

### Maddocks

Lawyers Collins Square, Tower Two Level 25, 727 Collins Street Melbourne VIC 3008 Australia

Telephone 61 3 9258 3555 Facsimile 61 3 9258 3666

info@maddocks.com.au www.maddocks.com.au

From
Melanie Olynyk
Daniel Vaughan

Date
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Direct Email 03 9258 3691 melan

03 9258 3200

**Email Letter** 

melanie.olynyk@maddocks.com.au daniel.vaughan@maddocks.com.au

To
Peter Jolly
President

Organisation
Victorian Municipal
Building Surveyors
Group

Email
jollypeter@hotmail.com

Our Ref MSB:628721

Dear Peter

#### Building Act 1993 delegations where Council is land owner

- 1. The Victorian Municipal Building Surveyors Group (**VMBSG**) has asked Maddocks to advise how certain powers, functions and duties of a council, in its capacity as a land owner under the *Building Act 1993* (**Act**), should be delegated by the council.
- 2. We understand that some municipal building surveyors (**MBSs**) have sought clarity as to whether certain actions or approvals should be undertaken by them, or by other staff at the council.
- 3. In order to keep clear lines of delegation, and to avoid potential conflicts of interest, it is preferable that the following functions are *not* delegated to the MBS, where the council is the land owner or adjoining owner:
  - 3.1 applying for a building permit (s 17);
  - 3.2 issuing protection work notices (s 84);
  - 3.3 responding to protection work notices (s 85);
  - 3.4 agreeing the amount of insurance for protection works (s 93);
  - 3.5 attending and signing a property survey (s 94);
  - 3.6 appealing protection work matters to the Building Appeals Board (s 141);
  - 3.7 referring a dispute between owner and building surveyor to Building Appeals Board (s 150);

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- referring matters to Building Appeals Board in relation to Protection of adjoining properties (ss 153-155).
- 4. We recommend that these delegations not be made to the MBS because:
  - 4.1 the MBS has specific powers under the Act, which are separate to the council's own powers and functions, and should be kept separate where possible; and
  - 4.2 there is potential for a conflict of interest if any such decisions, approvals or actions are appealed or disputed.
- 5. To the extent that a council is able, it should make these delegations to another internal team (e.g. the Property team).
- 6. In our template instruments, we generally do not specifically list every function, power and duty of land owners. This is because:
  - 6.1 our delegations instruments focus on statutory powers of councils, which need to be specifically delegated (as opposed to non-statutory powers or other functions of councils which can be authorised through internal council policies or position descriptions); and
  - 6.2 it would be unwieldy to include all powers of land owners across all legislation.
- 7. That said, there are some examples of 'landowner' powers included in the 'Miscellaneous and Administrative Powers' section of the CEO's Instrument of Sub-delegation known as the S7 Instrument (**S7**), such as the 'Power to serve statutory notices in relation to land owned or managed by Council'.
- 8. Where councils commonly rely on specific provisions, or find that there is some confusion about the application of a provision, it can be helpful to include such provisions in our instruments (e.g. for section 45(1) of the *Transfer of Land Act 1958*, also included in the S7 Instrument).
- 9. We have provided, at **Attachment 1**, a template addendum to our S7 Instrument, which could be inserted at the end of the section on the Act, or alternatively made as a separate delegation by Council's CEO. We will consider including this in our next update to the S7 if the councils find it useful.
- 10. Please let us know if you have any further queries.

Yours sincerely

Melanie Olynyk Partner



## **Attachment 1**

BUILDING ACT 1993 – Council as Land owner				
Column 1	Column 2	Column 3	Column 4	
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS	
s 17	Applying for a building permit		Where Council is land owner	
			Recommend not be delegated to MBS	
s 84	Issuing protection work notices		Where Council is land owner	
			Recommend not be delegated to MBS	
s 85	Responding to protection work notices		Where Council is adjoining owner	
			Recommend not be delegated to MBS	
s 93	Agreeing to the amount of insurance		Where Council is adjoining owner	
			Recommend not be delegated to MBS	
s 94	Attending and signing a property survey		Where Council is land owner or adjoining owner	
			Recommend not be delegated to MBS	
s 141	Appealing protection work matters to Building Appeals Board		Where Council is land owner or adjoining owner	
			Recommend not be delegated to MBS	
s 150	Referring a dispute between owner and building surveyor to Building Appeals Board		Where Council is land owner or adjoining owner	
			Recommend not be delegated to MBS	



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Column 1	Column 2	Column 3	Column 4
PROVISION	THING DELEGATED	DELEGATE	CONDITIONS & LIMITATIONS
s 153	Referring matter to Building Appeals Board where owner and adjoining owner cannot agree about a survey		Where Council is land owner or adjoining owner
			Recommend not be delegated to MBS
s 154	Referring matter to Building Appeals Board where owner and adjoining owner cannot agree about necessary expenses for supervising protection work		Where Council is land owner or adjoining owner
			Recommend not be delegated to MBS
s 155	Referring matter to Building Appeals Board where owner and adjoining owner cannot agree about other Part 7 matters		Where Council is land owner or adjoining owner
			Recommend not be delegated to MBS