

Amended Notice of Inquiry

TO: [Name of Architect]
Registered Architect No. []

OF: [Registered Address]

1. BASIS OF INQUIRY:

The Architects Registration Board of Victoria ("the Board") pursuant to Division 1 of Part 4 of the *Architects Act* 1991 ("the Act") has decided to hold an inquiry into your professional conduct. The Board pursuant to Division 2 of Part 4 of the Act has constituted a Tribunal to conduct the inquiry.

2. THE MODE OF INQUIRY

The Inquiry will proceed by way of oral hearing. The Act stipulates that:

At an inquiry—

1. subject to Part 4 of the Act, the procedure of the Tribunal is in its discretion; and
2. the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit; and
3. the Tribunal is not bound by rules of evidence but may inform itself in any way it thinks fit; and
4. the Tribunal may require evidence to be given on oath or affirmation and any member may administer an oath or take an affirmation for that purpose; and
5. the Tribunal is bound by the rules of natural justice.

3. APPEARANCE OF PARTIES

It is in your best interests to appear personally or through a representative at the inquiry. If neither you nor a nominated representative appears at the hearing, the Tribunal may proceed in your absence and will make a finding on the evidence before it at the inquiry. You may explain your behaviour or answer the allegations personally or in writing or both.

4. TIME AND DATE OF INQUIRY:

The time and date will be fixed at the preliminary conference.

5. VENUE:

Both the preliminary conference (if one is held) and the inquiry will be held in the Conference Room, Level 7, 372 Albert Street, East Melbourne.

6. MATTERS AND/OR BEHAVIOUR ALLEGED:**Allegation One**

Between on or about 30 November 2004 and 2008 you were careless in your practice as an architect in relation to the design of (Site) within the meaning of paragraph 32(a) of the *Architects Act 1991*.

Particulars

1. (Clients) instructed you that the residence on Lot 4 was to be designed so that a vehicle could park in a designated car space in lieu of where the garage was to be constructed at the rear western side of the residence.
2. The width of the car space is between 2940 mm and 2980 mm and is less than the width of 3.5 metres required by the Res Code clause 55.03-11 and the Building Regulations 2006.
3. The car space is not functional. The car space is not wide enough to permit the car doors to be opened, nor does it allow safe and efficient movement into the space as required by the Res Code clause 55.03-10.

Allegation Two

Between on or around 30 November 2004 and 2008 you were careless in your practice as an architect in relation to the design of (Site) within the meaning of paragraph 32(a) of the *Architects Act 1991*.

Particulars

1. (Clients) instructed you that the residence on Lot 4 was to be designed so that they could drive their vehicle, including a horse float, from the laneway at the rear of the Site through the property to exit onto Flinders Parade, at the front east of the Site.
2. The concrete paved driveway on the northern side of Lot 4 measures 2440 mm clear between the side of the building and the post to the paling fence which borders the northern side.
3. The driveway is not functional. It is not practical for the (Clients) to drive their vehicle down the driveway as it is not wide enough given there is inadequate space between the residence and side fence.
4. The design of the driveway does not comply with the Res Code requirements of clause 55.03-9 – Standard B14 which requires a driveway to be minimum 3 metres wide.

**7. POWERS EXERCISABLE BY
THE TRIBUNAL:**

The Tribunal may, as a result of the inquiry and pursuant to section 32 of the Act, make one or more of the following determinations—

1. to caution the architect;
2. to reprimand the architect;
3. to require the architect to undertake further education of a kind, and to complete it within a period, stated in the determination;
4. to impose a condition or limitation on the architect's registration relating to the architect's practice;
5. to impose a penalty not exceeding 50 penalty units;
6. to suspend the architect's registration for the period stated in the determination;
7. to cancel the architect's registration—

and may make any determination as to costs that it thinks fit.

**8. TRIBUNAL
DETERMINATIONS
REASONS AND**

(Pursuant to Section 33 of the Act)

1. A determination made on an inquiry comes into operation on its making or at any later time stated in the determination.
2. As soon as possible after making a determination on an inquiry the Tribunal must give to the person to whom the determination relates a written statement setting out its determination.
3. A person affected by a determination made on an inquiry may, by notice in writing given to the Board within 2 months after the date on which the determination is made request the Board for the reason for the determination.
4. As soon as possible but not later than one month after receiving the request, the Board must give the applicant a written statement setting out the determination made on the inquiry, the reason for the determination and the findings of fact on which they were based.

The Tribunal in its discretion may issue written findings and reasons for findings before receiving submissions on penalty and costs and making determinations on penalty and costs.

**9. ENFORCEMENT
TRIBUNAL
DETERMINATIONS OF**

The Act states that the Board must take all action necessary to give effect to a determination

**10. TIME AND DATE OF
PRELIMINARY CONFERENCE**

This Notice is given to you pursuant to Section 27 of the Act.

DATED this fifth day of October 2011.

SIGNED:



Bruce Allen
Chair of the Tribunal

IN THE MATTER OF the Architects Act 1991

NATURE OF INQUIRY

- ### DETERMINATION OF THE TRIBUNAL

The Practitioner pay to the Board the amount of \$30,073.90 as agreed on or before 10 January 2012 in respect of the Board's costs of the Inquiry.

The Tribunal took into account the following matters:-

- (a) The serious nature and consequences of the admitted allegations.
- (b) No satisfactory explanation was provided on behalf of the Architect for the carelessness involved in each admitted allegation.
- (c) There was direct involvement by the Architect in the substance of the matters the subject of the finding.

- (d) The Architect admitted the two allegations, however these admissions were made shortly before the hearing date despite the initial Notice of Inquiry being dated 21 January 2011.
- (e) The agreement by the Architect to pay a significant portion of the costs claimed on behalf of the Board.
- (f) The substantial time spent and professional and personal cost to the Architect in respect of this matter.
- (g) The vast experience and community involvement and reputation of the Architect.
- (h) The character and professional references provided to the Tribunal.
- (i) The complexity of the project the subject of the Amended Notice of Inquiry, including the changing nature of the clients' instructions and the relationship between each of the clients.

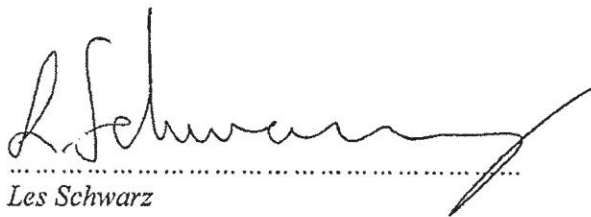
Signed:-



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Bruce Allen (Chair)



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Peter McEwan



.....
Les Schwarz

Dated: 20 October 2011