Civil and Administrative Tribunal

New South Wales

Case Name:	Taylor v The Owners SP No 61285
Medium Neutral Citation:	[2021] NSWCATAP 270
Hearing Date(s):	31 August 2021
Date of Orders:	10 September 2021
Decision Date:	10 September 2021
Jurisdiction:	Appeal Panel
Before:	R C Titterton OAM, Senior Member J McAteer, Senior Member
Decision:	1. Leave to appeal is refused. 2. The appeal in relation to SC 21/04852 is dismissed. 3. The appeal in relation to SC 21/13605 is dismissed.
Catchwords:	APPEAL – failure to bring originating application within a reasonable time – failure of Tribunal to consider arguments not put to it where litigant self-represented – matters raised on appeal not raised before Tribunal at first instance
Legislation Cited:	Civil and Administrative Tribunal Act 2013 (NSW) – ss 45, 80 Limitation Act 1969 (NSW) – s 14(1) Strata Schemes Management Act 2015 (NSW) – ss 108, 111, 126(2), 132 and 232 Workers Compensation Act 1987 (NSW) – s 151D(2)
Cases Cited:	Al-Daouk v Mr Pine Pty Ltd t/as Furnco Bankstown [2015] NSWCATAP 111 Bartel v Ryan [2018] NSWCATAP 231 Batistatos v Roads and Traffic Authority of NSW (2006) 226 CLR 256; [2006] HCA 27 Brisbane South Regional Health Authority v Taylor

	[1996] HCA 25; (1996) 186 CLR 541 Collins v Urban [2014] NSWCATAP 17 Coulton v Holcombe [1986] HCA 33 Itek Graphics Pty Limited v Elliott [2002] NSWCA 104 Malouf v Malouf (2006) 65 NSWLR 449 Moubarak by his tutor Coorey v Holt (2019) 100 NSWLR 218 Palm Homes Pty Ltd v Kav's Constructions Pty Ltd [2015] NSWCATAP 113 Pholi v Wearne [2014] NSWCATAP 78I Prendergast v Western Murray Irrigation Ltd [2014] NSWCATAP 69 Reisner v Bratt [2004] NSWCA Roberts v Harkness [2018] VSCA 215 The Owners – Strata Plan 21702 v Krimbogiannos [2014] NSWCA 411 Walton v Gardiner (1993) 177 CLR 378
Texts Cited:	Council of Australasian Tribunals' Tribunal Excellence Framework 2017 NCAT Annual Report for 2019-2020
Category:	Principal judgment
Parties:	Appellant: Cameron Arthur Taylor Respondent: The Owners – SP No 61285
Representation:	wmd Law (Appellant) Mr J McGrath (agent for Respondent)
File Number(s):	2021/00181445
Decision under appeal:	
Court or Tribunal:	Civil and Administrative Tribunal
Jurisdiction:	Consumer and Commercial Division
Citation:	[2021] NSWCATCD
Date of Decision:	03 June 2021
Before:	G Ellis SC, Senior Member .
File Number(s):	SC 21/04852, SC 21/13605

REASONS FOR DECISION

Summary

1 The appellant appeals from two decisions of the Civil and Commercial Division of the Civil and Administrative Tribunal (Tribunal) of 3 June 2021 in matters SC 21/04852 (the Respondent's application or matter) and SC 21/13605 (the Appellant's application or matter) (the Decision).

2 In the Respondent's matter, the Tribunal ordered the Appellant to carry out the works set out in Appendix A to the Decision by 3 October 2021.

3 The Tribunal dismissed the Appellant's application. The Appellant had sought to have the clothes lines removed from the rooftop and the access doors to the rooftop area locked.

4 For the following reasons, both appeals should be dismissed.

Background

The Respondent's matter

5 In summary, the Respondent had sought orders pursuant to ss 132 and 232 of the *Strata Schemes Management Act 2015* (NSW) (SSMA) requiring the Appellant to remove personal property from the common property of SP 61285, remove unauthorised building work and to make good any damage.

6 The Respondent's application related to eight items being an air-conditioning unit, screening, bricks, tiles, bi-fold doors, a gate, material added to a pergola to convert it to a roof, and pot plants.

7 The Respondent's evidence included a statutory declaration obtained from a previous owner of the Appellant's lot. She had purchased the lot "off the plan" in 1999. She apparently added the following items without obtaining approval of the Respondent and that she paid for those items: (emphasis original):

- the fibre glass balcony cover;
- the courtyard fibre glass cover;
- the additional height of the courtyard brick fence;
- the courtyard tiles, gate and power points.

8 We say apparently as there was a finding to this effect in the Decision. However, the statutory declaration was not in the materials before us.

9 The Tribunal also had before it a building report dated 21 July 2020 which suggested that:

- the tiled area on the upper level of the Appellant's unit was not waterproof;
- that area is directly above the main bedroom ceiling of another unit which is experiencing water ingress;
- the masonry wall in that tiled area does not appear to have weep hole drains in the cavity flashing;
- that wall has a high moisture content which suggests water leaks and saturation;
- due to the lack of drainage, there are elevated moisture levels in the internal walls of the Appellant's main bedroom, adjacent to the door;
- water does not drain from the tiled area on the upper level of the Appellant's unit; and
- roofing material that had been used appeared to be creating water leaks.

10 In summary, the Appellant had sought orders to have the clothes lines removed from the rooftop and that the access doors to the rooftop area be locked. Here we note that the Appellant's lot is a two-level unit; the lower level has a balcony while the upper level is on the level which was, during the hearing and the Decision, referred to as the rooftop.

11 In summary, the Appellant submitted that:

- there had been water damage issues since he purchased his unit and that he had not "touched any original tiles or any structural part of the unit" since he purchased it;
- there was a privacy issue because his main bedroom is located on the upper, roof level which he asserts was not approved for communal use or a clothesline and which was said to have a lockable door;
- there was a safety issue with the current use of the rooftop area;
- since many of the items the subject of a complaint by the Respondent were installed by the first owner of the unit, who purchased it "off the plan", those items should be "considered original".
- he was not liable for the unapproved work as that work was not done by him.

12 In support of his submissions that he was not responsible for repairing unapproved work done by a previous owner of his lot, the Appellant submitted that the Respondent:

- had a compulsory duty to maintain and repair the common property;
- was not responsible for the maintenance and repair of unapproved work; and
- was obliged to restore to its original condition any common property which had been altered, replaced or destroyed.

13 The Tribunal accepted those first two propositions. However, the Tribunal did not accept the third. It found that the authority relied on by the Respondent did not support that proposition.

14 The Tribunal found that there "clearly" had been unauthorised work done on the common property either by the Appellant or by his predecessors in title. To the extent that such work had caused damage, the Tribunal was empowered to make an order pursuant to s 132 of the SSMA. In respect of work that had not caused damage or had not yet caused damage, having regard to ss 108 and 111 of the SSMA, the Tribunal considered that an order was warranted under s 232 of the SSMA.

The Appellant's matter

15 The Appellant's case was that the clotheslines on the rooftop were located in an area around the stair well contrary to where they should be according to the Development Approval (DA) plans, namely an area on the boundary of the rooftop.

16 The Appellant contended that the DA shows the roof as common property and does not say it is for communal use. He referred to the handwritten notes of a council officer dated 16 September 1999 which read "*All* [town planning] *requirements fulfilled/completed*" but submitted that there was no evidence that an amendment to the DA was ever obtained.

17 The Respondent's response was that the rooftop can be accessed as it is common property and that the clotheslines is not contrary to any requirement of the local council. The Respondent also submitted that the location and use of that clothesline has been approved by the Respondent at the Annual

General Meeting held on 05 November 2020. It was also submitted for the Respondent that the application of the Appellant was retaliatory.

18 In summary, the Tribunal dismissed the Appellant's application because:

- the door in question was a fire door;
- there is no evidence as to what was the height requirement when the wall of the rooftop area was built;
- there was no evidence to support the proposition that the current use of the rooftop gave rise to an insurance issue;
- the rooftop area was common property and the Appellant had not established that pedestrian traffic should be prohibited; and
- the available evidence from the Local Council comfortably satisfied the Tribunal that there was no relevant non-compliance with Council requirements, that the location and use of the clotheslines was therefore a matter for the Respondent and that the Respondent had taken appropriate steps in that regard.

Grounds of Appeal

19 The Appellant sought leave to appeal on three bases.

20 The first (and primary) ground of appeal identified in the Notice of Appeal was that the Decision was not fair and equitable. This ground states:

> The decision requires the Lot Owner (Applicant and respondent respectively in the proceedings) to undertake substantial works to the common property including removal of works that, on evidence of the architectural plans were original works and have been in place for over 20 years. The works were constructed at the same time as the building was constructed and prior to any occupation. The nature of the works would require raising the roof level to comply with Australian Standards upon removal of the works; waterproofing and engaging an engineer in order to comply which would exceed $50,000-$80,000.
>
> The alleged alterations were made over 20 years ago before the executive commitee and strata were formed and as such did not require approval from the Owners Corporation.
>
> The alleged alterations are in their original condition as they were constructed over 20 years ago.
>
> The decision failed to consider the evidence that no owner undertook the construction of the cement wall and pergola which were original. The decision failed to consider the behaviour of the Owners corporation in erection of a washing line on the roof which was immediately adjacent to the bedroom of Lot 14 and as such a privacy screen was required so as to ensure continued privacy.

21 The second ground of appeal was that the Decision was against the weight of the evidence.

22 The third ground of appeal was that significant new evidence was now available that was not reasonably available at the time of the hearing.

23 An attachment to the Notice of Appeal sets out a number of errors of law said to have been made by the Tribunal. In summary these are that:

- the Tribunal erred in its construction of s 232 of the SSMA;
- the Tribunal erred in its application of s 132 of the SSMA;
- in the alternative, the Tribunal erred in its construction and/or application of s 126(2) of the SSMA; and
- the Tribunal failed to give adequate reasons in respect of its decision to decline to make a "work approval order" under s 126(2) of the SMAA

24 In addition, the Appellant also claimed that:

- the Tribunal failed to consider that the disputed alterations were made over 20 years ago before the construction of the building was completed and before the executive committee and strata were formed. Therefore no approval was required nor could it be obtained at that time for the alterations. The disputed works, namely the cement rendered wall are already in their original condition as the works were undertaken by the original builder;
- the Tribunal erred in dismissing the application filed by the Appellant pursuant to s 232 of the SSMA and did not consider that with the placement of a washing line on the roof of the building was not part of the original plan that the privacy of the Appellant would be greatly affected.

Reply to Appeal

25 The Respondent's Reply to Appeal was filed on 20 August 2022. It annexes 69 pages of materials including submissions. Suffice it to say that the Respondent opposes leave to appeal being granted, and submits that the appeals should be dismissed.

26 Reference will be made to the Respondent's documents where necessary in the Consideration section of these submissions.

Nature of an appeal

27 Section 80 of the Civil and Administrative Tribunal Act 2013 (NSW) (NCAT Act) sets out the basis upon which appeals from decisions of the Tribunal may be brought. That section states that an appeal may be made as of right on any question of law or with leave of the Appeal Panel on any other grounds (s 80(2)(b)).

A question of law

28 In Prendergast v Western Murray Irrigation Ltd [2014] NSWCATAP 69, without listing exhaustively possible questions of law, the Appeal Panel considered the requirements for establishing an error of law giving rise to an appeal as of right.

29 As noted above, the Appellant raises a number of errors of law in his appeal.

Leave to appeal

30 Clause 12 of Sch 4 of the NCAT Act provides that, in an appeal from a decision of the Consumer and Commercial Division of the Tribunal, an Appeal Panel may grant leave to appeal only if satisfied that the appellant may have suffered a substantial miscarriage of justice because:

(1) the decision of the Tribunal under appeal was not fair and equitable; or

(2) the decision of the Tribunal under appeal was against the weight of evidence; or

(3) significant new evidence has arisen (being evidence that was not reasonably available at the time the proceedings under appeal were being dealt with).

31 The principles to be applied by an Appeal Panel in determining whether or not leave to appeal should be granted are well settled. In Collins v Urban [2014] NSWCATAP 17 the Appeal Panel conducted a review of the relevant cases at [65]-[79] and concluded at [84](2) that:

> Ordinarily it is appropriate to grant leave to appeal only in matters that involve:
>
> (a) Issues of principle;
>
> (b) questions of public importance or matters of administration or policy which might have general application; or
>
> (c) an injustice which is reasonably clear, in the sense of going beyond merely what is arguable, or an error that is plain and readily apparent which is central to the Tribunal's decision and not merely peripheral, so that it would be unjust to allow the finding to stand;
>
> (d) a factual error that was unreasonably arrived at and clearly mistaken; or
>
> (e) the Tribunal having gone about the fact finding process in such an unorthodox manner or in such a way that it was likely to produce an unfair result so that it would be in the interests of justice for it to be reviewed.

32 Even if an appellant establishes that they may have suffered a substantial miscarriage of justice in the sense explained above, the Appeal Panel retains a discretion whether to grant leave under s 80(2) of the Act. An

appellant must demonstrate something more than that the Tribunal was arguably wrong: Pholi v Wearne [2014] NSWCATAP 78 at [32].

Leave to adduce further evidence

33 Prior to the hearing the Appellant filed over 150 pages of documents, including an affidavit of the Appellant signed on 2 August 2021, on which he sought to rely. These documents were not before the Tribunal. These documents included, but was not limited to correspondence with the Local Council; a full copy of the strata plan; a Title Search for the common property showing the current consolidation of Registered by-laws is AQ936752 which was lodged on or about 7 April 2021; an engineer's report dated 12 July 2021 regarding the alleged works; "Consolidation of By-Laws including By-Law 8 relating to the washing line"; a "clear copy" of the original landscaping plans lodged with Council showing the location of the washing lines; an email dated 3 May 2019 from Strata Manager requesting that the privacy screen be removed; material produced by Sutherland Shire Council; an historical title search for Lot 14 in SP61285; various documents relating to the historical ownership of the Appellant's lot; emails between Appellant and strata manager in relation to repairs to the footings of the pergola and request for permission to put up the screen and photographs.

34 The Appellant submitted that leave to appeal should be granted because there was now material available that was not reasonably available at the time of the hearing. The Notice of Appeal states that he "was unable to obtain the documents prior to the hearing".

35 The Appellant submitted that the evidence should be admitted as at the time of the Tribunal hearing he was not legally represented and, as such, evidence which may have been available at the time of the original filing of material was inadvertently overlooked as he did not fully understand "the process" and the requirement to file material.

36 The Respondent objected to the Appeal Panel receiving this material as it says the Appellant was advised during one of the directions hearings of the Tribunal that he should seek legal advice. However, in the event the Appeal Panel

decided to accept the materials, the Respondent filed its own responsive material.

37 The (repeated) explanation for the failure of the Appellant to file this material before the Tribunal was because he was unrepresented is unpersuasive. Section 45 of the NCAT Act provides that a party to proceedings in the Tribunal:

- has the carriage of the party's own case and is not entitled to be represented by any person, and
- may be represented by another person only if the Tribunal grants leave.

38 The fact is that literally tens of thousands of cases are heard by the Consumer and Commercial Division of the Tribunal every year in which the parties are not represented: see the *NCAT Annual Report* for 2019-2020 at p 17.

39 The only explanation as to why the materials were not reasonably available was that the Appellant "was unable to obtain the documents prior to the hearing". This is an unsatisfactory and unpersuasive explanation.

40 However, as the Respondent was not prejudiced by the Appeal Panel receiving the material, in that it had filed materials in response, we decided to allow the Appellant to rely on his materials. Nevertheless, we note the guidance of the Appeal Panel in In *Al-Daouk v Mr Pine Pty Ltd t/as Furnco Bankstown* [2015] NSWCATAP 111 where a similar issue was considered. The Appeal Panel stated at [25]:

> … to grant leave [to appeal] simply on the basis of whether a party had been unsuccessful in their attempt to obtain evidence would allow any party who has a personal excuse for not providing evidence otherwise reasonably available an opportunity to seek leave to appeal any decision of the Tribunal. Such an outcome would not promote finalisation of the real issues in dispute in a just, quick and cheap manner, as an opposing party would be liable to face a successful appeal and a rehearing merely because of the personal circumstances of the person who failed to procure necessary evidence.

41 And we note that the Tribunal's NCAT Guideline 1 – Internal Appeals says that *"Generally, an appeal is not an opportunity to have a second go at a hearing."*

Appellant's submissions

42 Regardless of how the grounds of appeal were expressed in the Notice of Appeal and the attachment summarised above, the Appellant's written submissions focused on three principal grounds.

Failure to bring application within a reasonable time

43 The first ground was that the Respondent failed to bring its application within a reasonable time. The submission was developed in a variety of ways.

44 *First*, the Appellant concedes there is no time limit for an application to be brought under s 232 of the SSMA. However, the Appellant submits that "such applications are still subject to other restrictions in time", and the SSMA includes a "long stop" which prevents any claim being made 10 years after the work was first used.

45 *Secondly*, while it is submitted that s 14(1)(b) of the *Limitation Act 1969* (NSW) does not "strictly apply", it is the general limitation period for damages. If the Tribunal forms the view that this limitation does then apply to these proceedings, then the Respondent's application was out of time at the time of its filing.

46 *Thirdly*, as:

- the Appellant is the third owner of his lot and the alleged works were undertaken more than 20 ago; and
- the Respondent did not take any action in that period prior to the commencement of the proceedings notwithstanding that one of the members of the Committee was an owner for the whole of that period of time and would have been aware of the existence of the alleged illegal building works,
- it was not fair and just for the case to proceed: *Itek Graphics Pty Limited v Elliott* [2002] NSWCA 104.

47 *Fourthly*, where there is a time delay, the Court or Tribunal must take into consideration the following four rationales identified by McHugh J in *Brisbane South Regional Health Authority v Taylor* [1996] HCA 25; (1996) 186 CLR 541 at 552, namely:

- as time goes by relevant evidence is likely to be lost;
- it is oppressive to a defendant to allow action to be brought long after the circumstances that gave rise to it have passed;

- it is desirable for people in the community to be able to arrange their affairs and utilise their resources on the basis that claims can no longer be made against them. Many in the community have significant interest in knowing that they have no liabilities beyond a definite period;
- the public interest requires that disputes be settled as quickly as possible.

48 *Fifthly*, where the *Limitation Act* does not apply, there comes a time when a plaintiff's cause of action is so stale by the great effluxion of time that a defendant cannot receive a fair trial, the interests of justice will require a court to dismiss or permanently stay the proceedings: *Batistatos v Roads and Traffic Authority of NSW* (2006) 226 CLR 256; [2006] HCA 27.

Failure of the Tribunal to stay the proceedings

49 The second submission was the failure of the Tribunal to stay Respondent's application. Here the Appellant submits:

- where the use of the Tribunal's procedures occasions unjustifiable oppression to a party, or where the use of the Tribunal's procedures serves to bring the administration of justice into disrepute: *Walton v Gardiner* (1993) 177 CLR 378;
- a permanent stay is appropriate where there has been significant delay between the events giving rise to the cause of action and the commencement of proceedings which delay has resulted in relevant evidence becoming unavailable or impoverished: *Moubarak by his tutor Coorey v Holt* (2019) 100 NSWLR 218.

Sections 126 and s 132 of the SSMA

50 The third submission related to the failure of the Tribunal to consider or apply correctly ss 126 and 132 of the SSMA. The Appellant submitted that:

- the Tribunal can, on request of a relevant owner, apply the provisions of s 126 of the SSMA in so far that the Tribunal can under s 232 determine a dispute between the Owners Corporation and an owner;
- the alleged illegal works cannot be seen from the street and can only be seen by residents due to the placement of the washing lines on the roof and therefore will not affect amenity or appearance or consistency with the character of the building from that perspective;
- the Appellant sought permission for a privacy screen to be installed so as to ensure that when owners, tenants and invitees are using the washing line facilities which is located on the roof only a few metres from his bedroom, that such use would not restrict his own privacy. This was refused by the Respondent on a number of occasions, which refusal was unreasonable and potentially self serving;

- the Appellant had sought in his application for the removal of the washing lines from the roof, or alternatively permission to retain his privacy screen, and the evidence relating to this was not given sufficient weight in the decision before the Tribunal.

Conclusion

Failure to bring application within a reasonable time

51 There is an anterior problem with the Appellant's submissions that the Respondent failed to bring application within a reasonable time. The issue is that it is not clear at all whether this point was taken before the Tribunal.

52 As the Appeal Panel noted in Bartel v Ryan [2018] NSWCATAP 231 at [25], the plurality of the High Court of Australia said in Coulton v Holcombe [1986] HCA 33 at [9] that it is elementary that a party is bound by the conduct of their case. Except in the most exceptional circumstances, it would be contrary to all principle to allow a party, after a case had been decided against them, to raise a new argument which, whether deliberately or by inadvertence, the party failed to put during the hearing when they had an opportunity to do so: see too Palm Homes Pty Ltd v Kav's Constructions Pty Ltd [2015] NSWCATAP 113 at [27].

53 The Appellant submitted that, in effect, it had. The Respondent agreed that it had.

54 We are not so sure. This is for two reasons. First, the Decision says nothing about the issue – thus suggesting that the point, if taken by the Appellant, was rejected by the Tribunal. Secondly, neither party provided the sound recording or a transcript of the proceedings, which they were directed to do if they wished to rely on what occurred at the Tribunal hearing on appeal.

55 However, giving the Appellant the benefit of the doubt on the matter, we would not allow an appeal on this basis. This is for the following reasons.

56 *First*, we reject the submission that the SSMA includes a "long stop" which prevents any claim being made 10 years after the work was first used. There is no such provision in the SSMA.

57 *Secondly*, we reject the submission that the *Limitation Act 1969* (NSW) has any application, including in particular the general limitation period for damages set out in s 14. Section 14(1) states:

> 14 General
>
> (1) An action on any of the following causes of action is not maintainable if brought after the expiration of a limitation period of six years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims—
>
> (a) a cause of action founded on contract (including quasi contract) not being a cause of action founded on a deed,
>
> (b) a cause of action founded on tort, including a cause of action for damages for breach of statutory duty,
>
> (c) a cause of action to enforce a recognizance,
>
> (d) a cause of action to recover money recoverable by virtue of an enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.

58 While the Respondent's cause of action may be described as a breach of a statutory duty, it was not a cause of action for damages for that breach. Therefore, in our view the *Limitation Act* has no application. And again we note that it does not appear that the point was taken before the Tribunal.

59 *Thirdly*, we reject the submission that *Itek Graphics Pty Limited v Elliott* [2002] NSWCA 104 has any application. First, that case concerned the granting of leave to sue after the expiry of a limitation period, The Court noted at [87] that the general question that has to be asked is what is fair and just or what does the justice of the case require. Secondly, the Court was in fact considering a limitation provision in s 151D(2) of the *Workers Compensation Act* 1987 (NSW).

60 Finally, we turn to the submission that where the *Limitation Act* does not apply, there comes a time when a plaintiff's cause of action is so stale by the great effluxion of time that a defendant cannot receive a fair trial, the interests of justice will require a court to dismiss or permanently stay the proceedings. While the submission may be correct as a matter of principle, it has no application here as the Appellant found a great quantity of evidence on which he now relies. All that evidence supports his submission that he did not undertake the works himself, a matter which we accept, and which the Tribunal

accepted. Nevertheless, as the registered proprietor of his lot he is responsible for his lot and any unauthorised works on it.

61 Even with the additional evidence, we detect no error in the Tribunal's approach or in the conclusion it reached.

Failure of the Tribunal to stay the proceedings

Sections 126 and 132 of the SSMA

62 These submissions can be considered together as they are both misconceived. This is because:

- no application was ever made to the Tribunal to stay the proceedings;
- no application was ever made to the Tribunal to by the Appellant pursuant to s 126 of the SSMA; and
- no application was ever made to the Tribunal to by the Respondent pursuant to s 132 of the SSMA.

63 These submissions appear to amount to a suggestion that the Tribunal was under a duty to consider arguments and indeed causes of action that were not raised before it. There is no evidence before us that suggests that these matters were raised by the Appellant during the Tribunal hearing. While the Tribunal has a duty to provide assistance to self-represented parties (see the Council of Australasian Tribunals' *Tribunal Excellence Framework 2017* at 16), it is not the Tribunal's role to run the party's case for them: *Roberts v Harkness* [2018] VSCA 215 at [49]. And the Tribunal cannot give assistance to the unrepresented litigant in such a way as to conflict with its role as an impartial adjudicator: *Reisner v Bratt* [2004] NSWCA 22 at [4] – [6]; *Malouf v Malouf* (2006) 65 NSWLR 449 at [94].

Consideration - Appeal in relation to the Appellant's application

64 The matter was barely pressed at the appeal hearing. No written submissions were provided in support of this appeal, and the Appellant's only oral submissions were that this appeal would not be pressed if the Respondent agreed to the relocation of the clothesline.

65 This appeal was misconceived and must be dismissed.

Summary

66 To the extent that the appeal raises errors other than errors of law, we are not satisfied that any ground involves an issue of principle, a question of public importance, an injustice which is reasonably clear or that the Tribunal has gone about its fact finding process in such an unorthodox manner that it is likely to have produced an unfair result.

67 The appeal is otherwise dismissed.

Orders

68 The Appeal Panel orders:

(1) Leave to appeal is refused.

(2) The appeal in relation to SC 21/04852 is dismissed.

(3) The appeal in relation to SC 21/13605 is dismissed.

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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