

## Alloura Waters Retirement Village and Living Choice Australia Ltd

**Village:** Alloura Waters Retirement Village

**Operator:** Living Choice Australia Limited



**The Advocates:** Appearing for the Alloura Waters Residents were Gai McGlynn (Vice-President of the Residents Committee) and Bill Plant (RVRA Committee from early 2011)

### **The Background:**

- The residents rejected the budget initially for Payroll Tax, and the operator said that they were unhappy with the rejection, as this was the only group village to do so.
- The residents rejected the amended budget on the grounds that the operator had not justified the Head Office Management fee charges in accordance with the Regulations 26(e) and 17(2) of Act, and
- the operator was claiming that loose items of capital replacement should be funded by the village residents by special resolution under section 30. Residents were told that they were the only one of the operator's group of villages not using clause 30 for capital item replacement.
- Removal of the payroll tax of \$24,000 was offset by other budget amendments, to reduce the budget costs by around \$12,000.
- The Head Office Management fee calculation for the Village was found, verbally, to be higher than that charged to all other villages in the operator's group, although the method of allocation between villages was the same. Alloura Water's increase was 12% and others 4%.

### **The Dispute:**

The decisions required from the CTTT finally were:

- Whether the increase in the component for administration fees included in the proposed budget figure for recurrent charges is justified.
- Whether the contribution to the line item "Capital Maintenance Fund" in the proposed annual budget is justified.

### **The Case History:**

This case was a very complex one, and several hearings were held. The case took eleven months from time the application went to the CTTT and when the decision was received. The Operator was represented by a Gadens solicitor, Arthur Koumoukelis, who did not comply with some directions of the CTTT, and who argued that many items of evidence from the residents be disallowed.

The CTTT Member became ill during the case, and so the decision was finally given many months after the case was heard.

A detailed outline of this case is available from our Administration Office and web site, but there is not sufficient room to elaborate further here.

### **The Result:**

Issues:

- (1) Whether the increase for Head Office Administration Fees is justified, and
- (2) Whether the contribution to Capital Works fund is justified.

**Issue (1):** The Senior Member reduced the **increase in recurrent levies** from 12% to 4% which was the same as other villages operated by LCA. No other items requested by residents were altered.

**Issue (2): Loose Capital Items.** The operator had included a schedule for replacement of clothes dryers, microwaves, venetian blinds, entertainment equipment, office equipment, PVC outdoor settings, and timber outdoor settings.

The evidence included a letter stating that these could be funded from the Capital Works Fund with the agreement of residents under RV regulation clause 30.

In the rulings of the Senior Member, he wrote:

36. The operator draws some distinction between fixed (capital) assets and non-fixed (capital) assets. Neither the Act nor the Regulation makes such a distinction.
37. Section 97(2) RVA clearly establishes that any capital replacement cost “ *...in respect of an item of capital*” is the responsibility of the operator.
38. The quantity surveyor’s items nominated for the 2010/2011 budget, described by him as “loose items”, clearly fall within the categories of “items of capital” defined in Reg. 4. The inclusion of this item of \$18,014, within the capital works fund budget, is in contravention of RV Act s 97(2).

**What has been learnt?**

- **The Operator is responsible for any item of capital.**
- Do not be overawed by the proceedings, and stand up for your opinions.
- Do not consent to items that you have reservations about; argue them with the Member.
- Be prepared to argue on points raised by the operator, and to cross examine.
- Don’t be afraid of requesting an adjournment.

**Note:** Bill Plant also acted in an advocacy role for the residents at the New England Masonic Village at Armidale when the operator applied to the CTTT about the resident’s rejection of the budget. Bill spent some time at the village in discussions with residents and the management, and a compromise was reached.

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