

# PUSHING THE LIMIT: HOW TO OPPOSE SAT APPLICATIONS BEING MADE OUT OF TIME

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# EXTENSIONS OF TIME

## Basic position

- Applicants for review in SAT must lodge within 28 days of the day notice of the decision is given: rule 9 of the *State Administrative Tribunal Rules*.
- Time can be extended by the Tribunal: rule 10.

# EXTENSIONS OF TIME

- When does the 28-day time run from?
  - Date of decision?
  - *No*
  - When notice is given.
  - SAT determined that the 28-day period begins when the notice is given not just of the decision, but also of the right of review.

*Bocol Constructions Pty Ltd and Keslake Group Pty Ltd [2017] WASAT 15*

# EXTENSIONS OF TIME

*Murrin and City of Wanneroo* [2016] WASAT 87 (and 88)

Story:

Owner-builder, piecemeal applications. Compliance concerns arose.

(iii) Applicant complained about decisions, sought meetings.

- Relevance: LG, as model litigant, was prepared to concede that good faith efforts to negotiate (even if on a flawed logic) should not count against the applicant in calculating delay.

(iv) Christmas & NY break

- Relevance: LG, as model litigant, was prepared to allow a small extra period as explained delay.

# EXTENSIONS OF TIME

*Murrin and City of Wanneroo [2016] WASAT 87 (and 88)*

Story:

Owner-builder, piecemeal applications. Compliance concerns arose.

Notes:

- (i) Applicant took certain comments by LG officers, and notes on an approved plan, to expand the scope of what he took to be approved, beyond what was sought.
- (ii) LG responded to application for building permit by stopping clock: other approvals required & missing info should be supplied.
- Relevance: In both instance - no decision on the merits. A fresh application, with supporting information required, can allow a decision.

# EXTENSIONS OF TIME

1. Discretionary
2. Only exercisable if strict compliance works an injustice upon the applicant

# EXTENSIONS OF TIME

3. 4 core factors
    - i. Length of the delay
    - ii. Reasons for the delay
    - iii. Whether there is an arguable case
    - iv. The extent of any prejudice to the respondent
  4. Indulgence
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# EXTENSIONS OF TIME

## The 4 factors

- Delay

Consider conceding any delay that *is* explained, focusing your objections on the period that is unexplained.



# EXTENSIONS OF TIME

The 4 factors:

- Arguable

Don't concede out of hand - some applications are genuinely unarguable.

# EXTENSIONS OF TIME

## The 4 factors:

- Prejudice
  - (a) If there is prejudice, take the point (but don't oversell it).
  - (b) Be specific.

# EXTENSIONS OF TIME

- Many respondents move straight to 4 factors.
- Don't forget:
  - The discretion can only be exercised in the applicant shows injustice
  - Note the onus.
  - Cross-examine the applicant's witnesses

# EXTENSIONS OF TIME

*Murrin*

- **Strategy:** put the applicant (who bears the onus) to proof.

# EXTENSIONS OF TIME

## *Murrin 1*

For the grant of leave:

- The applicant's argument was arguable (not hopeless, unarguable or bound to fail);
- There would not be any *significant* prejudice to the LG.

Against the grant of leave:

- "considerable" delay (55 days);
- no adequate reason for that delay; and
- the applicant can make a further DA.

→ Refusal to grant, as it will not work an injustice to the applicant.

# EXTENSIONS OF TIME

## *Murrin 2*

For the grant of leave:

- There would not be any *significant* prejudice to the LG

Against the grant of leave:

- “considerable” delay (55 days);
- no adequate reason for that delay;
- No arguable case; and
- applicant can make a further application for a building permit.

→ Refusal to grant, as it will not work an injustice to the applicant.

# EXTENSIONS OF TIME

## Take home points ...

- All correspondence re decisions, must advise of right of SAT review.

When responding to an application for an extension of time ...

- As the discretion can only be exercised in the applicant shows injustice
  - *Don't* move straight to 4 factors.
  - *Make* the applicant *meet* their onus to show injustice.

# EXTENSIONS OF TIME

Questions?

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