



Civil and Administrative Tribunal

New South Wales

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Case Name: Sunaust Properties Pty Ltd v The Owners – Strata Plan No 64807

Medium Neutral Citation: [2022] NSWCATAP 246

Hearing Date(s): 9 June 2022

Date of Orders: 27 July 2022

Decision Date: 27 July 2022

Jurisdiction: Appeal Panel

Before: S Westgarth, Deputy President  
I Coleman SC ADCJ, Principal Member

Decision: (1) Appeal upheld.  
(2) Orders 1 to 4 inclusive made on 17 January 2022 in SC 21/02639 are set aside.  
(3) Application SC21/02639 is remitted to the Consumer and Commercial Division for further orders.  
(4) If the Appellant seeks costs (either in respect of the appeal or in respect of the first instance proceedings), the Appellant must file and serve written submissions within 21 days of the date hereof in support of such application.  
(5) Within 21 days thereafter, the Respondent must file and serve written submissions in response to the Appellant's submissions.  
(6) The submissions of the parties should address the question of whether the Tribunal may determine costs on the papers and make an order dispensing with a further hearing.

Catchwords: APPEAL - proceedings commenced in the Supreme Court prior to commencement of tribunal proceedings - whether cl5(7) of schedule 4 of the Civil and Administrative Tribunal Act precluded the tribunal from

having jurisdiction to determine relevant issues -  
whether an issue for determination before the tribunal  
was the subject of dispute before the Supreme Court -  
whether there is a risk of concurrent and inconsistent  
findings being made in the tribunal and the Supreme  
Court.

Legislation Cited: Strata Schemes Management Act 2015 (NSW)  
Civil & Administrative Tribunal Act 2013 (NSW)  
Civil & Administrative Tribunal Rules 2014

Cases Cited: Steak Plains Olive Farm Pty Ltd v Australian Executor  
Trustees Ltd [2015] NSWSC 289  
Owners Corporation SP 64807 v BCS Strata  
Management Pty Ltd [2020] NSWSC 1040

Texts Cited: None cited

Category: Principal judgment

Parties: Sunaust Properties Pty Ltd (Appellant)  
The Owners - Strata Plan No 64807 (Respondent)

Representation: Counsel:  
E Young (Appellant)  
R Gration (Respondent)

Solicitors:  
MC Lawyers (Appellant)  
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File Number(s): 2022/00035175; 2022/00118800

Publication Restriction: Nil

Decision under appeal:

Court or Tribunal: NSW Civil & Administrative Tribunal

Jurisdiction: Consumer & Commercial Division

Citation: N/A

Date of Decision: 17 January 2022

Before: G Ellis SC (Senior Member)

## REASONS FOR DECISION

### Introduction

- 1 This appeal arises from the decision of the Tribunal published on 17 January 2022 (the Decision) concerning an agreement between the parties made on or about 16th March 2001, which the parties referred to as the Caretaker's Agreement.
- 2 The Appellant is the Caretaker under that agreement and the Respondent to this appeal is the Owners Corporation in respect of Strata Plan no 64807. The Respondent made an application to the Tribunal for orders under s 72 of the *Strata Schemes Management Act 2015 (NSW)* (the Strata Act) for the Caretaker's Agreement to be terminated by order of the Tribunal.
- 3 Under s 72 of the Strata Act the Tribunal has power to terminate an agreement for the appointment of a strata managing agent or building manager for the strata scheme. Section 66 of the Strata Act provides a definition of a building manager and a person is taken to be a building manager for a strata scheme if the person meets the description of a building manager set out in s 66, regardless of whether the title given to the person's position is building manager, caretaker, resident manager or any other title (see s 66(5)).
- 4 The Tribunal made an order under s 72 to the effect that the agreement between the parties is terminated. It also made an order for the sale of two lots in the strata scheme owned by the Appellant.
- 5 On 4 February 2022 the Appellant lodged a Notice of Appeal in respect of the orders made on 17 January 2022. There are 18 paragraphs identifying approximately the same number of grounds of appeal. Ground 3 relies upon the operation of clause 5(7) of schedule 4 of the Civil & Administrative Tribunal Act 2013 (the NCAT Act). Clause 5 is on the following terms:

**5 Relationship between Tribunal and courts and other bodies in connection with Division functions**

- (1) Meaning of "court" For the purposes of this clause,

“court” means any court, tribunal, board or other body or person (other than one referred to in subclause (2)) that--

(a) is empowered under any other Act, or

(b) by consent of, or agreement between, 2 or more persons has authority,

to decide or resolve any issue that is in dispute, whether through arbitration or conciliation or any other means.

(2) However,

“court” does not, for the purposes of this clause, include--

(a) a court, tribunal, board or other body or person that, in relation to a particular matter, is empowered by law to impose a penalty, admonition or other sanction for a contravention of a law or for misconduct or breach of discipline proved to have been committed in connection with that matter but is not empowered to award or order compensation or damages in respect of that matter, or

(c) the Ombudsman, or

(d) any person exercising the functions of an ombudsman under any law of the Commonwealth, or

(e) any person authorised, under a law of the State or of the Commonwealth or of another State or a Territory, to make decisions or orders, or give directions, that are binding only on one party to a dispute.

(3) Effect of application to Tribunal or court. If, at the time when an application was made to the Tribunal for the exercise of a Division function, no issue arising under the application was the subject of a dispute in proceedings pending before a court, a court has no jurisdiction to hear or determine such an issue.

(4) Subclause (3) ceases to apply to the extent to which the application concerned is dismissed for want of jurisdiction or withdrawn.

(5) Subclause (3) does not prevent a court from hearing and determining any proceedings in which it is claimed that any order, determination or ruling of the Tribunal in exercise or purported exercise of a Division function is invalid for want of jurisdiction or from making any order as a consequence of that finding.

(6) For the purposes of subclause (3), an issue arises under an application made to the Tribunal for the exercise of a Division function only if the existence of the issue is shown in the applicant's claim or is recorded in the record made by the Tribunal in accordance with this Act.

(7) Effect of pending court proceedings on Tribunal. If, at the time when an application is made to the Tribunal for the exercise of a Division function, an issue arising under the application was the subject of a dispute in proceedings pending before a court, the Tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue.

(8) Subclause (7) ceases to apply to the extent to which the proceedings concerned are dismissed or quashed by the court, or by another court, for want of jurisdiction or without deciding the issue on its merits, or withdrawn.

(9) Evidence from court proceedings. In proceedings on an application to the Tribunal for the exercise of a Division function, a finding or decision made by a court, tribunal, board, body or person referred to in subclause (2) is admissible as evidence of the finding or decision.

(10) Clause prevails over other law. This clause has effect despite Part 3 of this Act or any other Act or law to the contrary.

6 We are of the opinion that clause 5(7) operated in this case to preclude the Tribunal from having jurisdiction to determine issues central to the application brought by the Respondent. Accordingly, for the reasons set out later in this decision the appeal should be upheld. It is not necessary for us, in the light of our conclusion, to consider the other grounds of appeal.

7 However, it is necessary to explain the background to the dispute between the parties as recorded in the Decision, and that is done in the following paragraphs.

### **Summary of the Decision at first instance**

8 On 30 October 2020, the Appellant commenced proceedings against the Respondent in the Supreme Court. The issues in those proceedings will be described later. On 11 December 2020, the Respondent filed a Cross-Application in the Supreme Court proceedings.

9 On 24 December 2020, the Respondent filed two applications in the Tribunal, an application for substantive or final orders and a related application for interim orders. The applications before the Tribunal sought an order under s 72(1)(a) of the Strata Act for the termination of the Caretaker's Agreement and an order for transfer of Caretaker lots to a replacement building manager. Paragraph 4 sought an order requiring the Appellant to pay to the Respondent compensation for "overpayments" made by the Respondent to the Appellant.

10 The Decision records at [158] that the Respondent's applications came before the Tribunal on 12 February 2021 when an order was made dismissing the claim for order 4. The Decision records that the Tribunal's "published reasons clearly indicate that decision was based on clause 5(7)". This is a reference to clause 5(7) of schedule 4 of the NCAT Act.

11 At [160] of the Decision the Tribunal recorded that the Appellant's submissions detailed "overlapping factual aspects between this application and the pre-

existing Supreme Court proceedings”. The Tribunal also stated that it “would appear the issue of whether the CA (ie. the Caretaker’s Agreement) should be terminated is a matter which cannot be considered in the Supreme Court proceedings.

- 12 At [162], the Tribunal noted the judgment of White J (as he then was) in *Steak Plains Olive Farm Pty Ltd v Australian Executor Trustees Ltd* [2015] NSWSC 289, in which, at [105], the following appears:

“The Parliament has provided, in effect, that if an issue arising under the application can be dealt with either by a court or the tribunal, the issue should be determined by the court or tribunal in which the proceedings are first commenced.”

- 13 At [163], the Decision stated that there were two reasons why the Tribunal rejected the Appellant’s contentions on the issue (namely the issue of whether clause 5 precluded the Tribunal from having jurisdiction). The first reason was that the issue had previously been raised, considered and determined by the Tribunal on 12 February 2021. The second reason was that the issue of whether the Caretaker’s Agreement should be terminated is an issue that can only be determined by the Tribunal by reason of the wording of s 72 of the Strata Act.

- 14 It is necessary to refer to some findings of fact made by the Tribunal in support of the conclusion that the Caretaker’s Agreement should be terminated. These findings of fact appear to us to be relevant to a consideration of whether clause 5 operates. The relevant findings of fact are as follows:

- (1) From March 2002 the Appellant began increasing its fee by 5% each year [155].
- (2) From September 2009 the Appellant began charging an additional quarterly fee of approximately \$5,000 backdated to 1 April 2009 [155].
- (3) At [168] the Tribunal found that the Caretaker’s Agreement was never varied to permit a 5% annual increase. In the following paragraphs the Tribunal provides detailed reasons, having regard to the evidence of various witnesses, for coming to that conclusion.
- (4) At [186] the Tribunal stated that it was not persuaded that there was an agreement to pay an additional fee based upon the oral evidence of two of the witnesses. The Tribunal then considered documentary evidence and at [189] the Tribunal stated that it determined that there was no agreement to pay the additional fee charged by the Appellant.

15 The Decision also considered and made findings concerning conduct of persons representing the Appellant, but it is not necessary for us to deal with those findings in any detail. It is sufficient to record that at [260] the Tribunal referred to s 72(3)(a) and made the following findings of fact:

- (1) That the Appellant had refused to perform the Caretaker's Agreement by not providing access to CCTV footage, failing to provide keys, and refusing to provide a password contrary to provisions of the Caretaker's Agreement.
- (2) The Appellant unsatisfactorily performed the Caretaker's Agreement by charging a 5% annual increase instead of a CPI increase as specified in the Caretaker's Agreement, charging an additional fee that was neither agreed nor authorised and charging for gardening and mowing which was not agreed.
- (3) The Appellant had unsatisfactorily performed the Caretaker's Agreement by having one of its Representatives as a member of the strata committee for a period of approximately five years (October 2010 to May 2015).
- (4) The Appellant has unsatisfactorily performed the Caretaker's Agreement by the conduct of one of its employees in improperly commencing and pursuing Supreme Court proceedings in the name of the Respondent, which attempted to prevent the AGM on the 8 August 2020 being held.
- (5) The Appellant had unsatisfactorily performed the Caretaker's Agreement by the conduct of its representatives in falsely representing that the annual general meeting of 8 August 2020 had been cancelled.
- (6) At [262] the Tribunal considered s 72(3)(b) of the Strata Act and concluded that the charges imposed by the Respondent were unfair with respect to the 5% annual increase, the additional fee and the charges for gardening and mowing all of which have been referred to above.
- (7) At [269] the Tribunal considered whether it should exercise its discretion in favour of the Respondent to terminate the Caretaker's Agreement and concluded that the Respondent was entitled to an order on the basis of the Appellant's conduct over a long period of time, recent and continuing conduct and "a consistent attitude of not being bound by the [Caretaker's Agreement]".
- (8) At [270] the Tribunal referred to the fact that the Appellant had paid \$310,000 in October 2000 for the rights it acquired under the Caretaker's Agreement and that by now terminating that agreement it would deprive the Appellant of those rights. The Tribunal stated that the Appellant had received "amounts considerably more" than what was envisaged by the Caretaker's Agreement, namely approximately \$700,000 by the application of the 5% increase and the additional fees charged.

- (9) At [271] the Tribunal stated that “Accordingly” the Tribunal was satisfied that the Respondent had established a basis for a termination order.

### **The Supreme Court Proceedings**

- 16 During the hearing of the appeal, we were taken to the “pleadings” filed in the Supreme Court proceedings. The Appellant had filed a summons in the Supreme Court, Commercial List, seeking orders that there were amounts due to be paid pursuant to the Caretaker’s Agreement that have been unpaid since January 2020. The summons also sought a declaration that the Caretaker’s Agreement included a term whereby the fees due were to be increased annually by 5% above the amount payable in the preceding 12 months. A further declaration was sought to the effect that there was no term in the Caretaker’s Agreement which permitted increases by reference to the Consumer Price Index. Finally, there was an application for a declaration that the Caretaker’s Agreement included a term whereby the fees may be increased by amounts agreed by way of a variation agreed between the parties.
- 17 Accompanying the summons is a “Commercial List Statement” which sets out the factual basis for the orders sought in the summons. In the section dealing with the Plaintiff’s contentions (ie. the Appellant’s contentions) there are contentions concerning the claim to be entitled to increase the Caretaker’s fees by 5% per annum. There are also contentions concerning the facts supporting the alleged variation entitling claims for additional payments by reason of the undertaking of additional work.
- 18 We have also been supplied with a copy of the Commercial List Response filed for the Respondent. In substance the various contentions described above by the Appellant are denied by the Respondent.

### **Appellant’s Submissions**

- 19 In respect of the ground concerning clause 5(7) schedule 4 of the NCAT Act the following summarises the Appellant’s submissions:
- (1) The Tribunal gave two reasons for rejecting the Appellant’s submissions on this issue which are recorded at [163] of the Decision (and summarised earlier in this decision). With respect to the determination made by the Tribunal on 12 February 2021 the Appellant submits that there was no consideration and determination of whether clause 5(7)

applied. All that happened was that the Respondent did not press order 4 and the Tribunal made orders accordingly dismissing that particular aspect of the application. The Tribunal erred in basing its decision on the Tribunal's earlier decision which in fact had not considered and determined the issue.

- (2) The second reason given by the Tribunal did not take account of the relevant case law dealing with what constitutes an "issue" for the purposes of clause 5(7) and applied the wrong legal test. That was an error of law. As was explained in *Owners Corporation SP 64807 v BCS Strata Management Pty Ltd* [2020] NSWSC 1040 the object of clause 5(7) is to avoid the risk of concurrent findings by each of the court and the Tribunal. That case also made plain that the second reason given by the Tribunal at first instance is not the relevant legal test to be applied.
- (3) The characterisation of what is an issue is not to be undertaken narrowly. It applies to both legal and factual issues raised by the Tribunal proceedings and the court proceedings.
- (4) The findings and conclusions set out at [269]-[271] of the Decision form the basis of its decision to exercise its discretion to terminate the Caretaker's Agreement. The issues and the supporting evidence concerning the 5% per annum increase, the charges for additional work, charges for gardening and mowing and other issues (not presently relevant) would, had they not formed part of the case before the Tribunal, have led to the case before the Tribunal having a very different complexion.
- (5) The Supreme Court may make findings of fact concerning the claim for unpaid fees and that may result in their being concurrent findings in existence. If the Appellant were to be successful before the Supreme Court that would be a relevant factor for the Tribunal to consider in the exercise of its discretion as to whether the Caretaker's Agreement should be terminated.
- (6) The only potentially relevant findings that were outside of the legal and factual issues in the Supreme Court were those in [260(1)] of the Decision and these relate to minor discrete issues (namely authority to view the CCTV footage, a dispute about keys, a dispute about whether a password to a digital video recording should have been made available).
- (7) The Appellant submits that the Tribunal's rejection of the clause 5(7) point constitutes jurisdictional error and is an error of law.

#### **Respondent's submissions in respect to clause 5(7) schedule 4**

20 The following summarises the Respondent's submissions with respect to clause 5(7):

- (1) The Respondent submits there is a distinction between overlapping subject matter and the relevant issues. The relevant issues before the Tribunal were those referred to in s 72 of the Strata Act namely whether

the Appellant had refused or failed to perform the Caretaker's Agreement or had performed it unsatisfactorily, whether the charges paid were unfair and/or whether the Caretaker's Agreement was harsh, oppressive, unconscionable, or unreasonable.

- (2) None of the above issues arise in the Supreme Court proceedings which concern a money claim by the Appellant for unpaid fees under the Caretaker's Agreement and a cross-claim by the Respondent for an offsetting money claim for past overpayments made to the Appellant and to third parties in respect of services the Appellant was required to perform. In the Decision the Tribunal found that the Appellant had unsatisfactorily performed the Caretaker's Agreement (see [260(2)]). There was no finding that money was due to be paid or repaid by one party to the other.
- (3) The Respondent relied upon passages from the *Steak Plains Olive Farm* case. That case involved proceedings first commenced in the Tribunal in which the applicant sought orders under the *Agricultural Tenancies Act 1990 (NSW)* for possession of a farm and compensation. The Respondent later commenced proceedings in the Supreme Court and made an application in the Tribunal for the Tribunal proceedings to be transferred to the Supreme Court. At [105] his Honour White J noted with approval the statutory purpose of a provision akin to clause 5(7) which is to avoid the risk of concurrent findings by the Tribunal and a court in respect of a particular issue. His Honour said that that purpose would not be advanced by the adoption of a narrow characterisation of the issue as to whether, in that case, one of the parties was entitled to equitable relief against forfeiture. His Honour held, as quoted earlier in this Decision, that the statutory purpose of clause 5 would be furthered by acknowledging that Parliament has provided that if an issue arising under the application can be dealt with either by a court or the Tribunal the issue should be determined by the court or the Tribunal in which the proceedings are first commenced.
- (4) The Respondent submits that it is necessary in considering whether clause 5(7) operates to identify the issues between the parties with some precision.

## Consideration

21 It is of assistance to make reference to the decision of Williams J in the *Owners Corporation SP no 64807 v BCS Strata Management Pty Ltd*. In that case, the plaintiff Owners Corporation sought orders against the strata managing agent. The tribunal proceedings (which preceded the Supreme Court proceedings) were brought by some lot owners who sought the compulsory appointment of a managing agent for the strata scheme. At [47] her Honour said that the issues before the Supreme Court and the tribunal were whether the existing strata managing agent (appointed by the Owners Corporation) had authority to issue

the notice of the annual general meeting to be held on 8 August 2020, and whether the strata committee had validly resolved to cancel that meeting.

- 22 At [45] Her Honour noting and respectfully agreeing with the decision in *Steak Plains Olive Farm* said that it would be inconsistent with the purpose of clause 5 if there could be concurrent findings in the Tribunal and in the Court in respect of the same substantive issues and a consequent risk of inconsistent findings concerning those issues. Her Honour stated that it was important to focus on the substance of the real legal and factual issues raised by the Tribunal proceedings and the Court proceedings in question.
- 23 In the Decision, the Tribunal found that the parties had not agreed to a term of the Caretaker's Agreement which permitted the Appellant to increase the fee annually by 5% and nor had the parties agreed to pay an additional fee: see [160] and [186] of the Decision. At [260] of the Decision the Tribunal characterised the charge of 5% per annum as unsatisfactory performance. That should be considered in light of the earlier finding that there was no agreement between the parties for a 5% increase to be charged.
- 24 In our view these findings were significant factors in the Tribunal's ultimate decision to find that the provisions of s 72 of the Strata Act had been satisfied justifying a termination order.
- 25 A central issue in the Supreme Court proceedings will be whether the Appellant is entitled to claim for monies allegedly due but not paid and whether the Respondent is entitled to recover monies paid but which the Respondent says were not due and therefore constitute "overpayments". These issues involve the necessity to determine the terms of the Caretaker's Agreement, including whether that agreement was varied subsequently.
- 26 Characterising the issues in the Tribunal and in the Supreme Court in the way we have described in the above paragraphs leads us to the conclusion that there is a realistic risk of the Tribunal and the Court making concurrent and inconsistent findings. The Tribunal in the Decision has found that the Appellant has not complied with its contractual obligations by charging amounts to which it was not contractually entitled. In our view, the Supreme Court is being asked to make determinations of the same character, namely whether the Appellant is

contractually entitled to further money or whether the Respondent is entitled to recover monies allegedly paid in excess of the Respondent's contractual obligation.

- 27 It is clear that the monetary dispute between the parties was a central factor in the Tribunal's decision to terminate the Caretaker's Agreement. At [260] the Tribunal referred to both the 5% increase issue and the additional fee issue as well as the charge for gardening and mowing. The fact that other issues were also mentioned in that paragraph does not detract in our view from the importance of the monetary dispute between the parties. At [261] the Tribunal described this conduct, as well as other identified conduct, as constituting gross misconduct. At [262] the Tribunal considered whether the charges imposed were unfair and described the 5% increase as "not an agreed variation" and a breach of clause 3.1 of the Caretaker's Agreement. The additional fee was also described as "not an agreed variation" and not authorised by the [Caretaker's Agreement]. The charges for gardening and mowing were "not an agreed variation".
- 28 In our view, if Supreme Court were to find that the Appellant's claim against the Respondent should be upheld and the Respondent's cross-claim dismissed the result would be that a significant factual matter in support of the Respondent's claim in the Tribunal for termination of the Caretaker's Agreement would no longer exist, and to that extent, the Respondent's application would be substantially less meritorious. Viewed in that light, it is clear to us that the provisions of clause 5(7) were applicable such that the Tribunal did not have jurisdiction to determine the Respondent's application in so far as required the tribunal to determine issues also arising in the court for determination.
- 29 We note that clause 5(9) provides that the evidence in a court (in this case the Supreme Court), is admissible as evidence in the Tribunal.
- 30 The Appellant's submissions concerning ground 3 also take issue with [163] of the Decision where the Tribunal gave two further reasons to reject the Appellant's contentions concerning jurisdiction. The first reason was to the effect that the tribunal had already determined the issue on 12th February 2021. In our view the record of that decision (AB vol1,p13 ) supports that

interpretation. The second reason was that only the tribunal has authority to terminate a caretakers agreement under s72 of the Strata Act and presumably therefore the tribunal should retain its jurisdiction. We are of the view that the Tribunal erred in this conclusion. The focus of clause 5(7) is on issues and the clause does not recognise that jurisdiction is retained if the relief sought in the tribunal cannot be obtained elsewhere. In any event the Respondent has contractual rights under the Caretaker Agreement such as termination for repudiation by the Appellant . We make no comment concerning the application of such rights as between the parties to this appeal but observe that the loss of jurisdiction in the tribunal does not mean that the Respondent is without remedy. In the BCS case the effect of the judgment was to preclude the Owners Corporation from pursuing its application in the court against the strata manager. That outcome supports our view that the Tribunal erred in its consideration of cl5(7).

- 31 Ground 3 of the Notice of Appeal is therefore upheld. This ground raises a question of law and leave is not required.
- 32 It does not follow from our conclusion concerning cl5(7) that the tribunal does not have jurisdiction to determine the Respondent's application, so long as that application does not require determination of issues attracting the engagement of cl5(7). Accordingly it is not appropriate for us to dismiss the application at first instance. It is a matter for the Respondent to decide whether to withdraw the application or prosecute it again in the Consumer and Commercial Division without reliance on issues before the Supreme Court. The appropriate order that we should make is to remit the application to the Division.
- 33 The Appeal Panel therefore make the following orders:
- (1) Appeal upheld.
  - (2) Orders (1) to (4) inclusive made on 17 January 2022 in SC 21/02639 are set aside.
  - (3) Application SC21/02639 is remitted to the Consumer and Commercial Division for further orders.

## Costs

- 34 Following receipt of submissions from the parties, the Tribunal made an order that the Appellant is to pay the Respondent's costs on the ordinary basis, as agreed or assessed. The decision on costs was published on 28 March 2022.
- 35 A notice of Appeal was lodged on 26th April 2022. It follows from our conclusions with respect to the substantive appeal that the order made on 28 March 2022 should be set aside.
- 36 The Appellant's submissions foreshadow that, in the event that the appeal is upheld, the Appellant seeks an order that the Respondent pay the Appellant's costs of the appeal and costs at first instance. The Tribunal has power to make an award for costs by virtue of the provisions contained in s 60 of the NCAT Act and rules 38 and 38A of the Civil & Administrative Tribunal Rules 2014. We think it appropriate to give the parties an opportunity to make submissions with respect to costs rather than decide costs without further submissions. Accordingly, we will make directions to that effect
- 37 We therefore make directions for submissions on costs as follows:
- (4) If the Appellant seeks costs (either in respect of the appeal or in respect of the first instance proceedings), the Appellant must file and serve written submissions within 21 days of the date hereof in support of such application.
- (5) Within 21 days thereafter, the Respondent must file and serve written submissions in response to the Appellant's submissions.
- (6) The submissions of the parties should address the question of whether the Tribunal may determine costs on the papers and make an order dispensing with a further hearing.

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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

any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.