

Building Act 1993

Building Regulations 2018

TERMS OF APPOINTMENT

RELEVANT BUILDING SURVEYOR

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1 NATURE OF CONTRACT

- 1.1 The *RBS* shall carry out upon request by the *owner*, and in accordance with the *Building Act 1993* and *Regulations*, the *Services* in accordance with this Agreement
- 1.2 The *owner* shall pay the *RBS* the *fee* and *fee adjustments* in accordance with this Agreement.

2 OWNERS WARRANTIES AND INDEMNITIES

- 2.1 The *owner* warrants:
- (a) the accuracy and completeness of all information given to the *RBS*;
 - (b) that the *RBS* when carrying out *the Services* acts with the *owner's* authority;
 - (c) that no other person has been appointed as *RBS* for the *subject property*.
- 2.2 The *owner* shall indemnify the *RBS* against any claims in respect of the *RBS* acting within authority as the *owner's* agent.

3 SERVICE OF NOTICES

- 3.1 A notice (and any other document) shall be deemed to have been given and received:
- (a) if addressed or delivered to the relevant address in this Agreement or last address communicated in writing to the person giving the notice; and
 - (b) on the earliest day of
 - (i) actual receipt;
 - (ii) confirmation of correct transmission of fax; or
 - (iii) two (2) days after posting.

4 INFORMATION

- 4.1 The *owner* shall:
- (a) promptly answer any reasonable enquiries made by the *RBS* in connection with the *Services*;
 - (b) direct others to liaise, co-operate and confer with the *RBS* when necessary; and
 - (c) provide the *RBS* with all relevant information.

5 LEGISLATIVE REQUIREMENTS – COMPLIANCE

- 5.1 If a *legislative requirement* necessitates a change to:
- (a) the *owner's* project requirements;
 - (b) the *building works*;
 - (c) the *Services*; or
 - (d) a *fee* or charge or payment of a new *fee* of charge;
- there shall be a *fee adjustment*.

6 THE RBS' REPRESENTATIVES AND KEY PERSONNEL

The *RBS* shall provide the *Services* personally or by a competent representative.

7 PAYMENT

- 7.1 The *RBS* shall claim payment in accordance with the *fee schedule* attached to this Agreement;
- 7.2 Each claim shall be in writing, include details for the value of *Services* provided together with any disbursements incurred by the *RBS* and may include details of other moneys then due to the *RBS* pursuant to the provisions of this Agreement.
- 7.3 The *owner* shall pay any claim made by the *RBS* within 14 days of the date of the claim.
- 7.4 If an invoice is in breach of payment terms and referral to a collections company is required any additional fees associated with this may be added to the invoice amount payable by the *owner*.

8 INTEREST

Interest at rate of 12% shall be due and payable by the *owner* as from the 15th day after the claim.

9 TERMINATION

- 9.1 The termination of the *RBS* under this Agreement may only occur with the *owner* first obtaining written consent to terminate from the Victorian Building Authority pursuant to Section 81(1) of the Building Act 1993.
- 9.2 If this Agreement is terminated in accordance with clause 9.1, the *owner* shall pay to the *RBS* all outstanding payments owing to the *RBS* at the time of termination.
- 9.3 The *RBS* shall be entitled to charge additional fees for costs and disbursements arising as a consequence of the termination.

10 THE SERVICES

10.1 Building Permit

- (a) The *owner* may lodge an application for a building permit to be issued by the *RBS*.
- (b) The *owner* in making an application for a building permit must:
 - (i) complete an Application for Building Permit Form 1 Annexed hereto;
 - (ii) pay the required *fee*;
 - (iii) pay the required building permit levy under the *Building Act 1993*;
 - (iv) comply with the requirements of the *Building Act 1993*;
 - (v) provide all documents and information required under the *Building Act 1993* and its *Regulations* or as requested by the *RBS*;
 - (vi) comply with the conditions of any Planning Permit or other prescribed approval issued in relation to the *subject property*;
 - (vii) state the contract price for the *building work* including the costs of labour and materials if there is a contract for the *building work*; or
 - (viii) in any other case provide such sufficient information to enable the *RBS* to estimate the costs of the *building work* including the cost of labour and materials; and
 - (ix) include any necessary report and consent of any prescribed reporting or service authority under the *Building Act 1993* or any necessary permit or approval of a responsible authority under the *Planning and Environment Act 1987*.
- (c) The *RBS* may:
 - (i) request further information from the *owner*;
 - (ii) issue a building permit for a stage of the *building works*;
 - (iii) issue a building permit with conditions;
 - (iv) issue a building permit without conditions; or
 - (v) refuse to issue a building permit.

10.2 The building permit once issued shall be forwarded to the *owner and /the owner's agent*.

10.3 If a Building Permit is refused

If an application for a building permit is refused by the *RBS* the *owner* may make a further application for a building permit.

10.4 **Variation of Building Permit**

The *owner* may lodge an application requesting a building permit be varied and or extended by the *RBS*;

The application must:

- (a) be in writing;
- (b) include all documents required under the *Building Act 1993* and the *Regulations* or requested by the *RBS*;
- (c) be accompanied by the required *fee* as per this Agreement.

11 **NON COMPLIANCE**

If the *owner/ owner's agent* fails to comply with:

- (a) the building permit and/or its conditions;
- (b) any directions issued by the *RBS*;
- (c) a section of the *Building Act 1993* and the *Regulations*; and
- (d) the *RBS* provides additional *Services* under the *Building Act 1993*, the *Regulations* or this Agreement;

the *owner* shall pay the *RBS* a *fee adjustment* in accordance with this Agreement.

12 **INSPECTIONS**

12.1 If the *RBS* is requested by the *owner* or the *owner's agent* to carry out an inspection of the *building works*, the *owner* shall provide the *RBS* with not less than 24 hours notice and shall cease any works on the *subject property* until such time as the *RBS* has caused the *subject property* to be inspected.

12.2 The *owner* shall pay the *RBS* the *fee* or a *fee adjustment* required under this Agreement for any inspections.

13 ADDITIONAL SERVICES

- 13.1 The *RBS* may perform additional *Services* in exercising its obligations under this Agreement, the *Building Act 1993* and its *Regulations* and or any other relevant legislation including but not limited to:
- (a) obtaining additional information and documents from a *council* and other authority;
 - (b) carrying out additional inspections of the *subject property*;
 - (c) reporting any matters to the *Victorian Building Authority* or other authority;
 - (d) responding to any requests for information from the *Victorian Building Authority* or other authority including but not limited to a *council*, the *Building Appeals Board*, and the *Building Practitioners Board*;
 - (e) issuing any notices or orders under the *Building Act 1993* and the *Regulations*.
- 13.2 Upon the *RBS* carrying out additional *Services* the *owner* shall pay the *RBS* the *fee* or a *fee adjustment* required under this Agreement.

14 OWNERS OBLIGATIONS

- 14.1 The *owner* hereby acknowledges his/her/its ongoing obligations pursuant to the *Building Act 1993* and the *Regulations* including but are not limited to:
- (a) providing the *RBS* with unfettered access to the *subject property*;
 - (b) not obstructing the *RBS* in carrying out its functions;
 - (c) not provide the *RBS* with any information which may be misleading or deceptive;
 - (d) advising the *RBS*:
 - (i) of any changes in relation to the engagement of a *Building Practitioner* or an insured architect within 14 days of such change;
 - (ii) of any change to the *owner's* address;
 - (iii) if *building works* cease on the *subject property*;
 - (iv) if the *subject property* is transferred to a new *owner*; and
 - (e) ensuring the *building works* the subject of any building permit issued by the *RBS* are carried out in accordance with the building permit, directions of the *RBS*, the *Building Act 1993* and the *Regulations*.

15 ENTIRE AGREEMENT

This document embodies the entire agreement between the parties and any previous or simultaneous negotiations, representations, arrangements and agreements are superseded by this Agreement. No amendment or variation may be made to this Agreement other than in writing executed by each of the parties.

16 SEVERANCE

In the event that any condition or provision of this Agreement is held to be invalid or unenforceable for any reason whatsoever that condition or provision shall be read

down to the extent necessary to give it, if possible, partial operation, but if that is not possible, the condition or provision may be severed and the remainder of this Agreement shall remain in full effect.

17 DEFINITIONS

In this Agreement—

Building	includes structure, temporary building, temporary structure and any part of a building or structure;
Building Appeals Board	means the Building Appeals Board under Part 10 of the Building Act 1993;
Victorian Building Authority	means the Victorian Building Authority under Part 12 of the Building Act
Building Practitioner	1993; has the same meaning as it has in the Building Act 1993;
Building Practitioners Board	means the Building Practitioners Board under Part 11 of the Building Act 1993;
Building Work	means work for or in connection with the construction, demolition or removal of a building;
Certificate of Consent	means a certificate of consent under Division 3A of Part 3 of the Building Act 1993;
Council	means a council within the meaning of the <i>Local Government Act 1989</i> ;
Domestic Building Work	has the same meaning as it has in the <i>Domestic Building Contracts Act 1995</i> ;
Fee	means the fee calculated in accordance with the Fee Schedule attached hereto;
Fee adjustment	means a sum to be added to or deducted from the fee;
Function	includes power, authority and duty;
Legislative requirements	includes: (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where Services are being provided; (b) Certificates, licences, consents permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services and (c) Fees and charges payable in connection with the foregoing;
Municipal Building Surveyor	means a person for the time being appointed, employed or nominated by a council as its municipal building surveyor for the purposes of this Act;
Owner	means (a) the person who is registered or entitled to be registered as proprietor, or the persons who are registered or entitled to be registered as proprietors, of an estate in fee simple in the land; and (b) in relation to Crown land reserved under the <i>Crown Land (Reserves) Act 1978</i> and managed or controlled by a committee of management, means the Minister administering that Act; and (c) in relation to any other Crown land, means the Minister or <i>public authority</i> that manages or controls the land; (d) in relation to a building, means the owner of the land on which a building is situated;



RELEVANT BUILDING SURVEYOR FEE SCHEDULE



Charges outlined in this Fee Schedule comprise fees, expenses and any applicable GST. Fees are calculated at an hourly rate (or part thereof) unless otherwise stated. Each attendance is calculated in multiples of 6 minute units or part thereof.* Fees do not include any applicable GST, which shall appear as a separate item on accounts.

The time spent may include telephone attendances, preparation and consideration of correspondence and documents, advice, research, travelling time, consultations with you or with other persons, preparation for and attendance at meetings, court or tribunal hearings, sending of faxes and emails, filing or lodging documents or other work as required to perform the functions of the RBS.

Expenses

Expenses include out of pocket payments or obligations to pay third persons that are incurred or paid on your behalf.

ITEMS	\$	Fee*	Fee Type**
Application for building permit (Assessment and issue - including one (1) further information request letter)	\$	Determined by project type	per item
Application for occupancy permit	\$	Determined by project type	per item
Making any Applications to prescribed reporting authorities	\$	192.50	per hour
Exercising discretionary powers (non-DTS)	\$	192.50	per hour
Assessing an application for a variation to a building permit	\$	240.79	per item
Assessing an application for a Staged building permit	\$	291.80	per item
Assessing an application for a Conditional building permit (administration)	\$	192.50	per hour
Attending to any Statutory enforcement functions	\$	192.50	per hour
Additional assessment of Application for building permit (two (2) or more further information request letters)	\$	192.50	per hour
Attending to any administrative issues which may arise due to false or misleading information	\$	192.50	per hour
Performing Mandatory inspections domestic	\$	141.65	per item
Performing additional inspections domestic	\$	141.65	per item
Performing Mandatory inspections commercial	\$	173.13	per item
Performing additional inspections commercial	\$	173.13	per item
Property visits other than for mandatory or additional inspections	\$	192.50	per hour
Attending to any issues which may arise due to an appeal of any RBS decision	\$	192.50	per hour
Assessing an application to extend a building permit	\$	321	per item
Assessing an application to renew a building permit if the permit has lapsed	\$	192.50	per hour

ITEMS	\$	Fee*	Fee Type**
Assessing an application to transfer a building permit to a new owner	\$	192.50	per hour
Carrying out an assessment and issuing a Building Notice	\$	256	per hour
Carrying out an assessment and issuing a Building Order	\$	256	per hour
Carrying out an assessment and issuing a Cancellation of Building Order	\$	256	per hour
Carrying out an assessment and referring a Building Order to The Victorian Building Authority	\$	256	per hour
Carrying out an assessment and as necessary cooperating with any Victorian Building Authority proceedings	\$	256	per hour
Carrying out an assessment in relation to the Administration of Dual appointment issues	\$	256	per hour
Carrying out an assessment in relation to the termination of the RBS and complying with any orders of directions of the Building Commission	\$	256	per hour
Carrying out an assessment and attending to all things in relation to Protection Works under the Building Act 1993	\$	256	per hour
Attending to the consideration of any information required to perform any statutory role or function	\$	256	per hour
Carrying out any additional non-statutory consulting services	\$	192.50	per hour
Carrying out any additional services not otherwise provided for in this Agreement	\$	256	per hour
Interest to be applicable to late payment(s)	%	12%	per annum on outstanding fees
Photocopying, collating and stapling	\$	0.15	per page
Photograph/s (minimum of \$15.00)	\$	1.50	per photo
Council Building Permit Lodgement Fee	\$	121.90	per item

* the RBS retains a discretion to round-up multiples of 6 minute units

** strike out inapplicable fee type