



Summary of Judgment

KINCHINGTON ESTATE PTY LTD V WODONGA CITY COUNCIL [2019] VSC 745

18 November 2019

In this case, Kinchington Estate Pty Ltd sought orders compelling the Wodonga City Council to provide a written statement of reasons in accordance with s 8 of the *Administrative Law Act 1978* (Vic) ('the AL Act') in respect of decisions made by the Council to refuse 'in principle agreement' under s 178A(3) of the *Planning and Environment Act 1987* (Vic) ('the P&E Act') to a proposal to amend a section 173 agreement burdening a parcel of land owned by Kinchington Estate Pty Ltd. The Court was satisfied that the Council was obliged to provide reasons pursuant to s 8 of the AL Act for its decisions. In reaching this conclusion, the Court held that a decision under s 178A(3) of the P&E Act was one that had to be reached in accordance with the rules of natural justice.

Kinchington Estate Pty Ltd had made two applications to Wodonga City Council for amendment of an agreement in existence pursuant to s 173 of the P&E Act. The Council notified Kinchington that under s 178A(3) of the P&E Act it did not agree in principle to the requests made by Kinchington. In response to a request from Kinchington for a statement of reasons in accordance with s 8 of the AL Act, the Council asserted that it was not acting as a 'tribunal' as defined in s 2 of the AL Act when the decisions were made, and therefore was not required to furnish a statement of reasons for its refusals.

The question of whether the Council was acting as a tribunal was answered by the Court with reference to whether procedural fairness was due to be afforded when the decisions were made. The Court noted the starting point for this analysis is that an exercise of statutory power must be taken to attract the requirements of procedural fairness unless it can be shown that the legislation clearly manifests a contrary statutory intention. The Court held nothing in the legislative scheme established by ss 178A–178I of the P&E Act expressly or impliedly excludes or ousts the requirements of procedural fairness.

The Court also refuted any suggestion by the Council that the decision-making power of the Council to refuse in principle was not wholly borne from statute. The Court held the s 173 agreement cannot confer any power on the Council that it does not enjoy under statute and having been satisfied that a decision made under s 178A(3) operates in law to determine a question affecting the rights of the applicant in respect of the s 173 agreement, the decision was one which attracted procedural fairness. Resultingly, the Court determined the Council had acted as a tribunal and must produce a statement of reasons for its refusal decisions.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.