

Executive Summary

BCS Strata Management (Raine & Horne Strata Sydney before its acquisition in 2010), together with Executive Committee, is directly and solely responsible for the following mismanaged contract on behalf of large strata scheme at Macquarie Park, NSW for 11 years:

- Coerced owners corporation to allow the strata manager and the Executive Committee to sign off the contract with wireless internet service provider (ISP) without tender, and without decision being made at a general meeting.
- Misplaced (by own admission: lost) the paperwork of the contract with the wireless ISP for nine and a half years (until December 2013).
- BigAir Group Ltd (BigAir) and its predecessor WHome wireless service provider failed to comply with the commercial agreement with the large strata scheme:
 1. Have not reimbursed owners corporation an amount equal to 5% of all income twice a year from April 2004 till now (March 2015).
 2. Since 15th of November 2013 runs the business without any legal rights as original WHome contract was cancelled by the owners corporation officially.
 3. Have not paid 10% interest on unpaid amounts to owners corporation for period of ten years.
 4. Failed to ensure all required certifications were provided to the owners' representative within five business days of completion of installation.
- Since 31st of January 2014, BCS Strata Management failed to enforce legal order that requested BigAir to leave private property.

Currently, BigAir is:

- Not paying for electricity usage to owners corporation.
- Not paying for renting common property in the complex. In 2010, the owners corporation rejected Optus' proposal to rent common property for small mobile tower in amount of \$22,000.00 (GST inclusive) per year. Using that average figure for BigAir, it means owners corporation incurred losses for unpaid income of at least \$270,000.00 over eleven years.
- Not serving the needs of the owners (there are no users who subscribe to BigAir services in the complex, or if there are some remaining, the number is very low – BigAir refuses to even provide the details). The last one was supposed to be the caretaker, who, according to the email exchange on 1st of March 2013 and 22nd of August 2013 was instructed by Strata Manager to move to another provider.
- Is illegally running business on private property, in spite of clear order to leave premises on 31st of January 2014, as sent by Grace Lawyers, who charged \$4,172.30 (according to incomplete accounting data as BCS Strata Management prevents owners from accessing all strata documents):

Cred. Code	Creditor Name	Doc. Ref. No.	Doc. Date	Doc. Total	Chq. Date	Date Presented
46169	GRACE LAWYERS	50615	31/03/2014	\$195.25	23/04/2014	23/04/2014
46169	GRACE LAWYERS	50063	28/02/2014	\$1,199.00	01/04/2014	01/04/2014
46169	GRACE LAWYERS	48462	31/12/2013	\$316.25	29/01/2014	29/01/2014
46169	GRACE LAWYERS	47768	16/12/2013	\$1,112.10	06/01/2014	06/01/2014
46169	GRACE LAWYERS	47265	6/12/2013	\$968.00	16/12/2013	16/12/2013
46169	GRACE LAWYERS	45825	30/09/2013	\$381.70	21/10/2013	21/10/2013
			Total	\$4,172.30		

- Provides services to parties outside the complex, which was never approved or licensed as far as owners corporation is concerned.

Huge attempts to engage BCS Strata Management and EC members to discuss this and other issues were made – to no avail. Ample opportunities were given to both parties to provide evidence of their duty of care and professional conduct.

In short, BigAir and its predecessor WHome (fully owned subsidiary of BigAir Group Ltd since 2006), in on the private property/land of the large strata plan and runs unapproved services without:

- Giving the correct notice,
- Taking steps to cause as little detriment, inconvenience and damage as possible, and
- Abiding by an agreement with an owner/occupier of land.

BigAir occupies common property in the large strata scheme without approval or contract.

One of the excuses BigAir tries to portray is that their equipment is low-impact. Most ordinary people do not know that low-impact is description for visual impact. The health impact and the power of the facility is not described by term "low-impact" at all.

For carriers seeking to install infrastructure, the general rule is that they need to obtain local government planning permission and comply with state and territory planning laws. However, carriers may install a limited range of facilities without seeking planning approval. The most common of these are low-impact facilities. The determination defines where these facilities can be installed, based on location and zoning considerations. A facility that may be otherwise deemed low-impact in a rural or industrial zone may not be low-impact if it is installed in a residential area.

Carriers seeking to inspect land, install a low-impact facility or maintain a facility must comply with Schedule 3 to the Telecommunications Act and with the Telecommunications Code of Practice. Schedule 3 specifies carrier responsibilities, including requirements to:

- give written notice to landowners and occupiers, before the activity starts.
- do as little damage as practicable and act according to good engineering practice,
- take all reasonable steps to ensure the land is restored to a condition similar to its condition before the activity began,
- take all reasonable steps to ensure the activity interferes as little as practicable with the operations of a public utility,
- maintain records about the type and location of certain facilities.

The Telecommunications Code of Practice imposes additional requirements on carriers, including requirements to:

- comply with any standard or code registered with the ACMA,
- ensure the design, planning and installation of the facility follow best practice and comply with ACMA or industry codes or standards,
- give written notice to landowners and occupiers, specifying the purpose for which the carrier intends to engage in the activity and outlining the objection process,
- at least ten business days before starting the activity (including installation) or at least two business days before beginning an activity associated with inspection of land if no part of the land affected by the land entry activity is, or is included in, a sensitive area and engaging in the activity does not involve any material disturbance to the land when installing a low-impact facility between 10:00 pm and 7:00 am, make no more noise than allowed under the relevant state or territory law applying to similar activities,
- take all reasonable steps to make use of existing facilities for the activity, and make reasonable efforts to cooperate with other carriers and public utilities undertaking similar activities on the same land to minimise inconvenience and damage.

This large strata scheme has 218 lots, with many children of school age. The Department of Education and Training adopts a policy of prudent avoidance by not endorsing the installation of any mobile telecommunications facilities on school or TAFE property.

https://www.det.nsw.edu.au/policies/administrative/asset_manage/mobile_ph/PD20050148.shtml

Although this policy applies to all schools and TAFE Institutes, it is of crucial importance for parents in high-density areas (buildings and houses) where lot of children live. The Department of Education and Training supports objections, if appropriate, to proposals to establish mobile telecommunications facilities near school grounds and TAFE campuses and requests that telecommunications carriers locate these proposed facilities further away from Departmental sites. While the Department cannot state a specific separation distance between a proposed mobile telecommunications facility and a school or TAFE campus, the Department has a preference for a distance of at least 500 metres from the boundary of the property.

The reluctance by BigAir to leave the complex can only be attributed to one logical explanation: BigAir is profitable in some other business running in the complex, of which owners do not know the full details yet. Otherwise, why would anyone be so eager to stay in the complex if they "only provide services to owners and nobody else"!?

There are many Internet service providers now (at some point NBN too) and this large complex does not need to waste owners money on letting a third-party company abuse their common property and funds.

So far, lawyers charged owners corporation \$4,172.30 (GST inclusive) for attempts to remove BigAir from the complex (to no avail).

Timeline of Major Events

- Through campaign with hidden agenda, on 1st of October 2003, a few members of the Executive Committee and Raine & Horne Strata Sydney BCS persuaded owners to approve Special By-Law that allowed the Executive Committee to enter into internet services contracts without decisions at general meetings.

19 owners present in person and 35 via proxy on 1st of October 2003.

Outcome: Raine & Horne Strata Sydney failed to declare the meeting invalid due to lack of quorum. Of 35 proxies, 19 were given to an EC member, who, along with a selective group of 17 (out of 26) townhouse owners (including two other members of the Executive Committee) received reimbursements for personal water and gas usage without Special Resolution or registered By-Law, hence directly decreasing their voting entitlements and being unfinancial. These undeclared reimbursements were never provided in accounting books even as late as May 2016. Six proxy votes were given to Strata Manager himself, who voted for his own increased remuneration at the meeting. Meeting was non-compliant with SSMA 1996 Schedule 2 Section 12 2 (a) and (b), SSMA 1996 Schedule 2 Section 10 (8), SSMA 1996 Schedule 2 Section 11 (7A) and (7B), and SSMA 1996 Section 183.

The Special By-Law was, hence, illegally registered with the Land and Property NSW:

Special By-Law 6

That the Owners Corporation agree to install on common property equipment comprising of a telecommunications infrastructure for the provision of services to residents to enable them to receive the following – broadband internet, wireless connectivity, home working, ip telephone capabilities, home security and automation.

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

- The Special By-Law was registered in record time in the Land and Property NSW on 18th of October 2003.

Form: 15CB
 Release: 1.1
 www.lpi.nsw.gov.au

CHANGE OF BY-LA



New South Wales
 Strata Schemes Management Act
 Real Property Act 1990

AA103129U

PRIVACY NOTE: this information is legally required and will become part of the public record

(A) TORRENS TITLE

For the common property
 CP/SP

(B) LODGED BY

Delivery Box	Name, Address or DX and Telephone	CODE
495R	BY-LAW EXPRESS GPO BOX 751 SYDNEY NSW 2001 PHONE: 9252 0107	CB
	Reference (optional):	

(C) The Owners-Strata Plan No certify that pursuant to a resolution passed on 01 October 2003 and in accordance with the provisions of

(D) section 47 Strata Schemes Management Act 1996 the by-laws are changed as follows--

(E) Repealed by-law No NOT APPLICABLE
 Added by-law No Special 6 & 7
 Amended by-law No NOT APPLICABLE
 as fully set out below.
 (See annexure hereto)

- On 15th of November 2003, six out of nine members of the Executive Committee in attendance, without passing any details to 218 owners in the complex or issuing request for tender, entered into five-year contract with SkyNet Global to provide owners with broadband and home services.

That contract could have easily be left for approval at the Annual General Meeting a month earlier - in retrospective, it is obvious why the Executive Committee and Raine & Horne Strata Sydney BCS wanted to avoid it.

Large strata scheme entered into contract with WHome provider of internet for exclusive services to owners in the complex only. According to the contract signed on 15th of November 2003, they were obliged to pay an amount equal to five percent (5%) of all income to owners corporation.

MINUTES OF A COMMITTEE MEETING FOR STRATA PLAN
NORTH RYDE HELD IN APARTMENT AT 9.00AM ON
SATURDAY 15 NOVEMBER 2003.

ITEM 1
PRESENT

APOLOGIES

ATTENDANCE from Raine & Home Strata-Sydney.

ITEM 2 That the minutes of the last Committee Meeting be confirmed
- Carried.

ITEM 3 To consider a proposal from Skynet Global to provide broad
band internet and home services to the complex.

Following discussion it was resolved to enter into an agreement
with Skynet Global permitting them to install their equipment on
common property subject to:

- (a) Any access required to undertake installation and
maintenance is to be arranged through the caretaker.
- (b) The agreement is to be for a period of five years with a
suitable notice period being given (say 6 months).
- (c) That the Owners Corporation shall be paid a fee equal to 5%
of the connection charge to individual subscribers.
- (d) That the service provided by Skynet Global shall not
adversely effect any other services provided to residents of
the complex.

In connection with the service to be provided the following
matter was also raised:

- That any residents using the service should make their
own arrangements to ensure that their computer has
suitable security software installed.

- The original terms and conditions as submitted by WHome SkyNet Global on 3rd of December 2003:

1. **TERM**
 - 1.1 This Agreement takes effect on the date the memorandum of acceptance is accepted by W Home and continues until terminated by W Home.
2. **DEFINITIONS**
 - 2.1 In this Agreement:
 - Building means the owners corporation identified in the accompanying application;
 - Equipment means such equipment and cabling as is required to provide the W Home Services;
 - W Home means W @ Home Pty Limited ACN 104874795 of 395 Pitt Street Sydney NSW 2000;
 - W Home Services means the provision of broadband communications via a wireless or power line connection.
3. **OBLIGATIONS OF THE BUILDING**
 - 3.1 Building hereby grants to W Home a licence to install and maintain the Equipment within the common property on the terms and conditions contained in this Agreement. Building acknowledges that the Equipment is and remains the property of W Home and that W Home may relocate the Equipment within the common property or remove the Equipment prior to or at the expiry of the Agreement (whether by way of termination by W Home or otherwise).
 - 3.2 Building will permit W Home access to the common property where the Equipment is housed or where telecommunications lines are installed during normal working hours (9:00am to 5:00pm Monday to Friday excluding public holidays) on the giving of reasonable notice that such access is required.
 - 3.3 Building will ensure that no person other than personnel authorised by W Home may access, adjust, repair or maintain the Equipment and will not move, alter, add to or attach any other items to the Equipment, except with W Home's written consent.
 - 3.4 Building will give W Home at least 48 hours notice of any planned changes to networking equipment, computer equipment, telephone equipment, power supply, telecommunications wiring or other changes, which may affect the operation of the W Home Equipment.
 - 3.5 Building will provide (and ensure the continued supply) and pay for the supply of electrical power to the Equipment.
 - 3.6 Building will not during the term of this Agreement enter into any agreement with any other organisation providing a service the same as or substantially similar to the W Home services.
 - 2.12 Building warrants that it has obtained all necessary consents in relation to the installation of the Equipment.
4. **W HOME'S OBLIGATIONS**
 - 4.1 W Home is to install the Equipment at no cost to the Building.
 - 4.2 W Home will provide and pay for all necessary telecommunications access lines to the Equipment.
 - 4.3 W Home is responsible for the cost of any relocation of the Equipment within the common property.
 - 4.4 W Home indemnifies Building against all claims by W Home customers against Building as a result of any act or omission on the part of W Home, its servants or agents.
5. **TERMINATION**
 - 5.1 W Home may terminate this Agreement on the giving of 30 days notice in writing.
6. **LIMITATION OF LIABILITY**
 - 6.1 Clause 6.2, applies to goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will not apply if the Building establishes that reliance upon it would not be fair and reasonable.
 - 6.2 Liability for breach of a condition or warranty implied into this Agreement by the *Trade Practices Act 1974*, is limited to one or more of the following as determined by W Home:
 - (a) In the case of goods: (i) the replacement of the goods or the supply of equivalent goods; or (ii) the repair of the goods; or (iii) the payment of the cost the replacement of the goods or the supply of equivalent goods; or (iv) the payment of the cost of having the goods repaired;
 - (b) In the case of services: (i) to the supplying of the services again, or (ii) the payment of the cost of having the services supplied again.
 - 6.3 W Home makes no representation whether express or implied as to the merchantability, condition, durability or fitness for the purpose for which the W Home Services or Equipment are to be used and any implied warranty as to latent defects is expressly excluded. W Home makes no representation whether express or implied that any services will be provided with due care and skill. This clause will not be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying any warranty which by law cannot be excluded, restricted or modified.
7. **MISCELLANEOUS PROVISIONS**
 - 7.1 Each party hereby consents to the use of its name by the other party for the promotion of the W Home services and their availability at the premises (subject to reasonable restrictions which a party makes known to the other party) and acknowledges that such use does not constitute use or infringement of either party's trade mark.
 - 7.2 Neither party shall be liable for any delay or failure in performing any of its obligations under this Agreement or for the consequences of such delay or failure where the delay or failure results from circumstances beyond the control of that party, including without limitation governmental restrictions, fire, flood, storms, earthquake, explosion, failure of or severe or prolonged interruption to electrical supply or telecommunication services, fuel, water or equipment.
 - 7.3 This agreement is fully assignable by W Home. This Agreement may not be assigned by the Building.
 - 7.4 If any provision of this Agreement is invalid or unenforceable such invalidity or unenforceability shall not prejudice or in any way affect the validity or enforceability of any other section or sub-section of this Agreement.
 - 7.5 This Agreement is governed by the laws applying in New South Wales, Australia.

- On 3rd of December 2003, without consultation with members of the Executive Committee, Raine & Horne Strata Sydney BCS sent amendments to the contract. **Of special importance were the clauses that owners corporation should earn some income from the wireless ISP, if income not received in any 12-month period, owners corporation reserved the right to terminate the contract with one-month notice, and that automated renewal of the contract extended to one year.**

Skynetglobal
395 Pitt Street
Sydney NSW 2000

Telephone 02 9668 2999
Fax 02 9668 2383
Email strata@bcms.com.au

Attention: Anna

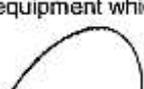
Dear Anna,

Re : Strata Scheme No. [redacted]
North Ryde
Building Application Form

We attach completed application requesting that your services be provided to the above complex of residential apartments and townhouses.

This letter confirms agreement that Skynetglobal will adopt the following clause as if they were part of that agreement.

Special Terms/Conditions:

- The agreement is for an initial period of five years. In the absence of notice the agreement will automatically renew on each anniversary for a period of twelve months.
 - At any time after the fourth anniversary and each year thereafter the Building may give a minimum of 6 months notice of termination to take effect at the end of the calendar month following the expiry of that notice and the next anniversary of the agreement whichever is the later.
 - SkyNetGlobal will pay an amount equal to five percent (5%) of all income (including but not limited to monthly connection charges and installation fees) derived from the installation during the preceding six months, twice per annum in arrears to the Building together with a simple statement of the computation of that income. If no income is received for a period of 12 months then the Building may terminate the agreement with one months notice.
 - SkyNetGlobal warrant that the transmission of the signals either wireless or over power cables will not adversely affect the normal home computer, TV, radio, baby listening devices and usual home appliances ordinarily expected to be present in the building. The Building owners agree that this warranty does not extend to interference with equipment which could not normally be expected to be present in home units.
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- WHome SkyNet Global accepted the contract changes on 19th of December 2003:



19 DEC 2003

Dear Mr [redacted],

My thanks for your Building Application Form, regarding the installation of W Home services into your building ([redacted]).

We have agreed to make an exception to our policies and to accept your requested special terms/conditions as stated in your letter dated 3 December 2003.

Enclosed is a copy of the fully authorized form for your files.

Please feel free to contact W Home (details below) should you have any questions or require any clarification or guidance.

My thanks for your interest in and commitment to W Home.

Yours faithfully,

General Manager Marketing and Alliances

- **There is, however, a serious lack of procedural correctness. In the minutes of the EC meeting held on 10th of December 2003, where only five out of nine members of the EC attended, the contract with the wireless IPS was already approved, without amendments that WHome SkyNet Global signed nine days later!**

(f) Approval granted for Skynet Global to provide broad band internet and home services to residents of the complex.

The proposal from Skynet Global has been accepted subject to additional conditions as outlined in the previous minutes. An agreement has now been signed and dispatched to the service provider.

- Years passed by and no details of any income or benefits to owners corporation that the wireless ISP might have provided were given to owners.

Financial statements did not contain a single figure of earnings from WHome SkyNet Global in period since the contract signoff and 2012, when one concerned owner, realising that no details of the payments were ever provided to owners over the years, tarted requesting information about current status of the contract. To no avail. BCS Strata Management and the members of the Executive Committee avoided any scrutiny.

- Affairs became more complex in 2013. The owner persisted with asking for proof of benefits of having the wireless ISP business running in the complex. Number of emails exist to prove it. BCS Strata Management refused to respond to each of them.

- On 2nd of January 2013, EC member wrote to Strata Manager, and in the email clearly stated the responsibility of BCS Strata Management to resolve the contract with the ISP.
- 29th of January 2013: BCS Strata Management tries to approach original wireless ISP to obtain copy of the lost contract. **BCS Strata Management was not even aware that SkyNet Global was acquired by BigAir as early as 2006:**

From: [Raine & Horne Strata Sydney](#)
Sent: Tuesday, 29 January 2013 5:53 PM
To: 'webmaster@skynet.com.au'
Subject: [SP](#) - Existing Contract

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Good afternoon
– **Macquarie Park**
Existing Skynet Global Contract

I am the Strata Manager for the above property.

I understand that Skynet Global provides a wireless internet service to this scheme.

Could you please confirm.

If so, could you please forward a copy of the contract between strata plan and Skynet Global to our [office](#).

Could you also please advise how many unit owners (names and unit numbers not required) in this scheme are subscribed to the Skynet Global service.

Your assistance with this matter will be greatly appreciated.

Should you have any questions regarding this matter, please do not hesitate to contact me.

- 1st of March 2013, Caretaker complains to Strata Manager about Big Air and issues statement that they believe they were the only BigAir user in the complex:

 Fri 1/03/2013 11:29 AM
Ruth Luka <ruthluka@bigair.com.au>
Bigair

To Peter Bone

 You replied to this message on 4/03/2013 8:28 AM.

Hi Peter,

As you are aware I have had my computer repaired, this has made me think, by my records I am the only one that is with Bigair in the complex. This to me is really unnecessary, the cost of running Bigair etc, to have Bigair on the complex,
After contact with John Ward I feel it could be advisable for me to change supplier and we could have Bigair removed from our complex.
If you please discuss this with the Executive Committee and return to me the outcome as soon as possible.

- 22nd of May 2013 – correspondence between Strata Manager Mr Peter Bone and Caretaker confirmed two accounts with Big Air: one was from Caretaker and one from another owner in the complex.

 Wed 22/05/2013 8:58 AM
Peter Bone
RE: Body Corp report 22nd MAY 2013.rtf

To 'Ruth Luka'

Thanks Ruth

By the way, I have recently discovered at least one unit owner is currently using the Bigair e-mail address.

Regards

From: Ruth Luka [<mailto:ruthluka@bigair.com.au>]
Sent: Wednesday, 22 May 2013 8:47 AM
To: Peter Bone
Subject: Body Corp report 22nd MAY 2013.rtf

Hi Peter
Please find attached the report for the E C meeting tonight.

- 8th of August 2013: BCS Strata Management made another desperate attempt to obtain copy of the lost contract from wireless ISP:

From: [redacted]
Sent: Thursday, 8 August 2013 12:37 PM
To: [redacted] whome.com.au
Subject: SP [redacted] - Current Contract

Good afternoon [redacted]

Re: Strata Plan [redacted] Macquarie Park
Current Contract

I am the Strata Manager for the above property.

I am currently updating the scheme's files and have been advised that the Owners Corporation of this scheme currently has a rental contract with WHome.

I cannot however locate a copy of this contract and would greatly appreciate if you could forward me a copy.

Please do not hesitate to contact me should you have any questions regarding this matter.

- 12th of August 2013: BCS Strata Management complained to EC member that they were not having any progress regarding contract with the wireless ISP.

Based on request from a single EC member, caretaker disconnected power to BigAir equipment. Not only that advice was legally very dangerous but also rushed without any consultation with the rest of the Executive Committee.

From: [redacted]
Sent: Monday, 12 August 2013 8:08 AM
To: [redacted]
Subject: RE: SP [redacted] - Current Contract

In that case please instruct [redacted] to disconnect the power to the unit and refuse access to any whome staff until they contact you and resolve the dispute.

They will turn up in a hurry if there are customers using the service.

From: [redacted]
Sent: Monday, 12 August 2013 8:03 AM
To: [redacted]
Cc: [redacted]
Subject: FW: SP [redacted] - Current Contract

Good morning [redacted]

I am getting nowhere with the Whome matter.

Please see below my most recent attempt to obtain information on this matter.

- **Upon ill-advice by the EC member, Caretaker switched off the power supply to wireless ISP equipment on 13th of August 2014.**

- **BigAir, as new owner of the wireless ISP, responded with threats and explanations about "their rights" to run the business one day after the power was switched off to their equipment, on 14th of August 2014:**

From: On behalf of BigAir Facilities <facilities@bigair.net.au>

Sent: Wednesday, 14 August 2013 2:38 PM

To: Raine & Horne Strata Sydney

Subject: North Ryde : SP - Current Contract

Good afternoon

By way of confirmation, I am the Commercial Manager at BigAir and as such I am the proper officer of this company to deal with property related matters such as what has happened this morning.

I think the best place to start is to suggest that you update your records to reflect updated contact details below;

Name BigAir Group Limited ACN 098 572 626

ABN 57 098 572 626

Short form name BigAir

Notice details Level 1, 59 Buckingham Street, Surrey Hills NSW 2010

Telephone: (02) 9993 1300

Facsimile: (02) 9699 1840

All property related matters;

Attention: Commercial Manager

facilities@bigair.net.au

All Operational Related matters;

Attention: NOC Manager

noc@bigair.net.au

All Billing Related matters;

Attention: Accounts Payable Officer

payables@bigair.net.au

In regards to existing equipment on the property, I suggest that every site has particular nuances that may or may not be a factor to be considered. In all circumstances BigAir advise property owners to seek independent legal advise in relation to the specific circumstances associated with any particular matter and their rights under the legislation that they [property owner] operates and interaction with the Telecommunications Act.

Please note that I have only recently started at BigAir and as such I have had no visibility to this site previously, I have briefly looked at my predecessors notes and it is clearly apparent that the underlying issues predate him. On this basis, and without the time to perform more thorough investigation, I provide the following observations without prejudice and in the spirit of cooperation.

As discussed this site is an old WHome facility - WHome is a fully owned subsidiary of BigAir Group Ltd - From a access perspective and without performing any serious investigation - I would speculate that access to the premises is provided by way of two aspects - there should be a contact to deliver services to tenants in the property (usually called a service level agreement) - under this agreement there should be a provision providing access to property for the purpose of installing equipment necessary for the delivery of services. The second aspect would be that the equipment would have been installed with the approval of the owners in accordance with the provisions of the Telecommunications Act.

At this juncture and without prejudice a bit of background may be prudent;

BigAir is a Licensed Carrier under the Telecommunications Act 1997 ("Cth").

WHome would have originally accessed with the approval of the property owners and in accordance with the Telecommunications Act and the agreement to provide services to the tenants of the property

The Telecommunications Act and associated regulations were designed to encourage the roll out of telecommunications infrastructure in Australia.

Schedule 3 to the Act provides carriers with the power to inspect land to determine whether the land is suitable for the carriers purpose and install a facility on the land and maintain facility that is situated on the land . Carriers receive immunity from certain State and territory laws when exercising these powers. Again and without labouring the point; BigAir suggest that you seek legal advise in regards to the interaction between Federal legislation and State legislation when reviewing your requirements as a property owner in respect to our use of your site and any requirements that you may need to fulfil.

The power to install a facility may only be exercised with respect of certain types of infrastructure, such a facility described in the existing [Low Impact] determination.

The Telecommunications (Low-Impact Facilities) Determination, as the name implies, regulates whether a particular type of facility is low-impact or not.

The Telecommunications Act 1997 (CTH), Telecommunications Code of Practice 1997 and the Telecommunications (Low-Impact Facilities) Determination are available from <http://www.austlii.edu.au>.

We understand that the installation on the rooftop of the premises falls within the criteria defined under this determination, and as such is covered under the auspices of the Telecommunications Act. To interfere with this equipment may constitute a criminal offence under the Commonwealth Criminal Code.

I do not personally favour the above situation as I find it cumbersome and confusing to the parties involved and in my experience leads to circumstances to which we find ourselves in now.

As you know, I have dispatched a technician to site to determine review the existing legacy equipment and pending this advise I will revert to your offices with suggested course of action moving forward. However, and for the avoidance of any doubt - I do not believe that Property Owners should have to pay for the use of power - and moving forward I will rectify this situation either by way of compensation to the owners based on power draw or by way of separate metered supply with provider (regardless of whatever contractual arrangement exist between the owners and WHome). We can discuss this in greater detail once I have familiarized myself with the property.

I hope the above will go some way to resolve any concerns that you may have in relation to the above site - however if more substantive response required - I will need to assess in the context of specific concerns.

- 14th of August 2014: BigAir sent a technician to set up a new cabinet for the system on the rooftop of Block C. Two technicians from BigAir came to the strata complex at around 13:40 hours and stayed until around 18:20 hours to complete their new installations and work.

Owners were never given any explanation or details of the event so far and neither BigAir complied with the 48-hour advance notice to visit the site (a required by the original contract).

- Caretaker wrote a summary of what happened on 14th of August 2014, along with details of the treat issued by BigAir. It was sent to only two members of the EC:

Dear EC and Secretary 14th August 2013.

Yesterday I turned the power off to the Big Air box in the Telstra room as requested by

Today at 11.15am I had a call from Andrew of Big Air stating that he would be sending some- one out to setup a new cabinet for the system up in the roof top of C Block as it was sitting on milk crates now and to do a general service.

With that I called Strata Manager to inform him, he was not in the office so asked for Branch Manager he was unable to talk, the receptionist said that she would have Strata Manager call me. While waiting for Raine & Horne Strata Sydney to call, I called other member of the EC and left a message, then called to see if was home & spoke to his wife, she advised me to tell the people that there is a outstanding matter that needs to be attended to and for them to call and talk to the Strata Manager.

No sooner hung up, EC member called and confirmed what's wife had said, and also asked me to turn off the system up in the rooftop of C Block, which I did do. Then I had Strata Manager call so filled him in on all the calls Etc, and that he would be getting a call regarding this matter, he agreed with what was said.

I had a call from another staff member from Raine & Horne saying that she had a guy from Big Air in the line, she put him through to me, he was saying that there needs to be some work done on the system in C Block, I informed him that the power had been turned off and that he needed to have his supervisor call the Strata Manager on the matter.

I then had a call from Big Air saying that there was a power problem with the system at our site. He asked the name of our complex and did not know where or anything really about us. I informed him of the situation and gave him Strata Manager's name and he said he would call. **He called back saying that he could not talk to Raine & Horne Strata Sydney and that what was done was illegal and that he did not want to have police escort his guys on site to turn the power back on. I said that I would get Strata Manager to call him back immediately so I called Raine & Horne and spoke to staff member asking for Strata Manager, who answered, I filled him in on the matter and a he said that he had had a call from a Big Air and that he would call him now.**

Branch Manager from Raine & Horne Strata Sydney called me and said for me to turn the power back on and to allow the men to replace the cabinet etc and have the system back up. I returned to both areas and turned all power back on.

I had two men on site with a new cabinet and other equipment to carry out the said job at around 1.40pm and said that the job would take approx 2-3 hours. I checked with my staff member at around 3.45 and he said that they were not going to be finished by 4.00 that they would be another hour or an hour and a half.

I called my night staff at 5.35pm to check if we had tradesmen up in C Block, I spoke to Chris who said that they would be another 40 minutes or so just finishing off some details.

I hope that I did the correct thing in the situation.

BigAir did not provide any details or license information about the new equipment.

- In panic, BCS Strata Management contacted the EC member asking for advice on 14th of August 2013. The response offered layman's advice:



Wed 14/08/2013 3:06 PM

RE: SP - FW: North Ryde : SP - Current Contract

To

The power to install equipment even if permitted does not extend to the provision of free electricity and always includes a rent or other reimbursement.

They are at fault by not notifying change of party, address and are in breach of their agreement. Do not get bullied by these people.

From:

Sent: Wednesday, 14 August 2013 2:51 PM

To:

Cc:

Subject: SP - FW: 1 Fontenoy Road, North Ryde : SP - Current Contract

Good afternoon

Please see e-mail below from Bigair.

- On 1st of September 2013, after concerned owner tried to motivate a group of owners and EC members via email, EC member sent urgent note to BCS Strata Management and EC members. In it, he was looking for scapegoat by trying to put blame on the owner who discovered the contract mismanagement. He also provided number of false statements, including the fact that 5% commission by wireless ISP was not part of the original contract as discussed at EC meeting on 13th of November 2003.

Sent: Sunday, 1 September 2013 11:50 AM

To: Raine & Horne Strata Sydney Strata and Branch Managers

Cc: EC members

Subject: SP the wHome contract / BigAir issue URGENT attention please on 2nd September.

You have been authorised at the ECM last Wednesday to sign a costs agreement with Lawyers regarding this wireless service. I suggest you also supply this email and the relevant AGM minutes and ECM minutes I refer to below. In addition to the actual contract in your possession which must be supplied to lawyers you will find the additional information below and require to extract and copy from the minute book the various minutes referred to.

I have researched my files and correspondence with Raine & Horne Strata and can advise the matter came about as follows:

In or about July / August of 2003 the owners corporation was fielding numerous complaints about the lack of internet connections (and telephone lines in general) to the complex. This situation was much worse than we currently experience, as at that time mobile phone data services were virtually non-existent in this geographic area and the relevant telephone exchange which supplied our voice services was not equipped for what we now call ADSL or ADFSL2. As a result the strata manger sought an alternative supplier of wireless internet.

In September 2003 a registration of interest form was circulated to all owners to gauge the level of support for the introduction of such a service. While I do not have the final count of that returned survey I know the demand was significant and prompted wHome to offer a contract for the provision of the services. The Owners Corporation (the committee) knew that this would require access to common property (largely we were told at the time to the electrical supply cupboards around the complex).

As a result the matter was put to the **AGM in October 2003** and passed. Motion number 8 applies. You should find both the notice of that AGM and the relevant minutes which show the matter was approved for the committee to negotiate a contract. That AGM motion reads: **"That the Owners Corporation agree to install on common property equipment comprising of a telecommunications infrastructure for the provision of services to residents to enable them to receive the following – broadband internet, wireless connectivity, home working, ip telephone capabilities, home security and automation. The Executive Committee shall be granted the power to review the services available and enter into a contract on behalf of the Owners Corporation."** You may find it insightful to check whether concerned owner in question was present at that AGM as I do not have my copy of the minutes to hand.

Subsequently Strata Manager brought back a contract to the ECM. **An ECM was convened on 15th November 2003 at 9am on Saturday 15 November 2003. ITEM 3 of that ECM clearly sets out the terms under which a contract with Skynet Global were to be allowed to install the equipment. The contract was to provide for the owners corporation to receive 5% of all the income derived by individual subscribers. The detailed contract is not attached to my copy of the ECM minutes but I presume that it complies with that instruction.** I note that the members present at that ECM were 6 in all. Apologies were received from another member so he was clearly aware of the meeting and would have been aware of the AGM motion having being approved which allowed for this installation.

There is therefore nothing wrong with the installation and no failure at any time of the Managing Agent, Executive Committee or Owners Corporation in permitting it.

And now to the problem part. I understood the contract to require annual payments of the 5% commission which the Strata Manager did not follow up on. I suspect that initially the take-up and rollout was slow but there is no doubt that it was intended to be paid. The contract was to provide for termination with 6 months notice after 5 years. The failure to collect the funds is a failure of the Strata Manager – not of the committee. I suspect this got further lost in the transition through strata managers over the years.

The commercial position will only be clear in the actual contract but our instructions to Grace are that if we do not receive immediate compensation that notice is to be given to terminate the service with 6 months notice. An acceptable compensation settlement would be:

An accurate accounting of all subscriber income attached to the antennae at Macquarie Gardens for the period November 2003 to now (10 years!!) – as the supplier has increased the capacity without consent (it was originally intended only for residents of Macquarie Gardens) this will be a substantial number as the signal can be detected for some distance – much stronger than initially. 5% of that amount is due an payable now. Complete recovery of all our legal costs incurred in pursuing the debt.

I suspect that the accounting for the income in the manner contracted will be claimed as too hard to effect now. **Failing such accounting an annual fee of \$20,000 (being the amount that alternative suppliers would pay for access based on other contracts offered but refused) would be the minimum acceptable fee. This fee should be negotiated in two parts for tax reasons. 50% should be nominated as the estimated consumption of electricity. (If the supplier wishes to continue the service by paying the 5% we will have to take the risk on power consumed – however ANY change to terms must include full cost recovery for all power consumed and the supplier is to pay for and have read a meter to verify this.**

If the amount is not paid then as there are many alternate services available the supplier must be given notice to remove the equipment. I have no doubt that the matter, if taken to an AGM again, would result in a refusal to grant access. The supplier should be left in no doubt as to the antithapy that exists around their attitude, failure to communicate and live up to their contract. Compromise will be hard to obtain from the owners as a whole. The circumstances that existed at the time the service was initially permitted do not exist today and there is absolutely no imperative that our building have this equipment installed for anything other than economic gain. This matter must be resolved before the notice for the AGM is sent out. That gives us a bare 5 weeks. If they (Big Air) attempt to drag there feet I will move at the AGM that the service be discontinued and legal action commenced for breach of contract. That is a certain loss for them regardless of the Telecommunications Act. For that reason its is very muchy in the interests of Big Air to settle quickly as concerned owner has quite incorrectly (but to our advantage in this case) whipped up the masses into a fervent revolt on the "theft" of electricity.

This matter is important and urgent for reasons of the false claims by concerned owner surrounding the approval and recovery of income but in fairness it is a Strata Manager issue and not an EC problem. It is very much in BCMS's interests to finalise this rapidly before the AGM.

- The final decision to enter into agreement into a contract with WHome was not made at the general meeting. The fact is: it was made at a small EC meeting, attended by only six (out of nine) members of the EC and Strata Manager himself, one month after the general meeting:

MINUTES OF A COMMITTEE MEETING FOR STRATA PLAN 52948, 1-15
FONTNEOY ROAD NORTH RYDE HELD IN APARTMENT 151 AT 9.00AM ON
SATURDAY 15 NOVEMBER 2003.

ITEM 1
PRESENT M MacDonald, E Saultis, U Aranwella, G
Raichman and J Ward.

APOLOGIES

ATTENDANCE J Fry from Raine & Horne Strata-Sydney.

ITEM 2 That the minutes of the last Committee Meeting be confirmed
- Carried.

ITEM 3 To consider a proposal from Skynet Global to provide broad
band internet and home services to the complex.

Following discussion it was resolved to enter into an agreement
with Skynet Global permitting them to install their equipment on
common property subject to:

- (a) Any access required to undertake installation and
maintenance is to be arranged through the caretaker.
- (b) The agreement is to be for a period of five years with a
suitable notice period being given (say 6 months).
- (c) That the Owners Corporation shall be paid a fee equal to 5%
of the connection charge to individual subscribers.
- (d) That the service provided by Skynet Global shall not
adversely effect any other services provided to residents of
the complex.

In connection with the service to be provided the following
matter was also raised:

- That any residents using the service should make their
own arrangements to ensure that their computer has
suitable security software installed.

- 5th of September 2013: BigAir tried to rush owners corporation into a new contract, which was rejected

From:
Sent: Thursday, 5 September 2013 3:14 PM
To: 'BigAir Facilities'
Cc:
Subject: RE: SP - RE: , North Ryde : SP - Current Contract

Hi

Thank you for your e-mail.

The Executive Committee are currently seeking advice on this matter.

Will be in contact once I have instructions from the Executive Committee.

Regards

From: bigair.net.au **On Behalf Of** BigAir Facilities
Sent: Tuesday, 3 September 2013 4:04 PM
To:
Cc:
Subject: Re: SP - RE: , North Ryde : SP - Current Contract

Good afternoon

I do not appear to have received any further response in regards to our proposal to enter into access licence?

Kind Regards

On 19 August 2013 15:21, - wrote:
Good afternoon

Re: Strata Plan - Macquarie Park

Thank you for your e-mail.

I am the Strata Manager for this property.

has now bought me up to speed on this matter.

Your proposal has been forwarded to the members of the Executive Committee for their review and consideration.

I will keep you advised of the Executive Committee's decisions in relation to this matter as and when this information becomes available.

- 16th of September 2013: BCS Strata Management engaged Lawyer (at owners corporation expense) to pursue the contract details with the wireless ISP. In spite of the fact that BCS Strata Management was solely responsible for lost contract, they abused common funds of owners corporation to resolve the issues. **In the official request, Lawyer admitted that Strata Manager lost the contract and had no knowledge of it since 2004.**

16 September 2013

Attention:

BigAir Group Limited
Level 1, 59 Buckingham Street
Surry Hills NSW 2010

Email: facilities@bigair.net.au

Dear Sir

THE OWNERS - STRATA PLAN NO _____
TELECOMMUNICATIONS INSTALLATION
_____, MACQUARIE PARK 2113

Our Ref: 131862

We act on behalf of The Owners – Strata Plan _____ (“Owners Corporation”).

We have been instructed that the Owners Corporation has previously entered into an agreement with Whome which is a subsidiary of BigAir Group Limited for use and access of the common property for the installation and subsequent repair and maintenance of certain telecommunication equipment.

BigAir has recently installation further equipment which was connected to the common property electricity supply. We have been engaged by the Owners Corporation to advise on this issue.

We kindly request that you provide the executed copy of the current agreement between the Owners Corporation and WHome so we can assess the rights of both parties in light of the agreement at the applicable law and advise our client accordingly.

Should you have any questions, please do not hesitate to contact us and we look forward to hearing from you.

- 1st of October 2013: BigAir approached the Lawyer showing willingness to enter into new contract.

From: On behalf of BigAir Facilities <facilities@bigair.net.au>
Sent: Tuesday, 1 October 2013 5:43 PM
To: Solicitor on behalf of Raine & Horne Strata Sydney and strata plan|
Subject: Re: [GL 131862]

Good afternoon

Re: Strata Plan Macquarie Park

Please find attached letter for attention of the Solicitor.

We would welcome the opportunity to discuss this matter directly with the Solicitor, to this purpose please feel free to contact me directly on XXX.

Kind Regards

—
BigAir Group Limited Facilities

email: facilities@bigair.net.au | **address:** Level 1, 59 Buckingham St, Surry Hills, NSW 2010
phone: (02) 9993-1300 | **fax:** (02) 8080-8162

- 17th of October 2013: Lawyer's office initiates proposal for meeting with BigAir:

From: Solicitor's Office|
Sent: Thursday, 17 October 2013 2:56 PM
To: Raine & Horne Strata Sydney
Cc: Solicitor
Subject: RE: [GL 131862] | Draft letter to BigAir
Attachments: 20131001173721067.pdf; Re: [GL 131862]
Importance: High

Please see **attached** letter received from BigAir. The original email (also **attached**) which sent the letter didn't have the attachment. SB (the contact at BigAir) had been on holidays since and we have only been able to receive the letter today.

I have also had a chat with BigAir on the phone today. They do not have the original contract. BigAir, however, is agreeable to regularise the situation, i.e. pay for its use of the electricity by setting up a separate or private meter, and enter into a new agreement with the Owners Corporation. If the Owners Corporation has certain issues it would like addressed, this would be a good opportunity to incorporate them into the new agreement.

He has suggested a site meeting with the Owners Corporation and BigAir manager of his office to discuss and reach an agreement with regularising the situation. We would assume that the member(s) of the executive committee and/or strata managing agent would attend on behalf of the Owners Corporation. They are conscious of the present circumstances and do not want to have a repeat of the situation where the power was cut off. Once the meeting is held, they will provide us with an agreement for our review on behalf of the Owners Corporation.

Please let us know if the Owners Corporation wish to proceed with the meeting. I look forward to hearing from you.

- BCS Strata management admitted at the Annual General Meeting on 23rd of October 2013 that "they had lost" the original SkyNet Global contract, in spite of one owner having proof that he witnessed the contract at document viewing at Strata Manager's office one year earlier!

No decisions were made at the AGM and BCS Strata Management even declined to provide any information in the minutes of the AGM thus preventing owners who did not attend in person to have proper information.

- 15th of November 2013: **BigAir was notified by the Lawyer about strata scheme accepting their repudiation and cancelling the original Whome contract, with strong warnings that all unpaid benefits had to be settled, along with 10% interest before any new negotiations occurred.**

BigAir Group Limited
Level 1, 59 Buckingham Street
Surry Hills NSW 2010

WITHOUT PREJUDICE SAVE AS TO COSTS

URGENT

Email: facilities@bigair.net.au

Dear Sir

**THE OWNERS - STRATA PLAN NO
TELECOMMUNICATIONS INSTALLATION
, MACQUARIE PARK 2113**

Our Ref: 131862

As you are aware, we act on behalf of The Owners – Strata Plan ("Owners Corporation").

We have been instructed that the Owners Corporation has previously entered into an agreement with Whome which is a subsidiary of BigAir Group Limited for use and access of its property for the installation and subsequent repair and maintenance of certain telecommunication equipment.

At the executive committee meeting of the Owners Corporation held on 15 November 2003, the Owners Corporation approved a contract which detailed the terms of this agreement. As part of the agreement, the Owners Corporation was to receive 5% of the income derived by the carrier.

The Owners Corporation has received no such payments from Whome or BigAir since the commencement of the contract. Whome and BigAir are, therefore, in breach of an essential term of the contract. The Owners Corporation puts you on notice that it accepts this repudiation and, therefore, terminates the contract.

We note that you have recently installed further equipment which was connected to the common property electricity supply without the approval of the Owners Corporation. In a conversation with the writer you have advised that BigAir is willing to enter into a contract with the Owners Corporation in relation to this use of its premises and services.

We have sought instructions from the Owners Corporation which has advised that it would not be willing to enter into any further contract until a realistic commercial offer is proffered by BigAir. Such an offer must factor the payments which have not been made by your company since 2003, as well as proper consideration in the form of annual payments in the future. In addition, the Owners Corporation will require your company to reimburse it for the use of its services (such as electricity) and its legal and strata management costs for entering into the agreement.

The Owners Corporation requests that BigAir provide its offer within fourteen (14) days of the date of this letter. If a satisfactory response is not received within this period, our client will have no alternative but to have your company's equipment removed from its premises. In this regard, we have been instructed that only one unit at the premises is utilising your company's services and the owners of the unit have advised that they have no objection to the services being disconnected.

We trust your cooperation will be forthcoming and look forward to hearing from you.

- On the same day, 15th of November 2013, the Lawyer sent the following warning in email to EC and BCS Strata Management:

3.3 Carriers' responsibilities

Carriers seeking to inspect land and install a low-impact facility or maintain a facility must comply with Schedule 3 to the Telecommunications Act and with the Telecommunications Code of Practice. Schedule 3 specifies carrier responsibilities, including requirements to:

- provide written notice to landowners and occupiers, before beginning the activity;
- do as little damage as practicable and act according to good engineering practice;
- take all reasonable steps to ensure the land is restored to a condition similar to its condition before the activity began;
- take all reasonable steps to ensure that the activity interferes as little as practicable with the operations of a public utility; and
- maintain records about the type and location of certain facilities.

On 16 May 2013, the Federal Court (*Pipe Networks Pty Ltd v Commonwealth Superannuation Corporation* [2013] FCA 444) upheld the controversial statutory rights of telecommunications carriers to access privately owned land for the purposes of installing 'low impact' facilities without landowner consent and, thereby, the requirement to enter into a commercial arrangement with the landowner.

- **BCS Strata Management managed to “find” the lost contract with wireless ISP on published it as Document ID BCS6789932 on their website on 10th of December 2013.**

- 13th of December 2013: the Lawyer advised BigAir that no further negotiation by owners corporation would occur and 10% interest rate per annum would apply for late payments.

BigAir Group Limited
Level 1, 59 Buckingham Street
Surry Hills NSW 2010

WITHOUT PREJUDICE SAVE AS TO COSTS

URGENT

Email: facilities@bigair.net.au

Dear Sir

**THE OWNERS - STRATA PLAN NO [REDACTED]
TELECOMMUNICATIONS INSTALLATION
[REDACTED], MACQUARIE PARK 2113**

Our Ref: 131862

We refer to your letter dated 2 December 2013.

We record that you would like to discuss a more enduring relationship with the Owners Corporation. The Owners Corporation can only consider this once the issues arising from the past agreement are resolved by your company.

Please find **enclosed** a copy of letter dated 19 December 2003 from WHome agreeing to the special terms proposed by the Owners Corporation at the time. As you can see, the Owners Corporation was to receive 5% of the income derived by the carrier.

As previously advised, the Owners Corporation has received no such payments from WHome or BigAir since the commencement of the contract.

In our letter dated 15 November 2013, we advised that the Owners Corporation has accepted your company's repudiation and terminated the contract

The Owners Corporation will not be entertaining any further negotiations until the total amount of payments under the previous agreement (since its commencement) have been paid in full. These payments must be substantiated by a detailed calculation of the commission based on all income derived from this installation for each year of the agreement.

Interest on the late payments will be accepted at the rate of 10 per cent per annum based on each full year's commission being payable annually at the end of each year

If such payment is not received by close of business on 20 December 2013, the Owners Corporation may commence action for breach of contract to recover the damages it has suffered.

We await your response.

- 15th of January 2014: Without an official EC meeting, or any notice for owners corporation, the amount offered by BigAir was rejected by owners corporation as grossly inadequate.

- 31st of January 2014: BigAir instructed to remove their equipment from the complex due to failed contractual obligations for 10 years. Big Air refused to comply and still runs business without contact, without presenting their license, and without paying owners corporation for rent, electricity and other items:

31 January 2014

Attention:
BigAir Group Limited
Level 1, 59 Buckingham Street
Surry Hills NSW 2010

WITHOUT PREJUDICE SAVE AS TO COSTS

URGENT

Also by Email: facilities@bigair.net.au

Dear Sir

**THE OWNERS - STRATA PLAN NO
TELECOMMUNICATIONS INSTALLATION
MACQUARIE PARK 2113**

Our Ref: 131862

We refer to your correspondence dated 15 January 2014.

With respect, it is our client's opinion that the offer which has been proposed is grossly inadequate and has no regard to interest.

In our letters dated 15 November 2013 and 13 December 2013 respectively, we informed you that the Owners Corporation has accepted your company's repudiation and terminated the contract.

You are required, therefore, to remove all your equipment and reinstate our client's property to its original condition to its reasonable satisfaction within seven (7) business days of the date of this letter.

In addition, the Owners Corporation will not be entertaining any further negotiations with BigAir. In this regard, from a review of your alleged revenue, it is noted that there will be no or minimum loss to BigAir.

If the equipment is not removed by close of business on 4 February 2014, the Owners Corporation may commence action against you without any further notice to you.

Please kindly confirm once the equipment has been removed.

- 18th of June 2014: At the Executive Committee meeting that was attended by only seven members of the committee and the Strata Manager, decision was made to pursue matters with BigAir without further involvement of the Lawyer due to unsatisfactory progress with removal of the wireless ISP from common property.

MOTION 2: The meeting noted the following matters to be followed up.

BigAir Contract:

The Executive Committee will consider pursuing this matter without the services of Grace Lawyers.

- 10th of September 2014: At the Executive Committee meeting that was attended by only seven out of nine members of the committee and the Strata Manager, owners were told that advice from a legal contact was pending as to who may be recommended to assist the owners corporation with any further action.

MOTION 2: The meeting noted the following matters;

BigAir Contract:

The Executive Committee are awaiting advice from a legal contact, as to who may be recommended to assist the Scheme with any further action.

- 12th of November 2014: Under intense pressure from a concerned owner, who had extensive telecommunications experience and ran thorough investigation about BigAir, and raised cases with Australian Media and Communications Authority and Telecommunications Industry Ombudsman (file number 2014/10/03580), the following was reported in the agenda for the Annual General Meeting:

WHOME (now BigAir) BREACH OF CONTRACT

The wireless internet supplier BigAir, originally known as Whome, has reneged on its contractual obligations to pay a commission to the OC and has relied on changes to the Telecommunications Act to prevent their equipment being removed. Solicitors acting for the OC gave ineffective advice and this matter remains a commercial headache. Self-managed legal action may be the only resolution to this, which will take a lot of committee time. The cost of initiating legal action may exceed any recoupment but the alternative is that BigAir continues to profit from the use of common property for no cost.

BCS Strata Management and EC members found “no errors” in their own actions.

- Motion was raised for owners to approve at the AGM held on 26th of November 2014:

No.17 That the Executive Committee be authorised to take such action as is reasonably necessary to cause the company known as BigAir (formerly known as WHome) to remove their equipment from the premises maintained in breach of contract. Such action is to include the pursuit of a complaint with the Telecommunications Ombudsman. An order by the ombudsman to reconcile the breach in commercial terms (including maintaining equipment on site) may be accepted as an alternative resolution.

- Motion was carried, but results are yet to follow as of mid-July 2016, as shown in the minutes of the EC meeting held on 4th of March 2015. Almost two and a half years after the owners corporation ordered eviction of BigAir from the complex, no concrete action followed by BCS Strata management and the EC:

7. BIGAIR - TELECOMMUNICATIONS OMBUDSMAN:

Motion

7.1 To determine how the Scheme may proceed to resolve the outstanding matter of BigAir's installation and related rent receivable.

The EC delegated this matter to [redacted] as a committee member not involved in the original agreements with Whome and instructed the managing agent to make available to him the relevant contracts and legal letters to pursue settlement negotiations and return to the EC with the proposal.

- Agenda for AGM 2015, dated 20th of October 2015, had the following statements:

The EC is acutely aware of the limited access to hard wired data services in the complex but has no responsibility other than telephone voice access.

The EC has however focussed on pushing ahead to make the NBN available and cabling to the main distribution room has been completed. We will advise as soon as the service is available for subscription to individual apartments. This will allow remaining Whome users in the building to get better data services from NBN and then the BigAir problem can be tackled without denying service to those few remaining BigAir users in the complex.

The wireless internet supplier BigAir, originally known as Whome, has reneged on its contractual obligations to pay a commission to the OC and has relied on changes to the

- 6 -

-47-

Macquarie Gardens, Strata Plan 52948

Telecommunications Act to prevent their equipment being removed. Solicitors acting for the OC gave ineffective advice and this matter remains unresolved.

- Frustrated owner, due to prolonged lack of actions, submitted many Motions for AGM/EGM 2016 to BCS Strata Management on 19th of February 2016. One of the crucial Motions was:

Motion: Recovery of lost revenue from BCS Strata Management for ISP BigAir

That owners corporation 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: "Recovery of lost revenue from BCS Strata Management for ISP BigAir"

BCS Strata Management shall reimburse owners corporation for failing to act in best interest of owners corporation and allowing wireless ISP BigAir to run business without contract or approval since 31st of January 2014 in the following manner:

- Penalty rate of \$2,000.00 plus GST per each calendar month (or pro-rata), with 4% yearly interest rate, calculated since 31st of January 2014,
- If carried, Special By-Law shall be registered with the LPI within two weeks after the resolution at the general meeting,
- The first bulk payment into owners corporation funds shall include all months since 31st of January 2014 and be enforceable within 30 days after the registration of the Special By-Law,
- Payments into owners corporation funds shall continue until such time when BigAir removes their equipment from the complex, or different decision is made by owners corporation,
- Payments into owners corporation funds shall be monthly and strictly monitored by members of the EC,
- To the extent of any inconsistency with previous by-laws or motions, this motion prevails.

- The owner's Motion generated lot of undisclosed activities by BCS Strata Management, including more decisive actions against BigAir.

Minutes of EC meeting held on 21st of March 2016 finally allege that some actions against BigAir are proceeding, albeit very belatedly. The EC and BCS Strata Management tried to link actions against BigAir with NBN rollout, although only one documented user was registered with BigAir for more than two years since 2014 and there was no business need to allow BigAir to run services without benefits to owners corporation:

8. BIG AIR SERVICES:
<u>Motion</u>
8.1 To confirm transfer of remaining wHome or Big Air services to alternate provider including Caretaker's office.
Any remaining wHome or BigAir wireless data services must be transferred to an alternate supplier to allow the whome equipment to be removed.
9. ACTION AGAINST BIG AIR
<u>Motion</u>
9.1 To confirm action against BigAir in absence of any practical constraints existing until now.
The action against BigAir for non-payment of agreed commissions which was suspended until NBN services were completed will now be recommenced as authorised at the 2014 AGM.

- Owner's updated Motion for AGM/EGM 2016 was submitted to BCS Strata Management on 22nd of April 2016:

Motion: Recovery of Lost Revenue from BCS Strata Management for Illegal Operation by ISP BigAir

That owners corporation 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: "Recovery of lost revenue from BCS Strata Management for ISP BigAir"

Documentary evidence exists that EC warned BCS Strata Management the recovery of lost income from the ISP was a Strata Manager issue and not an EC problem on 2nd of January 2013 and 1st of September 2013.

As confirmed in Caretaker's report on 22nd of May 2013 only one owner had an account with the ISP and was urged to change provider.

BCS Strata Management shall reimburse owners corporation for failing to act in best interest of owners corporation, acting in non-compliance with Motion 17 carried at AGM 2014, delaying eviction of the ISP although it had no dependence on the rollout of the NBN, and allowing wireless ISP BigAir to run business without contract or approval since 31st of January 2014 in the following manner:

- Penalty rate of \$2,000.00 plus GST per each calendar month (or pro-rata), with 4% yearly interest rate, calculated since 31st of January 2014,
- All disclosed legal costs incurred by Grace Lawyers since 31st of January 2013, amounting to \$1,394.25 (GST inclusive), with 4% yearly interest rate since the date they were paid from common funds, and any other such expenses by Grace Lawyers or other legal service providers, pending financial audit by owners corporation within one month after the resolution at general meeting.
- If carried, Special By-Law shall be registered with the LPI within two weeks after the resolution at the general meeting,
- The first bulk payment into owners corporation funds shall include all months since 31st of January 2014 and be enforceable within 30 days after the registration of the Special By-Law,
- Payments into owners corporation funds shall continue until such time when BigAir removes their equipment from the complex, or different decision is made by owners corporation,
- Payments into owners corporation funds shall be monthly and strictly monitored by members of the EC,
- To the extent of any inconsistency with previous by-laws or motions, this motion prevails.

- **In the meantime, BigAir still runs their business without contract, license or approval or the owners corporation. No benefits to owners corporation.**

Conduct of BigAir When Approached by Concerned Telecom Expert Living in the Complex

- Frustrated by lack of action by BCS Strata Management and the EC for 10 years, an owner with extensive expertise in telecommunication industry IT forensics, approached BigAir in person on 30th of September 2014. The email was sent to prescribed complain address at BigAir:

To whom it may concern,

I am one of the owners in Strata Plan XXX, where your R2MAC is located without legal rights or approval from the owners corporation.

Before taking other actions on my side, it is your obligation to:

** Acknowledge my email within two working days*

** Assign a unique reference number or some other identifier that will ensure we can easily identify my complaint and its subject matter.*

(the rest of the message deleted for the sake of brevity).

No response was received.

- It is important to note that BigAir contacted the owner only after the Telecommunications Industry Ombudsman (TIO) office sent them official request to respond to him before they make other decisions within 10 working days on Friday afternoon, 10th of October 2014. TIO office and the concerned owner spoke in detail three times last week. They reviewed the case and found good grounds for their further involvement.

In addition, around 120 owners in the complex received owners full reports via email and not one objected to his actions or processes. The support was 100% against BigAir to continue to run the business in the complex.

BigAir failed to respond to owner's personal complaint sent on 30th of September 2014. The BigAir employee who called the owner claimed to have just come back from holidays and did not know what was going on.

The owner did not accept that explanation because his email was not only sent to a personal address at BigAir but also to an official company's mailbox that was strictly recommended for official correspondence. A single person being on holidays did not mean that the company stops running the business.

Therefore, even if one BigAir employee had been on holidays, the fact stays: nobody from BigAir had replied from a mailbox designed for official business in prescribed time frame.

- The BigAir employee called back for the first time on 13th of October 2014 and questioned the owner that he sent an email to them two weeks earlier. A call from phone number 02 9933 1300 was received at 14:19 hours EST and the talk lasted for 92 minutes and 38 seconds.

The owner provided a proof that BigAir statements were invalid, void and personally offensive for trying to find excuses for not even acknowledging the complaint:

Sep 30 19:42:54 mysrv sendmail[2826]: s8U9gni7002826: from=<owner@mydomain.dom>, size=10231, class=0, nrcpts=2, msgid=<542A7B19.3090802@mydomain.dom>, proto=ESMTP, daemon=MTA, relay=mysrv.mydomain.dom [10.207.58.99]

Sep 30 19:42:54 mysrv mimedefang.pl[8220]: s8U9gni7002826: MDLOG,s8U9gni7002826, mail_in,,<owner@mydomain.dom>,<facilities@bigair.com.au>,OFFICIAL COMPLAINT AND REQUEST FOR RESPONSE - BigAir Site ID R2MAC running without contract or compensation to owners for 10 years

Sep 30 19:42:54 mysrv mimedefang.pl[8220]: s8U9gni7002826: MDLOG,s8U9gni7002826, mail_in,,<owner@mydomain.dom>,<manager@bigair.net.au>,OFFICIAL COMPLAINT AND REQUEST FOR RESPONSE - BigAir Site ID R2MAC running without contract or compensation to owners for 10 years

Sep 30 19:42:54 mysrv sendmail[2826]: s8U9gni7002826: Milter delete (noop): header: X-Spam-Score
Sep 30 19:42:54 mysrv sendmail[2826]: s8U9gni7002826: Milter add: header: X-Scanned-By:
MIMEDefang 2.75 on 10.207.58.99

Sep 30 19:42:54 mysrv opendkim[1475]: s8U9gni7002826: DKIM-Signature field added (s=default, d=mydomain.dom)

Sep 30 19:42:54 mysrv sendmail[2826]: s8U9gni7002826: Milter insert (1): header: DKIM-Signature:v=1; a=rsa-sha256; c=relaxed/relaxed;\n\td=mydomain.dom; s=default;t=1412070174;\n\tbh=nie2v5ZccKx8tzoljllRwKXOe4OWk2XKQ3KppBWAVpl=;\n\tth=Date:From:To:CC:Subject;\n\ttb=XzZpqngMs1E7DHDVPqPjIN1YVgmvcirqVFZGxlkN01NYm1eMPPFon45QBZixZDq0\n\t hPagf8bZViiWqHxPUBChTwAL2pGO+YwBgeshIqO5No8vNWRCYS8U9nos4d7L2Oas5n\n\t /jvEyBTbAFriV84cgRIkZq2PwZqESjY/6hXYMUI=

Sep 30 19:42:55 mysrv sendmail[2832]: STARTTLS=client, relay=ironport.bigair.net.au., version=TLSv1/SSLv3,verify=FAIL, cipher=ECDHE-RSA-AES256-GCM-SHA384, bits=256/256

Sep 30 19:43:01 mysrv sendmail[2832]: s8U9gni7002826: to=<facilities@bigair.com.au>, ctladdr=<owner@mydomain.dom> (1000/1000), delay=00:00:08, xdelay=00:00:07, mailer=esmtplib, pri=160231, relay=ironport.bigair.net.au. [202.171.190.23], dsn=2.0.0, stat=Sent (Ok: queued as 049AC80D4F)

Sep 30 19:43:03 mysrv sendmail[2832]: STARTTLS=client, relay=aspmx.l.google.com., version=TLSv1/SSLv3,verify=FAIL, cipher=ECDHE-RSA-AES128-GCM-SHA256, bits=128/128

Sep 30 19:43:07 mysrv sendmail[2832]: s8U9gni7002826: to=<manager@bigair.net.au>, ctladdr=<owner@mydomain.dom> (1000/1000), delay=00:00:14, xdelay=00:00:06, mailer=esmtplib, pri=160231, relay=aspmx.l.google.com. [74.125.129.26], dsn=2.0.0, stat=Sent (OK 1412070187lp3si26312574pab.230 - gsmtplib)

The email was sent to two mailboxes at BigAir and accepted by their and Google's SMTP gateways.

There were no bounced messages or rejections.

- **Owner asked the BigAir employee on 13th of October 2014 if he could provide a definite to the question about BigAir serving customers outside the complex. In accordance to the original contract, ONLY owners in the complex were allowed to be recipients or wireless services from their predecessor WHOME. BigAir failed to provide an answer, apart from vague response that the facilities installed in this large strata complex were part of their network. BigAir response was deliberately vague and misleading.**
- **Owner asked the BigAir employee why they did not honour the contract signed with WHOME for 10 years. The response was, again vague, blaming lawyers at BigAir for not carefully checking the contractual obligations after the acquisition of SkyNet Global and WHOME in 2006.**

It is the duty of BigAir to check the contracts and this excuse is not acceptable.

Even more so when the owner had undeniable proof that BigAir technicians were visiting the complex on different occasions in the past. It is obvious that BigAir took good care of maintaining the equipment but not taking care of the contract.

- **Owner asked the BigAir employee to provide him with full details of the current licenses to run their business in the complex. That was declined with suggestion that I should obtain it from ACMA himself. Absolutely unacceptable response by BigAir.**
- **After the incident with disconnected power to BigAir facility on 13th of August 2013, not only the power was reconnected under serious threats by BigAir, but some new equipment was installed by BigAir technicians in that period.**

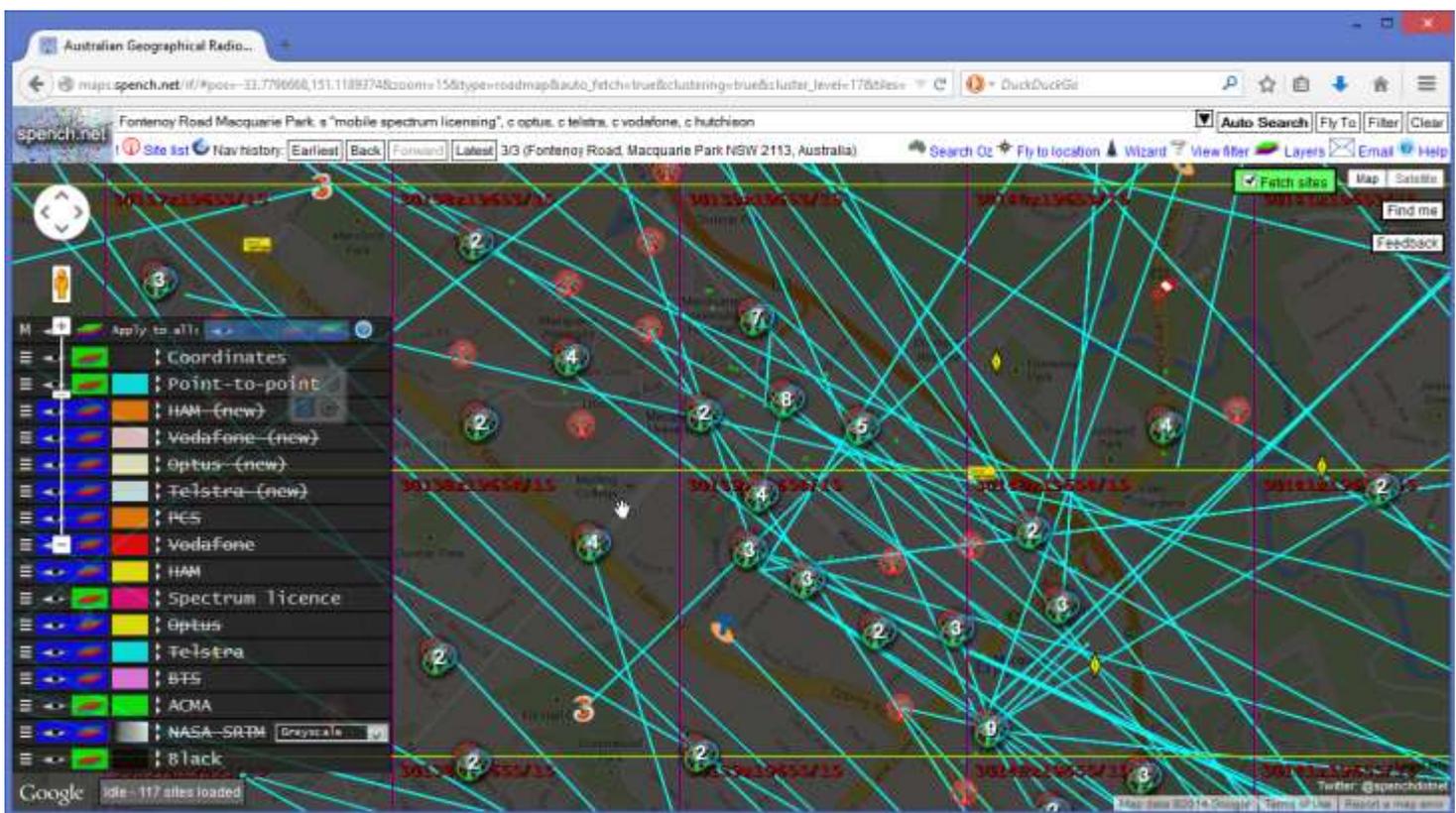
No details of the explanation about the new equipment were provided to owners corporation, or at least it never became published.

- On 15th of November 2013, Lawyers, on behalf of owners corporation, sent BigAir the letter.

The letter clearly indicated that 5% of the ALL income derived by the carrier was overdue for payments since 2004. Later on, BigAir's offer, of around AU\$5,000 all inclusive, was rejected by owners corporation as grossly inadequate.

- **Owner asked BigAir employee to provide him with full details of the supposed new contract that they presented to owners corporation either in January or February 2014. He did not get it and it seems that such contract was never drafted.**

- During the talk on 13th of October 2014 it was obvious that the best offer by BigAir (submitted in December 2013) was compensation in amount of around AU\$2,500.00 per year for using the common property and electricity. That offer was categorically rejected in official response by Lawyers, on behalf of owners corporation, on 31st of January 2014 and BigAir ordered to remove their equipment.
- BigAir tried to claim that the two responses to owners corporation, sent on 6th of February 2014, were never replied to and that BigAir was “expecting the”. The fact is that there was no room for any further negotiation and the duty of BigAir was to organise the removal of the equipment and send notification about it. BigAir claimed to owner on 13th of October 2014 that in their letter on 6th of February 2014 they expressed firm comments they were not able to comply with orders in such a short time frame, but had failed to provide any schedule of their equipment removal to this day (January 2015). It is obvious that BigAir did not intend to comply with the orders and would have not taken any action until concerned owner’s personal TIO case was initiated.
- BigAir employee asked the concerned owner on 13th of October 2014 what would it take, in his opinion, to get new contract signed. The owner replied, in his own name, that reimbursement to owners corporation of at least AU\$40,000.00 per year would be the starting point for any further talks. BigAir found that quote unacceptable. In any case, the decision to enter in any new contract would be made by owners at a general meeting and offers as low as AU\$2,500.00 that BigAir submitted stood no chance.
- BigAir employee refused to provide details of total earnings that their facilities make in the complex, apart from the statement that it is “very small but still profitable”.
- Owner advised BigAir employee that there were lot of wireless signals and providers in this area and that the colocated wireless systems are strongly supported by licensing bodies. As an example, Optus submitted proposal for mobile phone base station at 26 Talavera Road (Site Reference S8821 Nth Ryde West) in early October 2014. Radio Frequency Map of this region taken in July 2014 proved owner’s point:



The response from BigAir was that it “would cost them money” to relocate!?

- Two more times the concerned owner sent emails to BigAir and in site of successful delivery, nobody from the wireless ISP ever responded. As of early January 2015, BigAir failed to even create a complaint for three months!

- On 21st of October 2014, the concerned owner received a form from the TIO office to fill in and prove that he was authorised to represent the owners corporation. The owner forwarded it to the Strata Manager at BCS Strata Management, CC-ed all members of the Executive Committee, and Bcc-ed around 100 other owners. Because BCS Strata Management refused to take action, the Office of Telecommunications Industry Ombudsman refused to even look at the case, in spite of undeniable evidence, because they apparently could only take action if the owners corporation approach them (individuals do not count!?).
- Australian Communications and Media Authority (ACMA) seemingly have no information about this site.

The ACMA do not provide private information on its customers however the Register of Radiocommunications Licences on the ACMA website consists of licensing information that revealed no licensing exists for BigAir in this strata complex:

http://web.acma.gov.au/pls/radcom/register_search.main_page

- BCS Strata Management could not produce any licensing information either.

Photos

Some of the photos taken on 6th of October 2014 on roof of Block C in large strata scheme at Macquarie Park. They also show poor isolation practices on cabling:



MARS ANTENNAS & RADIOSYSTEMS LTD.

ANTENNA
MA - WA58 - 1X MNT

N: M216410200015

N: 49178 DATE: 10/10

MADE IN ISRAEL



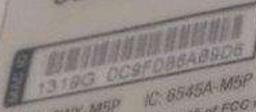
06.10.2014 18:17



www.ubnt.com

PowerBridge M5

Carrier Class AirMax Bridge



1319G DC9F086A85C6

FCC ID: SWX-M5P IC: 6545A-M5P

This device complies with Part 15 of FCC rules.
Operation is subject to the following two conditions:
1) This device may not cause harmful interference and
2) This device must accept any interference received,
including interference that may cause undesired operation.

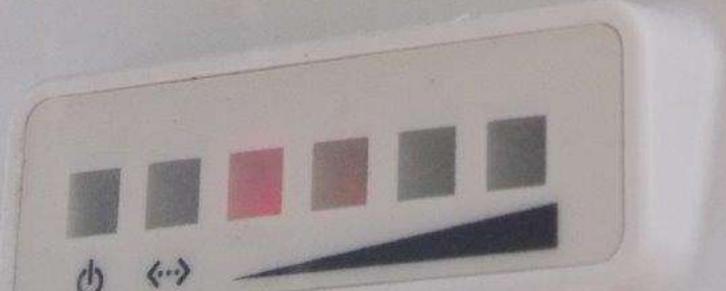
CE RoHS Compliant

M/N: PoweBridgeM5
24V == 1A POE



UBIQUITI NETWORKS

 N28998



06.10.2014 18:14

AIRMUX-200/ODU/F58F/EXT (A)

P/N : 1990120000

S/N : 847003616



ID:CC100056087

This device complies with part 15 of the FCC Rules . Operation is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation

06.10.2014 18:15