building inspector under this scheme are to be borne by the developer, irrespective of whether the additional specialists were appointed by the developer.

2.6 Interim and final reports

An application to vary the period within which an interim report or a final report is to be provided will be considered by the Secretary on a case by case basis. If a building inspector does not give a copy of the interim report or final report within 14 days after completing the report to the required persons, a penalty may apply.

Part D: Appointing the building inspector - Diagrams

2.7 Appointing the building inspector - developer

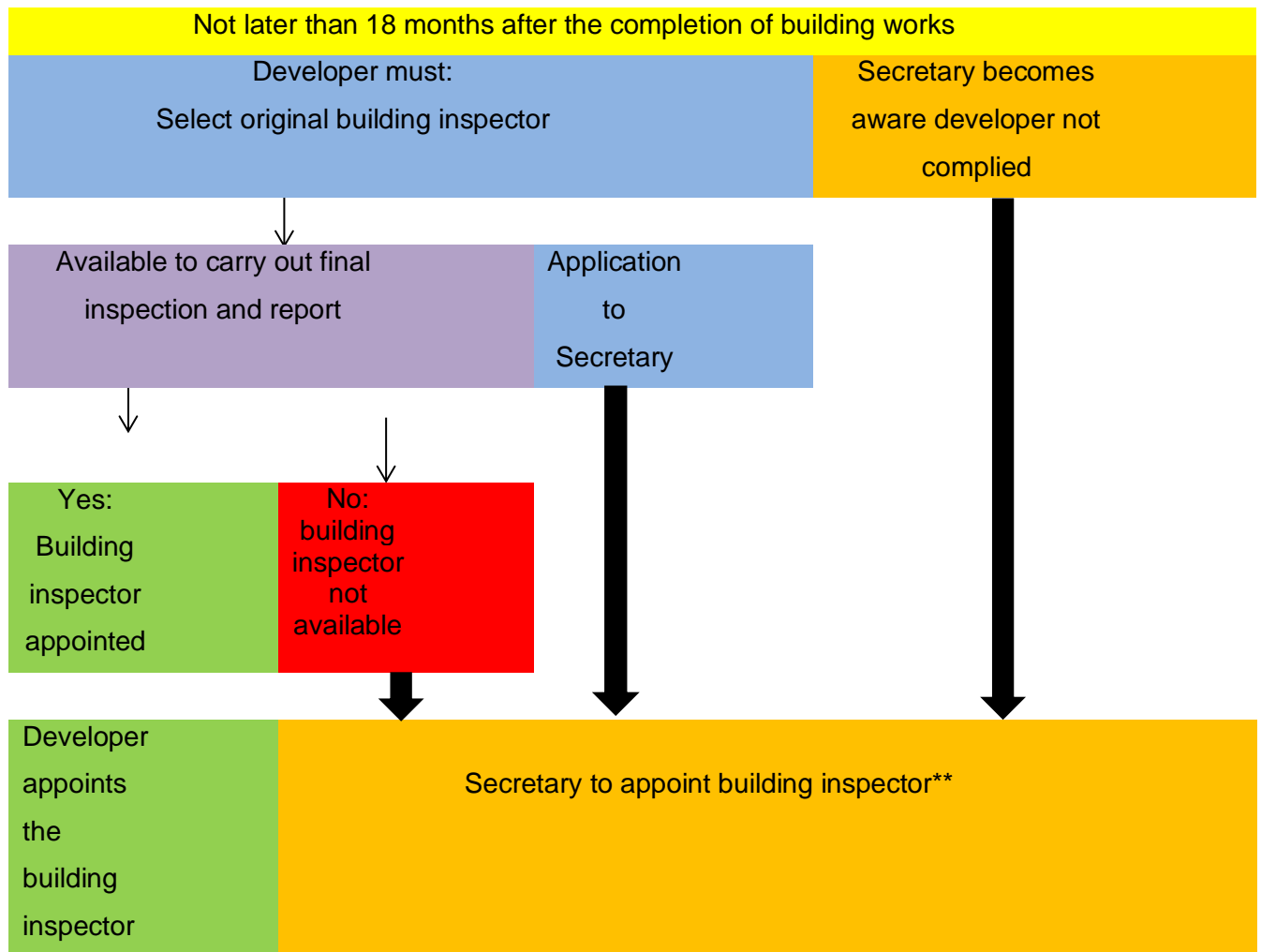
2.7.1 Diagram 1a: Interim inspection



* There is avenue for an owner of a lot in a strata scheme who objects to an approval of the appointment of a building inspector by the owner's corporation to give the Secretary written notice of the objection and the grounds for the objection no later than 14 days after the approval. If appropriate in the circumstances, the Secretary may provide the developer the opportunity to repeat the process or will arrange for the appointment of another qualified person as the building inspector.

** The appointment of a building inspector arranged by the Secretary is not required to be approved by the owner's corporation.

2.7.2 Diagram 1b: Final inspection



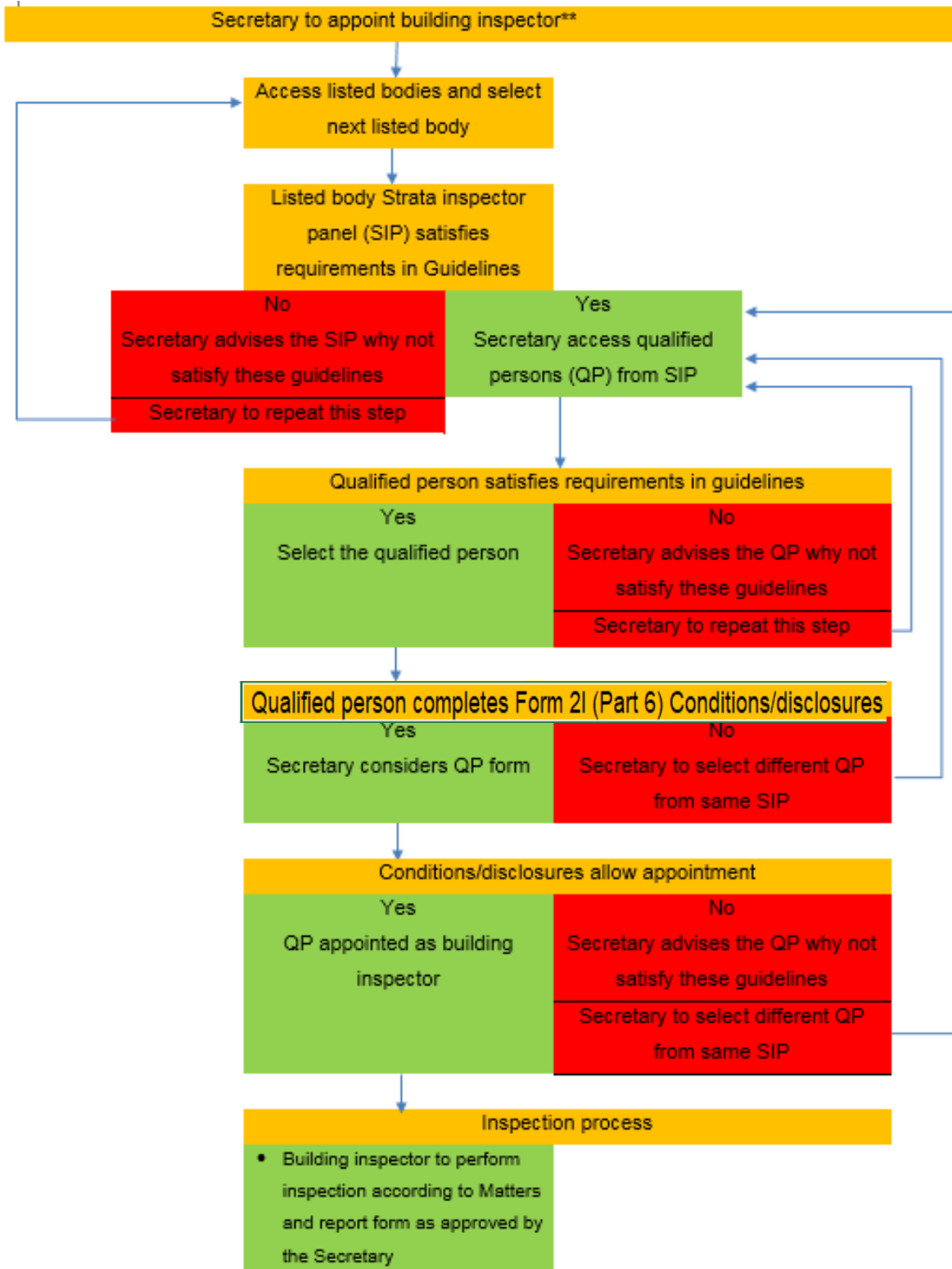
** The appointment of a building inspector arranged by the Secretary is not required to be approved by the owner's corporation.

2.8 Appointing the building inspector – Secretary

This diagram is provided for comparison purposes only.

The process the Secretary will follow to arrange a building inspector is located on Fair Trading's [website](#) in the publication 'Secretary's process: Arranging the appointment of building inspectors for Strata building bond and inspections scheme.'

2.8.1 Diagram 2: Interim and final report



Part 3. Glossary

Authorised professional association means a body listed in Strata Schemes Management Regulation 2016 – Part 8

Building bond means the same as in the *Strata Schemes Management Act 2015* – section 207(1).

Building inspector means the same as in the *Strata Schemes Management Act 2015* – section 193(1).

Building work means the same as in the *Strata Schemes Management Act 2015* – section 190

Code of conduct means a set of principles, values and rules of behaviour expected by the bodies listed on the strata inspector panel within the Strata Schemes Management Regulation 2016

Codes of practice means codes of practice that provide advice to practitioners. Where procedures are recommended for specific professional tasks, these codes are intended to embody 'best practice'. All practitioners must inform themselves of new and updated codes of practice within a reasonable time of their promulgation in order to remain professionally competent.

Connected person means the same as in the *Strata Schemes Management Act 2015* – sections 7. For the purpose of SBBIS additional connections are included at sections 195 and 197

Developer means the same as in the *Strata Schemes Management Act 2015* – section 189

Final report means a report prepared under section 201 of the *Strata Schemes Management Act 2015*

Initial period of an owner's corporation of a strata scheme means the same as in the *Strata Schemes Management Act 2015* – section 4

Interim report means a report prepared under section 199 of the *Strata Schemes Management Act 2015*

Lot means the same as in the *Strata Schemes Management Act 2015* – section 4

Occupation certificate means the same as in the *Environmental Planning and Assessment Act 1979*

Owners corporation means the same as in the *Strata Schemes Management Act 2015* – section 4

Prescribed period means the same as in Strata Schemes Management Regulation 2016 - Clause 46

Qualified person means the same as in the *Strata Schemes Management Act 2015* – section 193(2)

Residential building work means the same as in the [Home Building Act 1989](#)

Secretary means the same as in the *Strata Schemes Management Act 2015* – section 4

Strata Building Bond and Inspections Scheme means the requirements of *Strata Schemes Management Act 2015* – Part 11 and Strata Schemes Management Regulation 2016 – Part 8

Strata inspector panel means the members the listed body has determined qualified to perform the inspections and provide the reports for the purpose of the Strata building bonds and inspection scheme (SIP)

Part 4. DOCUMENT CONTROL

4.1 Document Approval

Name and position	Signature	Date
Manager: Strata building bonds and inspections	Melanie Schwerdt	20/12/2017
Secretary: A/Director or Executive Director	Lynelle Collins	20/12/2017
Secretary: Manager	Melanie Schwerdt	1/07/2020

4.2 Document version control

Version	Status	Date	Prepared by	Comments
1.0	Draft	May 2017	Melanie Schwerdt	
2.0	Draft	October 2017	Melanie Schwerdt	Technical workshop Fair Trading website
3.0	Draft	November 2017	Melanie Schwedt	Fair Trading website
4.0	Review	December 2017	Melanie Schwerdt	Document for Developers Legal Services
5.0	Review	June 2020	Melanie Schwerdt	Amendments to legislation
6.0	Review	July 2020	Melanie Schwerdt	Legal Services

4.3 Document review date

This guideline will be reviewed when the Act or Regulations are amended and annually based on commencement of regime for first two years and assessed thereafter.