

FOLEY'S | LIST

NOISY NEIGHBOURS

Author: Julie Davis

Date: February, 2016

© Copyright 2016

This work is copyright. Apart from any permitted use under the *Copyright Act 1968*, no part may be reproduced or copied in any form without the permission of the Author.

This paper was published in the *VPELA Review* February 2016

Requests and inquiries concerning reproduction and rights should be addressed to the author c/- annabolger@foleys.com.au or T 613-9225 6387.

NOISY NEIGHBOURS??

The Public Health and Wellbeing Act 2008 (Vic) (PHWA) s.194 was employed by the City of Port Phillip in relation to excessive noise coming from an old house in Ripponlea. The behaviour of the people creating the noise and nuisance was described by the Magistrate at first instance as 'appalling'. The respondents to an improvement notice issued by the Council appealed the issue of the notices to the Magistrates Court. The Magistrate affirmed the improvement notice and the respondents then appealed to the Supreme Court. ([Hallett v City of Port Phillip S CI 2014 02225](#))



The subject property was used for parties and band performances, and was a venue for live music. A ramp in the backyard of the property was used for skateboarding. There was no doubt in the Court's decision that the rights of neighbours had been ignored and that the owner of the property (a Company) and its sole Director had a responsibility as landlord to prevent the behaviour.

The questions of law which were referred to the Supreme Court considered the nature of the appeal. The Court determined that an appeal under s. 208 of the PHWA required a de novo reconsideration of the Council's decision to issue the improvement notices. Relevant evidence that could be tendered included events occurring since the improvement notices were issued; such as an order of VCAT giving possession of the property to the landlord, which had occurred prior to the Magistrates Court hearing. The Magistrate had erred in his interpretation of s 208 and the nature of the appeal that it created.

On the question of whether the Council had to give the respondents notice of the allegations and a fair opportunity to be heard, the Court found that the principles of natural justice were not excluded by the terms of the PHWA. Those principles apply unless excluded where a decision adversely affects the interests of a person. The Magistrate erred in finding that there was no obligation to inform the appellants of the allegations against them and give them an opportunity to respond before the improvement notices were issued.

This is a useful decision for Council's exercising powers under the PHWA. Of note was the failure of the process server to establish that the improvement notice had been left at the respondent's usual or last known place of residence with a person on the premises.

Julie Davis

LLB; Master of Business (Corporate Governance); Accredited Mediator; Certificate IV Training and Assessment (TAE 40110). Barrister experienced in Environment, Land, Water, Planning and Local Government Law. Foley's List – 9225 7777 or 0412322111. julie.r.davis@vicbar.com.au