

## Appointment of Private Building Surveyor (Incorporating Service Agreement)

I / We:

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Owner of the following address:

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For the proposed building work: (Works description)

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Pursuant to Part 6 of the Building Act 1993, Hereby appoint Private Building Surveyor:

**Andrew Herbig (BS-L 62668)**

to carry out all or any of the following functions under the Act -

- a) the issuing of building permits;
- b) the carrying out and/or authorise inspections of buildings and building work under Part 4;
- c) the issuing of occupancy permits/final certificates and temporary approvals under Part 5.

I/We have read and agree to the terms & conditions attached to this agreement (dated March 2024) and wish to engage Andrew Herbig to perform all required functions of the Building Act 1993 and Building Regulations 2018.

**SIGNATURE OF OWNER 1:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**SIGNATURE OF OWNER 2:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

By signing this application, I/We confirm that another private building surveyor or a municipal building surveyor has not already commenced carrying out functions set out in Section 76 of the Building Act. I/We also certify that no building works have commenced that are the subject of this application; including any excavation or site works.

## **TERMS and CONDITIONS**

This Appointment and Service Agreement (the Agreement) forms part of the contract for certification work in accordance with the Building Act 1993 (the Act) and Building Regulations 2018 (Regulations) and applies where a person elects to appoint (the appointer(s)) Andrew Herbig from *Impact Building Approvals* to assess and determine a Building Permit application and act as the Relevant Building Surveyor (RBS) in accordance with the Act and Regulations.

The functions under the Act, which are to be carried out as part of this Agreement, relate to the building permit and all endorsed and referenced plans and documentation, as issued by *Impact Building Approvals*.

The Agreement also encompasses any subsequent modifications to the abovementioned approvals, subject to payment of applicable fees and charges, and unless otherwise advised in writing.

### **1. Errors and Omissions**

- 1.1. *Impact Building Approvals* does not accept responsibility for any damages, loss or delay suffered by the appointer(s) or any other related party arising as a result of any omission or error contained within the agreement or any failure of the appointer(s) to comply with all terms and conditions of the agreement.
- 1.2. In the event of any negligent act or omission by the appointer(s), *Impact Building Approvals* shall be indemnified against and released from all liability, damages, compensation, actions, claims, disputes and suites of any kind which may arise before, during or after the period of the agreement in relation to the appointment of *Impact Building Approvals*.

### **2. Scope**

- 2.1. The scope of works covered by the Agreement is limited to building works described in the building permit and all endorsed and referenced plans and documentation, as issued by *Impact Building Approvals*.

### **3. Indemnity and Exclusion of Liability**

- 3.1 The appointer(s) indemnifies *Impact Building Approvals* and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the appointer(s), a breach by the appointer(s) of this agreement, a wilful unlawful or negligent act or omission of the appointer(s), and any claim action or proceeding by a third party against *Impact Building Approvals* or its employees, officers and contractors caused or contributed to by the appointer(s).
- 3.2 The appointer(s) releases and holds harmless *Impact Building Approvals* against all claims, demands, expenses, loss or damage arising in connection with the appointer(s) reliance on, or use of, any aspect of the Building Permit Application Assessment Services, including advice, given to the appointer(s) by *Impact Building Approvals* in a manner which is not contemplated or authorised by the Act or otherwise not in accordance with any exclusions or assumptions given by *Impact Building Approvals*.

### **4. Liability Limit**

- 4.1 The Certifier's aggregate liability to the Client arising in connection with this Agreement, whether based in contract, tort (including negligence), equity, statute, by way of indemnity or contributions, warranty, guarantee or otherwise, is limited to the lesser of:
  - (a) the amount of the Contract Sum; and
  - (b) \$50,000.
- 4.2 If, and to the extent that, clause 4.1 is void as a result of section 64A of the Australian Consumer Law under Schedule 2 of the *Competition and Consumer Act 2010* (Cth), then the Certifier's liability for a breach of a condition or warranty is limited to:
  - (a) the supplying of the relevant Services again; or
  - (b) paying the cost of having the Services supplied again.
- 4.3 The Certifier's liability to the Client is excluded in relation to any loss of profit, loss of any contract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers or any other indirect or consequential losses or damages arising in connection with the Agreement.
- 4.4 Clauses 4.1 and 4.3 do not limit or exclude the Certifier's liability in respect of claims, actions, costs, losses, damages or liability arising due to:
  - (a) liability which cannot be limited at law;
  - (b) fraudulent or criminal conduct; or
  - (c) any matters listed in Item 11.

### **5. Appointment**

- 5.1. All information provided by the appointer(s) shall be taken to be accurate and correct. *Impact Building Approvals* shall not accept any responsibility for any intentional or unintentional error or omission made by the appointer(s).
- 5.2. The appointer(s) confirms or verifies that no building works, the subject of a relevant building permit, have commenced prior to the appointment of *Impact Building Approvals* under this Agreement and that no other person has been appointed as the RBS for the subject property.
- 5.3. The appointer(s) shall indemnify the RBS against any claims in respect of the RBS acting within authority as the owner's agent.
- 5.4. Where building works have commenced prior to the appointment of *Impact Building Approvals*, the appointment shall be deemed invalid.
- 5.5. The appointer(s) shall keep the RBS informed of any changes to the details of the Principal Contractor (builder) and any relevant insurance required by the builder. Failure to meet this obligation shall result in the appointer(s) indemnifying *Impact Building Approvals* against any losses suffered as a result of non-compliance with any legislative requirements.

- 5.6. *Impact Building Approvals* shall not accept responsibility for any damages or costs associated with the RBS's inability to issue an Occupancy Permit due to, but not limited to, the following:
- Non-compliance with a building permit including endorsed and referenced plans and documentation, or a related planning permit,
  - Unsatisfactory final inspection,
  - Missed mandatory inspections, or other inspections,
  - Failure to pay the required fees.

## **6. Inspections**

- 6.1. The appointer(s) acknowledges that all required mandatory inspections, and other inspections of the building works, are required to be carried out by the RBS or a building inspector authorised by the RBS.
- 6.2. *Impact Building Approvals* shall notify the appointer(s) of any mandatory inspection requirements, and any other inspection requirements, in accordance with Clause 37 of the Regulations.
- 6.3. The RBS will undertake inspections of the relevant building works during construction, and prior to the issue of an Occupancy Permit, so to ascertain and confirm compliance with the endorsed building permit plans and documentation, Building Code of Australia and/or other relevant or applicable standards for construction.
- 6.4. The appointer(s) authorise right of entry to the property, and any building works the subject of a building permit, by any building inspector, building surveyor or other person, arranged by or employed by *Impact Building Approvals* to carry out any mandatory inspections, or other inspections, as deemed necessary or required by the RBS.
- 6.5. The appointer(s) acknowledges that it is the Principal Contractor (builder) or Owner Builder's responsibility pursuant to Section 33 of the Building Act 1993 to make suitable arrangements with the RBS to carry out any mandatory inspection identified on the building permit, by calling *Impact Building Approvals* on 0410 297 573 as soon as the relevant building stage is ready for inspection.
- 6.6. The appointer(s) acknowledges and accepts that building works must not and cannot proceed to any subsequent stage of construction prior to obtaining a satisfactory inspection result from the RBS for each relevant stage of construction.
- 6.7. The RBS will provide confirmation of the outcome of any mandatory inspection, or other inspection, as soon as practical after the inspection has been completed.
- 6.8. The appointer(s) acknowledges and accepts that a failure to request the RBS to carry out a mandatory inspection or other inspection may prejudice and possibly prevent the issue of an Occupancy Permit in respect of the building.

## **7. Third Party Certification of Works**

- 7.1. To ensure compliance with the approved building permit plans and/or Building Code of Australia, the appointer(s) acknowledges that the Principal Contractor/Owner Builder may be required to submit third party certification from a suitably qualified person in a specific field (e.g. structural engineer) to the RBS demonstrating a specific matter or element of the building works complies with any relevant standard. The RBS will advise when this is required by inspection result or written documentation. Such certification is required to be prepared a suitably qualified and registered person and must reference the relevant provisions of the Building Code of Australia, Australian Standards and building permit endorsed plans and documentation. This certification is in addition to any mandatory inspection, or other inspection requirements required to be carried out by the RBS.

## **8. Occupancy Permit**

- 8.1. An Occupancy Permit can only be issued by the appointed RBS.
- 8.2. The appointer(s) acknowledges and accepts that the occupation or use of the whole or any part of a new building, or change of an existing use/classification, must not occur unless an Occupancy Permit has been issued in relation to the building or part.
- 8.3. The appointer(s) acknowledges and accepts that the Act contains penalty provisions for use or occupation of a building absent a validly issued Occupancy Permit. The appointer(s) acknowledges and accepts that liability for occupation or use of the whole or any part of a new building, or change of an existing use/classification, rests with the appointer(s).
- 8.4. The appointer(s) acknowledges and accepts that works carried out not in accordance with the endorsed building permit plans and documentation, or the Building Code of Australia, may result in the RBS refusing to issue an Occupancy Permit until such time as the building work complies or enforcement processes may be enacted in accordance with Part 8 of the Building Act 1993.

## **9. Service Fees**

- 9.1. The fees for inspection and certification services are as quoted by *Impact Building Approvals* and are payable upon appointment and on lodgement of any application for a building permit. All fees are inclusive of GST.
- 9.2. The fees quoted provide for the RBS to carry out one inspection in relation to each inspection listed in notice of mandatory inspections provided on the building permit.
- 9.3. Additional inspections required due to staging of building works or variations in the construction sequence may attract an additional fee.

- 9.4. Reinspection of works arising as a result of incomplete or unsatisfactory mandatory inspections, or other inspections, may attract an additional fee.
- 9.5. Where the appointer(s), the Principal Contractor or the Owner Builder, requests site meetings or site inspections, in addition to any mandatory inspection requirement, or other inspection requirement, *Impact Building Approvals* reserves its right to impose or require the payment of an additional fee.
- 9.6. Where the RBS becomes or is made aware of a matter that requires investigation or site visits not elsewhere dealt with by this Agreement, *Impact Building Approvals* reserves its right to impose or require the payment of an additional fee.
- 9.7. Where additional fees occur, payment is ordinarily required prior to provision of the service. Where the service is completed prior to payment, an invoice will be issued within twenty-one (21) days after the completion of that work.
- 9.8. In circumstances *Impact Building Approvals* is appointed under this Agreement, and the requisite fee payment is not honoured, the appointer(s) acknowledges and accepts liability for all or any unpaid fees and any associated debt recovery costs plus interest incurred from the time of the appointment.
- 9.9. The appointer(s) acknowledges and accepts that *Impact Building Approvals*, may suspend its services where fees have not been paid.
- 9.10 The following additional services do not form part of the provided fee proposal and will be subject to the charge of an hourly rate of \$400 (plus GST) as appropriate:
- Change in the scope of services specified in the fee proposal.
  - Changes to the design of the building.
  - Circumstances where requested documentation is presented in a manner that requires more than one re-assessment.
  - Circumstances where the Act or Regulations require the RBS to provide further activities in order to complete the obligations and functions of the RBS.
  - General advice during construction.
  - Matters arising from the protection of adjoining properties.
  - Assessment and acceptance of Codemark or other accredited materials/designs.
  - Items relating to written direction to fix building work, building notices, building orders or other enforcement provisions.
  - Attendance or correspondence relating to matters before the Building Appeals Board.
  - Complaints from neighboring properties or general public related to the subject building permit works; during or after completion of the works.
  - Disputes between a builder and the property owner where the RBS provides input in relation to the subject matter.
- 9.11 The following additional services do not form part of the provided fee proposal and will be subject to the charge as indicated below as appropriate:
- Assessment and determination relating to performance solution reports will incur a fee of \$600 (plus GST)
  - Assessment of an application to extend a time limit for a building permit will incur a fee of \$800 (plus GST); providing an extension period of up to 6 months
  - Assessment of an application to amend a building permit will incur a minimum fee of \$400 (plus GST); where the amendment is considered minor and a valid and current building permit exists. Additional fees will be applicable to applications that are not considered minor and will incur a fee representing 50% of the original fee.
  - Assessment and determination relating to proposed building works representing more than 50% of the existing building volume; subject to Regulation 233 (including inspection/s) will incur a fee of \$1,200 (plus GST).
  - Assessment and determination of a partial compliance application with the Building Regulations in accordance with regulation 233, will incur a minimum fee of \$400 (plus GST).
  - Staged building permit applications will incur a minimum fee of \$1,500 (plus GST).
  - Referral of a written direction to fix building work to the Victorian Building Authority will incur a fee of \$400 (plus GST).
  - Reporting of missed mandatory inspections to the Victorian Building Authority will incur a fee of \$400 (plus GST).
  - Transfer of private building surveying functions will incur a fee of \$300 (plus GST) for administrative purposes.
  - Building Notice & Building Order preparation and serving will incur a fee of \$1,200 (plus GST).

## 10. Work Health and Safety

- 10.1. Work Health and Safety legislation imposes a duty to ensure the health and safety of all persons on a construction site (a workplace). The statutory obligation extends to the appointor(s)/principal contractor/owner builder and person(s) conducting a business, on a construction site under this Agreement. *Impact Building Approvals* requires, as part of this Agreement, that the appointor(s)/principal contractor/owner builder and/or person conducting a business, undertakes to take all steps reasonably practicable to ensure the health and safety of any certifying authority, building surveyor, building inspector or other person, employed by or contracted to *Impact Building Approvals*, whilst that person is carrying out work on a construction site.
- 10.2. The appointor(s) acknowledges and accepts that *Impact Building Approvals* may suspend services where it believes that the health and safety of any certifying authority, accredited certifier or other person employed by or contracted to *Impact Building Approvals* is at risk.
- 10.3 The appointor(s) acknowledges and accepts all liabilities that arise as a result of any duty imposed to ensure the health and safety of any building inspector, building surveyor or other person, employed by or contracted to *Impact Building Approvals*, whilst that person is carrying out work on a construction site.

## 11. Termination of Private Building Surveyor

- 11.1. 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*.

11.2. If this Agreement is terminated in accordance with clause 11.1, the *owner* shall pay to the *RBS* all outstanding payments owing to the *RBS* at the time of termination.

11.3. The *RBS* shall be entitled to charge additional fees for costs and disbursements arising as a result of the termination.

## 12. Refund Policy

12.1. Fees relating to an application for a building permit to carry out building work are non-refundable. Any written request for withdrawal of an application will only entitle the applicant to a refund of any statutory fees held in trust. (ie. Council lodgement fee/s or similar)

12.2 If a building approval is issued and the subject works do not proceed for whatever reason, no refund is payable.

12.3 If a building permit application is refused, no refund is payable.

## 13. Miscellaneous

13.1. The appointer(s) must notify the *RBS* in writing of any change in the details or address of the Principal Contractor/Owner Builder.

13.2. This agreement and associated fee services shall expire two (2) years after the date of the agreement, whereupon *Impact Building Approvals* may cancel the agreement.

13.3. *Impact Building Approvals* may terminate this agreement or commence legal proceedings if there is a breach of the terms of this Agreement.

13.4. *Impact Building Approvals* recommends that the appointer(s) reviews the Building Permit and Planning Permit (if any) conditions and ascertain whether the Building Contract covers all additional requirements under the Permit. It is common that some conditions are not covered under the Building Contract and may be the responsibility of the owner/s to fulfil such conditions prior to obtaining an Occupancy Permit. *Impact Building Approvals* recommends that you familiarise yourself with such post-contract requirements and responsibilities.

13.5. 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
  - (1) actual receipt;
  - (2) confirmation of correct transmission of fax; or
  - (3) two (2) days after posting.

13.6. Building Permit Application

- (a) The owner/agent may lodge an application for a building permit to be assessed and determined as appropriate by the *RBS*.
- (b) The owner/agent in making an application for a building permit must:
  - (1) complete an Application for Building Permit Form 1;
  - (2) pay the required fee;
  - (3) pay the required building permit levy under the *Building Act 1993*;
  - (4) comply with the requirements of the *Building Act 1993*;
  - (5) provide all documents and information required under the *Building Act 1993* and its *Regulations* or as requested by the *RBS*;
  - (6) comply with the conditions of any Planning Permit or other prescribed approval issued in relation to the subject property;
  - (7) 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
  - (8) 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
  - (9) 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:
    - 1. request further information from the owner;
    - 2. issue a building permit for a stage of the building work;
    - 3. issue a building permit with conditions;
    - 4. issue a building permit without conditions; or
    - 5. refuse to issue a building permit.The building permit once issued shall be forwarded to the owner and the owner's agent.

13.8. 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. A new fee proposal will be provided as appropriate to a new application.

13.9. 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:

- (1) be in writing;
- (2) include all documents required under the *Building Act 1993* and the *Regulations* or requested by the *RBS*;
- (3) be accompanied by the required fee as per this agreement.

- 13.10. **Extension of time of Building Permit**  
The owner may lodge an application requesting an extension of time to the expiry date of the building permit by the RBS; The application must:
- (1) be in writing;
  - (2) include all documents required under the Building Act 1993 and the Regulations or requested by the RBS;
  - (3) be accompanied by the required fee as per this Agreement.
- 13.11. **NON COMPLIANCE**  
If the owner/ owner's agent fails to comply with:
- (1) the building permit and/or its conditions;
  - (2) any directions issued by the RBS;
  - (3) a section of the Building Act 1993 and the Regulations; and
  - (4) 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.
- 13.12. **OWNERS OBLIGATIONS**  
The owner hereby acknowledges his/her/its ongoing obligations pursuant to the Building Act 1993 and the Regulations including but are not limited to:
- (1) providing the RBS with unfettered access to the subject property;
  - (2) not obstructing the RBS in carrying out its functions;
  - (3) not provide the RBS with any information which may be misleading or deceptive;
  - (4) advising the RBS:
    - (a) of any changes in relation to the engagement of a Building Practitioner or an insured architect within 14 days of such change;
    - (b) of any change to the owner's address;
    - (c) if building work cease on the subject property;
    - (d) if the subject property is transferred to a new owner; and
  - (5) ensuring the building work 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.
  - (6) to make application for and obtain required occupancy permit, certificate of final inspection, report and consent or other permits or approvals deemed by the RBS to be necessary to the carrying out of the functions.

#### 14. DEFINITIONS

##### In this Agreement—

<b>Agent</b>	means a person who has been formally appointed by the <i>Owner</i> to apply for the building permit as the applicant on the <i>Owner's</i> behalf.
<b>Building</b>	includes structure, temporary building, temporary structure and any part of a building or structure;
<b>Building Appeals Board</b>	means the Building Appeals Board under Part 10 of the Building Act 1993;
<b>Building Practitioner</b>	has the same meaning as it has in the Building Act 1993;
<b>Building Work</b>	means work for or in connection with the construction, demolition or removal of a building;
<b>Certificate of Consent</b>	means a certificate of consent under Division 3A of Part 3 of the Building Act 1993;
<b>Council</b>	means a council within the meaning of the Local Government Act 1989;
<b>Domestic Building Work</b>	has the same meaning as it has in the Domestic Building Contracts Act 1995;
<b>Fee</b>	means the fee calculated for the provision of Building Surveying services described in this agreement;
<b>Fee adjustment</b>	means a sum to be added to or deducted from the fee;
<b>Function</b>	includes power, authority and duty;
<b>Legislative requirements</b>	includes <ol style="list-style-type: none"> <li>(1) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where Services are being provided;</li> <li>(2) Certificates, licenses, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services and</li> <li>(3) Fees and charges payable in connection with the foregoing;</li> </ol>

<b>Municipal Building Surveyor</b>	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;
<b>Owner</b>	means <ul style="list-style-type: none"> <li>(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</li> <li>(b) in relation to Crown land reserved under the Crown Land (Reserves) Act 1978 and managed or controlled by a committee of management, means the Minister administering that Act; and</li> <li>(c) in relation to any other Crown land, means the Minister or public authority that manages or controls the land;</li> <li>(d) in relation to a building, means the owner of the land on which a building is situated;</li> </ul>
<b>Relevant Building Surveyor</b>	means a private building surveyor appointed by an owner under Part 6 of the Building Act 1993.
<b>Victorian Building Authority</b>	means the Victorian Building Authority Part 12 of the Building Act 1993.

\*\*\* End of Terms & Conditions \*\*