

**The Owners Strata Plan No. 84751 v Karimbla Construction Services Pty Ltd (No 2)
- [2016] NSWCATAP 177**

Civil and Administrative Tribunal

New South Wales

Medium Neutral Citation:	The Owners Strata Plan No. 84751 v Karimbla Construction Services Pty Ltd (No 2) [2016] NSWCATAP 177
Hearing dates:	18 March 2016, 2 June 2016.Costs orders determined on the papers
Date of orders:	03 August 2016
Decision date:	03 August 2016
Jurisdiction:	Appeal Panel
Before:	D Cowdroy OAM QC ADCJ, Principal Member A Coleman SC, Senior Member
Decision:	1. The appellant pay the respondent's costs of the proceedings on the indemnity basis such costs payable forthwith. 2. The solicitor for the appellant indemnify the appellant for the costs payable by it in accordance with order 1 above together with the costs of and incidental to having those costs agreed or assessed.
Catchwords:	COSTS: Conduct of appellant and its solicitor leading to adverse costs order; solicitor accepts she ought indemnify the appellant.
Legislation Cited:	Civil and Administrative Tribunal Act 2013 .
Cases Cited:	Owners Strata Plan No 84751 v Karimbla Construction Services Pty Ltd [2016] NSWCATAP 145 .
Category:	Costs
Parties:	The Owners Strata Plan No 84751 – Appellant Karimbla Construction Services Pty Ltd - Respondent
Representation:	Counsel: n/a – Appellant Mr Bradley - Respondent Solicitors: Ms Crittenden - Appellant
File Number(s):	AP 16/01346
Decision under appeal	Court or tribunal: NCAT Jurisdiction: Consumer and Commercial Division Date of Decision: 15 December 2015 Before: D Goldstein, Senior Member File Number(s): HB 14/58159

REASONS FOR DECISION

1. On 28 June 2016 the Appeal Panel published its reasons for decision in this matter: [\[2016\] NSWCATAP 145](#).
2. At [118]-[122] of those reasons, we dealt with the issue of costs. Our conclusion was that the appellant should pay the respondent's costs of the proceedings, including the appeal, on the indemnity basis such costs payable forthwith.

3. We also formed the view that the conduct of the solicitor for the appellant was such that she ought to show cause as to why she should not be responsible for those costs. We directed that she file written submissions going to that issue.
4. Such submissions, dated 12 July 2016, were provided to the Appeal Panel on 16 July 2016. In those submissions, the solicitor for the appellant said:

In circumstances where the Appeal Panel has formed the view that my conduct in these proceedings..... has caused my client to incur costs, I do not wish to make any submissions that would result in my client having to pay the costs order rather than me.

I have notified my client that I consider it would be unprofessional and unethical of me to make a submission that would attempt to promote my interests over its interests.

Accordingly, I invite the Appeal Panel to order that I indemnify the [appellant] for the costs order made against it, and that I pay all costs of and incidental to having that costs order agreed or assessed.

5. As observed, the reasons we took the view that she should make submissions on this issue are set out in the reasons for our decision and we do not need to repeat them. We consider that the position taken by the solicitor for the appellant is appropriate.
6. Accordingly, we make the following orders:
 1. Order 6 of the orders made on 28 June 2016 is confirmed, namely, that the appellant pay the respondent's costs of the proceedings on the indemnity basis, such costs payable forthwith.
 2. The solicitor for the appellant indemnify the appellant for the costs referred to in 1 above, together with the costs of and incidental to having those costs agreed or assessed.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

Decision last updated: 03 August 2016