

# Delegations, Authorisations, Appointments and why they matter

PRESENTED BY

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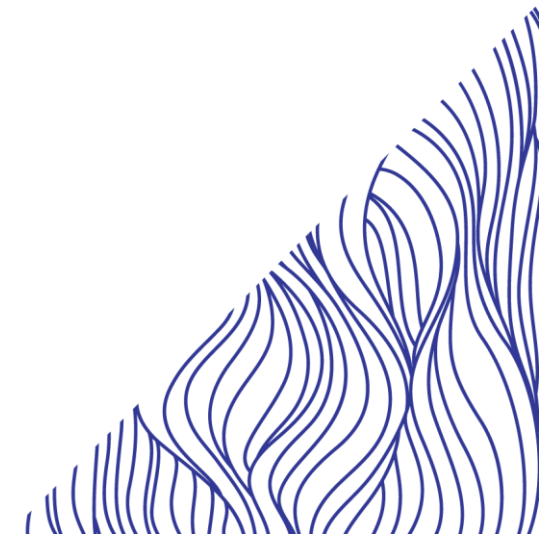
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## Key legislation

- **Environmental Planning and Assessment Act 1979**
- **Local Government Act 1993**
- **Protection of the Environment Operations Act 1997**

## Key topics

- **Delegations**
- **Authorisations**
- **Appointments**
- **PINs**



# Why does it matter?

## Example 1: Investigations

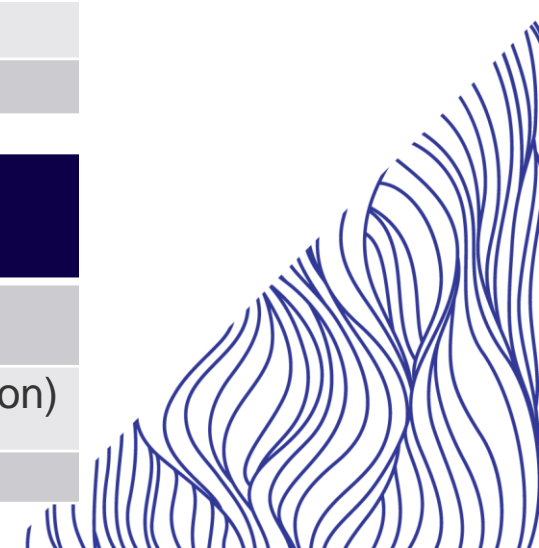
<b>EPA Act</b>	Investigation Officer	s.9.14	Appointment
<b>PEO Act</b>	Authorised Officer	s.187	Appointment
<b>LG Act</b>	Authorised Officer	s.191	Authorisation

## Example 2: Orders / notices

<b>EPA Act</b>	Council	s.9.35	Delegation
<b>PEO Act</b>	Regulatory authority	s.91	Delegation
<b>LG Act</b>	Council may order	s.124	Delegation

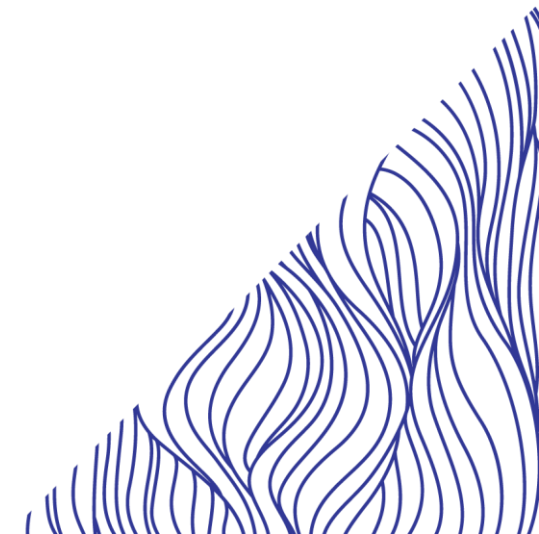
## Example 3: PINs

<b>EPA Act</b>	Authorised person	Sch. 5 cl. 2 EPA Regs	Authorisation
<b>PEO Act</b>	Enforcement officer	s.226, cl. 127 PEO Regs	Appointment (by authorisation)
<b>LG Act</b>	Authorised person	s.124	Authorisation



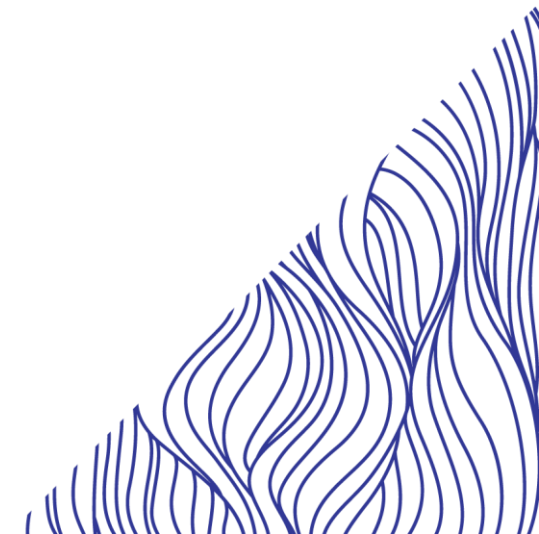
# Delegations

- **Delegating powers and decision making functions helps a Council govern efficiently and effectively**
- **Legislation gives a function or power to the Council**
- **The Council can decide, by resolution, to allow the General Manager to do some or all of those things on its behalf (subject to the limits in s.377)**
- **The General Manager can decide to subdelegate to others**
- **Example = power to give orders under EPA/ LG Act.**



# Delegations

- **Delegations can be:**
  - General or limited
  - Conditional or unconditional
- **Delegations Cannot**
  - Eliminate discretion
  - Impermissibly divide functions



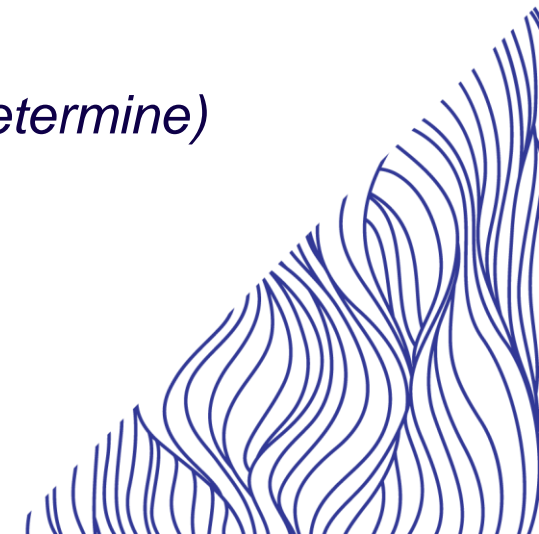
# *Belmorgan Property Development Pty Ltd v GPT Re Ltd & Anor [2007] NSWCA 171*

- **DA for seven storey retail shopping centre and commercial office complex**
- **Council resolution**

*“In the event the applicant does not provide a written response within 7 days from the date of Council’s correspondence confirming the applicant’s agreement to undertake a major redesign of the proposal, the General Manager be granted delegated authority to determine the application based on relevant planning, urban design and economic grounds.”*

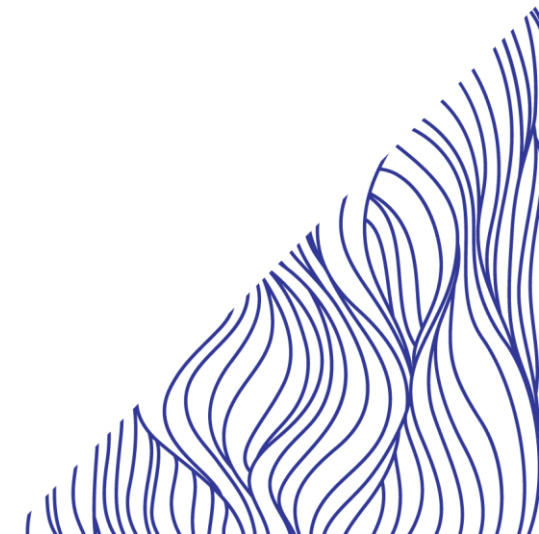
## **Court found:**

- No power to delegate function to determine DA by only granting *consent (c.f determine)*
- Impermissible fetter on GM authority.
- Later resolution displaced earlier general delegation to determine DAs



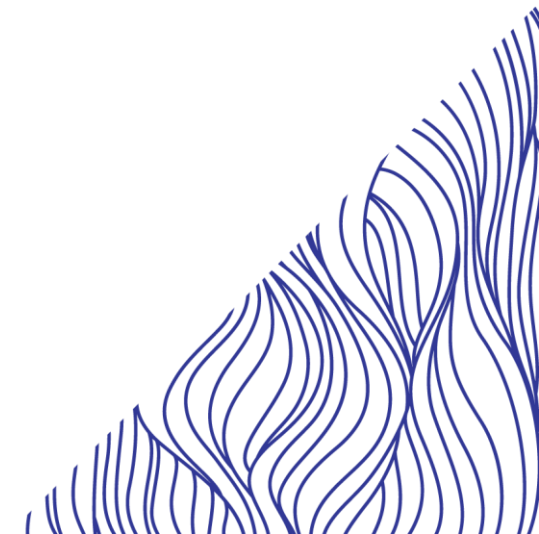
# Appointment

- **Nomination of someone to a position or responsibility**
- **Usually by written instrument**
- **The legislation defines what an appointed person may do by virtue of holding that position**



# Authorisations

- **Instrument giving permission to a person to exercise a power**
- **Usually specific to particular function / purpose**





# M&S Investments v Affordable Demolitions

- **Authorised Officer under POEO Act?**
- **Relevant to time in which a prosecution can be commenced**
- **“Instrument of delegation” issued under s.378 of the LG Act.**

*R11*

*To exercise and perform the powers, authorities, duties and functions of an authorised officer or authorised person or council investigation officer (subject to any limitations determined by the Chief Executive Officer from time to time) in respect of all matters arising from the administration of any of the following Acts and their associated regulations: ...*

*Protection of the Environment Operations Act [amongst others]*

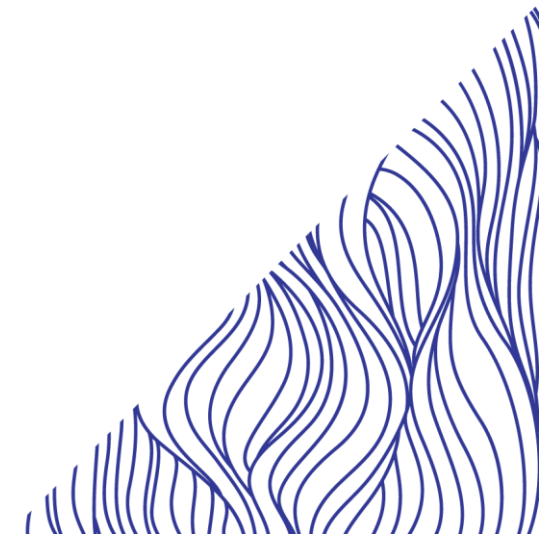


# M&S Investments v Affordable Demolitions

## ***G6 Power of Entry***

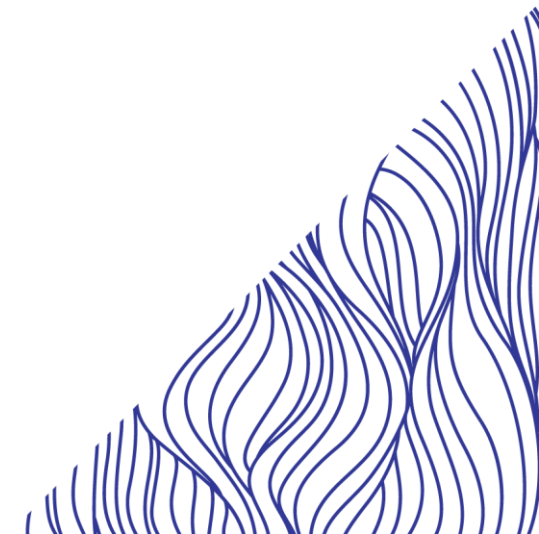
***G6.1*** *To give an owner or occupier of land or premises written notice of the Council's intention to enter their land for the purpose of inspection, investigation, sampling, seizures and any other functions as authorised under the provisions of the following Acts and regulations made under them:*

*...Protection of the Environment Operations Act [amongst others]*



# M&S Investments v Affordable Demolitions

- **Delegation is not an appointment**
- **S.378 LG Act very different to s.187 POEO**
- **Instrument ineffective**
- **Not authorised officers under POEO**

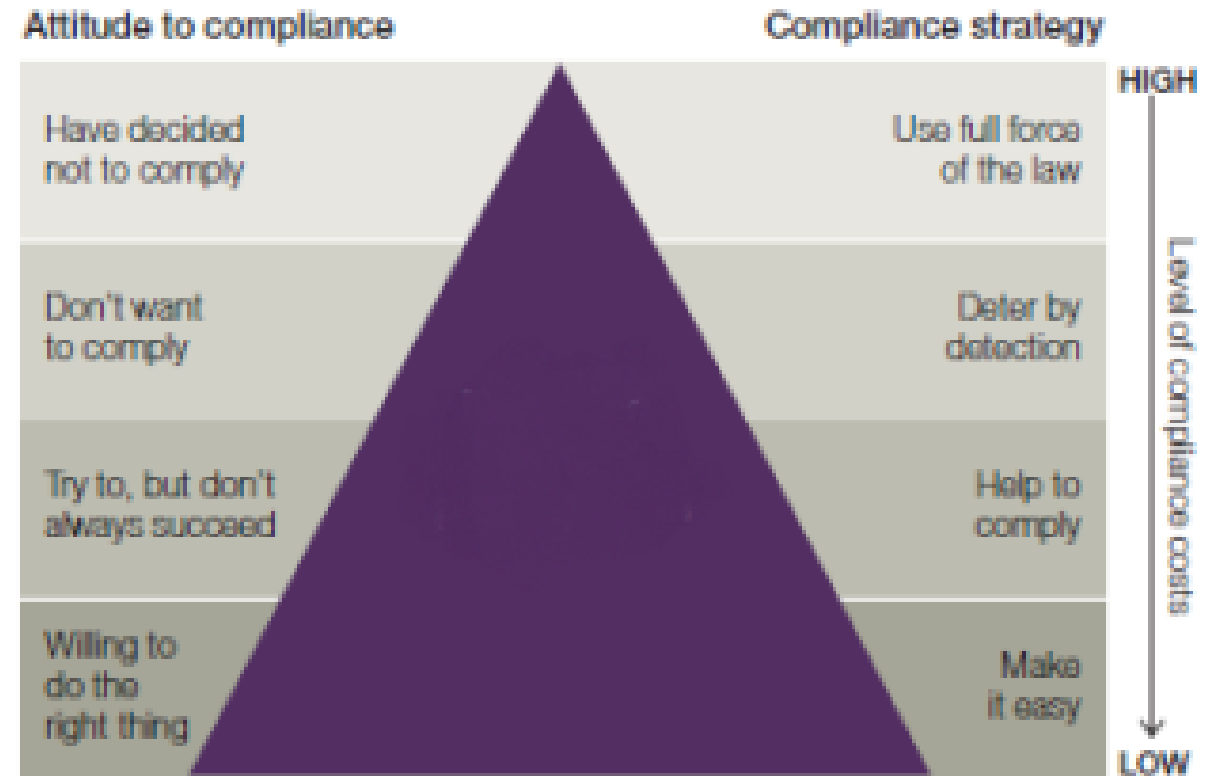


## PINs

- On the spot fine

### The pros

- Quick, easy to issue (but check authority!)
- Small(ish) penalty intended to act as an immediate deterrent
- No conviction recorded



# PINs

## The Cons

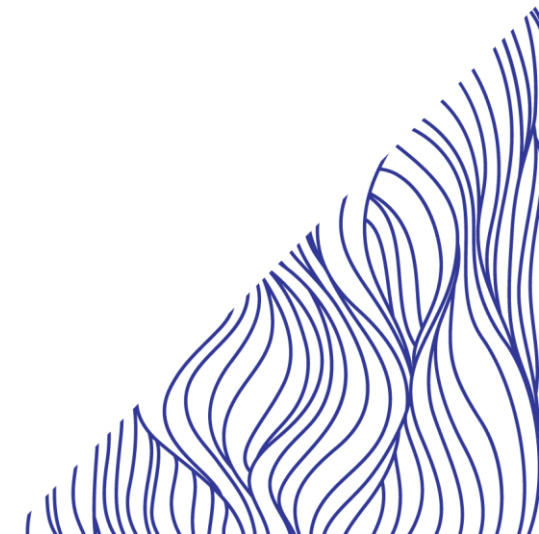
- **Need to do before civil enforcement**
- **Higher standard of proof – “beyond reasonable doubt”**
- **Form not well suited to environmental or planning offences**
- **Recent increases in PIN amounts = increase in election to have offence dealt with by Local Court**
- **Working out “who” did the offence and “when” can be tricky**
- **Need supporting evidence in case charge ends up in Local Court**





# PINs

- **But don't panic if PIN is Court elected**
  - Can withdraw PIN
  - Can instruct us to act for you. 😊
  - We can amend Court Attendance Notice to address defects in the PIN (common)
  - If win, Council will get (some) costs + any fine amount paid



Questions?

