

Topic: Objection to appointed Auditor

Village: The Landings, North Turramurra

Operator: Sakkara Investment Holdings Pty Ltd *as trustee for Sakkara Landings Trust.*

The Advocate: A resident, on behalf of the RC, was the advocate in the CTTT for the residents of The Landings. No legal assistance was used.

The Dispute: An auditor had conducted village audits for several years. The Residents Committee was not happy with lack of auditing thoroughness relating to interpretation of the RV Act.

The residents unanimously agreed to have a new auditor carry out this work, and were prepared to pay a higher fee to cover the work they wanted.

The Operator not only refused to change auditors, but also contracted the original auditor for another three year period.

Case History: A Directions Hearing was followed, about four months later, by a 2 hour hearing. In the meantime Affidavits, with annexed evidence, were exchanged between the parties to clarify the issues. At the hearing, for reasons unknown, there was no representative of the Operator present. The Member heard a written statement read out by the advocate. He compared this with the written submissions tendered by the Operator.

The Results: The Member ordered that:

1. The Operator is to comply with section 112 and 114 of the RV Act, in particular that proposed expenditure on auditing fees for mandatory audits pursuant to section 118 of the Act be included in each annual budget for approval by residents. This means that Residents are able to approve their auditor each year.
2. That section 118, which implies a possibility of continuity of any named auditor, does not apply in this matter.
3. For the proposed budget for the financial year ending 30th June 2014 the Operator is not to propose the services of the firm unacceptable to the residents. The member would not extend his ruling to the FY13 Budget because that is awaiting rulings by CTTT in another case.
4. That any costs or damages incurred by the Village Manager in having to cancel the three year agreement are not the responsibility of the residents to pay.

What Has been Learnt:

1. That section 118 2 (c) is not interpreted to mean that residents do not have the right to changes auditors even though the auditor has been used in the previous year;
2. That operators do not have any right to make a contract with a service provider paid from Recurrent Charges, beyond a single year, without having residents' specific agreement to any such extended contract;
3. That the Tribunal does not have the right under legislation to nominate any specific service provider as was requested by the Applicant.