

FOLEY'S | LIST

ORDER TO PAY FEES

*(Victorian Civil and Administrative
Tribunal Act 1998, S.115B)*

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ORDERS TO PAY FEES - NEW POWER OF TRIBUNAL

Joinder application

The first decision with respect to section 115B of the 2 June 2014 amendments to the VCAT Act (VPELA Revue, June 2014, page 21) was made by DP Gibson at a practice day hearing on 12 June 2014. The order was made in circumstances where an application was made by a third party (Brunswick Property Holdings Pty Ltd) to be joined as a party to the proceeding. (Iramiyan v Moreland CC [2014] VCAT 726)

This was a “failure” review concerning a mixed use development of 8 storeys. A mediation had taken place, and it appeared likely that the Tribunal would make an order to grant a permit as a result of the mediation. A hearing could therefore be avoided, but for the application by Brunswick to be joined.

Notwithstanding that Brunswick had been provided with a copy of the application for review, it did not subsequently lodge a statement of grounds within time (s. 83(2) P&E Act).

The Tribunal was concerned to uphold ss 97 and 98 VCAT Act (act fairly and according to the substantial merits of the case; be bound by the rules of natural justice).

Further, the grounds of objection to the permit application ultimately submitted by Brunswick did not impress the Tribunal. However, those grounds could not be said to have no tenable basis whatsoever. The Tribunal locked Brunswick in to those grounds of objection by ordering, effectively, that they could not be changed. Perhaps sensing that the matter could still resolve, the Tribunal also ordered that the original Mediator contact the parties with a view to reopening the mediation.

The dilemma of disadvantage to the applicant and the responsible authority being caused by the intervention of a third party, Brunswick, versus the disadvantage to Brunswick of being shut out of the hearing, was resolved by ordering that Brunswick be joined as a party to the proceeding, but that Brunswick pay the fees payable by the applicant in respect of any future hearing fees. The Tribunal also noted that a further order may be made regarding reimbursement of the application fee paid by the applicant. (For hearing fees, see Victorian Civil and Administrative Tribunal (Fees) Regulations 2013; and Practice Note PNVCAT6 – Hearing Fees)

Brunswick was also ordered to pay the party/party costs of the applicant and the responsible authority, attributable to the practice day hearing.

Enforcement

In an enforcement application, the Tribunal has ordered that fees paid by the Responsible Authority be paid by a Respondent to the application, citing s 14 P&E Act (the Council has a duty to efficiently administer and enforce its planning scheme. (see Greater Bendigo CC v Wearne [2014] VCAT 706 and Wellington SC v Bigham [2014] VCAT 708)