Land and Environment Court
New South Wales

Medium Neutral Citation:	**Boomerang & Blueys Residents Group Inc. v New South Wales Minister for the Environment, Heritage and Local Government [2018] NSWLEC 139**
Hearing dates:	7 June, 24 July 2018
Date of orders:	07 September 2018
Decision date:	07 September 2018
Jurisdiction:	Class 4
Before:	Sheahan J
Decision:	The Minister's Notice of Motion is dismissed. See par [109]
Catchwords:	EVIDENCE: Notice to Admit Facts issued by the Applicant and challenged by one Respondent, who asks the Court to set it aside – only some elements of notice pressed – principles to apply.
Legislation Cited:	Associations Incorporation Act 2009 Civil Procedure Act 2005 Coastal Protection Act 1979 Evidence Act 1995 Uniform Civil Procedure Rules 2005
Cases Cited:	Batistatos v Roads and Traffic Authority of New South Wales (2006) 226 CLR 256; [2006] HCA 27 Edwards v The State of New South Wales [2017] NSWSC 459 Gerard Michael McGuirk v The University of New South Wales [2009] NSWSC 253 McDonald v McDonald [2016] NSWSC 724 McGuirk v University of New South Wales [2010] NSWCA 104 Minister for Immigration and Citizenship v SZMDS (2010) 240 CLR 611 Minister for Immigration and Multicultural and Indigenous

	Affairs v SGLB (2004) 207 ALR 12 Parkesbourne Mummel Landscape Guardians Inc v Minister for Planning (2009) 170 LGERA 118; [2009] NSWLEC 101 Port Macquarie-Hastings Council v Mansfield [2018] NSWLEC 107 Rogers v The Queen (1994) 181 CLR 251 Sutherland Council v Minister for Planning (1995) 86 LGERA 76
Category:	Procedural and other rulings
Parties:	Boomerang & Blueys Residents Group Inc. (Applicant) New South Wales Minister for the Environment, Heritage and Local Government (First Respondent) MidCoast Council (Second Respondent)
Representation:	Counsel: Mr R White, barrister (Applicant) Ms S Duggan, SC with Ms N Hammond, barrister (First Respondent) Mr J Lazarus, barrister (Second Respondent) Solicitors: King & Wood Mallesons (Applicant) Department of Planning (First Respondent) Lindsay Taylor Lawyers (Second Respondent)
File Number(s):	2018/51177

JUDGMENT

Introduction

1 This is an application by a Respondent to have the Court set aside a Notice to Admit Facts ("NAF") served by the Applicant.

2 These judicial review proceedings were commenced by summons on 15 February 2018, supported by a substantial affidavit sworn by the Applicant's solicitor, Karen Coleman, and a bundle of documents.

3 The Applicant is an association, established in 2011 as an informal group, incorporated under the *Associations Incorporation Act 2009* in April 2015, and located in Newcastle East. Most of its members are said to be registered proprietors of properties within Council's area and within the coastal zone defined in the *Coastal Protection Act 1979* ("the Act").

4 The association challenges decisions made by the First Respondent (the relevant State Government Minister – "**the Minister**") on 16 November 2017, and by the Second Respondent ("**the Council**") on 20 December 2017, concerning the Act and the Great Lakes Coastal Zone Management Plan ("GLCZMP" or "the Plan" – see *Exhibit B1* at tab 6).

5 The Minister certified the Plan, and the Council adopted it, on those respective dates, and the Applicant seeks declarations that both those decisions/determinations are invalid. As counsel for the Applicant noted (T24.07.18 p28, LL35-37):

> ... if we succeed against the minister in the summons and succeed in quashing the decision of the minister to certify the plan, then we don't
>
> need to seek any relief against the council.

6 The Association was extensively involved in the evolution of the GLCZMP, and members met with the Minister of the day, officials, and Council officers, prior to the making of the plan. Those interactions are the subject of the NAF.

7 Various, allegedly relevant, exchanges, in which the Applicant was involved, commenced in late 2014, and also involved the then responsible Minister, Robert Stokes, his replacement, Gabrielle **Upton** (who certified the Plan), an ongoing coastal adviser to government, Angus **Gordon**, and the Respondent Council. Stokes remained involved in the subject matter, as Minister for Planning, until a ministerial reshuffle brought the present Respondent, Minister Upton, to the now relevant portfolio.

8 Apart from the provisions of the Act, regard must be had, in the preparation of CZMPs, to Guidelines published by the then Minister in July 2013 (*Exhibit B1*, tab 14).

The Proceedings

9 The summons is extensive, comprising 84 paragraphs, and stating **four** grounds of challenge, interpreted by the Minister (subs15) as:

(1) Unreasonableness (presumably in the "*Wednesbury*" sense – pars 47, 48, and 84);

(2) non-compliance with the Act and Guidelines (pars 51 to 58, 60, and 61);

(3) deficiency of information for the GLCZMP (pars 64 and 72); and

(4) no rational basis for the risk assessments in Tables 1-3 and 1-4 of the Plan (found in *Exhibit B1* at tab 6 fols 034 to 036. See also ground (1) above, pars 78 to 80, and 83 of the summons, and T24.07.18 p21, L31 to p22, L11).

10 The summons narrates the development of the Plan, commencing with coastal risk related work done by Worley Parsons ("WP") in 2010-2011, followed by risk mapping in the Great Lakes Local Environmental Plan 2014 ("the LEP"), and further geotechnical ("Ground Penetrating Radar") work in 2014 ("the GPR reports").

11 Both Respondents filed their Responses to the summons on 24 April 2018.

12 Among each Respondent's Points of Defence ("POD") is a challenge to the Applicant's standing to bring these proceedings (Council POD 5, and Minister POD 85).

13 All three parties have filed tender bundles – the Applicant on 7 May 2018, the Minister on 15 May 2018, and the Council on 23 May 2018. There is some duplication of documents across the bundles.

14 The Minister contends that her tender bundle contains "the totality of material" before her "in the exercise of her powers" (subs par 6), but the Applicant complains (subs par 8) that:

> ... There is no evidence before the Court that the First Respondent had been given or had read the documents provided behind Tabs 5 to 14 of the Tender Documents filed by the First Respondent on 15 May 2018. Additionally, there is no evidence that the First Respondent read the documents provided behind Tabs 1 to 3 of the Tender Documents bundle, but only that the briefing note and its attachments were prepared and the first page was initialled by the Minister.

15 The Applicant also filed, in May, affidavits from two of its office-holding members, Adrian Donald Hibberd (its Secretary and Public Officer), and Michael John Francis Fox (its President), deposing to the Applicant's allegedly relevant dealings with the Respondents and others, including Gordon.

16 Neither Respondent has, at least as yet, filed any affidavit evidence to rebut the allegations in the summons, or the sworn evidence of Hibberd and Fox.

17 The Applicant is represented by Robert White of counsel, the Minister by Sandra Duggan SC and Natasha Hammond of counsel, and the Council by Jason Lazarus of counsel.

Notices to Admit Facts

18 Section 56 of the *Civil Procedure Act 2005* ("CP Act") provides:

> (1) The overriding purpose of this Act and of rules of court, in their application to civil proceedings, is to facilitate the just, quick and cheap resolution of the real issues in the proceedings.
>
> (2) The court must seek to give effect to the overriding purpose when it exercises any power given to it by this Act or by rules of court and when it interprets any provision of this Act or of any such rule.
>
> (3) A party to civil proceedings is under a duty to assist the court to further the overriding purpose and, to that effect, to participate in the processes of the court and to comply with directions and orders of the court.
>
> ...

19 The NAF procedure is governed by Rule 17.3 of the Uniform Civil Procedure Rules 2005 ("UCPR"), which provide:

Notice to admit facts

(1) The requesting party may, by a notice served on the admitting party (***the requesting party's notice***), require the admitting party to admit, for the purposes of the proceedings only, the facts specified in the notice.

(2) If, as to any fact specified in the requesting party's notice, the admitting party does not, within 14 days after service on the admitting party of the requesting party's notice, serve on the requesting party a notice disputing that fact, that fact is, for the purposes of the proceedings only, taken to have been admitted by the admitting party in favour of the requesting party only.

(3) The admitting party may, with the leave of the court, withdraw any such admission.

20 The following other provisions of the UCPR are also relevant:

2.1 Directions and orders

The court may, at any time and from time to time, give such directions and make such orders for the conduct of any proceedings as appear convenient (whether or not inconsistent with these rules or any other rules of court) for the just, quick and cheap disposal of the proceedings.

...

2.3 Case management by the court

Without limiting the generality of rule 2.1, directions and orders may relate to any of the following:

...

(e) the making of admissions,

...

42.8 Dispute of fact subsequently proved or admitted

(1) In this rule:

disputing party means the party who serves a notice disputing a fact under rule 17.3 (2).

fact in dispute means the fact that is the subject of a notice served under rule 17.3 (2).

requesting party means the party who is served with a notice disputing a fact under rule 17.3 (2).

(2) Unless the court orders otherwise, the disputing party must, after the conclusion of proceedings in which a fact in dispute is subsequently proved or is subsequently admitted by the disputing party, pay the requesting party's costs, assessed on an indemnity basis, being costs incurred by the requesting party:

(a) in proving the fact, or

(b) if the fact has not been proved—in preparation for the purpose of proving the fact.

(3) An entitlement to costs under this rule is not affected by any order as to costs unless that order makes particular reference in that regard.

21 As Ms Duggan noted (T24.07.18 p6, LL10-24):

> The only response available is either an admission or a denial and the form of the admission sought is a matter entirely in the hands of the party who drafts the notice. And it is that elected drafting that the party who receives the notice must respond. So I either admit or I deny.
>
> ...
>
> ... whilst it is a procedural step it does have significant consequences and significant consequences in relation to both the drafting, that is, what we're being asked to admit, and the consequence of denial if we choose to respond not by admission.

22 On 24 May 2018, the Applicant served on the two Respondents in the present matter a NAF, “in very similar terms” (T07.06.18 p8, L39).

23 That which was directed to, and is now challenged by, the First Respondent Minister, is before the Court (as *Exhibit B2*). It sought admission by the Minister of 20 “facts”.

24 On 5 June 2018, the Minister filed a Notice of Motion (“NOM”) seeking to have the whole notice set aside.

25 Ms Duggan complains (T24.07.18 p8, LL31-34) that:

> ... the applicant is not seeking to have us admit incidental matters but rather form opinions, express conclusions, inquire of other people and basically they make a submission to us and ask us to admit it.

and later (p9, L49) that the Applicant has “cherry-picked parts of conversations”, and (p10, LL13-14) has suggested “that what was in the mind of Minister Stokes was somehow in the mind of Minister Upton”.

26 Ms Duggan further complains (T24.07.18 p11, LL20-25) that the NAF is:

> ... asking me to go and ask Mr Gordon, who is not a party to the proceedings, who's only one member of a panel, which advice was not sought by the minister as an individual, not a matter which he made a submission separately - the panel made its collective or collegiate decision - to give what one can only assume is expert opinion in relation to the current situation and the situation as it was when the minister made the decision.

27 The Minister’s NOM was supported by (1) an affidavit affirmed by the Minister’s solicitor, Donette Holm (read on the motion), and (2) the Minister’s tender bundle (tendered on the motion as *Exhibit B1*).

28 The Applicant relied on no documentary evidence (T24.07.18 p2, L50 to p4, L19).

29 Among matters revealed by Holm’s affidavit is the reluctance of Angus Gordon to assist the Applicant by providing a witness statement (Holm p15, item 2). Gordon was chairman of the NSW Coastal Panel, and remains a member of the NSW Coastal

Council, a collegiate body, and is not a party to the proceedings, but the Minister complains that she is being asked to make a binding admission in respect of his opinion (T24.07.18 p11, LL5-33).

30 When the Minister's set-aside NOM was listed before me as List Judge, on 7 June 2018, I:

(1) stayed the NAF until 14 days after judgment on the NOM;

(2) vacated the directions hearing scheduled for 8 June 2018; and

(3) stood over that directions hearing, and the hearing of the NOM, to 24 July 2018.

31 The Court was also informed on 7 June that the Council had responded to the Applicant's NAF directed to it, but reserved its position until the Minister's NOM had been determined (T07.06.18 p8, LL41-45). Its counsel, Mr Lazarus, confirmed that stance at the hearing of the NOM (T24.07.18 p1, LL44 to p2, L9, and p29, LL5-14).

32 When I heard the Minister's NOM on 24 July 2018, the Applicant pressed **only 9** of the original 20 paragraphs of the NAF, namely pars **5, 7, 8, 9, 10, 15, 17, 19, and 20**.

33 The parties concede that the Court has power to set aside the NAF "in the circumstances of the case" (see ss 14 and 61(1) of the CP Act, and also UCPR 2.1, in [20] above).

The Present NAF Dispute Introduced

34 In all the above circumstances, and given the state of the pleadings (to which I will return, at [44]), the Applicant says (subs 7) that it cannot be clear as to which of the material facts it has pleaded is/are really is dispute. The NAF is, therefore:

> ... intended to remedy this deficiency (at least in part) by seeking admissions (or denials if there is a genuine basis for dispute) in relation to certain key factual matters. This is an entirely usual procedure under the UCPR. Rather than responding to the Notice in the usual way (ie. by an admission or denial) the Minister applies to avoid this by having the entire Notice set aside.

35 Mr White further submits (par 9):

> Section 56(1) of the [the CP Act] imposes a duty on all parties to assist the Court to further the overriding purpose in s 56(1), namely, "*to facilitate the just, quick and cheap resolution of the real issues in the proceedings*". The purpose of the Applicant's [NAF] is to seek to elicit admissions of material facts which arise on the Applicant's pleaded case and about which there is no dispute, thereby narrowing issues and reducing costs and delay in accordance with the parties' obligations under s 56 ...

36 During his response to Ms Duggan's oral submissions, Mr White submitted (T24.07.18 p23, LL8-21, and L45 to p24, L9):

> ... we felt compelled to issue the notice to admit facts in this case is (sic) for two reasons. Firstly, the defence to the summons is wholly unresponsive to the summons and the way in which the case has been pleaded, so that we are unable to glean from the defence what the true issues in the case are.
>
> Secondly, that your Honour's seen that in the substantive proceedings there will be evidence put forward as to what took place at the various meetings between my client and the ministers at the time, and the minister has chosen not to put on any evidence in response to those affidavits, so we don't know, as we stand here today, to what extent those conversations are going to be objected to or whether there's any dispute about those conversations, so part of the rationale for the notice to admit facts is to try and narrow issues and narrow facts in dispute.
>
> ...
>
> As we stand, we don't know whether it's a factual issue in the case, whether the beaches are indeed stable and in balance, whether what the physical characteristics of the beaches are as acknowledged by the minister.
>
> We've pleaded what they are but we haven't been told what the minister says about that pleaded fact. That's not an admission or a denial. We simply don't know. We also don't know from the pleadings whether it's admitted or denied that a meeting took place and that the advice was given. If we've persuaded your Honour that advice to the minister that beaches are stable and in balance is relevant in circumstances where properties at those beaches have been categorised at immediate high risk for coastal erosion and from wave runup, if your Honour accepts the relevance there, at the moment we simply don't know on the state of the pleadings whether it's admitted that that advice was received or not.

37 He continued (Tp24, L23-37):

> It was suggested by my learned friend that we've sought to cherrypick from conversations and it's unfair and oppressive to ask the minister to consider only part of a conversation. Your Honour, that's simply not a fair characterisation of the way in which the matter has been put in the pleadings. We've pleaded what the conversation was and what the advice was, and as I say, there's been nil response to that in the pleading, in the defence.
>
> We've also put on evidence as to what the conversation was and no evidence has been put on by the minister to gainsay that that conversation took place or that the advice was only part of a long series of advices given to the minister during that conversation. We simply don't have that evidence, your Honour. The only evidence that we have to date is what is said by my clients in their affidavit material and what is said on the pleading in the summons, namely, that the conversation took place and this was the advice given. It's not oppressive in those circumstances for the minister to answer that.

38 The Applicant argues in its written submissions (par 10) that the Minister’s obligations as a “model litigant” dictate that she keep costs down by “not requiring the other party to prove a matter which the State or an agency knows to be true”.

39 The Applicant also complains (subs 13 and 28) that the Minister’s position has changed from that put to me, on 7 June, by her junior counsel, Ms Hammond.

40

The Minister submits generally (par 11) that the matters enumerated in the pressed paragraphs of the NAF are:

(1) **not** “facts” properly **capable of admission** by her; and/or

(2) **not relevant**, as they do not reasonably relate to any pleaded ground of the Applicant’s challenge, or any matter that is genuinely an issue for determination;

and/or

that the NAF is “**oppressive**”, and so an **abuse of process**.

41 The Minister further submits that it is not sufficient for the Applicant to assert that reciting “facts”, or making allegations, in its pleadings, makes them relevant (subs pars 14 and 16).

42 The question for the Court is (par 16):

> ... will the facts sought to be admitted, if accepted, rationally affect a fact in issue in the proceedings[?]

43 The Minister says (par 17) that some of the “facts” sought to be admitted “are not relevant as they do not reasonably relate to any pleaded ground [or] ... are matters properly established on the documentary material ...”.

The Pleadings

44 It is relevant to observe at this point the different approaches the parties have taken in their pleadings.

45 The Applicant set out in its summons a large number of “particulars” of a factual nature (pars 1 to 46). Of those, pars 32 and 34 recounted the making of the decisions challenged in the proceedings

46 The summons then went on to state and amplify the Applicant’s four grounds of challenge to the nominated decisions made by the Respondents (pars 47-80).

47 The summons then provided other information about the challenge (pars 81-83), and concluded (in par 84) with this “Summary”:

> In the premises of the grounds pleaded in the foregoing paragraphs of this Summons each of the decisions of the first respondent and second respondent pleaded respectively in paragraphs 32 and 34 above was invalid, void and ineffective on the further ground that each was an irrational exercise of power.

48 The Council’s Response to the summons, filed 24 April 2018, simply “denies” each of the four grounds, and in the case of Grounds 2, 3, and 4 “says further” various things in respect of each of those grounds. Par 5, as earlier noted ([12]), questions the Applicant’s standing to bring the challenge. (It appears from p15 of Holm’s affidavit that Council may seek to amend its filed Response.)

49

On the other hand, the Minister's Response addressed each of the 84 paragraphs, specifically and in turn, and added (as par 85 of its Response) her challenge to the Applicant's standing.

50 Frequently in her Response (i.e. to approximately 40 paragraphs of the summons) the Minister said (my emphasis):

> The First Respondent **does not plead** to this paragraph as it is not a proper pleading and is a matter for evidence.

51 Six other paragraphs were "admitted" (pars 1, 3, 5, and 11-13); three were partly admitted (pars 4, 14, and 54); four (pars 7-10) were "not admitted" (the First Respondent "does not know and cannot admit"); six more were deflected to the Second Respondent (pars 16-21); and 13 were simply "denied".

52 The Applicant complained by letter (Holm, p13) about the form of the Minister's Response/POD, on the basis that it fails to identify the issues "genuinely in dispute between the parties", or the grounds upon which relief is opposed.

53 Mr White said (T24.07.18 p29, L31 to p30, L10):

> ... written and oral advice given to the minister that the beaches are stable and in balance is plainly relevant to the pleaded judicial review of the certification of this CZMP, ... [I]t is appropriate to use processes such as notice to admit facts where the facts are themselves relevant to the pleaded judicial review case ... [T]he case management requirements and obligations in the CPA (sic) Act have become even more onerous on parties to seek to seek to identify and narrow issues so that only the real issues in dispute are forward at the substance hearing. As I say, we've been really pressed to make this notice to admit facts because of the way in which the case has been conducted by the minister in defence, whereas we say ... almost all aspects of the pleaded summons are up in the air because of the way in which the minister has decided to plead the case, ... in this entirely unresponsive way so that we don't know and we won't know ... until trial what the issues in the case are.
>
> As your Honour will recall, all the evidence is on, the pleadings have been done and we expect on the next case management occasion, once your Honour has given judgment on the notice to admit facts dispute, we submit that a timetable for the hearing will be set, so we'll be very quickly into the hearing and we ... won't know what the real issues in the case are. In my submission, the minister should not have the notice set aside. The minister should be directed to answer the notice as the minister can by way of either admission or denial.

54 The Minister's lawyers responded to Holm's complaint letter, saying (Holm p19) that they "consider the response to the Summons is adequate having regard to the manner in which the Summons was pleaded".

55 Ms Duggan SC made plain in argument that, as it is for the Applicant to fulfil its onus of proof, its use of the NAF, directed to the Minister, is inappropriate. She said (T24.07.18 p32, L36 to p33, L11):

> I am required to answer the summons and to put on whatever evidence I

> wish to rely upon. I have done that. The applicant is required not to plead evidence. It has. We've responded appropriately. The just, cheap and quick is that the applicant goes in knowing what its case is and what it has to prove. That's its election. It's drafted the statement of facts, it's drafted its summons the way it has. We're responding to that. If there (sic) not getting the answers that they want, it may well be because they've not drafted their documents appropriately.
>
> They haven't pleaded the minister had this advice and didn't do anything. If they had pleaded that, I would've had to respond to that pleading. I'm perfectly entitled to deny it, which is an appropriate course. To the extent that they have pleaded their case, we have responded to it. To the extent that we say this is not a proper pleading, it's because they're pleading evidence. The UCPR says they can't plead evidence. You can't plead evidence for the purposes of getting an admission and the[n] complain that the person doesn't fall for your trick.
>
> What effectively the applicant is arguing, the minister should've placed greater weight on the material that it gave her and (sic – [than]) the material that her experts gave her. That's not Wednesbury unreasonableness. They haven't pleaded a failure to take into account. They haven't pleaded to taking into account an irrelevant consideration. The matters that were before the minister are in the bundle that the applicant has. It can make its case on the basis of the evidence that we filed. It's not for us to tell them what it says. It's not for us to tell them what it means.

Authority

56 Neither the parties nor the Court could identify very many (at least, reported) cases in this Court where there has been a challenge to a NAF.

57 Mr White, appearing for the Applicant, took the court to Bignold J's 1995 decision on the somewhat analogous procedure of administering interrogatories: *Sutherland Council v Minister for Planning* ("*Sutherland*") (1995) 86 LGERA 76.

58 The then prescribed procedure for the making of a local environmental plan required the Director of Planning to provide a report (on the draft plan) to the Minister. The Council alleged that the relevant public actions of both office-holders were (p77) "tainted by irrelevant and improper considerations and a lack of good faith and involve an excess of statutory power". Council challenged changes made to the draft by the Director before the plan was made by the Minister, and administered several interrogatories to the two respondents. According to the headnote (at 77):

> Some answers were vague and to several questions objections were variously taken on grounds that the questions were irrelevant and/or oppressive and/or amounted to impermissible cross-examination. The answers were not verified.

59 Bignold J, relying on much historic authority (cited at pp79-82), held (p78) that the answers to interrogatories required verification by affidavit, and (p79) that the response "I am now unable to recall" was "insufficient both as to form and substance".

60

His Honour dealt individually with several of the questions as the respondents contended they were irrelevant, and some also oppressive. His Honour rejected those submissions, on the basis (p85) that the questions went to “issues raised by the applicant’s pleading”. He said:

> Not only is the content of the s 69 report relevant, but how and why that content came into being, must be relevant to the applicant's allegations of invalidity based upon irrelevant considerations, improper purpose and lack of good faith.

61 Ms Duggan, for the Minister, said that *Sutherland* (T24.07.18 p30, L20-24):

> is not authority ... for the propositions that my friend puts. What it is authority for is a properly pleaded case where the requisitions made to the person in whom the knowledge rests is asked a specific question and that question's relevant, they need to answer it. That is not this case. All bar one of the facts relate to matters not relating to my client, Minister Upton.

62 In *Parkesbourne Mummel Landscape Guardians Inc v Minister for Planning* (“*Parkesbourne*”) (2009) 170 LGERA 118; [2009] NSWLEC 101, a residents’ group opposed the declaration that a wind farm proposal was a “critical infrastructure project”, under the then s 75C of the EPA Act.

63 In its proceedings, the group served a NAF on the proponents of the project, seeking admissions that “no agreements had been made with various named landowners to host turbines on their respective landholdings”. The proponents sought to set the NAF aside.

64 Lloyd J held that the proceedings as pleaded concerned the approval process, not the implementation of the project. The issue of hosting agreements was not, therefore, relevant, the NAF being directed to the possibility of implementing the project.

65 His Honour also held that the NAF procedure was, in those circumstances, “both inappropriate and oppressive” – the notice sought admissions “for an illegitimate purpose”, and, although a NAF is a procedural step, it can be found to amount to an abuse of process. His Honour found that that NAF, being both for an illegitimate purpose, and oppressive, amounted to an abuse of the Court’s process.

66 His Honour referred to *Batistatos v Roads and Traffic Authority of New South Wales* (2006) 226 CLR 256; [2006] HCA 27 and *Rogers v The Queen* (1994) 181 CLR 251, to both of which I referred recently in *Port Macquarie-Hastings Council v Mansfield* [2018] NSWLEC 107 (on the question of procedural abuse in a subpoena context), and set the notice aside.

67 More authority on setting aside NsAF can be found in the NSW Supreme Court.

68 Parts of a NAF were set aside by Schmidt J in *McDonald v McDonald* (“*McDonald*”) [2016] NSWSC 724. The relevance of the admissions sought in that case was disputed, but much of the judgment deals with questions concerning the authenticity of

documents. Her Honour relevantly said (at [31] and [37] – emphasis added):

> 31 Whether admissions are made; whether further admissions are sought; and if sought, how they are responded to, **must all be approached by the parties in light of the overriding duty imposed upon them by s 56**. In RMS's case, it **also has relevant obligations as a model litigant**.
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> ...
>
> 37 What is in issue depends firstly on what is pleaded and secondly, what is admitted.

69 More recently, Davies J decided *Edwards v The State of New South Wales* ("*Edwards*") [2017] NSWSC 459, in which a self-represented litigant claimed damages for false imprisonment and malicious prosecution, and served a NAF concerning what Davies J called ([7]) "169 so-called facts which it required the Defendant to admit".

70 His Honour set aside the notice, saying inter alia (at [13] and [17] – emphasis added):

> 13 The **principal purpose** of a Notice to Admit Facts and a Notice to Admit Authenticity of Documents is **to facilitate proof**. In particular, it is to facilitate proof **of incidental matters or matters of some precondition which may not be in issue**. However, until issue is joined on the pleadings what will and will not be contested will not be apparent. Although there may be some cases where it may be appropriate to seek an admission at a very early stage (and **r 17.3 UCPR contains no time stipulation**) ordinarily it would be inappropriate to serve a Notice to Admit Facts until the pleadings are completed: *Gerard Michael McGuirk v The University of New South Wales* [2009] NSWSC 253 at [98]. That holding was apparently not disapproved on appeal although the appeal was allowed: *McGuirk v University of New South Wales [2010] NSWCA 104* at [130].
>
> ...
>
> 17 I am satisfied that the Court has the power pursuant to r 2.1 UCPR to set aside the Notice to Admit Facts: *McGuirk* (CA) at [144] and [160]ff. I am also satisfied that there is power in s 61(1) of the *Civil Procedure Act 2005* (NSW) in the present case because I consider that **the setting aside of the Notice to Admit Facts in its present form is more likely to bring about a speedier determination of the real issues between the parties to the proceedings**. That is particularly so because, as noted, the pleadings are not complete and the issues are not defined, and many of the matters raised by the Notice to Admit Facts are irrelevant to what is known of the issues on the present state of the pleadings. **The introduction of irrelevant matters in such a lengthy Notice is likely to delay the final speedy determination of the proceedings**.

The Challenged NAF in More Detail

71 As earlier noted ([32]), the Applicant presses only paragraphs 5, 7, 8, 9, 10, 15, 17, 19, and 20 of the NAF it directed to the Minister.

72 It divides those "facts" into three groups or categories (subs par 15 – emphasis mine):

a. admissions about what the current Minister [(**Upton**)] was advised at a meeting, or had before her in her briefing materials: paragraphs [10], [15] and [17] of the Notice;

b. admissions about what the previous Minister **Stokes** said or was advised at meetings: paragraphs [7], [8], [9] of the Notice;

c. the views expressed and held by the former Chairman of the NSW Coastal Panel and a current member the NSW Coastal Council [(**Gordon**)] about the present risks at Blueys and Boomerang beaches: paragraphs [5], [19] and [20] of the Notice.

73 The pressed paragraphs of the NAF are set out in the Applicant's subs in the following terms (pars 16-19 – see also T24.07.18 p19, L39 to p20, L2):

Paragraph [10] of the Notice to Admit

16. Paragraph [10] of the Notice relates to statements made at a meeting between representatives of the Applicant and the Minister (amongst others), and provides as follows:

> On 28 June 2017, at a meeting between Michael Fox, Adrian Hibberd, Stephen Bromhead MP, Minister Upton and Sharon Molloy (who attended by telephone), Ms Molloy said words to the following effect, "*Boomerang and Blueys Beaches are stable and in balance*".

Paragraphs [15] and [17] of the Notice to Admit

17. Paragraphs [15] and [17] of the Notice relate to whether there was material before the Minister indicating that there were properties at Blueys and Boomerang Beaches which were at "extreme or high risk" from particular coastal hazards. These paragraphs provide as follows:

> 15. There was no material available to you prior to the commencement of these proceedings (other than the CZMP, as defined in Applicants Summons (Judicial Review)) indicating that there were properties at Blueys Beach at any time from 1 July 2017 at extreme or high risk of experiencing any of the following hazards:
>
> a. Coastal erosion;
>
> b. Recession;
>
> c. Wave run-up;
>
> d. Overwash.
>
> 17. There was no material available to you prior to the commencement of these proceedings (other than the CZMP, as defined in Applicants Summons (Judicial Review)) indicating that there were properties at Boomerang Beach at any time from 1 July 2017 at extreme or high risk of experiencing any of the following hazards:
>
> a. Coastal erosion;
>
> b. Recession;
>
> c. Wave run-up;
>
> d. Overwash.

Paragraphs [7], [8] and [9] of the Notice to Admit

18. Paragraphs [7], [8], [9] of the Notice relate to statements made by Minister Stokes, the former Minister responsible for the *Coastal Protection Act 1979* (NSW), and provide as follows:

> 7. At a meeting on or about 10 January 2017, between Michael Fox, Prof Bruce Thom and Minister Stokes, Mr Stokes said words to the following effect:
>
> > *"Boomerang and Blueys Beaches are at low risk of coastal hazards (but not zero)."*
>
> 8. At a meeting on or around 10 January 2017, between BBRG representatives (including Michael Fox) and Minister Stokes, Angus Gordon, Prof Bruce Thom and Hannah Dunn, Minister Stokes said words to the effect of each of the following:
>
> a. *"I have been advised that Boomerang and Blueys beaches are stable.*"
>
> b. "*I will undertake not to include those hazard maps in the Coastal SEPP*."
>
> c. "*I cannot direct MCC to remove the hazard maps from the LEP, but I will contact MCC and request that they consider removal due to the flawed data*."
>
> 9. At a meeting on or about 10 January 2017, between Michael Fox, Adrian Hibberd, Prof Bruce Thom and Minister Stokes, Prof Thom said words to the following effect:
>
> > "*The Coastal Panel recommended approval of the Coastal Zone Management Plan despite the flawed hazard lines on the basis that more work should be done".*

Paragraphs [5], [19] and [20] of the Notice to Admit

19. Paragraphs [5], [19] and [20] of the Notice relate to statements made, and views held, by Mr Angus Gordon, the previous chairman of the NSW Coastal Panel, and a current member of the NSW Coastal Council (each of which is a statutory advisory body to the Minister responsible for coastal management). These paragraphs provide as follows:

> 5. On 9 December 2014, in a conversation between Angus Gordon and Michael Fox, Adviser Gordon said words to the effect of each of the following:
>
> a. "The WP desk top approach was totally wrong due to inadequate funding."
>
> b. "The Monica-provided profiles show stability and WP leave many questions."
>
> c. "I am aware of the Boomerang and Blueys issue and the LEP 2014 gazettal was inappropriate because the WP Study was an inadequate initial stage desk top Study, and the closed beaches are accreting."
>
> 19. Angus Gordon, former Chairman of the NSW Coastal Panel, is of the view that the words "extreme, high, intolerable risk of erosion or recession":
>
> a. are not an appropriate descriptor for the situation at Blueys Beach; and
>
> b. were not an appropriate descriptor at the time when Minister Upton certified the CZMP.

> 20. Angus Gordon, former Chairman of the NSW Coastal Panel, is of the view that the words "extreme, high, intolerable risk of erosion or recession":
>
> a. are not an appropriate descriptor for the situation at Boomerang Beach; and
>
> b. were not an appropriate descriptor at the time when Minister Upton certified the CZMP.

74 By email on 4 June 2018 (Holm p24), the Applicant sought to establish the relevance of the matters in the NAF, by providing to the Minister a schedule associating the paragraphs in the NAF with particular paragraphs in the summons.

75 Upon receipt and consideration of that schedule, the Minister's lawyers decided to proceed with their NOM to set the NAF aside (Holm p28).

76 The Minister's responses to the "assertions of relevance" by the Applicant in that schedule are detailed in a schedule to Ms Duggan's submissions (par 18).

The Minister's Arguments in Detail

77 In fairness to the detailed analysis contained in par 18 of the Minister's submissions on **relevance**, I extract below parts of the response schedule:

NAF par	Pars of Summons relied upon	Minister's response
...		
4 and 5	15	Is an assertion of a part of a conversation by a non party. A mere assertion of an opinion by a third party does not identify that the opinion or the facts is relevant to an issue in dispute in the proceedings. Without more this does not relate to any identified ground.
	46(a)	This is an assertion of opinion and is not referred to in reliance of any ground of challenge in the Summons. Without more this does not relate to any identified ground.
	48	See response to 46(a)
	60	This paragraph relates to assertions of deficiencies in the WP report when compared to the asserted mandatory requirements of the Guidelines. The conversations sought to be admitted do

		not relate to that subject matter nor could they be relevant for what is essentially a determination of a question of law.
	64	See response to 60
	69	This paragraph relates to the sufficiency of the totality of the information before the first respondent. The conversations sought to be admitted do not relate to that subject matter.
	72(b)-(d)	See response to 15
	77(a)	See response to 15
6 and 7	46	This is an assertion of opinion and is not referred to in reliance of any ground of challenge in the Summons. Without more this does not relate to any identified ground. Further neither of the conversations sought to be admitted appear to relate to the ground to which this paragraph is directed.
	60(f)	Neither of the conversations sought to be admitted appear to relate to the ground to which this paragraph is directed.
	72(b)	See response to 60(f)
	74(a)	See response to 60(f)
	77(a)	See response to 60(f)
	79(a)	See response to 60(f)
8	46(a)	This is an assertion of opinion and is not referred to in reliance of any ground of challenge in the Summons. Without more this does not relate to any identified ground.
	72(b)	The conversation sought to be admitted appear to relate to the ground to which this paragraph is directed.
	74(a)	See response to 72(b)
	77(a)	See response to 72(b)

	79(a)	See response to 72(b)
9	26	This is an assertion of opinion and is not referred to in reliance of any ground of challenge in the Summons. Without more this does not relate to any identified ground.
	60	This paragraph relates to assertions of deficiencies in the WP report when compared to the asserted mandatory requirements of the Guidelines. The conversation sought to be admitted do not relate to that subject matter nor could it be relevant for what is essentially a determination of a question of law.
	64	See response to 60.
	67	The conversation which is sought to be admitted does not on its face relate to this paragraph of the Summons
	72(b)	See response to 67 and further the content of the conversation sought to be admitted could not be relevant to a determination of what effectively is a pleaded legal question.
	74(a)	See response to 72(b)
	77(a)	See response to 72(b)
	79(a)	See response to 72(b)
10	31	This is an assertion of opinion and is not referred to in reliance of any ground of challenge in the Summons. Without more this does not relate to any identified ground.
	32	See response to paragraph 31
	46(a)	See response to paragraph 31.
	72(b)	The conversation which is sought to be admitted does not on its face relate to this paragraph of the Summons
	74(a)	The conversation which is sought to be admitted does not on its face relate to this paragraph of the Summons

	77(a)	The conversation which is sought to be admitted does not on its face relate to this paragraph of the Summons
12 to 18	As per 10 plus 79(a) 79(a)	See responses to 10 The conversation which is sought to be admitted does not on its face relate to this paragraph of the Summons.
19 and 20	As per 12 to 18	See responses above and note that the admissions are admissions of the opinion of a third party not facts.

78 The Minister's written submissions go on to deal (in par 19) with her claim that the NAF is "**oppressive**". She submits:

> 19. The 'facts' sought to be admitted, for the reasons outlined above, go well beyond a reasonable request to ascertain 'incidental matters or matters of some precondition which may not be in issue'. In addition, the requested admissions:
>
> > a) relate to material which is likely inadmissible as hearsay or opinion evidence: *Evidence Act* s 59, 76: Notice to Admit paragraphs [3]-[10]; [19]-[20];
> >
> > b) relate to part only of conversations where the totality or context of the asserted words may be relevant: [3]-[10]; [19]-[20];
> >
> > c) require an admission of an absence of information and an assessment of material and the formation of an opinion: Notice [15]; [16]; [17]; [18];
> >
> > d) are not facts but opinions: Notice [11]-[14];
> >
> > e) are matters not within the knowledge or control of the First Respondent: [2]; [3]-[10]; [19]-[20].

The Applicant's Arguments in Detail

Capable of admission?

79 Pars 10, 15 and 17 of the NAF involve the current Minister, who now says (subs 12) that these facts are not capable of admission by her.

80 In the case of NAF 10, the complaint is also that it relates to "part only of conversations at which [she] was not present (either by herself or her agent)", on 28 June 2017.

81 Mr White submits (pars 21-23 – footnote omitted):

> 21. ... This is the first time in the proceedings that the First Respondent has disputed this alleged fact; it was not traversed in the First Respondent's Response to Summons or evidence, notwithstanding that the fact of the Minister's attendance at

> the meeting and the contents of the advice heard at the meeting was pleaded in the Applicant's Summons, and is attested to in the Applicant's evidence.
>
> 22. Each of Mr Michael Fox and Mr Adrian Hibberd have (sic) put on evidence for the Applicant that Ms Upton attended the 28 June 2017 meeting. ... Additionally, Mr Hibberd has exhibited a file note of that meeting (which was prepared on the day following the meeting) which records that Ms Upton attended the meeting. ... This meeting was also attended by the local MP Mr Bromhead and the advisers to the Minister Ms Sharon Molloy attended by telephone.
>
> 23. The First Respondent's assertion that she did not attend the meeting of 28 June 2017 is not a reason to have the Notice set aside. On the contrary, if it is a disputed fact, the appropriate course for the Minister is to put on a formal denial.

82 In the case of NAF 15 and 17, relating to the contents of material before the Respondent Minister, she claims the matters are not capable of admission as they relate to "actions not taken by or required to be taken by" her, whereas Mr White insists (subs 24) that the focus is on materials and advice, not action or inaction.

83 NAF 7, 8 and 9 concern former Minister Stokes, and the Respondent Minister again says they relate to part only of conversations at which she was not present (either by herself or her agent). Mr White notes that Stokes is still a Minister in the NSW Government, and submits (par 26):

> ... It is well within the First Respondent's ability to make inquiries as to whether Mr Stokes made the alleged statements when he was the relevant Minister. To make such inquiries would be in the interests of the efficient conduct of the matter. Accordingly, the fact that Ms Upton was not present at these conversations is not a basis to assert that the First Respondent is not capable of admitting the facts.

84 NAF 5, 19 and 20 relate to statements made by Gordon, and the Applicant submits (par 27):

> ... as at 9 December 2014, Adviser Gordon was the Chairman of the NSW Coastal Panel, a statutory body which advises (and was, at the time, advising) the Minister for the Environment relation to the coastal issues. Additionally, Adviser Gordon is currently a member of the NSW Coastal Council, a statutory body which provides advice to the Minister about matters relating to the Minister's functions under the *Coastal Management Act 2016* (NSW). In such circumstances, it is within the Minister's ability to make inquiries as to the truth of the facts in paragraphs [5], [19] and [20] of the Notice from one of her current advisers.

Relevance?

85 The Applicant contends (subs 13) that the Minister conceded, when the matter was before me on 7 June 2018, that "the facts sought to be admitted are plainly relevant to the case as pleaded by the Applicant" (see Ms Hammond at T07.06.18 p2, LL10-15, and p6, LL25 and 40), but (subs 28) she now claims they are not relevant as they "do not reasonably relate to any pleaded ground". The Applicant cites pars 61(b), 72(b), and 79(a) of the summons.

86 Mr White notes (subs 29) that s 55C of the *Coastal Protection Act 1979* identifies the matters with which CZMPs must deal, including (s 55C(1)(d)) “management of risks arising from coastal hazards”.

87 He further notes (subs 30) that the subject Plan purported to identify the risks and coastal hazards arising at the subject beaches, and to outline the management of those risks. It classified residential properties at Boomerang as “assets at immediate extreme or high risk from coastal erosion or recession”, and those at Blueys as “assets at immediate extreme or high risk from wave runup and overwash”.

88 The Applicant’s fourth ground of challenge is that there was no rational basis for those risk assessments, and on this NOM, Mr White submits (par 31 – footnotes omitted):

> The GLCZMP was irrational, illogical and not based on findings or inferences of fact supported by logical grounds .... A decision is illogical or irrational if "*only one conclusion is open on the evidence, and the decision maker does not come to the conclusion, or if the decision to which the decision maker came was simply not open on the evidence or if there is no logical connection between the evidence and the inferences or conclusions drawn*".
>
> (The submission cites *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* (2004) 207 ALR 12, at 20-21 per Gummow and Hayne JJ, and *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611, at 649-650 per Crennan & Bell JJ.)

89 In essence, and crucially, the Applicant argues (par 32) that the evidence before the Minister, and the advice given to her, was that those two beaches were “stable” and “in balance”, so her finding was “not supported by logical or rational grounds”, and Mr White submits (pars 33-36) that:

> 33. On the evidence in these proceedings tendered by the First Respondent, the Minister appears to have had no information at all in the papers before her about the present risks at either beach.
>
> 34. The Applicant will submit that the evidence is that the Boomerang and Blueys beaches are stable, that the Minister was briefed about this by one of her advisers verbally at the meeting of 28 June 2017, and was informed at all material times of this fact.
>
> 35. This fact is thereby relevant to Grounds 1 & 4 in the Applicant's Summons (Judicial Review) in that it could rationally affect the assessment of whether a decision-maker was acting reasonably in making the decision to categorise unidentified properties as being at "extreme or high risk" from coastal hazards, when that decision-maker had received advice that the beaches were stable and in balance.
>
> 36. It is the Applicant's case that it was irrational and illogical for the residential properties to have been classified in the GLCZMP as assets of immediate high or extreme risk in light of the materials before her and the advice given to her.

90 In this respect, par 46 of the summons pleads:

> With respect to Blueys and Boomerang beaches:

a. They are stable in balance beaches;

b. They are not open beaches, but are closed, embayed beaches;

c. There has never been any erosion to any of the properties along either of these beach fronts; and

d. Any storm damage is contained within the dune buffer and then rapidly repaired (WorleyParsons 2011 Report, Figure 4.10) by sand deposits enabled by protective, extensive rocky headlands at the north and south ends of each of these beaches.

91 The Applicant will rely at trial upon the evidence provided by Hibberd and Fox in this respect, concerning statements by Stokes at a meeting on 10 January 2017, and the NAF seeks (subs 39):

> ... factual admissions that the Blueys and Boomerang beaches are "stable" and "in balance", and, further, that the Minister or her predecessor received advice from officials that the beaches are stable and in balance. The Applicant seeks admissions that the Minister made the statements referred to above, that the relevant Minister had been advised that the beaches are stable and Adviser Gordon held the same view.

92 NAF 15 and 17 relate to whether there was documentary material before the Minister indicating that there were properties at Blueys and Boomerang which were at “extreme or high risk” from particular coastal hazards.

93 The Minister says that these paragraphs of the NAF are not relevant, as they are “matters properly established on the documentary material”. The Applicant responds (subs 40) that:

> ... whether a matter may be established on documentary material is not relevant to the assessment of the relevance of a fact. As the Minister has submitted, the "*question of relevance should be considered through the matrix of the pleadings"* and a *"matter can only be relevant if it were 'evidence that, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in in (sic) issue in the proceedings*'". Accordingly, there is no basis for restricting relevance to a category of facts which are not matters that are "*properly established on the documentary material*". In any event, the relevant documentary material which would establish or contradict the facts asserted in paragraphs [15] and [17] is, by its nature, in the possession and control of the First Respondent. The First Respondent is therefore clearly able to admit or deny these paragraphs.

Oppressive?

94 The Minister advances a range of contentions regarding oppressiveness.

95 Ms Duggan submits (par 19) that the admissions sought in NAF 5, 7-10, 19, and 20 are “oppressive”, in that they “relate to material which is likely inadmissible as hearsay or opinion evidence: Evidence Act s 59, 76”.

96

The Applicant disputes that submission, and says (subs 42) that "the representations are capable of being admitted into evidence as admissions within the terms and meaning of s 81 of the Evidence Act".

97 The Applicant further submits (pars 43-47):

> 43. Alternatively, in relation to paragraphs [7] to [10] of the Notice, the relevant facts are sought to be admitted to establish the fact that the Minister Upton and Minister Stokes received the particularised advice and not to prove the truth of that advice. Accordingly, the hearsay and opinion rules will not apply.
>
> 44. In relation to paragraphs [5], [19] and [20] of the Notice, the relevant facts are sought to be admitted to establish the state of mind of Adviser Gordon (a factual matter), and not the truth of the opinion that he held. Accordingly, the hearsay and opinion rules will not apply.
>
> 45. The First Respondent has submitted that the admissions requested in paragraphs [7] to [10], [19] and [20] of the Notice are oppressive on the basis that they "*relate to part only of conversations where the totality or context of the asserted words may be relevant*". In this regard, the Applicant states that the First Respondent has had an opportunity to put on evidence as to the context or totality of the conversations, but has declined to do so. Additionally, the Applicant is of the view that no other words were exchanged that were relevant.
>
> 46. The First Respondent has submitted that the admissions requested in paragraphs [15] and [17] of the Notice are oppressive on the basis that they "*require an admission of an absence of information and an assessment of material and the formation of an opinion*". The admissions requested in these paragraphs relate to whether there was material before the First Respondent which indicated that properties faced certain coastal hazards. The First Respondent has now stated in the submissions on this Motion that its bundle of documents was the totality of the material before the First Respondent (which is denied by the Applicant). It cannot be considered oppressive to consider whether this material does or does not contain the relevant indication and whether it was before the Minister. On the evidence in the Tender Bundle of the Minister it appears that only the first four documents in the Bundle were before the Minister. It is not oppressive to look through these for slim documents.
>
> 47. The First Respondent has submitted that the admissions requested in paragraphs [5], [7] to [10], [19] and [20] of the Notice are oppressive on the basis that they "*are not within the knowledge or control of the First Respondent*". This is disputed. In this regard, we refer to our submissions at paragraphs 20 to 27 above.

Consideration

98 The obligation on the Minister to be a "model litigant" does not require it to concede the case brought against him/her.

99 However, defending oneself, and putting an Applicant to strict proof of some essentials, does not justify the rejection out-of-hand of reasonable attempts to obtain appropriate admissions using statutory procedures like NsAF or Interrogatories.

100

In this regard, I endorse and adopt the stances taken by Bignold J in *Sutherland*, and Schmidt J in *McDonald* (see [57]-[60], and [68] above).

101 I find, in the present case, unlike Lloyd J in *Parkesbourne*, no elements of oppressiveness or abuse of process.

102 As Schmidt J emphasised, the duty imposed by s 56 of the CP Act (legislated many years after *Sutherland* was decided – see [53] above) is now central to the achievement of "just, quick and cheap" litigation, especially when a "model litigant" is involved.

103 Despite the valiant attempts of counsel for the Minister to have the Court engage in a rehearsal of the trial, and the inevitable disputes about evidence, I have focussed, at this preliminary stage of the matter, on the validity of the Applicant's deployment of a NAF.

104 Unlike the situation in *Edwards*, the NAF in the present case will expedite, and not delay, the identification of the key issues in dispute, a fundamental objective of the CP Act. I find its use, in light of the Minister's "straight bat" response to the summons, entirely appropriate (c.f. [55] above).

105 Further, there is no authority for the arguments put by the Minister (1) that the facts sought to be admitted must be capable of response without the making of "reasonable" inquiries of non-parties, easily accessed, (see T24.07.18 p16, L36), and (2) that the necessity to make such inquiries is "oppressive" (Tp32 LL10-12).

106 I accept the submissions of the Applicant, on each aspect of this dispute, especially at [34] to [37], [53], [83], [84], and [97] above, and reject those of the Minister, who has so far failed to identify for the Court, as required by the CP Act, the matters she genuinely disputes. (See [52] above.)

107 The NAF (so far as it is pressed) should stand, and the Minister should respond to it in accordance with the relevant rules.

108 As requested by the Minister (Tpp19 and 33), and with the acquiescence of the other counsel involved (Tp33), the parties' costs on the NOM will be reserved.

Orders

109 Accordingly, the Court, noting that only paragraphs 5, 7 to 10, 15, 17, 19, and 20 of the Applicant's Notice to Admit Facts are pressed, makes the following orders:

(1) The First Respondent Minister's Notice of Motion, filed on 5 June 2018, is dismissed.

(2) Costs are reserved.

(3)

The Applicant's Notice to Admit Facts remains stayed until 14 days after delivery of this judgment, namely 21 September 2018, but should then be dealt with expeditiously by the Minister.

(4) The directions hearing adjourned to today is further adjourned to the List Judge's list on Friday 5 October 2018.

(5) The exhibits are to remain in the Court file.

****

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Decision last updated: 07 September 2018