

## Architects Registration Board of Victoria

### Notice of Inquiry

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

**OF:** [address]

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#### 1. BASIS OF INQUIRY:

**TAKE NOTICE THAT** the Architects Registration Board of Victoria (**Board**) pursuant to Division 1 of Part 4 of the *Architects Act 1991* (**Act**) has determined that an inquiry should be held into your fitness to practise as an architect and into your professional conduct. The Board pursuant to Division 2 of Part 4 of the Act has constituted a Tribunal to conduct the Inquiry on its behalf.

The Tribunal has decided and intends to hold an inquiry into your fitness to practise as an architect and into your professional conduct.

#### 2. MODE OF INQUIRY:

The Inquiry will proceed by way of oral hearing. Section 30 of the Act stipulates that:

*At an inquiry—*

- (a) subject to this Part [Part 4 of the Act], the procedure of the Tribunal is in its discretion; and*
- (b) 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*
- (c) the Tribunal is not bound by rules of evidence but may inform itself in any way it thinks fit; and*
- (d) 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*
- (e) the Tribunal is bound by the rules of natural justice.*

#### 3. APPEARANCE OF PARTIES:

You have a right to be present, to make submissions and to be represented 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 respond to this Notice and the allegations contained within this Notice personally or in writing or both.

4. TIME AND DATE OF PRELIMINARY CONFERENCE:

10:00 a.m. on Friday 24 May 2013

5. TIME AND DATE OF INQUIRY:

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

6. VENUE:

Both the preliminary conference and the Inquiry will be held in the Conference Room within the Board's Office, Level 7, 372 Albert Street, East Melbourne VIC 3002.

7. MATTERS AND/OR BEHAVIOUR ALLEGED:

**Allegation 1:**

During the period 29 May 2010 to 30 September 2010 you were guilty of unprofessional conduct (including in accordance with the meaning of 'unprofessional conduct' in regs 8 and 16 of the *Architects Regulations 2004*) in that you acted as architect and developer in relation to a project at [address], without providing written notice of the scope of each of the roles to your clients.

**Particulars:**

1. On 29 May 2010, you met with [Clients] regarding a proposed renovation of their property [address] (the **Project**).
2. On 29 May 2010, you proposed to act as both architect and builder in relation to the Project.
3. On or about 15 June 2010, you prepared sketch designs for the Project.
4. On or about 15 July 2010, agreement regarding the architectural fees was reached.
5. In September 2010, building works commenced on the Project with you acting as builder.
6. You did not provide written notice of the scope of each of your roles as architect and builder to the Clients.

**Allegation 2:**

During the period 29 May 2010 to 30 September 2010 you were guilty of unprofessional conduct (including in

accordance with the meaning of 'unprofessional conduct' in regs 9 and 16 of the *Architects Regulations 2004*) in that you acted as architect and developer in relation to a project at [address], without obtaining written consent to act from your clients.

**Particulars:**

1. On 29 May 2010, you met with [Clients] regarding a proposed renovation of their property at [address] (the **Project**).
2. On 29 May 2010, you proposed to act as both architect and builder in relation to the Project.
3. On or about 15 June 2010, you prepared sketch designs for the Project.
4. On or about 15 July 2010, agreement regarding the architectural fees was reached.
5. In September 2010, building works commenced on the Project with you acting as builder.
6. You did not obtain written consent to act as architect and builder for your Clients prior to commencing works.

8. POWERS EXERCISABLE BY THE TRIBUNAL:

Pursuant to section 32 of the Act:

*If after considering the submissions made at an inquiry the Tribunal finds that—*

- (a) the architect is careless or incompetent in his or her practice; or*
- (b) the professional standards of the architect are demonstrably lower than the standards which a competent architect should meet; or*
- (c) the architect is guilty of unprofessional conduct; or*
- (d) the architect has breached or failed to comply with any provision of this Act; or*
- (e) the architect has been convicted in Victoria of an indictable offence or has elsewhere been convicted of an offence which if committed in Victoria, would be an indictable offence; or*
- (f) the registration of the architect has been obtained by fraud or misrepresentation or concealment of facts—*

*the Tribunal may make one or more of the following determinations—*

- (g) to caution the architect;*
- (h) to reprimand the architect;*

- (i) to require the architect to undertake further education of a kind, and to complete it within a period, stated in the determination;*
- (j) to impose a condition or limitation on the architect's registration relating to the architect's practice;*
- (k) to impose a penalty not exceeding 50 penalty units;*
- (l) to suspend the architect's registration for the period stated in the determination;*
- (m) to cancel the architect's registration—  
and may make any determination as to costs that it thinks fit.*

#### 9. TRIBUNAL DETERMINATIONS AND REASONS:

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.

#### 10. ENFORCEMENT OF TRIBUNAL DETERMINATIONS:

Section 35 of the Act states that the Board must take all action necessary to give effect to a determination.

#### 11. REVIEW BY VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL:

You have a right under section 42(c) of the Act to apply to the Victorian Civil and Administrative Tribunal for review of a determination made at an Inquiry under Part 4 of the Act.

Under section 44(c) of the Act, any such application for review must be made within 3 months after the day on which the Tribunal gives notice of the determination.

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

DATED this 6<sup>th</sup> day of May, 2013

SIGNED:

  
.....  
Les Schwarz  
Chair of the Tribunal

## **INTHE MATTER of the *Architects Act 1991***

AND INTHE MATTER of an Inquiry into the professional conduct of [Name of Architect]

### **DETERMINATION**

This is the determination of the Tribunal constituted by the Architects Registration Board of Victoria to hold an inquiry into the fitness of [Name of Architect] to practise as an architect and into his professional conduct ("the Inquiry").

This determination was made at the conclusion of an Inquiry conducted on Wednesday, 14 August 2013.

The Tribunal, having conducted an Inquiry into the particular conduct or act or omissions raised in the Notice of Inquiry dated 6 May 2013 ("the Notice of Inquiry"), pursuant to Division 2 of Part 4 of the Architects Act 1991 ("the Act") and having considered the submissions made, hereby makes the following determination: -

1. Paragraph 6 of the particulars sub-joined to Allegation 2 in the Notice of Inquiry is amended by deleting the phrase "prior to commencing works".
2. That the Architect contravened Regulations 8,9 and 16 of the Architects Regulations 2004 ("the Regulations") in that the Architect failed to give the clients (as defined in the Notice of Inquiry) written notice of the scope of each of his roles as architect and builder in breach of Regulation 8 of the Regulations and did not obtain written consent to act from the clients within fourteen calendar days of the day of giving notice under Regulation 8 (1) of the Regulations (Allegations 1 and 2 in the Notice of Inquiry).

### **FINDING:**

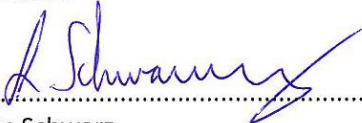
1. The Tribunal accepts the Architect's admissions in relation to Allegations 1 and 2 in the Notice of Inquiry.
2. By reason of the allegations contained in paragraph 7 of the Notice of Inquiry for the purposes of Section 32 (c) and 32 (d) of the Act, the Tribunal finds the Architect to be guilty of unprofessional conduct.

**PENALTY :**

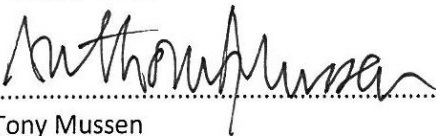
- A. Having found the Architect to be guilty of unprofessional conduct, the Tribunal determines to caution the Architect in respect of Allegations 1 and 2 in the Notice of Inquiry.
  
- B. The Tribunal determines in relation to costs that the Architect pay the Architects Registration Board of Victoria costs of the Inquiry in the sum of \$3,000.00. This payment is to be made within 3 months of the date of this determination.

DATED this 14<sup>th</sup> day of August 2013


SIGNED:



Les Schwarz  
Tribunal Chair



Tony Mussen  
Tribunal Member



Peter McEwan  
Tribunal Member