SUPREME COURT OF QUEENSLAND

CITATION:	*Remondis Australia Pty Ltd v Ipswich City Council* [2014] QSC 27
PARTIES:	**REMONDIS AUSTRALIA PTY LTD** ACN 002 429 781 (applicant) v **IPSWICH CITY COUNCIL** (respondent)
FILE NO:	BS8516 of 2013
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED EX TEMPORE ON:	3 February 2014
DELIVERED AT:	Brisbane
HEARING DATE:	3 February 2014
JUDGE:	Peter Lyons J

ORDERS:

1. **The time provided for the Applicant to make an application for a statutory order of review in respect of the decisions made by the Respondent on:**
   (a) 28 June 2012 (the Budget decision);
   (b) 14 January 2013, 15 April 2013, 15 July 2013 (Rates notices),
   be extended pursuant to s 26(2) of the *Judicial Review Act* 1991 (Qld) to 12 September 2013, and until 23 December 2013 in respect of the 14 October 2013 Rates notice.

2. **The time provided for the Applicant to make an application for review of the decisions made by the Respondent on:**

   (a) 28 June 2012 (Budget decision);

   (b) 14 January 2013 and 15 April 2013 (Rates notices),

   be extended pursuant to s 46 of the *Judicial Review Act* 1991 (Qld) to 12 September 2013.

3. **The Respondent's oral application for an order pursuant to s 26(3) of the *Judicial Review Act* 1991 (Qld) that the Court refuse to consider the Applicant's Application for Statutory Order of Review be dismissed.**

4. **The Applicant have leave to amend the Further Amended Application for Review so as to remove any challenge to the rates notice issued by the Respondent**

in October 2012.

5. Costs in the cause.

CATCHWORDS: REAL PROPERTY – RATES AND CHARGES – RATING OF LAND – REVIEW OF DECISIONS – JUDICIAL REVIEW – where the respondent imposed and levied rates on the applicant's land on two occasions – where those rates were a substantial increase over the rates that had been imposed on the previous owner – where the applicant challenges the adoption and levy of the rates and brings an application for a statutory order for review under section 26(1) of the *Judicial Review Act* 1991 (Qld) – where the applicant seeks an extension of time to make the application – whether section 26(3) or section 26(1) applies – whether the applicant might be granted an extension.

STATUTES – INTERPRETATION – GENERAL APPROACHES TO INTERPRETATION – GENERALLY – where the respondent submits that section 26(1) of the *Judicial Review Act* 1991 (Qld) does not apply – where the respondent's submission has the effect of reading words into the section – whether section 26(1) requires that a document provided to the applicant setting out the terms of the decision be issued by a decision maker pursuant to the statute under which the decision was made.

Judicial Review Act 1991 (Qld), s 26(1), s 26(3)

Newby v Moodie (1988) 83 ALR 523, considered

Stergis v Boucher (1989), 86 ALR 174, followed

COUNSEL: S L Doyle QC for the applicant
P J Flanagan QC for the respondent

SOLICITORS: Minter Ellison for the applicant
CBP Lawyers for the respondent

[1] **PETER LYONS J:** In June 2012, the respondent made a decision the effect of which was to impose certain rates on the land now owned by the applicant. Rates were subsequently levied on the applicant in accordance with that decision. That decision is referred to as the 2012 decision. A similar decision was made in June 2013, referred to as the 2013 decision. Rates were also subsequently levied on the applicant pursuant to that decision. In these proceedings, the applicant applies for statutory orders of review in relation to the decisions, which may be described as adopting rates, and what are referred to as decisions to levy those rates. Those applications are made under Part 3 of the *Judicial Review Act* 1991 (Qld) (*J R Act*). In addition, the applicant seeks relief in respect of those decisions, including declaratory relief under Part 5 of the *J R Act*.

[2] The applicant also seeks extensions of time, to the extent they may be necessary for its applications. The respondent submits that the court should act under section 26, subsection (3) of the *J R Act* and refuse to consider the applications. An oral

application was made in the course of the proceedings for such relief. It is convenient to refer to some of the relevant facts, in addition to the adoption of the resolutions in June 2012 and June 2013.

[3] The land in respect of which the rates have been imposed is used as a landfill. The applicant became the registered holder of the land on the 19th of November 2012. A rates notice was served on it on the 14th of January 2013. Later in January 2013, the applicant decided to get advice about the rates notice. It might be observed that that rates notice applied a rate approaching 41 cents in the dollar of the value of the land, and represented a substantial increase over the rates that had been imposed on the previous owner. Over subsequent months, the applicant corresponded with the respondent for the purposes of identifying the basis for the increase, and later challenging the validity of the decision. The respondent responded to this correspondence generally by addressing the issues raised.

[4] By a letter of the 17th of June 2013, the respondent, in response to a right to information request, provided material to the applicant, including a copy of the resolution and budget adopted in June the previous year. On the 26th of June 2013, it adopted the budget for the current year. On the 5th of August 2013, the applicant's solicitors wrote to the respondent, amongst other things indicating that they had instructions to commence proceedings to challenge the decisions. The respondent replied, indicating a conditional willingness to engage in a without prejudice meeting. That took place over the course of the following month.

[5] The present application was filed on the 12th of September 2013. The dispute today focused mainly on the application for a statutory order of review in respect of the decision made in June of 2012. The applicant submitted that the decision was one to which section 26(1) of the *J R Act* applied, and sought an extension of time for making the application. The respondent submitted that section 26(1) did not apply, but rather that section 26(3) did, and sought orders to the effect previously mentioned.

[6] Section 26(1) specifies the time within which an application for statutory order of review may be made in respect of certain decisions, and provides that the Court may allow further time for the making of the application. An application to which section 26(1) applies is identified as an application for a statutory order of review in relation to a decision, "that has been made and the terms of which were recorded in writing and set out in a document that was given to the applicant."

[7] The time period, subject to the court's power to extend it, for the making of such an application, is 28 days after "the relevant day". That expression is defined in section 28(5) by reference to a range of circumstances, some of which involve the giving of reasons for the decision. The relevant circumstance for the present case, however, does not involve that. Rather the relevant day is the day on which "a document setting out the terms of a decision is given to the applicant."

[8] The applicant contended that the relevant day was the day on which it received a copy of the relevant resolution, including the budget for 2012; that being the date of its receipt of correspondence dated the 17th of June 2013. That is, approximately the 19th of June 2013. The 28-day period would therefore expire on or about the 16th of July 2013.

[9] If section 26(1) applied, a proposition controverted by the respondent, then it was submitted for the respondent that the relevant date was the date of receipt of correspondence dated the 6th of March 2013, or alternatively a day no later than the 29th of April 2013.

[10] The respondent accepted that pursuant to the correspondence dated the 17th of June 2013, the applicant received a copy of the resolution of budget from June 2012. However, it submitted that that did not make section 26(1) of the *J R Act* applicable.

[11] Its submission appeared to be that the section did not become applicable because the applicant had received a document which, in fact, set out the terms of the relevant decision. Rather, the section applied only if it received such a document from a decision maker and the document was provided pursuant to the statute under which the decision was made. The provision of documents on about the 17th of June 2013 occurred consequent on a right to information request made under 2009 legislation, and not pursuant to the legislation which authorised it to decide to impose rates, that being the *Local Government Act* 2009 (Qld), section 94 of which requires and authorises a local government to decide rates and charges to be levied for the following financial year.

[12] The respondent submitted that any other construction would be inconsistent with the purpose of section 26(1). It also submitted that a different approach would be highly anomalous because it would enable the person affected by a decision to wait for many years, then take steps to obtain a copy of a decision, and then make an application within 28 days of being given a document setting out the terms of the decision.

[13] The purposive approach to the construction of legislation is not easy to apply to section 26(1), at least in the way for which the respondent contends. The respondent submitted that the purpose of section 26(1) was to provide finality in relation to decisions which might be subject to review. It is not apparent to me that that is an accurate statement of the purpose of the provision.

[14] The provision specifically permits the court to extend the time beyond that which would otherwise apply. No authority is identified which supported the submission. It seems to me that the true purpose of section 26(1) is to identify the time within which an application must be made. That purpose provides little assistance in construing the provision. While there may be results which might appear anomalous, it seems to me that consideration does not warrant a departure from the plain meaning of the words used.

[15] The effect of the respondent's submission is to read words into section 26(1). Those words would substantially restrict the natural reading of the language used in the section. That, in itself, raises a question about whether the submission should be accepted.

[16] The circumstances in which words might be read into a statutory provision are discussed in *Pearce on Statutory Interpretation in Australia* (6th edition) at paragraphs 2.28-2.32, where a number of conditions which must be satisfied before this can be done are referred to. They include the ability to identify, clearly, the words that have been omitted; and the fact that it is apparent that Parliament has omitted to deal with the circumstance with which it intended to deal. Even then, the

authorities referred to in the text indicate that the satisfaction of these conditions may not be sufficient to warrant the reading of words into a statutory provision.

[17] For the applicant it was submitted that the provisions relating to relief, by way of a statutory order of review, are beneficial provisions and that accordingly no narrow approach should be taken to provisions relating to the making of an application for such relief.

[18] It is correct to say that the legislation which introduces this remedy is beneficial. The specification of a time limit is not necessarily of a similar character; but the general context discourages me from taking an approach which would, in effect, add to the language used by the legislation.

[19] It therefore seems to me that the section applies whether or not a document setting out the decision was given under the legislation which authorised the making of the decision. In the present case the document was provided by the respondent to the applicant. It is therefore unnecessary to address the other qualification referred to by the respondent.

[20] I am satisfied, therefore, that section 26(1) applies when a document is given by a decision maker, to an applicant, which sets out the terms of the decision. In respect of the 2012 decision, that occurred, at the latest, by about the 19th of June 2013. It follows that the provisions of section 26(3) do not apply.

[21] It is then necessary to consider the submissions made by the respondent as to whether such a document was given to the applicant prior to June of 2013. The only authority to which I was referred, which is of assistance in determining that question, is *Stergis v Boucher* (1989), 86 ALR 174, a decision of Hill J. That decision dealt with analogous provisions found in the *Administrative Decisions (Judicial Review) Act* (1977) (Cth). While the language used is slightly different to that found in section 26 the differences appear to me not to be material.

[22] The applicant in that case sought to have review of a decision to commence proceedings by way of summons against him. It was submitted that the application was out of time because more than 28 days had passed since the summonses were served, the applicant, by then knowing the terms of the decision to bring the proceedings against him. Hill J identified the question to be decided as whether the summonses could be characterised as documents (using the language of the Commonwealth legislation) "setting out the terms of a decision to commence proceedings by way of laying informations". His Honour said that, while the summonses were the fruit of such a decision, they did not set out the terms of it. Although the applicant might infer the terms from the summonses, the summonses were not documents which satisfied the statutory description.

[23] At page 179, his Honour said that the policy of the provision specifying the time for making the application was that that time should be "circumscribed by reference to the furnishing by the decision-maker of some document which informs the recipient precisely what it is that has been decided." He also referred to the relatively formal context for the provisions specifying the time limit. His Honour's approach, it seems to me, supports the submission that the natural reading of the language of section 26(1) should be applied when identifying the document relevant for determining whether, first of all, there is a time limit; and, secondly, the limit itself.

[24] The first document relied upon by the respondent was a letter of the 6th of March 2013 from the respondent to the applicant. That letter set out some parts of the 2012 decision. The parts, however, referred to the circumstances in which the rates would not increase by more than 12.5 per cent above the rates levied for the previous year. Otherwise, the letter does not set out any material part of the 2012 decision. In my view, it does not satisfy the test for identifying the document which marks the commencement of the 28 day period.

[25] The letter of the 29th of April 2013 from the applicant to the respondent was relied upon as demonstrating that, by then, the applicant had been given a document setting out the decision. That letter quotes some parts of the budget adopted in June 2012, particularly relating to increases in rates. Other parts state, with some accuracy, the effects of other parts of the budget including those of particular relevance to the imposition of rates on the applicant's land.

[26] On the other hand, Mr Musselein, the chief financial officer of the applicant, swore an affidavit on the 31st of January 2014 read in these proceedings in which he deposed to the receipt of a copy of the budget consequent on the letter from the respondent of the 17th of June 2013 and swore that, to the best of his knowledge, the applicant had not previously been given a copy of the budget adopted in June 2012 by the respondent. No notice had been given to the applicant of a contention it had received a document setting out the terms of the 2012 decision prior to the letter of the 29th of April 2013.

[27] In addition to Mr Musselein's evidence, there was evidence by way of affidavit from Mr Christopher, the State manager of the applicant, who has plainly examined the records of the applicant, which goes to matters relevant to the receipt by the applicant of documents relating to the 2012 decision among other things. In an affidavit of the 7th of November 2013 he swore that it was not until recently that the applicant understood sufficiently the basis for the respondent's decision.

[28] It seems to me that, in the absence of cross-examination of these witnesses, I should be reluctant to draw an inference on a critical matter of this kind of which no previous notice was given. While it is true that the letter of the 29th of April 2013 reveals substantial knowledge of the document, it seems to me it does not follow that, in the circumstances to which I have referred, I should conclude that it demonstrates that the applicant was given a document setting out the terms of the 2012 decision at some time prior to the 29th of April 2013.

[29] I have addressed this submission on the basis that the relevant decision may be identified by examining the budget and considering those portions of it which are of relevance to the applicant's land. However, I am by no means satisfied that that is the correct approach. The material reveals that, consistent with the Local Government Act, the respondent passed resolutions in June 2012, one of which was a resolution that the budget and rating resolutions set out in the 2012-2013 budget book be adopted. It may be, therefore, accepted that the Council then resolved, in accordance with what appears to be a budget resolution which appears at page 6 of the budget itself, to adopt the budget. The budget, in turn, includes provisions relating to the imposition of rates including that rate relevant for these proceedings.

[30] In other words, it seems to me that the better view is that the relevant decision is the decision to adopt the budget, no doubt including the terms of the budget and that,

accordingly, the applicant was not given a document setting out the terms of the decision until it was given the budget including what I have referred to as the budget resolution and the balance of the document. However, it is not necessary to reach a firm conclusion about that to dispose of today's application.

[31] Accordingly, I find that a document setting out the terms of the 2012 decision was first given to the applicant on about the 19th of June 2013. An extension of time is nevertheless required for the application for a statutory order review in relation to that decision.

[32] The extension is for a period of approximately two months. It seems to me that in determining whether to grant the extension, earlier knowledge of the applicant of the effect of the decision is nevertheless of some relevance. I would not, however, refuse the application because of that knowledge and because of the time that passed from the applicant's first knowledge of the rates being imposed on it.

[33] The applicant first became aware of the rates imposed under the 2012 decision early in 2013. It gives, in my view, a satisfactory explanation for what occurred subsequently. In essence, it sought to find out more about the decision, to take advice and to resolve the matter without recourse to litigation. I do not propose to set out in detail what occurred. I do note, however, that in particular, the month prior to the commencement of these proceedings was substantially taken up in attempts at a without prejudice resolution, and that early in August, the applicant's solicitors indicated that they then had instructions to institute proceedings which one might infer could have been done relatively shortly after their letter of the 5th of August 2013.

[34] The respondent accepted that it had suffered no prejudice by reason of the fact that proceedings were not commenced earlier.

[35] The applicant relied upon the relationship between its challenge to the 2013 decision and its challenge to the 2012 decision in support of its application for an extension of time. It submitted that there were overlapping facts and that that was a relevant consideration. I accept that there will be some overlap of factual matters to be investigated in respect of each decision, although the respondent submits each decision was made independently. The challenge alleges that each decision was unreasonable in the sense referred to in *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 QB 223, and it seems to me that, in particular in respect of that allegation, there will be common factual matters to consider.

[36] The other substantial basis for the applicant's challenge is that the increases followed by reason of the fact the land was transferred to it from a previous owner, the resolutions in each case having the effect that a lesser rate would have otherwise been imposed. There is scope, in my view, for there being common ground in respect of the challenge to each of the decisions on that basis, and that factor provides some support for the grant of the extension, although I do not consider it to be particularly weighty.

[37] The applicant submitted that the public interest would be advanced, rather than harmed, by granting the extension. I do not accept the precise terms of the supporting submissions, but I do accept that there is a public interest in ensuring that rates, particularly in substantial amounts, are imposed in accordance with the

legislative provisions which authorise them. Ultimately, rates are compulsory exaction by an authority under legislative provision, and are a significant intrusion on what would otherwise be the rights of a citizen. I therefore accept that this consideration provides support for the extension also.

[38] The respondent referred to the length of time which has passed since the 2012 decision; but while that is relevant, it is not of particular weight given that the respondent does not suggest any prejudice.

[39] The respondent is critical of the time taken by the applicant to make inquiries and do other things in relation to the application. It seems to me, however, that the applicant's conduct in this regard was reasonable.

[40] The respondent relied on the decision in *Newby v Moodie* (1988) 83 ALR 523, where an extension of time had been refused. It might first be observed that a determination to grant or refuse an extension is a decision to be made by reference to the facts of each individual case, and it is not usually helpful to refer to the facts in other cases. Beyond that, the substantial reason why the refusal of the extension was thought appropriate was the court's finding that the applicant there had made a deliberate decision to pursue other relief, rather than to apply for an extension of time to bring review proceedings. That circumstance does not apply in the present case.

[41] The amount of the rates is quite substantial. In each case, it is more than 40 per cent of the value of the land. In other words, taken together, the amount of the rates approaches the total value of the land, plainly, a significant sum. It seems to me that that too is not irrelevant in considering whether to grant an extension of time.

[42] Weighing up the competing considerations, I propose to grant the extension. I particularly rely upon my findings that the applicant has provided a satisfactory explanation for the time which has passed to the date when it filed its application; and that the respondent has not suffered any prejudice by reason of the passage of that time.

[43] Different considerations relate to the 2013 decision. The position ultimately reached by the parties is that it was not a decision to which section 26(1) applied. What then resulted is that I should treat this as an application by the respondent for an order for action under section 26(3) of the *J R Act*. Under section 26(4) in such a case, I am to have regard to the time when the applicant became aware of the 2013 decision. The decision obviously was only made in June of 2013. In view of the position ultimately reached by the parties, it is not entirely clear precisely when the applicant first became aware of the precise terms of the 2013 decision, but it would appear to be in the period between June and early August of that year. The delay is not great. Approximately a month of it may be explained by the without prejudice negotiations in which both parties took part.

[44] The ultimate question I have to consider is whether the application was or was not made within a reasonable time after the 2013 decision. It seems to me that it was made within a reasonable time of that decision and, accordingly, I refuse to make an order under section 26(3) in relation to the 2013 decision.

[45] The challenge to the decisions to levy rates relates to matters which are either part of the 2012 decision and the 2013 decision or consequential to those decisions. I say that it may relate to matters which are parts of those decisions because the decisions themselves seem to extend to the levying of rates. The nature of these applications, it seems to me, means they should be dealt with in the same way as the applications for the extension of time in relation to the 2012 decision. I, accordingly, propose to give such extensions of time as are necessary in relation to those decisions.

[46] Applications under Part 5 of the *J R Act* are subject to the time limits found in section 46 of that Act. An application under Part 5 must be made as soon as possible, and in any event, within three months after the day on which the grounds for the application arose. Detailed submissions were not made about when those grounds arose and I propose to assume they did when each decision was made. That would mean that the three months expired in respect of the 2012 decision in September 2012. It would also mean that in respect of the 2013 decision, the period expired after the application was filed. The approach taken by the parties was that the discretionary considerations relevant to an extension of time for the application for a statutory order of review were, in broad terms, the same as those for an extension of time under section 46 in the *J R Act*. I would, accordingly, grant the extension by reference to similar considerations.