

Architects Act 1991

Architects Registration Board of Victoria

Notice of Inquiry

TO: [The Architect}

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 1 – breach of section 32(c) of the
*Architects Act 1991***

1. Between about January 2017 and about February 2017, in relation to the provision of architectural services for the construction of a dwelling at [Site], you were involved in the carrying out of building works, being building works associated with the widening of the balcony to the attic of the proposed dwelling and the construction of a wall (**Works**) without a planning permit or building permit, in breach of clause 5(2)(a) of the Victorian Architects Code of Professional Conduct and pursuant to regulation 9 of the *Architects Regulations 2015* you are therefore guilty of unprofessional conduct within the meaning of paragraph 32(c) of the *Architects Act 1991*.

Particulars

You knew that the Works were not authorised by the planning permit or building permit and that while amendments to the planning permit had been sought, they had not been granted.

You sought to justify that the works were about to be carried out in:

- 1.1 Your email to [your Client] on 14 January 2017
- 1.2 Your letter to the Architects Registration Board of Victoria dated 3 February 2017

**Allegation 2 – breach of section 32(c) of the
*Architects Act 1991***

2. Between about January 2017 and about February 2017, in relation to the provision of architectural services for the construction of a dwelling at [Site], you were involved in the carrying out of building works, being building works associated with the widening of the balcony to the attic of the proposed dwelling and the construction of a wall (**Works**) without a planning permit or building permit, in breach of clause 18 of the Victorian Architects Code of Professional Conduct and pursuant to regulation 9 of the *Architects Regulations 2015*

you are therefore guilty of unprofessional conduct within the meaning of paragraph 32(c) of the *Architects Act 1991*.

Particulars

You knew that the Works were not authorised by the planning permit or building permit and that while amendments to the planning permit had been sought, they had not been granted.

You sought to justify that the carrying out of the works in:

- 2.1 Your email to [Client] on 14 January 2017
- 2.2 Your letter to the Architects Registration Board of Victoria dated 3 February 2017

Allegation 3 – breach of section 32(c) of the *Architects Act 1991*

3. Between about January 2017 and about April 2017, in relation to the provision of architectural services for the construction of a dwelling at [Site], you were involved in the carrying out of building work, being the construction of a dwelling to a height which was contrary to the planning permit and building permit issued for the work, in breach of clause 5(2)(a) of the Victorian Architects Code of Professional Conduct and pursuant to regulation 9 of the *Architects Regulations 2015* you are therefore guilty of unprofessional conduct within the meaning of paragraph 32(c) of the *Architects Act 1991*.

Allegation 4 – breach of section 32(c) of the *Architects Act 1991*

4. Between about January 2017 and about April 2017, in relation to the provision of architectural services for the construction of a dwelling at [Site], you were involved in the carrying out of building works, being the construction of a dwelling to a height which was contrary to the planning permit and building permit issued for the work, in breach of clause 18 of the Victorian Architects Code of Professional Conduct and pursuant to regulation 9 of the *Architects Regulations 2015* you are therefore guilty of

unprofessional conduct within the meaning of paragraph 32(c) of the *Architects Act 1991*.

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 AND REASONS

(Pursuant to Section 33 of the Act)

8. A determination made on an inquiry comes into operation on its making or at any later time stated in the determination.
9. 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.
10. 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.
11. 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 OF TRIBUNAL DETERMINATIONS 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 17th day of October 2017.

[SIGNED]

Les Schwarz
Chair of the Tribunal

IN THE MATTER of the Architects Act 1991

AND IN THE MATTER of an Inquiry into the professional conduct of [the Architect]

Determination and Reasons

This is the determination of the Tribunal constituted by the Architects Registration Board of Victoria as a result of an Inquiry which was conducted on 17 October 2017 into the fitness of [the Architect] to practise as an architect and into his professional conduct (“the Inquiry”).

The Tribunal, having conducted the above Inquiry into the particular conduct or acts or omissions raised in the Amended Notice of Inquiry dated 17 October 2017 (“the Amended Notice of Inquiry”) (copy attached) pursuant to Division 2 of Part 4 of the *Architects Act 1991* (“the Act”) and having considered the submissions made at the Inquiry, makes the following determination:-

Determination

1. That allegations 1 and 3 contained in the Amended Notice of Inquiry dated 17 October 2017 (“the Amended Notice of Inquiry”) are struck out.
2. The Architect is found guilty in respect of allegations 2 and 4 contained in the Amended Notice of Inquiry.
3. The Architect is cautioned in respect of allegations 2 and 4.
4. The Architect pay the costs of and incidental to the Inquiry, which costs are to be assessed or taxed by the Costs Court on a standard basis pursuant to the County Court scale in default of agreement between the parties.

Findings of Fact and Reasons

1. Allegations 1 and 3 contained in the Amended Notice of Inquiry should be struck out as:-
 - (a) They assert a breach of clause 5(2)(a) of the Victorian Architects Code of Professional Conduct (“*the Code*”), which is inapplicable to the facts of this case as that clause specifically relates to the conduct of an architect towards a client in administering a building contract for a client; and
 - (b) The conduct complained of is the same conduct as for allegations 2 and 4; and
 - (c) The allegations are a repetition of allegations 2 and 4.
2. The Tribunal finds the Architect guilty of allegations 2 and 4 in that he breached clause 18 of *the Code* and therefore pursuant to Regulation 9 of the *Architects Regulations*

2015 (“the Regulations”), guilty of unprofessional conduct within the meaning of section 32(c) of the *Architects Act 1991* (“the Act”).

3. The agreed facts between the parties and the Architect’s position are sufficiently set out in an undated document entitled “Summary of Agreed Facts and the Architects Position” which was contained in the Tribunal Book (“the Summary”).
4. The Architect admitted that he was involved in carrying out building works, namely the widening of the balcony to the attic of the proposed dwelling and the construction of a 3-metre and a 2-metre-high wall to the south-east boundary wall, which were not authorised by the planning permit (2014/386/1) or the building permit in that whilst amendments to that planning permit had been sought, they had not been granted at the time the unauthorised building works were performed.
5. The Architect further admitted that he was also involved in carrying out building works, namely constructing the dwelling with an increased wall height from the permitted 9.448 metres maximum to a 9.6 metre maximum, which was not authorised by the planning permit (2014/386/1) in that whilst amendments to that planning permit had been sought, they had not been granted at the time the unauthorised building works were performed.
6. However the Architect denied all allegations and defended them at the hearing on 17 October 2017. In summary, the architect cited a number of reasons as to why he was involved in carrying out building works. They are enumerated in pages 6 to 9 (inclusive) of the Summary.
7. Reference is made to paragraphs 60 to 62 (inclusive) of the judgment by McDonald J in *McSteen v. Architects Registration Board of Victoria* [2017] VSC 276 in respect of what constitutes unprofessional conduct.
8. The Tribunal is of the view that the Architect is guilty of unprofessional conduct in respect of allegations 2 and 4, especially given that the Architect admitted in the Summary of Agreed Facts that:-
 - (a) In respect of allegation 2, the Architect was involved in the Works (as defined in the Amended Notice of Inquiry) which did not have a planning permit or a building permit (namely the widening of the balcony to the attic and the construction of walls with increased wall heights).
 - (b) In respect of allegation 4, the Architect was involved in the Works (as defined in the Amended Notice of Inquiry) which was contrary to the planning permit issued for the Works (namely the increased wall heights).
 - (c) That the Architect was aware of the matters contained in the above sub-paragraphs however proceeded as if the amendments applied for to the planning permit and building permit respectively would be granted.

- (d) The Architect stated to [Name], an adjoining owner, that the Works would “revert” to the works permitted by the planning permit and building permit which then existed if the amendment sought were not approved.
9. It is concerning that the Architect did not appear to appreciate the inappropriateness of his conduct in being involved in the Works proceeding without the necessary permit(s) in place, especially as he had received objections to this approach from [the Neighbour].
10. The Architect pleaded not guilty to all allegations and is an experienced architect. He however has no previous history of complaints of unprofessional conduct.
11. The Tribunal accepts that the Architect was being pressured by his clients and also there were inordinate delays by the relevant Council. However the clients were well aware that their wish to increase the size of their balcony may well result in delays.
12. The Architect is therefore cautioned in respect of allegations 2 and 4.
13. Accordingly, the Tribunal also determines that it is fair and reasonable that the Architect pay the costs of and incidental to the Inquiry, which costs are to be assessed or taxed by the Costs Court on a standard basis pursuant to the County Court scale in default of agreement between the parties.

DATED this Fourth day of December 2017.

[SIGNED]

Les Schwarz
Chair of the Tribunal