

AGM 2013 and 2014 Motions by Owner at Macquarie Gardens

In accordance with the Strata Schemes Management Act 1996, Part 2, Division 3, Clause 36, an owner concerned with the status of the complex, submitted the following Motions for the AGM 2013 and 2014

The Motions presented had the following goals:

- To promote and enforce full transparency and duty of care in the management of the complex, which will guarantee significant savings in common funds (poor business decisions wasted above \$100,000.00 from common funds this year alone) ;
- Prevent future abuse of common funds and financial losses that amounted to hundreds of thousands of dollars over many years;
- Enforce and ensure equitable and fair sharing of water and gas usage costs for ALL townhouse owners without the need for them to provide any documentation on a quarterly basis;
- Enforce and ensure equitable and fair sharing of water and gas usage costs for all lot owners in Blocks A, B, C, and D;
- Enforce proactive management and planning for the Sinking Fund;
- Enforce healthy competition for the contracts with third-party service providers;
- Rescind unenforceable and illegal By-Laws that even members of the Executive Committee ignored in the past. Good example is Special By-Law 9. Our complex ran a small project to check the tap/basin water leakages in 2010 and 2014 (at hidden cost above \$4,000.00 for the plumber's services), and yet it was not a complete solution as it even failed to comply with the Special By-Law 9 because 48 lot owners in 2010 (including two members of the Executive Committee) did not allow access to their property. Another example was the fact that entry to private property is strictly limited to stringent rules as defined in the Strata Schemes Management Act 1996, Section 65.
- Enforce compliance with the Strata Schemes Management Act 1996 and Strata Schemes Management Regulation 2010.

Disclosure: The owner proposing the Motions had no affiliation or personal benefit from any business that operates in the complex.

At both AGMs, Raine & Horne Strata Sydney BCS and members of the EC disallowed explanatory notes to be sent to owners, misconstrued some of the motions, disallowed some motions without reason, and used dormant proxy votes to defeat the proposals.

In accordance with the SSMA 1996, any change of the text of the Motions must be reported to the person proposing them (in writing, in advance).

The Strata Schemes Management Act 1996, Part 2, Division 1, Section 14 defines the person chairing the meeting MAY rule a motion is out of order if:

- (a) the chairperson considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable, or**
- (b) except in relation to a motion to amend a motion, clause 35 (3) has not been complied with in relation to the motion (except for a procedural motion for the conduct of the meeting or to correct minutes, the substance of the motion was not included in the agenda).**

The person chairing the meeting, when ruling a motion out of order must give reasons for the ruling; and state how the ruling may be reversed by the persons present and entitled to vote.

The Executive Committee can also advise that Motions are ruled out of order and exclude them from the AGM agenda prior to the meeting.

The persons present at the general meeting, who are entitled to vote, may by ordinary resolution disagree with the Chairperson and/or the Executive Committee and reverse the ruling. The reasons given by the Chairperson and/or Executive Committee must be recorded in the minutes of the meeting.

It is easy to figure out why Raine & Horne Strata Sydney BCS and EC did not want to enforce duty of care and diligence. All the below listed motions were defeated, allowing Raine & Horne Strata Sydney BCS and EC to conduct more than million-dollar-per-year business without decisions at general meetings.

Motion: Occupational Health and Safety Risk Assessment

The Owners Corporation SP52948 by SPECIAL RESOLUTION pursuant to Section 47 of the Strata Schemes Management Act 1996, make an additional By-Law in the following terms:

SPECIAL BY-LAW: "Occupational Health and Safety Risk Assessment"

1. To comply with the Work Health Safety (WHS) Laws that commenced on 1st of January 2012 and accompanied by the Model Work Health and Safety Regulations (MWSHR), the owners corporation shall conduct professional OH&S Risk Assessment before each and every annual general meeting;
2. The OH&S Risk Assessment results shall be included in the agenda for every annual general meeting.
3. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Repeal Illegal and Inequitable Special By-Law 13 "Sharing of water and gas costs"

The Owners Corporation SP52948 by SPECIAL RESOLUTION, pursuant to Section 47 of the Strata Schemes Management Act 1996, approve the following changes to the Special By-Laws:

1. Repeal Special By-Law 13 "Sharing of water and gas costs";
2. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Dispute Resolution Process

The Owners Corporation SP52948 by SPECIAL RESOLUTION pursuant to Section 47 of the Strata Schemes Management Act 1996, make an additional By-Law in the following terms:

SPECIAL BY-LAW: "Dispute Resolution Process"

1. The Executive Committee shall attempt to resolve all management disputes at the meetings within the complex;
2. If such resolution is unsuccessful or deemed unsatisfactory to any party, the Executive Committee shall request mediation at private meetings with help of voluntary members of the owners corporation;
3. If still unsuccessful, and any party requests mediation through free services provided by the Mediation Services Unit at the Department of Fair Trading, it shall be compulsory for the Executive Committee and the Strata Manager to attend and attempt to resolve the conflict through compromise and collaboration;
4. In the event that none of the above actions bring reasonable outcome of the dispute and any party requests adjudication through the Consumer, Trader and Tenancy Tribunal, the Executive Committee shall ask for an authority to seek legal advice at a general meeting by providing full details of the anticipated costs and reasons why the other mediation steps failed;
5. To the extent of any inconsistency with previous by-laws or motions, this motion prevails.

Defeated

Motion: Amend Special By-Law 12 “Control of common gas supply”

The Owners Corporation SP52948 by SPECIAL RESOLUTION, pursuant to Section 47 of the Strata Schemes Management Act 1996, approve the following changes to the Special By-Law 12 “Control of common gas supply”:

1. Replace Clause 1 in the Special By-Law:

Enter a lot to inspect the common gas supply to cooking appliances

With the following:

If approved by the owner or occupier (whichever applies), enter a lot to inspect the common gas supply to cooking appliances;

2. Modify Clause 3 in the Special By-Law to state:

Impose on the owner or occupier (whichever applies) of those lots in which the common gas supply has been diverted to additional appliances, an annual charge equal to reasonable estimate usage of gas having regard to the rated gas consumption of the additional appliances;

3. Modify Clause 5 in the Special By-Law to state:

The decision about the gas usage levy payable by each such individual owner shall be made at the annual general meeting, taking into account differences in power ratings for appliances each owner has and yearly increases in cost for gas delivery as imposed by the service providers;

4. Delete Clause 6 in the Special By-Law:

Introduce a retrospective levy on lots found to have tapped the common gas supply without permission from the Owners Corporation, any such charge to be at the absolute discretion of the Owners Corporation acting reasonably;

5. After amendments, the full text of the amended Special By-Law shall be:

In Addition to the powers, authorities, duties and functions conferred upon the owners Corporation by the Act and by-laws it shall have the following additional powers, duties and functions.

1. If approved by the owner or occupier (whichever applies), enter a lot to inspect the common gas supply to cooking appliances;

2. Determine whether the common gas supply has been tapped for the supply to appliances other than the internal bench top cooking appliances (“additional appliances”);

3. Impose on the owner or occupier (whichever applies) of those lots in which the common gas supply has been diverted to additional appliances, an annual charge equal to reasonable estimate usage of gas having regard to the rated gas consumption of the additional appliances;

4. Determine that such annual charge be a levy for the purpose of enforcing the payment thereof;

5. The decision about the gas usage levy payable by each such individual owner shall be made at the annual general meeting, taking into account differences in power ratings for appliances each owner has and yearly increases in cost for gas delivery as imposed by the service providers;

6. Continue to bill such levy until confirmation from a licensed gas fitter is received advising that no diversion of gas supply exists within a lot;

7. An owner and/or occupier of a lot must NOT connect an additional appliance to the common gas supply without:
a. First notifying the Owners Corporation in writing of the intention to do so;
b. Using only the services of a licensed gas fitter as approved by the Owners Corporation to carry out the installation;
c. Paying any charge when levied for the consumption of gas determined by the Owners Corporation;
d. Be responsible for the maintenance and repair of all fittings, pipe work and appliances attached to the common gas supply other than the gas supply piping to the boundary of the lot.

8. In the event that individual gas meters are installed to each and every lot such that consumption can be billed to each lot on a strictly metered basis the above requirements shall cease to have effect from the date of commencement of such direct billing of gas consumption.

Defeated

Motion: Equitable sharing of gas usage costs for townhouse owners

The Owners Corporation SP52948 by SPECIAL RESOLUTION pursuant to Section 47 of the Strata Schemes Management Act 1996, after any amendments, make an additional By-Law in the following terms:

SPECIAL BY-LAW: "Equitable sharing of gas usage costs for townhouse owners"

1. After each billing quarter, all 26 townhouse owners shall receive a refund from the Administration Fund that is equal to gas usage incurred by an average owner in Blocks A, B, C, and D. The formula for a refund to townhouse owners shall be:
 - a) Add subtotal charges before GST for common gas supply in Blocks A, B, C, and D (invoice for pool area gas meter must not be included), as issued by utility provider for four gas meters at the end of each billing quarter;
 - b) Calculate the sum of per-quarter levies (1/4 of yearly levies) that designated lot owners in Blocks A,B,C, and D pay for additional gas appliances as per Special By-Law 12 "Control of common gas supply";
 - c) Subtract b) from a);
 - d) Divide figure obtained in Step c) by 192 (total number of lots in Blocks A, B, C, and D).
2. Strata Manager shall make prompt payment to each of 26 townhouse owners in amount obtained in Step 1. d) at the end of every gas billing quarter;
3. The Treasurer of the Executive Committee shall monitor these payments and report the progress every quarter;
4. A new accounting code shall be introduced in the bookkeeping to keep records of the gas usage refunds for townhouse owners;
5. Individual townhouse owners shall have the choice to opt-out of the gas usage refunds;
6. Strata Manager shall keep a register of townhouse owners who wish not to receive the gas usage refunds and shall make it public knowledge for all owners. Townhouse owners can only issue such requests in written form. These requests become enforceable as of date of the application;
7. A townhouse owner who submits request not to receive the gas usage refunds, and then decides differently at other time, shall not be entitled to receive these benefits retrospectively;
8. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Equitable sharing of water usage costs for townhouse owners

The Owners Corporation SP52948 by SPECIAL RESOLUTION pursuant to Section 47 of the Strata Schemes Management Act 1996, after any amendments, make an additional By-Law in the following terms:

SPECIAL BY-LAW: "Equitable sharing of water usage costs for townhouse owners"

1. After each billing quarter, all 26 townhouse owners shall receive a refund from the Administration Fund that is equal to 0.5% of water usage invoiced through shared water meter HDTC0039. The formula for a refund to townhouse owners shall be:
 - a) Obtain figure from invoice for common water meter HDTC0039, as issued by the utility provider at the end of each billing quarter;
 - b) Multiply figure obtained in step a) by 0.005.
2. Strata Manager shall make prompt payment to each of 26 townhouse owners in amount obtained in step 1. b) at the end of every water billing quarter;
3. The Treasurer of the Executive Committee shall monitor these payments and report the progress every quarter;
4. A new accounting code shall be introduced in the bookkeeping to keep records of the water usage refunds for townhouse owners;
5. The decision to alter the water reimbursement percentage in step 1. b) for townhouse owners shall only be made at a general meeting;
6. Individual townhouse owners shall have the choice to opt-out of the water usage refunds;
7. Strata Manager shall keep a register of townhouse owners who wish not to receive the refunds and shall make it public knowledge for all owners. Townhouse owners can only issue such requests in written form. These requests become enforceable as of date of the application;
8. A townhouse owner who submits request not to receive the water refunds, and then decides differently at other time, shall not be entitled to receive these benefits retrospectively;
9. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Improved Financial Reporting and Auditing

The Owners Corporation SP52948 by SPECIAL RESOLUTION, pursuant to Section 47 of the Strata Schemes Management Act 1996, make an additional By-Law in the following terms:

SPECIAL BY-LAW: "Improved Financial Reporting and Auditing"

1. All invoices and payments shall be uploaded to Strata Manager's web site at the time of their settlement;
2. All quotes and tenders for work and services that relate to common property and the management of the complex shall be uploaded to Strata Manager's web site as soon as they become available;
3. Every month, a Treasurer of the Executive Committee (and Financial Subcommittee if applicable) shall receive a statement of all drawings from the trust account, together with a balance left in the bank. The Treasurer (and the Financial Subcommittee if applicable) shall review the statements and act promptly to correct any errors;
4. In each six-month period (February and August), a full report on the management of funds shall be sent to every owner (secure web access or email as preferred method of delivery to save the postage costs);
5. Every year, full expense transaction records income and expenditure statements together with balance sheet shall be provided to all owners at least 14 days before the annual general meeting to allow them to review the financials and make informed decisions (secure web access, email, or by post);
6. Individual townhouse owners shall have the choice to opt-out of the financial reporting scheme;
7. Strata Manager shall keep a register of owners who wish not to receive these reports and shall make it public knowledge. Owners can only issue such requests in written form. These requests become enforceable as of date of the application;
8. In the agenda for the annual general meeting the Treasurer of the Executive Committee shall provide written statement that they reviewed all accounts personally;
9. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Amend Special By-Law 6 "Telecommunications Infrastructure"

The Owners Corporation SP52948 by SPECIAL RESOLUTION, pursuant to Section 47 of the Strata Schemes Management Act 1996, approve the following changes to the Special By-Laws:

1. Replace the second paragraph:

The Executive Committee shall be granted the power to review the services available and enter into a contract on behalf of the owners corporation.

with the following:

The decision to enter into any telecommunications contract shall be approved at general meetings only.

2. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Repeal Motion 8 at AGM 2005 with Re-Enactment of NSW SSMA 1996 Section 80A

The Owners Corporation SP52948 by ORDINARY RESOLUTION, pursuant to Section 47 of the Strata Schemes Management Act 1996, approve the following changes to enforce compliance with the NSW Act and enforce better duty of care in financial management:

1. Repeal (with re-enactment of the NSW Strata Schemes Management Acts 1996, Division 3, Section 80A (1)) Motion 8 at AGM 2005 that deleted limit on spending by executive committees of large strata schemes.
2. Re-enact NSW Strata Management Acts 1996, Division 3, Section 80A (1). The full text, as prescribed by the Strata Schemes Management Act 1996, Division 3, Section 80A shall be:

80A Limit on spending by executive committees of large strata schemes

(1) If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next occurring after the determination was made, spend on the item or matter an amount greater than that determined amount for expenditure on the item or matter plus 10 per cent.

(2) The owners corporation of a large strata scheme may by resolution at a general meeting remove the limitation imposed by subsection (1) generally or in relation to any particular item or matter.

3. To the extent of any inconsistency with previous decision, this decision re-enacts (reintroduce) the NSW Strata Management Acts 1996, Division 3, Section 80A in full.

Defeated

Motion: Repeal Special By-Law 8 “Acquisition of Additional Common Property”

The Owners Corporation SP52948 by SPECIAL RESOLUTION, pursuant to Section 47 of the Strata Schemes Management Act 1996, approve the following changes to the Special By-Laws:

1. Repeal Special By-Law 8 “Acquisition of Additional Common Property”;
2. The Executive Committee shall not be allowed to acquire additional common property and have the unchallenged authority to make decision to spend 10% of the current Sinking Fund for common property acquisitions without general meetings.
3. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Procedure for convening Extraordinary General Meetings that directly relate to usage of Common Property

The Owners Corporation SP52948 by ORDINARY RESOLUTION (simple majority vote), pursuant to Section 47 of the Strata Schemes Management Act 1996, discuss and adopt the following process for convening extraordinary general meetings:

1. A request by any member of the owners corporation that relates to COMMON PROPERTY in the complex must not be submitted or considered for the extraordinary general meeting unless:
 - a) It is fully documented,
 - b) The proposer discloses all costs and financial or other benefits to themselves, their family, and their company (if applicable), and connections to the business that might create conflict of interest,
 - c) The proposer justifies the requirement for an emergency meeting.
2. Proposals from third-parties (non-owners in the complex) shall be dully considered on their merits and the quality of information they provide. Proposals must be thoroughly reviewed at the Executive Committee level and rejected if incomplete. Only fully documented proposals shall proceed to be voted at the extraordinary general meeting;

The proposals from third-party in relation to common property must provide reason given why it should happen through emergency meeting and why it cannot wait until the scheduled annual general meeting;

3. In all other instances, to avoid unnecessary costs, the extraordinary general meeting shall occur as per NSW Strata Schemes Management Act 1996 and NSW Strata Schemes Management Regulation 2010.
4. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Amend Special By-Law 9 “Control of excessive water usage”

The Owners Corporation SP52948 by SPECIAL RESOLUTION, pursuant to Section 47 of the Strata Schemes Management Act 1996, approve the following changes to the Special By-Law 9 “Control of excessive water usage”:

1. Delete the following Clause as unenforceable and non-compliant with owner’s rights.

- Not keep more than one washing machine within their lot space.

2. Replace the following Clause in the Special By-Law:

The Owners Corporation shall by its agents, employees or contractors have the right to enter a lot to inspect the laundry, bathroom and kitchen areas to ensure compliance with this By Law and may also arrange for the necessary repairs to leaking taps/cisterns to be undertaken and recover the cost of such maintenance from the lot owner.

With the following:

If approved by the owner or occupier (whichever applies), the Owners Corporation shall by its agents, employees or contractors enter a lot to inspect the laundry, bathroom and kitchen areas to ensure compliance with this By Law.

3. Add the following clauses:

If the Owners Corporation has reasonable and documented suspicion of excessive water usage in an individual lot, the Owners Corporation shall have the right to request access to that lot and investigate the claim. If the owner or occupier (whichever applies) does not consent, the Owners Corporation shall enforce it through the Strata Schemes Management Act 1996, in accordance with an order of an Adjudicator under Section 145.

If an owner or occupier of a lot (whichever applies) is proven to cause excessive water usage, the Owners Corporation shall have the right to impose levy for them in the amount approved at a general meeting.

4. Replace the following Clause in the Special By-Law:

2. Not use the washing machine in their lot space for any purpose other than to wash clothing, towels, bedding etc used by residents of that lot;

With the following:

2. Not use common water supply in their lots for any commercial purposes;

5. The full text of the amended Special By-Law shall say:

An owner and/or occupier of a lot must:

1. Ensure that leaking taps and/or cisterns within the lot are promptly repaired to prevent loss of water;

2. Not use common water supply in their lots for any commercial purposes;

If the Owners Corporation has reasonable and documented suspicion of excessive water usage in an individual lot, the Owners Corporation shall have the right to request access to that lot and investigate the claim. If the owner or occupier (whichever applies) does not consent, the Owners Corporation shall enforce it through the Strata Schemes Management Act 1996, in accordance with an order of an Adjudicator under Section 145.

If an owner or occupier of a lot (whichever applies) is proven to cause excessive water usage, the Owners Corporation shall have the right to impose levy for them in the amount approved at a general meeting.

If approved by the owner or occupier (whichever applies), the Owners Corporation shall by its agents, employees or contractors enter a lot to inspect the laundry, bathroom and kitchen areas to ensure compliance with this By Law.

6. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Training for Executive Committee Members and Declaration of Conflict of Interest

The Owners Strata Plan 52948 No. 52948 (the "Owners Corporation") by ORDINARY RESOLUTION (simple majority vote), pursuant to Section 47 of the Strata Schemes Management Act 1996, to approve training for Executive Committee members and declaration of conflict of interest in the following terms:

1. Owners shall commit to FREE EC training either before or within two months after they become members of the Executive Committee. They shall confirm it in writing at the first consecutive meeting after the general meeting;
2. Once a year, before their nomination at the general meeting, all candidates for the Executive Committee shall provide written declaration to the owners corporation stating that they do not have any conflict of interest that would preclude them from being members of the EC;
3. The EC members shall declare any conflict of interest at the start of each meeting or before discussion of the relevant agenda item. Details of any conflict shall be minuted.

Defeated

Motion: Positive Covenant

The Owners Corporation SP52948 by ORDINARY RESOLUTION, pursuant to Section 47 of the Strata Schemes Management Act 1996, approve and commit to proper proactive management of the complex to ensure increased value of properties and decrease financial losses due to delayed repairs:

1. Comply with an obligation imposed by a positive covenant and relating to the proactive maintenance and repair of property in the strata scheme pursuant to Strata Schemes Management Act (SSMA) 1996 Section 160;
2. Meet requirements pursuant to SSMA 1996 Section 75 (estimate amounts to be credited to the Sinking Fund that take into account anticipated major expenditure and schedule identified in the plan for the 10-year period to which the plan relates);
3. At every general meeting provide full details of at minimum two quotes for non-emergency major repairs, projects, and contracts due for renewal, and their funding from the Administration and Sinking Funds in the following year, and submit motions for their approvals.
4. To the extent of any inconsistency with previous by-laws, this by-law prevails.

Defeated

Motion: Introduction of Subcommittees

The Owners Corporation SP52948 by ORDINARY RESOLUTION (simple majority vote), pursuant to Section 47 of the Strata Schemes Management Act 1996, approve the introduction of subcommittees consisting of owners who are not members of the Executive Committee and one representative from the EC. The nominations for the subcommittees shall be open to all owners who are not already members of the Executive Committee.

1. The owners corporation may establish the following subcommittees (or as applicable):

- Finance and Legal
- Gardening
- Event and Social Activities
- Project (Capital) Works and Engineering
- Contract Management

2. The subcommittee shall operate for such a period of time as the owners' corporation may determine at the annual general meetings;

3. A subcommittee shall be constituted of the following persons who shall be appointed by the owners corporation at the general meetings (normally AGM) and subject to the removal and replacement thereby:

- a) A member of the Executive Committee (designated as the convenor of the subcommittee).
- b) Up to six (6) other owners who are not members of the Executive Committee.
- c) Members of the subcommittee cannot self-appoint themselves.
- d) In instance when more applicants wish to be members of a subcommittee, the preference shall be based on MERITS, SKILLS IN RELEVANT AREA, and CULTURAL DIVERSITY.
- e) Maximum term for any member of a subcommittee shall be three consecutive years. Compulsory "rotation" shall ensure "fresh blood" is introduced on a regular basis.
- f) Owner cannot be a member of more than two subcommittees.

4. The functions of a subcommittee shall be confined to those of an advisory and supervisory nature. For example, the Finance and Legal subcommittee shall review all invoices, payments, term deposits, expenditures, and provide summaries to the Executive Committee on monthly basis. They shall also look at legal obligations and conformance;

5. The members of a subcommittee shall elect their chairperson who shall preside at its meetings whenever possible. The chairperson is simply a coordinator with equal rights to all other members;

6. The meetings and proceedings of a subcommittee shall be regulated in such a manner as the subcommittee may from time to time determine;

7. The frequency of meetings of subcommittees shall be decided at discretion of their members;

8. The reports of the subcommittees shall be presented at each Executive Committee meeting (if applicable);

9. To the extent of any inconsistency with previous by-laws or motions, this motion prevails.

Defeated