

Points of Claim and Reasons to strike out Bannermans Lawyers from proceedings

1) The following orders and considerations are submitted by Lot 158 for the Tribunal investigations and decisions:

- Access to strata documents as per SSMA 2015 Section 188.
- Summons committee member Mr. Stan Pogorelsky.
- Remove committee member Stan Pogorelsky as per SSMA 2015 Section 238.
- Rescind Special By-Law Unreasonable-Communications as per SSMA 2015 Section 150.
- Bannermans Lawyers conflict of interest and lack of disclosure.
- Electronic delivery of documents and website evidence.

2) Section 237 of SSMA 2015 empowers the NCAT to make an order that either all, or part, of the functions of the owners corporation are delegated to a compulsory strata manager. On 15 January 2025, at Directions Hearing, none of five strata managers and none of the nine committee members appeared. Tribunal member repeated several times that, based on brief readings of Lot 158 submissions, and numerous problems in the complex, there should be a Motion for removing (compulsory) strata manager. Lot 158 does not need to do it themselves, because NCAT has powers to appoint a strata manager on its own motion, by its discretion. The evidence of dysfunctional owners corporation is undeniable and irrefutable.

2.1) CTTT (the predecessor to the NCAT) Member Moore in *Coote v Sharpe, Wentzel & Owners Corporation Strata Plan 55434* stated that imposing a compulsory strata manager upon an owners corporation is a “draconian” measure as it “*removes the democratic process which has been established*” under the Act.

2.2) In case of *Bischoff & Ors v Rita Sahade & Anr [2015] NSWCATAP 135*, the Tribunal said:

The appointment of a compulsory strata manager is a very significant step which must not be taken lightly, because it removes from the owners corporation its ability to manage its own affairs and reposes all of the functions of the owners corporation into a single person.

2.3) Lot 158 states that compulsory strata manager is the only viable solution for SP52948 to clean up the current deadlocks and “move on” because:

- Tribunal puts high emphasis on “democratic processes” that should govern operation in strata schemes. In SP52948, irrefutable evidence exists that such processes are broken, primarily due to owners not being informed before making decisions, or information given to them being incomplete, false and misleading.
- Owners corporation is not able to resolve the issue themselves by voluntarily appointing a strata manager.
- Present owners corporation and strata committee do not function adequately.
- Reasons for a finding of dysfunction are based on objective evidence.
- Owners corporation was offered through Lot 158 Motions, almost every year at general meetings, to ratify past events and allow “democratic processes” to make decisions. Such efforts were prevented by strata managers (with special support by Solicitor Adrian Mueller). The ratification of a lawful contract has a retrospective effect, and binds the principal from its date, and not only from the time of the ratification, for the ratification is equivalent to an original authority, according to the maxim, that *omnis ratihabitio mandate aequiparatur* (ratification is equivalent to express command). As a general rule, the principal has the right to elect whether he will adopt the unauthorized act or not. But having once ratified the act, upon a full knowledge of all the material circumstances, the ratification cannot be revoked or recalled, and the principal becomes bound as if he had originally authorized the act. The ratification must be voluntary, deliberate, and intelligent, and the party must know that without it, he would not be bound. That process was broken by strata managers.

2.4) Some of instances where an order for compulsory strata management is highly justified because of dysfunctional operation by Waratah Strata Management are presented in various sections of Lot 158 documents, Lot 158 secure website since 2015, and ProductReview website:

- Continued failures to carry out required maintenance and repairs and keep properties in a state of good and serviceable repair as required by section 106 of SSMA 2015,
- Continuous attempts to disallow Lot 158 to be a member of the strata committee, whilst allowing unfinancial owners to vote and be committee members,
- Failures to comply with fires safety orders and/or delaying remediation work for many years,
- Involvement in insurance fraud in NCAT case SC 20/33352,
- Assisting with falsified evidence and statements given to NCAT, NSW Fair Trading, and the Police.
- Long history of acrimony, deep seated discord and violence in the scheme,
- Pattern of strata managers disallowing competitive quotes for strata and building management, and other major expenses. The fact that Waratah Strata Management “won” contact renewals without tenders since AGM 2016 whilst preventing tenders from various companies (and not disclosing the contract details) is sufficient enough to conclude that owners

corporation is not able to resolve this issue themselves. This, by itself, is evidence that indicates the owners corporation is currently not functional,

- Hiding strata files from owners,
- Continuously organising committee and general meetings that do not comply with the Act,
- Allowing selective owners to obtain exclusive rights to common property without legally compliant meetings and/or By-Laws,
- Pattern of improper decisions making (decisions not made in accordance with the Act),
- Poor planning of levies, not raising sufficient levies, and not properly maintaining the Capital Works fund,
- Having significant negative balances in Admin Fund for the last two years, without providing evidence where money for it came from,
- Repetitive failures to conduct financial audits before general meetings,
- Falsifying data in financial audits,
- Discrimination and inequitable benefits to selective owners, including several committee members.
- Refusal to collect designated levies, including 10% simple interest per year for overdue payments, and more.

3) Access to strata documents as per SSMA 2015 Section 188 is detailed in document **NCAT-2024-00454780-001-strata-documents-SSMA-2015-Sec188**.

3.1) Formally, latest Lot 158 request for access to documents was ignored since 2 September 2024 and updated version for NCAT Hearing:

<https://www.nswstratasleuth.info/SP52948-year-2025/SP52948-Lot-158-request-access-to-strata-documents-Jan2025.pdf>

3.2) Once facts about Lot 158 being legally valid committee member in all previous years are confirmed, the Tribunal and Lot 158 should, must be given unlimited access to all strata documents, without exception, not only for himself, but also as requirement to provide new files to organizations which are conducting various investigations or follow-up actions are necessary:

- Police Event 174560202, premeditated fraudulent actions by Solicitor Adrian Mueller in NCAT case SC 20/33352.
- Police Event E65804633, premeditated fraudulent actions by Solicitor Adrian Mueller in NCAT case SCS 12/32675.
- Mediation Case 00994497 and NSW Fair Trading Case 11317277 (escalation to NSW Fair Trading Commissioner Natasha Mann).
- Office of Legal Services Commissioner case CAS016659, investigation of Solicitor Adrian Mueller.
- Law Society of New South Wales, investigation of Solicitor Adrian Mueller (as referred by Office of Legal Services Commissioner).
- New South Wales Bar Association case PCC24/22, investigation of Barrister Julie Wright and her misconduct and errors in Supreme Court case CA 2022/70683. New South Wales Bar Association recommended Lot 158 open cost recovery case with the District Court.
- Alleged ransomware attack against strata manager's computers in early February 2019, where Bitcoin ransom was subsequently paid by a third-party (known to Waratah Strata Management) to the threat actor in the equivalent amount of \$5,052.03.
- 12 Police Events related to stalking, threats, intimidation, and exposure to ridicule of Lot 158 owners, including actions against female owner who has very fragile health.
- Multiple requests to access CCTV recordings for safety investigations.
- Recovery of misappropriated funds in Admin and Capital Works Funds to benefit all 218 owners in the complex.

On 23 November 2024, Waratah Strata Management (Cc-ed to Uniqueco Property Services and several committee members) was asked to prepare responses (with evidence) for AGM 2024, which they silently declined:

- How did Waratah Strata Management comply with order at committee meeting on 7 May 2020 to sign the costs agreement of barrister under common seal for and on behalf of the Owners Corporation, who was requested to respond to the letter received from O'Brien Criminal & Civil Solicitors (acting on behalf of Lot 158). The alleged Barrister (Mr. Hussein Elachkar), Solicitor Adrian Mueller, strata managers, and committee members never complied with this decision at the committee meeting.
- How did Waratah Strata Management confirm that there was no conflict of interest by Solicitor Adrian Mueller in email on 21 June 2019, when Solicitor was asked to "help" with obtaining copy of USB key which Police lost a year earlier without disclosure to any owner?
- How did Waratah Strata Management (email by Solicitor Adrian Mueller on 9 June 2022) engage independent legal advice about Lot 158 serious allegations of Solicitor Adrian Mueller's misconduct and what was the outcome of such activity?

3.3) SP52948 strata managers and committee members have full knowledge that Mr. Stan Pogorelsky has not been financial since 1999 and illegally occupied the committee member's position, preventing Lot 158 from that role without disclosure to owners, CTTT/NCAT, District Court, Supreme Court, and NSW Fair Trading in all events since 2010. Evidence in document **NCAT-2024-00454780-001-remove-committee-member-Stan-Pogorelsky-SSMA-2015-Sec238-part-1, Section 1 to 1.15**.

3.4) SP52948 strata managers and committee members have full knowledge that Mr. Pogorelsky, whilst unfinancial, caused direct financial losses to Lot 158 for document searches whilst Lot 158 was legally valid committee member and had rights to unlimited free access to strata files.

3.5) SP52948 strata managers and committee members had full knowledge that Mr. Pogorelsky was a direct accessory to preventing access to many strata documents, directly hampering investigations by NSW Fair Trading, CTTT and NCAT, Office of Legal Services Commissioner, New South Wales Law Society, Police, District Court, and Supreme Court. Evidence in documents **NCAT-2024-00454780-001-remove-committee-member-Stan-Pogorelsky-SSMA-2015-Sec238-part-1, Section 14 to 14.19**, and **NCAT-2024-00454780-001-remove-committee-member-Stan-Pogorelsky-SSMA-2015-Sec238-part-2, Section 55 to 55.16**.

4) Summons for committee member Mr. Stan Pogorelsky to attend Hearing and provide documents to the Tribunal and Lot 158 is documented in **NCAT-2024-00454780-001-summons-committee-member-Stan-Pogorelsky-17Jan2025**.

4.1) In the event that Mr. Stan Pogorelsky resigns from the committee before NCAT Hearing, the request for Mr. Stan Pogorelsky summons and production of electronic documents on behalf of the owners corporation should still be valid due to the fact that he is the only person, apart from Lot 158, with extensive knowledge of all events listed in this Tribunal case. Lot 158 should be granted natural rights to cross-examine Mr. Pogorelsky so that Mr. Pogorelsky can confirm or refute, before the Tribunal, Lot 158 evidence, knowing that all statements will be made under an affirmation/oath.

4.2) It is closely related to, and very important for the Order "Access to strata documents as per SSMA 2015 Section 188".

4.3) On 23 January 2025, NCAT rejected the application as the summons applicant "*had not lodged a summons form in conjunction with the application for summons to be issued form*". Lot 158 was unaware of this simple procedural error, as the process he had followed on the Tribunal web form did not provide any details of further requirement and did not prompt for the payment. That would be corrected when Lot 158 brings all documents to NCAT in person.

4.4) Mr. Pogorelsky, and other committee members and strata managers, were informed and fully notified about summonses as early as 1 December 2024. Mr. Pogorelsky did not object to complying with the summons and same applies to any other person affected by the summons - nobody objected to the summons being complied with, and nobody tried to resolve the objection with Lot 158 who applied for the summons.

4.5) As per Tribunal's own processes in Section 8 and 11 of NCAT Procedural Direction 2 SUMMONSES:

8. In addition, the Tribunal itself can direct a registrar to issue a summons but this is likely to be mainly in cases where the parties cannot apply themselves.

11. If a registrar decides not to issue the summons, the party applying for the summons can ask to have a Tribunal Member decide whether or not the summons should be issued.

5) Remove committee member Stan Pogorelsky as per SSMA 2015 Section 238 is detailed in three-part document, due to NCAT limitation of 5 MB per file for website uploads: **NCAT-2024-00454780-001-remove-committee-member-Stan-Pogorelsky-SSMA-2015-Sec238-part-1**, **NCAT-2024-00454780-001-remove-committee-member-Stan-Pogorelsky-SSMA-2015-Sec238-part-2**, and **NCAT-2024-00454780-001-remove-committee-member-Stan-Pogorelsky-SSMA-2015-Sec238-part-3**.

5.1) Mr. Pogorelsky illegally occupied the committee member's position, preventing Lot 158 from that role without disclosure to owners, CTTT/NCAT, District Court, Supreme Court, and NSW Fair Trading in all events since 2010. Evidence in document **NCAT-2024-00454780-001-remove-committee-member-Stan-Pogorelsky-SSMA-2015-Sec238-part-1, Section 1 to 1.15**.

5.2) It took 13 years for Mr. Pogorelsky to admit at an official committee or general meeting that he had enjoyed use of gas heating without Special By-Law and resolution at general meeting. Special By-Law was registered on 6 May 2013 whilst counting votes of Mr. Pogorelsky and other unfinancial owners (special emphasis on Mrs. Lorna Zelenzuk Lot 3, Mr. Upali Aranwela Lot 62, and Mr. Moses Levitt Lot 147 who occupied committee member roles in various years) at AGM on 17 October 2012.

5.3) It took 17 years for Mr. Pogorelsky to announce for the first time that he had gas heating connection on 16 March 2017.

5.4) Mr. Pogorelsky was direct accessory to five insurance frauds:

- Four insurance claims for non-existent "Defence of Lot 3" in CTTT Case SCS 12/32675 (where Solicitor Adrian Mueller also claimed his costs in CTTT Case SCS 12/50460 which he did not even represent) after secret insurance policy change several weeks before the first claim. CHU Insurance paid \$24,919.31 (GST excl) in total. Four years later, CHU Insurance forced recovery of \$8,800.00 from SP52948. There are six versions of Solicitor's Standard Costs Agreement, of which four were forgeries.
- Insurance company paid \$19,758.14 (GST excl) in case SC 20/33352 on 24 March 2022. SUU Insurance got reimbursed one year later for \$14,917.60 (GST excl) when Lot 158 paid Supreme Court "penalty" in amount of \$23,744.42 (GST excl)

for the same Solicitor's claim (\$25,158.14 (GST excl)). There are six versions of alleged legal expenses for Solicitor Adrian Mueller in NCAT case SC 20/33352.

6) Rescind Special By-Law Unreasonable-Communications as per SSMA 2015 Section 150 is documented in **NCAT-2024-00454780-001-Rescind-Special-By-Law-11-Unreasonable-Communications-SSMA-2015-Sec150**.

6.1) The By-Law prevented Lot 158, LEGALLY VALID committee member from performing his duties in whilst five other committee members (who served in various years) were unfinancial for unpaid gas heating levies and other debt without disclosure (Lot 181 Mr. Stan Pogorelsky, Lot 3 Mrs. Lorna Zelenzuk, Lot 147 Mr. Moses Levitt, Lot 88 Mrs. Marianna Paltikian, and Lot 218 Mr. Jeffery Wang).

6.2) The By-Law is "unconscionable" because it quite unreasonably and unnecessarily precludes the exercise of a right of habitation with equal privileges and rights which the Tribunal considers is part of contemporary community standards associated with the rights of owners and occupiers of lots in strata schemes, provides no opportunity for consideration to be given to the rights and needs of individual lot owners, and it is unbalanced and operates only in the interests of those who are opposed to the proper management of the complex and wish not to disclose financial documents.

6.3) The By-Law is "harsh" because it is a blunt instrument which imposes a complete prohibition upon the owners' rights to express concerns about management of the complex and share it with other owners and investors, with no exceptions, provides no means by which the special circumstances of particular lot owners might be considered and it is based on the interests of only one side of the issues associated with the upkeep of the complex and financial management.

6.4) The By-Law is "oppressive" because it does not involve or permit a balanced consideration of the interests and needs of all lot owners or occupiers and operates only in the interests of lot owners who are opposed to the proper management of the complex and wish not to disclose financial documents, and provides no process by which a lot owner could be able to effectively report problems and share them with all owners and investors thus operates only in the interests of those opposed to the proper management of the complex and wish not to disclose financial documents.

6.5) The By-Law is "unreasonable" because:

- It is designed to victimise, humiliate, undermine, and even threaten owners who have strong reasons to complain and report issues related to mismanagement of the complex.
- Reasonable person (objective test), having regards to the circumstances, will see this By-Law as unreasonable.

6.6) The By-Law is deliberately ambiguous, ill-defined, and allows absolute powers to committee members and strata manager without scrutiny.

7) Bannermans Lawyers conflict of interest and failure to disclose is detailed in document **NCAT-2024-00454780-001-Bannermans-Lawyers-conflict-of-interest-and-disclosure**.

7.1) Strata managers and committee members ignored requirements that SSMA 2015 introduced on 1 July 2021, in spite of Lot 158 warning them about it as early as 3 February 2022, which required an owners corporation to serve all lot owners with a copy of any application made to NCAT concerning their scheme.

7.2) Alleged committee meeting on 6 January 2025, which dealt with Bannermans Lawyers engagement, was not compliant with SSMA 2015 laws and regulations.

- Clause 7 specifies that the notice of a meeting must include a detailed agenda for the meeting, which in this case failed to be met. Notice was not detailed, especially the details of Bannermans Lawyers Standard Costs Agreement.
- The Interpretations Act 1987 Section 76 specifies that the service of a document by post is taken to have taken effect on the seventh working day after the agenda was posted so this needs to be taken into consideration for the correct notice to be given (if required). The day of the meeting must be excluded from the calculation of service by post under section 36 of the Interpretation Act 1987 (NSW). Notice did not satisfy requirements for sending it. This was not an isolated incident with non-compliant meetings.
- Most of notices of SP52948 meetings, including the one allegedly approving Bannermans Lawyers engagement failed to disclose the following legal requirement as per SSMA 2015 Section 18 Disclosure of pecuniary interests. Since this NCAT case has Mr. Stan Pogorelsky as one of main "persons-of-interest", owners had/have extremely important reason to know about it.
- Agenda did not contain details of time and place of the meeting, denying owners their right to attend in person, if they wished so.

- Notice of the meeting coerced owners that only committee members were allowed to attend and/or vote. As in previous “paper-vote” meetings, strata manager and committee members failed to publish information that other owners can vote, and if there are 25% or more of voting rights, they can make decision any way they wanted without committee members.
- On Waratah Strata Management website, notice of the meeting was not published.
- On Waratah Strata Management website, meeting was not scheduled.
- Minutes of the meeting were not published on six notice boards.
- Lot 158 did not receive copy of the minutes, and by talking to several other owners, it appears others did not receive them either.
- Notice of the meeting hid details of the dire financial status in Admin Fund. On 24 December 2024, Admin Fund had negative balance (deficit) in amount of -\$196,041.57.
- Notice suggested that SP52948 wished to engage Bannermans Lawyers for “defending” at NCAT, without disclosing to owners that they had multiple conflicts of interest, including the fact Bannermans Lawyers failed to disclose breach of their duties and mislead the Tribunal at the Directions Hearing when appearing before the court. A conflict of interest arises as Bannermans Lawyers cannot act in the best interests of their current client (SP52948) as the solicitor had already been prejudiced through information they had obtained about Lot 158 since 2011 which could promote one party's case to the detriment of the other. Solicitors have a professional responsibility to ensure that they do not represent a party where they may have a conflict of interest.
- Waratah Strata Management published minutes of alleged committee meeting sometime between 12:02 and 13:41 hours belatedly on 15 January 2025, just about an hour or two before NCAT Directions Hearing. Agenda for this meeting still did not exist on their website.

7.3) Bannermans Lawyers became direct accessory to illegal major renovation by Lot 79 and failed to respond or take any action three times (in November 2024 and in January 2025), and appeared to fail to notify Registrar-General’s Office of the REPEATED FAILURE by SP52948 to comply with requirements for major renovations. Lot 79, in this instance, deliberately failed to comply with Bannermans' legal document in Part 3.1 (1).

7.4) Bannermans Lawyers advice on two occasions (18 January 2021 and 12 March 2021) were not recorded in Detailed Expenses for the financial year from 01/09/2020 to 31/08/2021 (or at any other time since then). This fact strongly point to one of two possibilities:

- Bannermans Lawyers had/have some special undeclared relationship with SP52948 representatives,
- Bannermans Lawyers were involved is some undeclared financial transactions (lawyers do not provide free advice easily).

7.5) There is no evidence that Waratah Strata Management and committee members notified insurance company and their broker about the NCAT case and their attempt to engage legal services before Lot 158 did it on 16 January 2025.

7.6) On 13 November 2016, Lot 158 questioned Strata Community Australia (NSW) Code of Conduct, and the conflict of interest of their Directors, which included Mr. David Bannerman. Strata Community Australia (NSW) admitted that they had no ability (or willingness) to apply their Code of Conduct to BCS Strata Management for their misconduct and unprofessional services. Strata Community Australia (NSW) Directors allegedly reviewed Lot 158 complaints and decided to ignore it. Bannermans Lawyers, to the best of Lot 158 knowledge, never took any action against BCS Strata Management or Pica Group (their parent company).

7.7) Rushed committee meeting scheduled for 6 February 2025, as found on walls in basement of four buildings on 24 January 2025, failed to satisfy notice periods and strata regulations in attempt to coerce the Tribunal and cause unnecessary legal costs at the time when SP52948 had continuous problems with Admin and Capital Works Funds and extreme fire safety and insurance risks. Process to approve alleged meeting dated 6 January 2025 at pending meeting on 6 February 2025 failed all standard ratification tests and reasoning.

8) Parties should be allowed to deliver documents online in electronic format. As of January 2025, there are more than 29,200 files on Lot 158 website - the contents were made public since 8 January 2015. It is reasonable to use online resources because NCAT allows it in their Procedural Direction 1 Paragraph 22, saves unnecessary paperwork and waste of natural resources, on 11 December 2023 the NSW strata and community title legislation changes came into effect, where the Strata Roll and other mandatory records must be kept electronically, sending files in printed form create unnecessary work for strata managers to convert them into electronic versions, generate unnecessary costs of printing, many files in evidence are colour photographs which would not look correct in black-and-white prints, many files in evidence are in video format which cannot be printed, and online documents allow faster and quicker searches. In addition, SP52948 deliberately generated expenses for Lot 158 in efforts to cause financial losses. Refer to document **NCAT-2024-00454780-001-electronic-delivery-of-documents-and-website-evidence**.