

STATUTORY DECLARATION

I, [redacted] of 158/1-15 Fontenoy Road, Macquarie Park, NSW 2113, BSEE(Electronics) employed as HP Senior IT Instructor and APJ HP-UX Advocate (previously Mission Critical Ambassador)

do solemnly and sincerely declare in CTTT File SCS 13/50737 as follows:

1. Request for CTTT Orders

1.1 Due to denial of access to documents by the Respondent as confirmed in latest EGM on 4th of December 2013 other orders are now possibly made obsolete unless the Tribunal finds ground for their inclusion in the proceedings at the Hearing) my submission is being filed and orders sought for

Professional misconduct and non-compliance with the SSMA 1996 and other Acts by the Strata Managers at Raine & Horne Strata Sydney, as listed in my original appeal:

- Section 101 Notices and orders to be kept
- Section 102 Minutes of meetings
- Section 104 Certain records to be retained for prescribed period
- Section 108 Inspection of records of owners corporation
- Section 167 Investigations by Adjudicator
- others as applicable or deemed necessary by the Tribunal

1.2 The evidence as per the Act Section 108 has not been provided by the Respondent and additional time to obtain them granted to me by the CTTT did not achieve any results - non-compliance with Part 4 of the Consumer Trader and Tenancy Tribunal Act 2001 to ensure, as far as practicable, that all relevant material is disclosed to the Tribunal so as to enable it to determine all of the relevant facts in issue (28(5)).

1.3 The Strata Manager was officially delegated duties of:

- Secretary of the EC since EC meeting in February 2012
- Secretary and Treasurer of the EC since the AGM in October 2012
- Chairperson of the EC in period between the AGM in October 2012 and EC meeting in August 2013
- One or more of EC office bearers roles at other times, as per Agency Agreement 2671 dated 26th of May 1999

His roles held since the AGM 2012 were not published in any minutes before the EC meeting in August 2013.

1.4 By denying the right to have crucial evidence, I am denied procedural fairness. I quote NSW Consumer Trading and Tenancy Tribunal by Philip Bambagiotti, Barrister released March 2002:

Documents and other evidence might be obtained by use of a summons (sec 40) et al.

Explanatory Notes:

- References to my folders provided in file SCS 12/50460 previously (until 25th of June 2013) are designated Fnumber Snumber herewith. An example: Folder 5 Sleeve 7 is F5 S7.

2.

- Tribunal provided me with access to the Respondent's files in file SCS 12/50460 after I paid the prescribed fee for photocopies in amount of \$117.00 on 28th of June 2013 (copies of submissions are not forwarded to parties – an example of similar ruling is in file SCS 12/33247 dated 26th of June 2012).
- Smaller additional attachments to support my statements are in annexures herewith. When the copies of evidence are too large, they are referred to as Exhibits and shall be brought on the Hearing date.
- Although not planned or deliberate, if some crucial evidence comes into my possession (like belated access to documents as per the Act Section 108 that I had requested several times already), I rely on Section 181 that stipulates the Tribunal may admit new evidence at the Hearing of the appeal.

2. Request to disqualify Solicitor Mr. Adrian Mueller due to reasonable apprehension of bias

2.1 At the EGM on 4th of December 2013, owners corporation carried motion to again engage Solicitor Mr. Adrian Mueller to represent them at the Hearing without seeking alternative quotes.

Explanatory notes or detailed agenda were not provided to owners.

2.2 Extract from the agenda for this EGM is annexed and marked "DB1". Full copy of the agenda for the EGM is in Exhibit "DB80" and shall be provided at the Hearing.

2.3 Minutes of the EGM 2013 held on 4th of December 2013 is annexed and marked "DB2".

2.4 Due to direct Solicitor's involvement in setting the agenda, minutes and other actions in relation to AGM 2012, his conduct during 2012/2013 that directly helped him earn more than \$33,000.00 so far, constructive contempt of court (disobeyed Tribunal orders and directions four times in file SCS 12/32675), I shall submit a separate request for his disqualification from the Hearing on grounds of reasonable apprehension of bias. Full details to justify my claim shall be provided to the CTTT Registrar.

3. Respondent's attempt to circumvent the CTTT proceedings

3.1 Motions 5 and 6 in the annexed extracts from the agenda for the EGM on 4th of December 2013, annexed in "DB1":

That the Owners Corporation ratifies all the acts of the Strata Managing Agent on behalf of the Owners Corporation up to and including the date of the last general meeting.

That the owners corporation ratifies all the acts of the Executive Committee on behalf of the Owners Corporation up to and including the date of the last general meeting.

These motions (annexed in "DB2") were adopted without detailed agenda or any discussion (meeting was completed in 30 minutes and only 16 out of 218 lot owners attended in person).

I was prevented from casting the vote through email sent on the day of the meeting, and thus made my attendance void.

3.2 Most of resolutions approved at EGM on 4th of December 2013 were directly related to file SCS 13/50767 or prevention of my legal and constitutional rights (annexed in "DB2").



3.3 Apart from refusal to provide access to documents in this and previous CTTT cases in SP52948, same Strata Agency was involved in another case to circumvent the CTTT proceedings - Raine & Horne Strata Sydney in **OC SP 37466 v Loombah Investments (Strata and Community Schemes) [2012] NSWCTTT 182 (1 May 2012)**.

(SCS 11/51344) Loombah Investments Pty Ltd made application for adjudication to seek the following orders and they won against the Respondent and the Strata Agency:

"That the Owners Corporation comply with the resolution passed as Motion 8 at general meeting of the Owners Corporation held on 3 May 2010."

The Tribunal found as follows:

- *There is no evidence that any discussion after the passing the resolution 7 and 8 on 3 May 2010 had the effect of rescinding those resolutions.*
- *There is no reasonable explanation why the notices of motion appeared on the agenda on 20 August 2010 and the outcome reflects this.*
- *The notices of motion of 13 January 2012 are valid and have the effect of rescinding the original resolutions of 3 May 2010.*

If the appellant considered that the notices of motion of 3 May 2010 were invalid and a decision pending on that question on appeal, why was a notice of motion placed before the Owners Corporation in the interim period to circumvent the proceedings...

4. My attempts to mediate without CTTT and legal expenses and evidence that OC should not defend Strata Manager at own or my cost

4.1 Email to Strata Manager (Cc-ed CTTT too) asking why he had failed to include my Motions in agenda for AGM 2012 on 3rd of October 2012. One of the Motions that was excluded from the agenda was in relation to better mediation process that did not incur legal expenses. Copy is annexed in F9 S8.

4.2 Full versions of my Motions that were not provided in the agenda for AGM 2012. Copy is annexed in F9 S12 to S24 inclusive.

4.3 My offer to mediate on 10th of October 2012. Copy of that email is annexed in F13 S24.

4.4 My request and proposal for EC meeting for tender of strata manager's contract via free services at Strata Match on 25th of June 2013. It was not included in the agenda of any meeting and no response received. The copy of the email is annexed and marked "DB3".

4.5 My request for multiple quotes for legal services and the Extraordinary General Meeting proposal on 12th of May 2012. Copy of that email is annexed in F12 S8.

4.6 Group of concerned owners requesting general meeting, mediations, and rejecting any legal engagement (sent before the EC meeting on 22nd of May 2013). Summary of their emails is annexed in F12 S9.

4.7 Motions and explanatory notes for AGM 2013 held on 23rd of October 2013. Copy of my motions is annexed and marked "DB4". Copy of my explanatory notes (which were excluded from the agenda of the general meeting) is annexed and marked "DB5".

4.8 One of my motions was in relation to better mediation process that did not incur legal expenses. It was rejected.

4.9 As part of Motion 10 at AGM 2013 on 23rd of October 2013, I proposed that Strata Community Australia NSW investigates professional conduct of the Strata Manager, without CTTT or my involvement. The Respondent declined and failed to include this information in the minutes of the meeting. Annexed and marked "DB6" is a copy of my requests for Motion 10.

4.10 Minutes of the AGM 2013 held on 23rd of October 2013. Most motions were not discussed and were simply put to vote due to proxy farming. Annexed and marked "DB7" is a copy of the minutes.

4.11 Minutes of the urgent EGM 2013 held on 4th of December 2013 (annexed and marked "DB2"). Two of the motions are of extreme importance and without legal precedent: they ratify ALL and ANY action of the Strata Manager and the EC in any period before the AGM.

4.12 Agenda for the urgent EGM 2013 scheduled for 20th of December 2013. Annexed and marked "DB8" is an extract from the agenda. Full copy of the agenda for this EGM is in Exhibit "DB81" and shall be provided at the Hearing.

4.13 EC member Mr. Bruce Copland stating that the owners corporation should not cover legal expenses for defence of the strata agency on 4th of January 2013. Annexed and marked "DB9" is a copy of the email.

4.14 EC member Mr. Bruce Copland making decision to continue to use services of Solicitor Mr. Adrian Mueller in spite of strong protest by owners on 3rd of June 2013 (reference in F12 S9). Annexed and marked "DB10" is a copy of the email.

4.15 Total current and expected expenses for legal costs have never been provided to owners corporation in any agenda or minutes of the meeting. A copy of the calculations for incurred and expected future expenses is annexed and marked "DB11".

5. Insurance renewal at AGM 2012 and legal costs claims in FY 2013 and effect on SCS 12/32675

5.1 The evidence provided in this section has not been disclosed to me or the CTTT in file SCS 12/32675 and 12/50460, and thus directly influenced Tribunal's decisions (non-compliance with the Act Section 167). Had it been disclosed, the rehearing in file SCS 12/32675 would have been dismissed without any additional legal costs and Tribunal's time and efforts.

5.2 No owners were provided with any information about competitive insurance quotes at majority of general meetings until the AGM 2013 on 23rd of December 2013: non-compliance with the Act Part 3 Division 3 Section 80B and Strata Schemes Management Regulation 2010 Part 4 Section 14.

5.3 Change for the indemnity insurance for SP52948 was applied without decision of the EC at any legally convened meeting on 1st of August 2012. Annexed and marked "DB12" is a copy of the email exchange trail between Raine & Horne Strata Sydney, CHU Underwriting Agencies and Gallagher Australia (insurance broker).

5.4 Four weeks later, an insurance claim number NH201212589 for "CTTT defence for Lot 3" was submitted by Raine & Horne Strata Sydney on 28th of August 2012. Copy is annexed and marked "DB13".

5.5 Email from Strata Manager Mr. Peter Bone confirming the first insurance payment in claim number NH201212589 for "CTTT Defence for Lot 3" on 4th of September 2012. Copy is annexed and marked "DB14".

5.6 Extract from insurance payments in claim number NH201212589 for "CTTT Defence for Lot 3". Total amount paid for legal cost claims in non-existent CTTT case incurred by Solicitor Mr. Adrian Mueller was \$24,919.31. Copy is annexed and marked "DB15".

5.7 Extract of payments to Solicitor Mr. Adrian Mueller's and GST by SP52948 in FY 2013. Copy is annexed and marked "DB16". Full copy of the FY2012/2013 expenditure statements are in Exhibit "DB82" and shall be provided at the Hearing.

5.8 Email from Strata Manager Mr. Peter Bone confirming the strata scheme's insurance company accepted the "legal defence" claim, as this insurance policy was not dependant on a successful court / CTTT action on 17th of June 2013. Copy is annexed and marked "DB17".

5.9 Solicitor Mr. Adrian Mueller acknowledged to the Respondent in his email on 8th of November 2013 that he was aware of insurance payments for his expenses. This private and confidential letter was published by Raine & Horne Strata Sydney on their web site as document BCS6518374 and also submitted in the agenda for the AGM 2013.

5.10 My email to Raine & Horne Strata Sydney and EC members documenting lack of response about public liability insurance from owners of Lot 3 on 9th of November 2013. Copy is annexed and marked "DB18".

5.11 EC member Mr. Bruce Copland's concern about insurance renewal and his personal preference to use the same insurer due to "their positive response to legal costs related to _____" on 19th of September 2012. Copy of email is annexed and marked "DB19".

5.12 EC member Mr. Bruce Copland's complaint about lack of insurance renewal process, dramatic rise in insurance costs and confirmation that second insurer Strata Unit Underwriting declined to quote on renewal for Strata Plan 52948 due to pending legal defence claim on 20th of September 2012. Copy of email is annexed and marked "DB20".

5.13 Spreadsheet of insurance premiums and claims as listed in the balance sheets at AGMs is annexed and marked "DB21".

5.14 The impact of extremely high CHU insurance quotes is shown in a copy of three quotes for renewal of insurance for AGM 2013 as provided by the broker and annexed and marked "DB22".

5.15 My summary about Directions Hearing on 6th of November 2013 and inquiry to Strata Manager and EC about deleted document ID 5304628 (doc date 30/04/2013) from Raine & Horne Strata Sydney's website. Annexed and marked "DB23".

5.16 Snapshots of Financials on Raine & Horne Strata Sydney's website over four periods in 2013 are annexed and marked "DB24".

5.17 F15 S31 contains original six-monthly balance sheet. Upon my inquiries and one more owner, amended details for legal expenses in the first half of FY2012/2013 were released on 23rd of April 2013 and published on web site on 30th of April 2013 but deleted after the AGM 2013 on 23rd of October 2013 when enquiries about inaccurate accounting was raised. A copy of deleted balance sheet is annexed and marked "DB25".



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6. Submission in support of SSMA 1996 Section 167

6.1 Statutory Declaration in file SCS 12/32675 provided by Strata Manager Mr. Peter Bone on 19th of April 2013:

- In paragraph 3 (a) of the Statutory Declaration, Mr. Peter Bone stated that annexed and marked "B" was copy of an email sent by Solicitor Mr. Adrian Mueller to Branch Manager Mr. Paul Banoob dated 5th of July 2012 and a letter from JS Mueller & CO Solicitors to the owners corporation dated 2nd of July 2012 attached to it.

On page 17 of the Statutory Declaration, that email message was listed but it contained crucial error. Important header in the email was missing ("Attachments:").

An example of an email with proper header from the same Solicitor was on page 22 of the Statutory Declaration.

Page 18 showed server signature for an email message that passed through Toga company, and the only member of EC who used address at toga.com.au was Mr. Bruce Copland. Toga has no affiliation with Raine & Horne Strata Sydney.

The annexure "B" was printed in office of Solicitor Mr. Adrian Mueller and it was not a proof of email being received at Raine & Horne Strata Sydney. This alleged email, as received by the strata agency was missing.

Email sent by Mr. Adrian Mueller on 5th of July 2012 was tampered with.

- In paragraph 3 (b) of the Statutory Declaration, Mr. Peter Bone stated that annexed and marked "B" was copy of an email sent by Branch Manager Mr. Paul Banoob to Gary Webb dated 5th of July 2012.

On page 16 and 17 of the Statutory Declaration, that email message was listed but it contained crucial error. Important header in the email was again missing ("Attachments:"). The attachment (proposal) by Solicitor Mr. Adrian Mueller could not have been part of this email.

When a message is forwarded, any attachment is shown in the header and also would contain some kind of separator pointing towards the forwarded message in the body of the email.

The alleged email from Mr. Paul Banoob was tampered with.

- In paragraph 3 (c) of the Statutory Declaration, Mr. Peter Bone stated that annexed and marked "B" was copy of an email sent by Mr. Gary Webb to the members of the EC dated 6th of July 2012.

On page 16 of the Statutory Declaration, that email message was listed but it contained crucial error. Important header in the email was missing ("Attachments:"). The attachment (proposal) by Solicitor Mr. Adrian Mueller could not have been part of this email.

The annexure "B" was printed in office of Solicitor Mr. Adrian Mueller and it was not a proof of email being received at Raine & Horne Strata Sydney. This alleged email, as received by the strata agency was missing.

The alleged email from Mr. Gary Webb was tampered with.



- In paragraph 5 of the Statutory Declaration, Mr. Peter Bone stated that annexed and marked "D" was copy of an email sent by Solicitor Mr. Adrian Mueller to Mr. Peter Bone dated 16th of July 2012.

On page 22 of the Statutory Declaration, that email message was listed.

The annexure "D" was printed in office of Solicitor Mr. Adrian Mueller and it was not proof of email being received at Raine & Horne Strata Sydney. This alleged email, as received by the strata agency was missing.

The email header contained attachment named "Cost Agreement". A solicitor would never name it that way as it is legally called "Costs Agreement".

The alleged email from Mr. Adrian Mueller was tampered with.

The "Subject:" headers in two emails seem to have been manually changed and manipulated. The two alleged email messages are contradicting each other:

All other emails in the Statutory Declarations on that had Strata Plan number in the "Subject:" header were of the following format:

For example, email on 5th of July 2012:

Subject: SP52948

Email in annexure "D":

Subject: Re: SP 52948

One contains no spaces between "SP" and "52948" and the other does.

Whilst it is possible for a sender to change the "Subject:" header, it does not seem plausible that it happened in this case.

The alleged email from Mr. Adrian Mueller was tampered with.

- In paragraph 5 of the Statutory Declaration, Mr. Peter Bone stated that annexed and marked "D" was copy of an email sent by Solicitor Mr. Adrian Mueller to Mr. Peter Bone dated 16th of July 2012.

On page 22 of the Statutory Declaration, that email message was listed.

The annexure "E" was printed in office of Solicitor Mr. Adrian Mueller and it was allegedly a proof of email being received from Raine & Horne Strata Sydney. This alleged email, as received by the strata agency was missing in the evidence.

- In paragraph 7 of the Statutory Declaration, Mr. Peter Bone stated that annexed and marked "E" was copy of his email sent to Solicitor Mr. Adrian Mueller dated 25th of July 2012.

On page 29 of the Statutory Declaration, that email message was listed.

The annexure "E" was printed in office of Solicitor Mr. Adrian Mueller and it was allegedly a proof of email being received from Raine & Horne Strata Sydney. This alleged email, as received by the strata agency was missing in the evidence.

- Two public documents on Raine & Horne Strata Sydney web site confirm that Solicitor Mr. Adrian Mueller did not receive signed copy of the Costs Agreement at any time before 16th of April 2013



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(one day after my challenge about his engagement at the Hearing on 15th of April 2013): DocID 6110639 and 6095784 (annexed and marked "DB77"). That contradicts with Paragraph 7 in the Statutory Declaration.

The email from the Solicitor sent on 15th of April 2013 (after the CTTT Hearing on the same day) confirmed that he did not have the signed copy of the agreement as claimed in the Statutory Declaration by Mr. Peter Bone.

The contents of his emails are public and available to any owner who has web account with Raine & Horne Strata Sydney.

The header of this email:

From: Adrian Mueller [mailto:AdrianMueller@muellers.com.au]

Sent: Monday, April 15, 2013 6:12 PM

To: peterb@bcms.com.au; Bruce Copland; paul.banoob@picaust.com.au

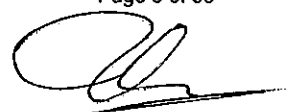
Subject: Re: SP52948 - CTTT Appeal (22012)

Importance: High

- Had the signed contract genuinely been sent to the Solicitor Mr. Adrian Mueller on 25th of July 2012, he would have provided it at the following times before the Hearing on 15th of April 2013:
 - In his submission to the Tribunal on 29th of January 2013 (which he did not).
 - After I had issued request for summons in file SCS 12/32675 and 12/50460 to Mr. Peter Bone, Mr. Bruce Copland, Mr. John Ward, and Mrs. Maureen McDonald on 27th of February 2013. In spite of Tribunal denying my request on 5th of March 2013 without any explanation, the Respondent could have provided the documents and evidence.
 - After I issued sent the following request to Raine & Horne Strata Sydney to verify the hidden headers in emails to verify their veracity:

ACCESS TO INSPECT RECORDS REQUESTED: SP52948 correspondence by EC members and Solicitor from January 2012 to February 2013
 - After I had issued personal summons to Mr. Peter Bone, Mr. Bruce Copland, Mr. John Ward, and Mrs. Maureen McDonald through email on 6th of March 2013. Exhibit "DB88" contains copies of the emails and requests for documents and information.
 - Neither Mr. Adrian Mueller, nor the Strata Manager offered any evidence or statements that the email with the signed contract allegedly sent on 25th of July 2012 was lost or missing. Nor Mr. Adrian Mueller explained why he presented an unsigned copy of the contract to the Tribunal when a signed one was allegedly readily available in his mailbox.
- In paragraph 17 of the Statutory Declaration, Mr. Peter Bone stated that annexed and marked "L" was copy of an email sent by Ms. Debbie Downes to each executive committee member dated 16th of April 2013.

On page 66 of the Statutory Declaration, that email message was listed.



The annexure "L" was printed in office of Solicitor Mr. Adrian Mueller and it was not proof of email being sent by Raine & Horne Strata Sydney.

The email does not contain any proof that it was sent to all or any EC member because the recipients' list is unknown and unlisted.

6.2 Strata Manager denied or avoided to provide documents and thus prevented me from delivering evidence to the Tribunal over the last three years. Consistently refusing to provide access to documents was/is in non-compliance with the Act Section 108.

6.3 Strata Manager failed to inform the tribunal about CHU insurance claim that would have made rehearing in file SCS 12/32675 void and null.

6.4 Strata Manager failed to disclose that without special by-law and special resolution for water and gas reimbursements to selective townhouse owners it was applied for 13 years, in spite of my numerous attempts to commit the Respondent to provide evidence about it to the Tribunal.

6.5 Strata Manager persistently denied any wrongdoings but provided no evidence in any Tribunal proceedings over the last three years. Example is building report by Napier & Blakeley that should have been presented at the Hearing on 17th of October 2012 (as per alleged EC meeting on 9th of July 2012).

6.6 EGM held on 4th of December 2013 offers evidence my legal right to raise questions or seek evidence is denied. That directly affects my ability to help the Tribunal with the proper information.

7. Submission on AGM 2012 and respondent's non-compliance with SSMA 1996 Section 153

AGM 2012 was conducted in non-compliance with the Act, its resolutions adversely affected many owners, and the compliance with the Act would have resulted in a failure to pass resolutions for most motions, especially Motions 11 and 12. The minutes of the AGM 2013 (Annexure "DB7", approved at urgently organized EGM on 4th of December 2013 without full disclosure, Annexure "DB2")) confirm that no amendments or corrections of the minutes of the AGM 2012 were applied. In spite of the Respondent's firm commitment in their submissions to CTTT in file SCS 12/50460 in June 2013, there were no changes in the approved minutes for AGM 2012.

Section 11 of the Strata Schemes Management Act 1996 ("SSMA" or "the Act") provides that the Corporations Act 2001 (which imposes fiduciary and other duties on company directors) does not apply to owners corporations, but the cases suggest that office bearers owe fiduciary duties under common law principles. In *RE: Steel & Others and the Conveyancing (Strata Title) Act 1961 (1968) 88 WN (Part 1) NSW 467*, the reasoning which has been supported in later cases, Mitchell J stated "...the respondents have failed to appreciate the nature of the duties cast on them as members of the council of a body corporate... such persons are at least in a position analogous to company directors, they may even have a higher fiduciary duty...".

7.1 Strata Manager, EC, and the Solicitor Mr. Adrian Mueller were aware of opened files SCS 12/50450 and 12/50460 as early as 10th of October 2012 – one week before the AGM and the Hearing in file SCS 12/32675. I made every attempt to prevent the general meeting from proceeding in a non-compliant manner. A copy of my email to Strata Manager is annexed and marked "DB76".

7.2 Non-prescribed proxy form was provided to selective owners (around 30 out of 218 owners) with special instructions how to vote and how to promote motions the Executive Committee had personally favored. Accordingly, the proxy was ineffective as a valid proxy appointment.



This proxy form was not included in official agenda and the addendum before the general meeting on 17th of October 2012 (original agenda sent on 2nd of October 2012 (F0 S3), and addendum sent on 9th of October 2012 (F0 S4)). Proxy form that was selectively delivered to around 13% of the owners in the strata plan, and not provided in any official correspondence, cannot be accepted as valid on grounds of reverse discrimination (domination by minority) and inequitable rights to same information and privileges.

Strata Community Australia NSW confirms the requirement to include proxy form in the Notice of the AGM mailed to all owners (on page 1 of the "Annual General Meeting" booklet).

Examples and details of non-prescribed proxy forms are annexed in F1 S26, F3 S29, F11 S19, and F15 S4. The non-prescribed proxy form contained suggestive request for owners to vote in favour of Motions 1, 2, 3, 4 (a), 5, 6, 7, 8, 9, 10, 11, and 12, without offering evidence in explanatory notes to help owners make informed decisions (explanatory notes from the Applicant were excluded).

The non-prescribed proxy form contained suggestive request for owners to vote against Motions 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 without offering evidence in explanatory notes to help owners make informed decisions.

The non-prescribed proxy form set special ruling for Motions 13, 14, 15, and 16 by stating that if they were not marked, the vote was to be counted as "in favour". It attempted to achieve preferential status for the Motions that were of personal interest to the members of the EC.

Non-compliance with the Act Section 118, Section 32 (1), and Schedule 2 Section 11 (1), (2) (a), (3), (7).

7.3 At Motion 19 (half-way through the AGM 2012), nominations for the election of the Executive Committee were called. After the ballot was conducted, it meant that the office bearers did not exist. The Strata Manager, with its delegated powers as per Strata Management Contract 2671 on 16th of June 1999 (F11 S3), should have assumed Chairperson's role till the end of the meeting or request the election of the Chairperson. In accordance with the Act, the AGM was conducted without the elected or approved Chairperson from Motion 19 onwards. Evidence provided in F0 S5.

Non-compliance with the Act Schedule 2 Section 15 (2).

7.4 Motions 11 and 12 were out of order as per the Act Schedule 2 Section 14 (a) because these motions would conflict with the Act or the by-laws, and would otherwise be unlawful and unenforceable.

Motions 11 and 12 dealt with "Special By-Law: Control of common gas supply" and "Special By-Law: Sharing of water and gas costs" respectively, which were applied without a special resolution or a registered special by-law for almost 14 years before the AGM 2012 in inequitable, unfair, and illegal (without Special By-Law or Special Resolution) manner.

Cost of these reimbursements is estimated to more than \$100,000.00 from the Administration Fund (financial details and invoices for these water and gas reimbursements for selective townhouse owners for nine-year period that the Applicant could obtain access to confirm the figure above \$74,000.00).

Details of the reimbursements were provided to the Strata Manager and the Executive Committee on several occasions in 2012 and 2013. Response from them was never received.

Chairperson Mr. Bruce Copland attempted to put forward reasoning that townhouse owners pay for lifts and other common property in buildings that they do not use. This reasoning is flawed and stands no ground. Issues relating to financial contributions towards the maintenance and repairs necessary to the common property may be an area that is particularly fraught, and in **Julian-Armitage v The Proprietors Astor Centre [1998] QCA 111** the issue put before the Court was whether the owner of the lower ground unit (the



appellant) had to share the maintenance costs in relation to the operation of the lifts servicing the other units in the plan – despite the appellant having no use for the lift. The Court held that the appellant did have to make a contribution to the body corporate for the upkeep and maintenance of the common property – which included the sharing of the costs of the electricity used to operate the lifts, despite *not* having any use for the lifts personally.

Unit (or Lot) entitlements or their equivalent are the basis for charging levies.

In Victoria a distinction is made between **Lot Liabilities** and **Lot Entitlements**. Lot entitlements determine how much voting power and the share the owner gets of any income the strata scheme makes. Lot liabilities are the share of cost of running the building that the lot owner pays. Such provisions do not exist in NSW.

Examples and evidence of inequitable water and gas reimbursements are annexed in F1 S19, F1, S20, F1, S21, F1 S22, F1, S23, F1 S24, F1 S25, F1 S29, F1 S30, F1 S31, F1 S32. F14 S5, F14 S5, F15 S15, F15 S17.

Summary of amounts for reimbursements to selective individual townhouse owners for financial years that I had access to is annexed and marked "DB26".

Example of reimbursements given to selective individual townhouse owners for multiple quarters for financial years that I had access to is annexed and marked "DB27".

Spreadsheet for reimbursements to selective individual townhouse owners that compares private water and gas expenses versus those for common property for financial years that I had access to is annexed and marked "DB28".

Non-compliance with the Act Schedule 2 Section 14 (a).

7.5 The Responded failed to provide sufficient and evidential information for owners in the agenda and the addendum for the meeting to make reasonable decisions for Motions 11 and 12.

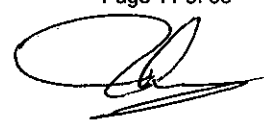
In Owners Corporation SP 67631 v Waters & Gardner (Strata & Community Schemes) [2010] NSWCTTT 343 (22 July 2010), the following was stated:

The test of reasonable is an objective test which requires the existence of facts which are sufficient to induce that state of mind in a reasonable person" (George v Rockett [1990] HCA 26; [1990] 170 CLR 104 at 112.) A decision by the Owners Corporation to withhold consent could be seen as reasonable if there was on the material before the Owners Corporation a sound basis for making that decision. Conversely, if there was no such sound basis it would be unreasonable.

In Bartlett v Owners Corporation SP 1429 (Strata and Community Schemes) [2011] NSWCTTT 219 (27 May 2011), the following was stated:

What is reasonable must be determined objectively. For a decision to be reasonable requires the existence of facts which are "sufficient to induce that state of mind in a reasonable person". (See George v Rockett [1990] HCA 26; [1990] 170 CLR at 112). In this context, as noted by the Tribunal in Waters & Gardner [at paragraph 40], the Owners Corporation's decision to withhold its consent to the proposed by-law could be seen as reasonable if:

"[T]here was on the material before the Owners Corporation a sound basis for making that decision. Conversely, if there was no such sound basis it would be unreasonable.



Strata Community Australia NSW confirms the requirement to include any other document necessary to fully inform owners in regards to motions on the agenda in the Notice of the AGM mailed to all owners (on page 1 of the "Annual General Meeting" booklet).

7.6 Owners were not informed about direct payments to three members of the EC (two deceased now: Dr. Edye and Mr. Bill Young) and the Chairperson Mr. Bruce Copland who claimed the water and gas usage reimbursements without compliance with the Act Section 25 since 1999 (can EC members be paid?).

7.7 Two of my motions were excluded from the agenda:

SP52948-Motion-Discuss-Special-By-Law-10

SP52948-Motion-Improved-Dispute-Resolution-Process

The exclusion of the latter one caused direct expenses of \$25,871.65 (GST exclusive) from the Admin Fund in FY 2013 (claimed from CHU Insurance through elaborate plan, without details provided to owners and CTTT in file SCS 12/32675 – annexure "DB16"). The GST component for these legal expenses was claimed through the Taxation Office (\$2,587.17).

The person chairing the meeting, when ruling a motion out of order must: give reasons for the ruling; and

- (a) state how the ruling may be reversed by the persons present and
- (b) entitled to vote.

The persons present (who are entitled to vote) may by ordinary resolution disagree with the chairperson and reverse the ruling. The reasons given by the Chairperson must be recorded in the Minutes of the meeting.

Details and evidence provided in F0 S5, F9 S5, F9 S6, F9 S7, F9 S8, F9 S12 to 24 inclusive.

Non-compliance with the Act Schedule 2 Section 36 (1) and (2), and Section 14 (a).

7.8 The Secretary of the EC (Strata Manager himself) and the Chairperson Mr. Bruce Copland misconstrued and misquoted two motions that I submitted:

Rescind Motion 8 at AGM 2005 - Limit on spending by executive committees of large strata schemes (presented in agenda for AGM 2012 as Motion 25)

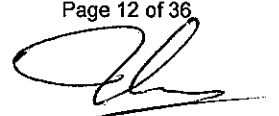
Rescind Special By-Law 8 - Acquisition of Additional Common Property (presented in agenda for AGM 2012 as Motion 23)

Details and evidence provided in F0 S5, F9 S5, F9 S6, F9 S7, F9 S8, F9 S12 to 24 inclusive.

Non-compliance with the Act Schedule 2 Section 36 (1) and (2), and Section 14 (a).

7.9 Ballot papers were not prepared and completed in compliance with the Strata Schemes Management Regulation 2012 Part 5 Section 18.

Applicant submitted his advanced nomination for the EC as early as 23rd of June 2012 and it was ignored until the day of the AGM.



Ballot paper was pre-arranged with nine nominees, and printed for owners to sign.

Details and evidence provided in F3 S30, F6 S6, F6 S7, F6 S8.

Full copy of the paperwork (including ballot papers) for this AGM is in Exhibit "DB83" and shall be provided at the Hearing.

Copy of email sent by Strata Manager Mr. Peter Bone on 15th of October 2012, confirming his actions in regards to pre-arranging the ballot paper, is annexed and marked "DB34".

7.10 Due to lack of proper actions by the Strata Manager, only one quote was obtained for the insurance in 2012, which increased the cost by 74.38%. Reasonable increase in FY 2012/2013 should have been between 12-20% (the minutes of the EC meeting held on 13th of June 2012 annexed in F1 S16 confirm it). Owners corporation incurred excessive cost for renewal of insurance by around \$19,254.15.

This crucial information was not disclosed to owners at AGM 2012 and failed to be included in the minutes of AGM 2013.

Non-compliance with the Act Part 3 Division 3 Section 80B and Strata Schemes Management Regulation 2010 Part 4 Section 14.

7.11 The Respondent failed to provide any evidence as per the Act Section 108 that there was tender for the management contract in 2012 or 2013.

There never was a tender that was published for owners for the strata management contract since year 2000 (or any other major contract in the same period).

Non-compliance with the Act, Part 3, Division 3, Section 80B; Strata Schemes Management Regulation 2010, Part 4, Section 14.

The decision to appoint strata manager was not authorised by a resolution at a general meeting - non-compliance with the Act Section 27 (1).

7.12 Lift maintenance contract was not tendered in 2005, and signed for seven-years in 2010 without a proper tender or knowledge of the EC and the owners corporation. ThyssenKrupp Elevator charged four quarters for maintenance in FY 2011 without owners knowledge.

Non-compliance with SSMA 1996, Part 3, Division 3, Section 80B; Strata Schemes Management Regulation 2010, Part 4, Section 14.

On 15th of March 2010, ThyssenKrupp Elevator sent a letter to the Strata Manager Mr. John Fry in response to his request to obtain quote for lift maintenance contract. Their offer was based on THREE-YEAR contract through two types of services (this quote was never provided to members of the EC; instead Mr. Bruce Copland and the Strata Manager Mr. John Fry negotiated seven-year unfavorable contract alone).

The lift maintenance contract fees grew by 5% in July 2012 (and July 2013). In the contract, these increases had to be linked to the CPI (the inflation rates which are much lower in Australia).

The agenda and the addendum for the AGM 2012 failed to disclose wrong charges for maintenance of lifts.

ThyssenKrupp's Elevator maintenance contract is annexed in F7 S11.

Issues with this and other contracts are listed separately in annexure "DB68".

7.13 Water and gas reimbursements for selective townhouse owners were applied without a Special Resolution or Special By-Law until 6th of May 2013. Their details were undisclosed in the agenda for the AGM 2012 and they amounted to \$10,831.66 in FY 2011/2012 (GST inclusive).

Non-compliance with the Act Section 68.

Three members of the EC received these reimbursements (essentially, payments) in period 1998 to 6th of May 2013 (the date of the registration of the Special By-Law), in non-compliance with the Act Section 25.

7.14 As per alleged gathering of six EC members on 9th of July 2012, building and asbestos report by Napier & Blakeley (which documented number of issues in July 2012), owners did not receive fair and comprehensive details at the AGM 2012 (or at any time since then).

The building report was/is important as part of compliance with the Work Health Safety (WHS) Laws that commenced on 1st of January 2012 and was accompanied by the Model Work Health and Safety Regulations (MWHRSR), which recommends the owners corporation to conduct professional OH&S Risk Assessment before each and every annual general meeting.

My request to obtain OH&S report for the AGM 2012 was silently rejected. As part of the Act Section 108, one year later I obtained proof of why it happened. Copy of email sent by Chairperson Mr. Bruce Copland on 25th of September 2012 is annexed and marked "DB29". SP52948's direct employee is caretaker and owners corporation has duty of care in regards to OH&S.

References are annexed in F13 S12, F13 S13, and F13 S15.

7.15 As per alleged gathering of six EC members on 9th of July 2012, the Solicitor had to present the Napier & Blakeley's building report and the Minutes of AGM 1999 at the Tribunal Hearing in file SCS 12/32675 on the same day as the AGM 2012 (17th of October 2012). This information was not disclosed before or at the AGM 2012.

That report and the OH&S report were not presented at the AGM.

Evidence annexed in F13 S14 and F15 S41.

7.16 The Strata Manager failed to include explanatory notes for the motions I had submitted in a timely manner.

The accompanying explanatory notes the Applicant sent for the Motions were specifically designed to provide owners with information to help them make informed decisions before casting their votes.

Because the owners did not get the explanatory notes for my motions and significant amount of financial information was deliberately undisclosed by the Executive Committee and the Strata Manager, owners could not have made proper decision about how to vote (test of reasonable).

Copy of email sent by Chairperson Mr. Bruce Copland on 29th of September 2012, confirming his actions in regards to changing or disallowing my motions, is annexed and marked "DB30".



Copy of email sent by Chairperson Mr. Bruce Copland on 25th of September 2012, confirming his actions in regards to changing or disallowing my motions, is annexed and marked "DB31".

Copy of email sent by Chairperson Mr. Bruce Copland on 24th of September 2012, confirming his actions in regards to changing or disallowing my motions, is annexed and marked "DB32".

Copy of email sent by Chairperson Mr. Bruce Copland on 24th of September 2012, confirming his actions in to remove my explanatory notes, is annexed and marked "DB33".

7.17 In spite of my repeated requests, the Respondent failed to investigate and provide evidence of compliance with Special By-Law 4 that imposed obligation of owner of Lot 3 to have public liability insurance in amount no less than \$5,000,000.00 since 2003.

This information was withheld at the Hearing in file SCS 12/32675 on 17th of October 2012, but also falsely presented at the AGM 2012 on the same day. Partial copies from two insurers show that owner of Lot 3 (published six months after the events) has/had two public liability insurances, each in amount of \$20,000,000.00, but there is a serious discrepancy:

The GIO insurance policy was issued on 18 October 2012 (one day after the AGM 2012 and the CTTT Hearing) and "backdated" to 13 September 2012

The APIA insurance policy was issued for period starting 16 November 2012 (one month after the AGM 2012 and the CTTT Hearing on 17th of October 2012)

As of 19th of December 2013, in non-compliance with the Act Section 108, the Respondent failed to prove that the owner of lot 3 had public liability insurance policy for any period before the AGM 2012.

The extended indemnity in the insurance policy was applied one week before the Solicitor's engagement at the Directions Hearing on 8th of August 2012 through a non-compliant EC meeting allegedly held on 8th of July 2012, and the insurance claim form submitted by Raine & Horne Strata Sydney's Mr. Ron Sinclair on 28th of August 2012.

The first claim was paid by CHU Insurance just five days later:

Reason CTTT Defence Lot 3
Claim Number NH201212589-01
Incident Date 12/06/2012
Payment Date 03/09/2012
Amount \$367.64

The second claim was paid on 7th of December 2012, three days before the Respondent issued a request for costs recovery for the SAME LEGAL EXPENSES in case SCS 12/32675 (on 10th of December 2012). In other words, Respondent's claim for legal expenses to the CTTT was already recovered:

Reason CTTT Defence Lot 3
Claim Number NH201212589-02
Incident Date 12/06/2012
Payment Date 07/12/2012
Amount \$12,714.65



16

There were two more insurance payments for "CTTT Defence Lot 3":

Reason CTTT Defence Lot 3
Claim Number NH201212589-03
Incident Date 12/06/2012
Payment Date 29/04/2013
Amount \$1,320.00

Reason CTTT Defence Lot 3
Claim Number NH201212589-04
Incident Date 12/06/2012
Payment Date 6/06/2013
Amount \$10,517.02

Details of the insurance claims are listed in Section 5 above.

Additional documents annexed in F8 S5, F8 S6, F8 S7, F8 S9, F8 S10, F8 S11, F8 S12, F8 S14, F8 S15.

The Strata Manager failed to exercise functions with duty of care in compliance with the Act Section 28.

The Respondent failed to enforce this Special By-Law for all years since 2003, as required by the Act Section 45.

7.18 The agenda for the AGM 2012 did not contain details of the legal expenses and did not provide owners with the Standard Costs Agreement and Disclosure by Solicitor Mr. Adrian Mueller.

Without a decision at any legally convened EC or general meeting (the alleged ratification at EC meeting on 22nd of August 2012 is invalid because at that time the owners still had not received copies of the minutes of the EC meeting held on 9th of July 2012, had no information about the Standard Costs Agreement and Disclosure, had no information about the change for the indemnity policy in the insurance contract set on 1st of August 2012, had no details of the first insurance claim for legal costs on 3rd of September 2012, and had no detailed report about Directions Hearing and orders made on 8th of August 2012), the Strata Manager engaged the Solicitor Mr. Adrian Mueller, who was even involved in defining the agenda and approving the minutes of the AGM 2012.

Evidence in F0 S3, F0 S4, and F1 S17.

Copy of email sent by Chairperson Mr. Bruce Copland on 25th of September 2012, confirming involvement of the Solicitor, is annexed and marked "DB35".

Copy of email sent by Chairperson Mr. Bruce Copland on 24th of September 2012, confirming involvement of the Solicitor, is annexed and marked "DB31".

Copy of email sent by Chairperson Mr. Bruce Copland on 30th of October 2012, confirming involvement of the Solicitor in reviewing the minutes of AGM 2012, is annexed and marked "DB36".

7.19 Balance sheet in the agenda for the AGM 2012 failed to disclose correct costs for Strata Manager's contract and failed to implement decrease in contract value as per "loyalty rebate" that Mr. Bruce Copland



and Mr. Greg Freeman (from BCMS) negotiated alone. From 1st of September 2011 it should have dropped to \$29,900.00 plus GST, instead of previous \$33,498.96 + GST, as per Mr. Greg Freeman's email to Debbie Downes, Paul Banoob and Simon Wicks on 24 October 2011); currently charging \$2,791.58 GST exclusive per month

Loss to owners corporation: \$3,598.96 (GST exclusive)

The equal loss occurred again in FY 2013.

Screenshot of the email exchanged between BCMS Mr. Greg Freeman and Raine & Horne Strata Sydney on 24th of September 2011 is annexed and marked "DB37".

Copy of email sent by Chairperson Mr. Bruce Copland on 31th of January 2013, confirming agreed decrease in contract costs for Strata Manager, is annexed and marked "DB38".

7.20 Motion 1 at AGM 2012 failed to document non-compliance of the previous general meeting and approved its minutes without sufficient evidence for owners to make informed decision.

- The agenda for the Extraordinary General Meeting (EGM) held on 7th of May 2012 was sent in non-compliance with the Act Schedule 2 Section 32 (1) and the Interpretation Act 1987 Section 76 (reference in F3 S8, F3 S9, F3 S12).
- The owner of Lot 136 and 137, who obtained exclusive rights to common property via Special By-Law 10 at the EGM 2012, did not reimburse owners corporation for all expenses incurred in relation to the meeting and the registration of the by-law.

Basic calculation about costs of the EGM was sent by me to Mr. Paul Banoob and Mr. Gary Webb at Raine & Horne Strata Sydney on 8th of May 2013 (reference in F3 S10).

The full expenses for the EGM 2012 were at least \$3,749.60. Invoice sent to the owner of Lot 3 states that total expense for photocopying agendas and minutes was \$110.00 and 3 hours of effort (at \$110.00 per hour), totalling \$440.00 including GST.

Full copy of my submission is in Exhibit "DB84" and shall be provided at the Hearing.

7.21 Balance sheet in the agenda for the AGM 2012 failed to disclose flat-fee of \$541.82 per month (GST exclusive) charged monthly in non-compliance with Strata Management Agreement 2671 Section 4.1 (b), 4.2, 4.5 and Schedule of Fees. Total for FY 2012 was \$6,501.84 and it should be $218 \times \$1.60 \times 12 = \$4,185.60$.

Evidence of the Strata Management Agreement 2671 (as per mid-2013) was enclosed in F11 S3. It was not updated since 16th of June 1999 and decision for the full value of the contract and schedule of fees was not made at any general meeting since year 2000.

7.22 The Responded failed to serve CTTT notices when issued by the Tribunal, and inform the owners through agenda and at the AGM 2012 that they had failed to comply with the CTTT orders three times in 2012:

CTTT Directions Hearing on 8th of August 2012

CTTT non-compliance note on 19th of September 2012

CTTT non-compliance note on 9th of October 2012

Owners had no information about them. Non-compliance with the Act Section 22 and 136.

7.23 "Motion 2: That the attached audited financial statements for the year ending 31st August 2012 be approved":

In spite of many attempts by the Respondent, the Strata Manager and the Executive Committee failed to disclose full accounting files to me as per the Act Section 108. Due to lack of information, many expenses were impossible to audit BEFORE the general meeting.

The attached audited financial statements were simple summaries, without details of relevance for expenses like illegal water and gas reimbursements.

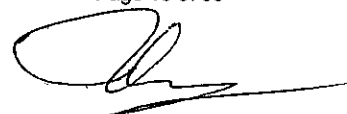
The request by the Applicant to obtain access to full financial statements was unserved since 26th of December 2011 (refer to F4 S5, F4 S6, F4 S7) and only Hearing in CTTT file SCS 12/32675 forced it three weeks AFTER the AGM 2012 (F4 S8).

7.24 Once the full financial statements were provided AFTER the AGM, it was obvious that:

- Some expenses were not authorised and equitable (water and gas reimbursements to selective townhouse owners, gas levies imposed on owners who had additional gas connections, to name a few),
- Term deposit not managed to achieve best outcomes for owners (between 2011 and 2012, the earnings from term deposits decreased by around 40%). Copy of a spreadsheet for Admin and Sinking Funds and interests they earned is annexed and marked "DB39".

Copy of balance sheet for FY 1997 to 2013 inclusive is annexed and marked "DB40".

- Details of negotiated electricity contract that the Chairperson signed alone in 2011 (expires on 30th of September 2015) not provided to owners whilst electricity costs increased by 18.04% in FY 2012 in spite of some LED lights supposed to save money (\$13,106.50 (including GST) was spent on LED light replacements in buildings on 21st of June 2012 - charged by the Caretaker's company). In addition, our complex paid full retail costs for the LEDs without discount negotiation. Using figure of 10% increase per year it can easily be calculated that over the last two financial years, the owners corporation lost \$17,260.00 for overpaid electricity usage. Copy of spreadsheet with utility expenses annexed and marked "DB 41". My request to obtain information about the electricity contract is unserved by the Respondent since the EC meeting in July 2011 (reference in F4 S19).
- Management fee for the Strata Manager did not decrease, which is direct proof of the Chairpersons' false statement in the agenda for the AGM 2011. This question was asked by me in correspondence before the AGM 2012, but unserved officially.



- In spite of several inquiries by me during 2012, the ISP SkyNet Global continued to run business in the complex without benefits to the owners since 2004:

Loss of income from common property by not charging the ISP;

Loss of common funds due to ISP's high-power equipment not paying for electricity usage;

Loss of income for not charging fee for every connection to the ISP services;

Original contract valid for five years only and not being reviewed or verified since its introduction;

SkyNet Global contract prevented owners corporation from having any similar (or better) ISP service in the complex. It forced owners, or attempted to force to use their services; At the time of AGM 2012, the Strata Manager and the Executive since April 2012. Full copy of the documented issues is in Exhibit "DB85" and shall be provided at the Hearing.

8. Submission on AGM 2013 and respondent's non-compliance with SSMA 1996 Section 153

AGM 2013 was conducted in non-compliance with the Act, its resolutions adversely affected many owners, and the compliance with the Act would have resulted in a failure to pass resolutions for most motions.

8.1 The minutes of the AGM 2013 (annexure "DB7", approved at urgently organized EGM on 4th of December 2013 without full disclosure, annexure "DB2") confirm that no amendments or corrections of the minutes of the AGM 2012 were applied. In spite of the Respondent's firm commitment in their submissions to CTTT in file SCS 12/50460 in June 2013, there were no changes in the approved minutes for AGM 2012.

I submitted initial version of errata and corrections of the minutes for AGM 2012 as early as 31st of January 2013 (annexed in F14 S8).

8.2 The Strata Manager failed to include explanatory notes for the motions I had submitted. When I questioned him and the EC member Mr. Bruce Copland before the meeting, they declined to comment.

My explanatory notes for the motions were specifically designed to provide owners with information to help them make informed decisions before casting their votes.

Because the owners did not get the explanatory notes for my motions and significant amount of financial information was undisclosed by the EC and the Strata Manager, owners could not have made proper decision about how to vote (test of reasonable).

8.3 OH&S compliance was seemingly not conducted and certainly not provided to owners, although Napier & Blakeley's building report that was completed a year earlier in July 2012 (annexed in F13 S12) and invoiced on 30th of July 2012 (annexed in F13 S13), and two Eagle Fire Protection reports documented many issues (January 2013 annexed in F15 S46 and July 2013 annexed and marked "DB46").

Some of the issues highlighted year earlier but not confirmed by the Respondent as resolved or addressed before the AGM 2013:

- Annual survey of fire safety measures and statements, as listed in Napier & Blakeley's building report in July 2012 (required by AS 1851.2005) ,

- Boiler plantrooms' requirement for additional lighting to meet OH&S as listed in Napier & Blakeley's building report in July 2012,
- Plantrooms used for storage, making them unsafe for repairs and maintenance, to meet OH&S as listed in Napier & Blakeley's building report in July 2012,
- Elevator non-compliance with current Lift Code AS 1735.2 – 2001, Work Health & Safety Act 2011, and BCA Building Regulations 2011, as listed in Napier & Blakeley's building report in July 2012.

Annexed and marked "DB47" is Strata Manager's email to the Caretaker on 31st of July 2013 confirming that no action was taken to rectify fire safety issues since January 2013.

Annexed and marked "DB48" is EC member Mr. Bruce Copland's email to Strata Manager on 21st of December 2012 confirming that fire alarms were not tested in townhouses for many years and that some other essential services might be missing.

8.4 Accounting report provided in the agenda for the AGM 2013 contained number of errors and misleading data. Annexed and marked "DB49" is my summary of major financial issues. The Respondent did not reply or acknowledge them, and approved the minutes of the AGM 2013 at EGM on 4th of December 2013 without any corrections or discussions.

8.5 Due to proxy farming, most of Motions were not discussed at the meeting. The Chairperson Mr. Bruce Copland disallowed it as pointless due to proxy votes given to him and members of the EC.

8.6 Agenda for the meeting was not detailed and did not contain any information to carry out motions that were against the Act, unenforceable, and fail the test of reasonable (same reasoning as in Paragraph 6.4 applies).

Strata Community Australia NSW confirms the requirement to include any other document necessary to fully inform owners in regards to motions on the agenda in the Notice of the AGM mailed to all owners (on page 1 of the "Annual General Meeting" booklet).

9. Submission on EGM 2013 and respondent's non-compliance with SSMA 1996 Section 153


EGM held on 4th of December 2013 was conducted in non-compliance with the Act and the compliance with the Act would have resulted in a failure to pass resolutions for most motions.

9.1 The minutes of the AGM 2013 were approved without any amendments or corrections.

9.2 My accounting report provided after the AGM 2013 proved number of errors made by the Strata manager. The Respondent did not reply or acknowledge them, and approved the minutes of the AGM 2013 at EGM on 4th of December 2013 without any corrections.

9.3 I was disallowed to attend the EGM through email sent on the day of the meeting. The original email from Strata Manager and my response is annexed and marked "DB50".

The Act Section 10 (8) states that the owner is entitled to vote but must be financial (payment made before the meeting of all contributions levied on the owner, and any other amounts recoverable from the owner, in relation to the lot that are owing at the date of the notice for the meeting). All my levies were paid on time. The Tribunal order for me to pay legal costs was challenged and file 2013/360456 opened in District Court before the EGM.



Annexed and marked "DB51" is my email to Strata Manager proving the pending District Court case on 2nd of December 2013.

9.4 Agenda for the meeting was not detailed and did not contain any information to carry out motions that were against the Act, unenforceable, and fail the test of reasonable (same reasoning as in Paragraph 6.4 applies).

9.5 Strata Manager and the EC failed to serve copies of CTTT notices on all owners as per the Act Section 136 (c), or provide them in the agenda sent on 20th of November 2013. There was still enough time to include them in the amendment (seven days before the meeting on 4th of December 2013):

- CTTT notice in file SCS 13/50737 on 19th of November 2013
- CTTT notice in file SCS 13/50737 on 27th of November 2013.

9.6 OH&S compliance was seemingly not conducted and certainly not provided to owners, although Napier & Blakeley's building report that was completed a year earlier in July 2012 (annexed in F13 S12) and invoiced on 30th of July 2012 (annexed in F13 S13), and two Eagle Fire Protection reports documented many issues (January 2013 annexed in F15 S46 and July 2013 annexed and marked "DB46").

Some of the issues highlighted year earlier but not confirmed by the Respondent as resolved or addressed before the EGM on 4th of December 2013:

- Annual survey of fire safety measures and statements, as listed in Napier & Blakeley's building report in July 2012 (required by AS 1851.2005) ,
- Boiler plantrooms' requirement for additional lighting to meet OH&S as listed in Napier & Blakeley's building report in July 2012,
- Plantrooms used for storage, making them unsafe for repairs and maintenance, to meet OH&S as listed in Napier & Blakeley's building report in July 2012,
- Elevator non-compliance with current Lift Code AS 1735.2 – 2001, Work Health & Safety Act 2011, and BCA Building Regulations 2011, as listed in Napier & Blakeley's building report in July 2012.

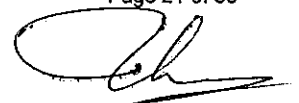
10. Submission on pending EGM scheduled on 20th of December 2013 and respondent's non-compliance with SSMA 1996 Section 153

EGM scheduled to be held on 20th of December 2013 shall be conducted in non-compliance with the Act and the compliance with the Act would result in a failure to pass resolutions to approve Solicitor's engagement in District Court case and approval to adopt the minutes of the previous EGM held on 4th of December 2013.

10.1 Agenda for the meeting was not detailed and did not contain any information to carry out motions - fails the test of reasonable (same reasoning as in Paragraph 6.4 applies).

10.2 Strata Manager and the EC failed to serve copies of CTTT notices on all owners as per the Act Section 136 (c), or provide them in the agenda sent on 6th of December 2013. There was still enough time to include them in the amendment (seven days before the meeting on 20th of December 2013):

- CTTT notice in file SCS 13/50737 on 19th of November 2013



- CTTT notice in file SCS 13/50737 on 27th of November 2013
- District Court orders in file 2013/360456 on 2nd of December 2013
- CTTT notice for Hearing in file SCS 13/50737 on 9th of December 2013
- District Court orders and notations of Her Honour Judge Truss made on 6th of December 2013.

11. Submission for two major unapproved reimbursements and levies in years 1998 to 2013 before the Special By-Laws were registered on 6th of May 2013

I was the first person in the complex to uncover these schemes and issue request to validate and investigate them on 26th of November 2011. At the time, this and several other questions were directed to the Chairperson of the EC. Official response was never provided.

11.1 Special By-Law "Sharing of water and gas costs"

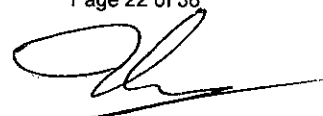
When this motion was carried at the AGM 2012, it conflicted with the Act and was unlawful and unenforceable:

- The Respondent's continuous and persistent claims it was ratified at the AGM 1999 stands no ground because ratification is a confirmation that some fact or statement is true through the use of documentary evidence. Ratification is not a Special Resolution (Motion 9 was properly set as Special resolution at that AGM and Motion 12 (ratification for water and gas reimbursements) was not);
- There was no detailed agenda for the AGM 1999, and even if we could accept the possibility the motion was carried out properly, it was not registered as Special By-Law within two years (any change to the bylaws had no force or effect until it was recorded on the common property folio of the Torrens Title Register. The change of by-laws cannot be accepted for lodgment where more than two years have lapsed since the passing of the Special Resolution);
- First time any reimbursements to townhouse owners were discussed was at the EC meeting on 17th of March 1998. The meeting was attended by five members of the EC and the Strata Manager. No other owner was present.

The EC made a decision, without any prior consultation with the owners corporation, to reimburse townhouse owners for the cost of water supply effective from 01.09.1997 (annexed in F1 S5).

Only five members of the EC were present at the meeting, together with ex Strata Manager John Fry, who just joined the complex at the time;

- At the EGM ("paper meeting") held on 21st of May 2000, 33 proxy votes were given to Strata Manager John Fry, who, due to lack of quorum, declared the meeting invalid (annexed in F1 S8). This EGM was supposed to approve minutes of AGM 1999, along with the motion to approve levies for year 2000 (due to introduction of the GST).
- Another EGM ("paper meeting") was convened on 23rd of August 2000 (annexed in F1 S9). This time, 51 proxy votes were given to Strata Manager John Fry, who declared quorum to be valid without count of valid proxy votes, their decisions, and review by any other owner or EC member.
- No other information about such reimbursements was tabled until the EC meeting on 21st of July 1999, when all of a sudden they were extended to gas (annexed in F1 S6);



- The Respondent failed to implement equitable water and gas reimbursements;
- The Respondent excluded number of townhouse owners from the reimbursements, without proof that those owners willingly chose to do so;
- The Respondent failed to be compliant with the Special By-Law, even after its formal approval (invoices for multiple quarters paid to some owners, GST for gas usage selectively applied, GST claim from Taxation Office selectively applied);
- The Respondent failed (and still fails) to provide accounting details for these reimbursements at any meeting;
- Excessive water and gas usage not monitored for townhouse owners.
- Not only this unregistered an unapproved scheme was carried out for more than 13 years without a Special Resolution or a By-Law, but almost all owners except the selected townhouse owners were not aware of them. Annexed in F1 S31 is a claim from owner of townhouse 217 in 2008 who complained about living in the complex for seven years and not being aware of the "right" to claim the reimbursements.

Annexed and marked "DB52" is an email from owner of townhouse 201 on 5th of July and follow-up on 12th of August 2013 who wanted to claim gas expenses retrospectively due to fact that previous Strata Manager provided her with false advice.

Annexed and marked "DB53" is an email from owner of townhouse 203 on 7th of August 2012 who complained about not knowing the rules applied to water and gas reimbursements in the past and questioning why she could not claim them for more than two quarters. Annexed document "DB27" shows my collection of proofs number of townhouse owners claiming reimbursements for multiple quarters.

Annexed and marked "DB54" is an email from daughter of owner of townhouse 219 (whose father was on the EC before his passing away two years ago) on 3rd of June 2013 confirming that her parents received water and gas reimbursements for 11 years.

Annexed and marked "DB55" is an email from owner of townhouse 210 on 4th of September 2012 who proved that claim form instruction applied to gas bill for a full reimbursement, not only usage.

11.2 With the Special Resolution made at the AGM on 17th of October 2012, the Special By-Law was not registered until 6th of May 2013, but the payments to the townhouses continued unabated (non-compliance with the Act Section 48 (What steps must an owners corporation take to make an amendment effective?)).

11.3 Copy of the Special By-Laws 11, 12 and 13 as carried at AGM 2012 without detailed agenda is annexed and marked "DB42". These By-Laws were published on Raine & Horne Strata Sydney's web site as late as 11 months after the AGM 2012 – on 11th of September 2013. Copy of the web site layout is annexed and marked "DB43".

11.4 One of many drastic outcomes of the analysis of the water and gas reimbursements: 192 owners in four buildings in the complex share, on average, Unit Entitlement equal to 44.76. It means that, approximately, owners of townhouse 205 (Unit Entitlement equal to 58) and 215 (Unit Entitlement equal to 54) contributed to common funds around \$600.00 LESS than these 192 owners with average Unit Entitlement equal 44.76 in 2012.

The example for FY 2013 is ever more illustrative: owner of townhouse 215 (Unit Entitlement equal to 54)



paid in common funds around \$1,000.00 less than an average contribution from 192 owners in the buildings, although the lots in buildings are valued at much lower level!

The water and gas reimbursements were not applied in equal shares between the townhouse owners as each claimed differently. Some illustrative examples:

FY 2007: 16 townhouse owners, comprising only 7.34% of the total number of owners, added 23.56% to the total cost for water and gas expenses in the complex.

FY 2008: 17 townhouse owners, comprising only 7.80% of the total number of owners, added 11.63% to the total cost for water and gas expenses in the complex.

FY 2009: 18 townhouse owners, comprising only 8.26% of the total number of owners, added 7.14% to the total cost for water and gas expenses in the complex.

FY 2010: 20 townhouse owners, comprising only 9.17% of the total number of owners, added 10.05% to the total cost for water and gas expenses in the complex.

FY 2011: 14 townhouse owners, comprising only 6.42% of the total number of owners, added 6.66% to the total cost for water and gas expenses in the complex.

FY 2012: 18 townhouse owners, comprising only 8.26% of the total number of owners, added 11.37% to the total cost for water and gas expenses in the complex.

FY 2013: 18 townhouse owners, comprising only 8.26% of the total number of owners, added 13.81% to the total cost for water and gas expenses in the complex. 18 townhouse owners were paid water and gas reimbursements that represent 13.81% of what other 200 owners spent for these utility costs for shared accounts (including spa, sauna, swimming pool, paving areas, foyers, lifts, gardens, tennis courts, garbage bins washing three times a week, and similar). 200 other owners spent on shared water and gas costs, on average \$494.48 each this year. 18 townhouse owners received reimbursements for their personal water and gas usage, on average \$758.68 each.

11.5 Some townhouse owners claimed GST component for gas usage, and others did not.

11.6 Number of townhouse owners (on average 8 out of 26) did not receive any reimbursements in any given financial year since 1999.

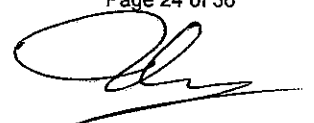
Although the townhouses have individual water and gas meters, it is impossible to monitor and establish "reasonable" water and gas usage in townhouses.

In addition, it is illegal to enter private property without consent of the owners. That means, it is impossible to enforce or even check, for example, who has one washing machine, or an extra gas heater connection in townhouses.

11.7 Special By-Law "Control of common gas supply"

The gas usage levies that were imposed on several owners in buildings were not applied in a reasonable and just manner.

11.8 These unapproved levies were never monitored or indexed in accordance with actual gas prices over almost 14 years.



11.9 These levies were not approved at any general meeting by a special resolution (before the AGM 2012 on 17th of October 2012) or registered as Special By-Law before 6th of May 2013!

11.10 Motion 11 at AGM 2012 "Control of Common Gas Supply" requests that owners in buildings must not connect any additional appliance to common gas supply without prior notification to owners corporation, but such rule never applied to townhouse owners, who claimed reimbursements for their private gas usage on virtually unlimited number of appliances (nobody really knows how bad these rebates were because the Strata Manager "cannot" provide details for years prior to 2007).

11.11 Motion 11 at AGM 2012 "Control of Common Gas Supply" allows for retrospective levies gas usage from owners in buildings but retrospective reimbursements do not apply for water and gas usage to townhouse owners.

The Motion's definition of "estimates to be at the absolute discretion of the Owners Corporation acting reasonably" is vague. It is prone to wild interpretations by the Executive Committee and the power how much to charge individual owners must be decided by the owners corporation at a general meeting only.

To impose retrospective gas usage levies on lots found to have tapped into the common gas supply is almost impossible to enforce because the date when such installation happened might not be provided by the owner of a lot.

11.12 In spite of what the Strata Manager and the Executive Committee claim, the owners have every right to disallow access to their lots because the Act, Section 65 defines strict rules when a private property can be entered in the complex. Visits to check leaking taps (not a common property) or number of installed washing machines and gas appliances are illegal and every owner has right not to give consent. Only when the owners corporation has evidence that a repair of common property is required (like burst pipe in the wall), it can enter the lot at all times.

Owners Corporation SP 65120 v Dewar (Strata & Community Schemes Division) [2008] NSWCTTT 893 (31 March 2008): this appeal required determination of the validity of a by-law dealing with fire safety. It included powers enabling the Owners Corporation to enter lots for the purpose of inspecting fire safety equipment and requiring a person in breach of the by-law to indemnify the Owners Corporation for any damage arising as a consequence. The appeal was dismissed and the order of the Adjudicator in SCS 06/40482, declaring that 'special by-law 2 – Fire Safety' was invalid under s159 of the Act because the Owners Corporation did not have the power to make this by-law, was confirmed.

SP52948 ran a small project to check the tap/basin water leakages in 2010, as it failed to comply with the Special By-Law 9 because 48 lot owners (including two members of the Executive Committee – Mr. Jeffery Wang and Mrs. Sandy Quick) did not allow access to their property.

11.13 A copy of the report about owners who refused entry to their lots for water leak inspection in 2010 is annexed and marked "DB44".

11.14 An extract from accounting books for unreported costs for these water leak inspections is annexed and marked "DB45".

11.15 The retrospective levies on gas usage adversely affect owners in townhouses who were not given the same rights to claim reimbursements for water and gas usage, especially since many current and previous lot owners in townhouses were not never informed about the rebate scheme. Since only a selected group of townhouse owners have received reimbursements for water and gas usage for many years, and the



Executive Committee disallowed the other townhouse owners to claim them retrospectively without a general meeting, this Special By-Law cannot be legally justified.

For the most part superior courts in New South Wales have been reluctant to embrace the concept of a so-called "retrospective" (or ex post facto) approval or consent in the context of a statutory scheme for obtaining some form of approval, consent or certificate.

Although a By-Law is not an Act or a statutory rule, it is nonetheless a binding rule that effects people's rights - **Renshaw, Ms - Owner of lot 3 Strata Plan SP12963 v Owners corporation of Strata Plan No. SP12963 [1999] NSWSSB 40 (7 July 1999)**.

11.16 All owners must have equal rights. If townhouse owners who missed on receiving reimbursements for water and gas cannot and could not claim them for the previous years (although some did get them, by silent approval of the EC and the Strata Manager), so cannot gas usage levies be charged retrospectively as per this new Special By-Law.

The same logic should apply to high water usage expenses that some townhouse owners claimed in the past. The control of water usage reimbursements, as per Motion 12 is not imposed in any reasonable form that ensures equitable costs being shared amongst all owners.

11.17 The Executive Committee and the Strata Manager failed to present factual information about the gas usage levies that were imposed on only a few lot owners in the period between 1999 and now.

By virtue of the SSMA 1996 Section 21(2), a decision that is required to be made by the owners corporation was not made as a special resolution or a by-law and could not have been applied by the Executive Committee and the Strata Manager for almost 14 years.

The Executive Committee failed in their fiduciary duties to the owners corporation (Supreme Court decision in **Waldorf Apartment Hotel v Owners Corporation Strata Plan 71623 (2009) NSWSC 882**).

11.18 Failure to comply with the provisions of the Act adversely affects many owners in the complex when the Special By-Law was passed. Their funds were depleted due to unauthorised expenditures for water and gas reimbursements and unequal levies for gas usage.

11.19 The only valid and legal grounds under which the Owners Corporation can enter a private lot is as per the Act Section 65 (Can an owners corporation enter property in order to carry out work?):

11.20 Either all By-Laws in the complex apply retrospectively to all owners, or not at all. No By-Law can disadvantage significant number of owners without giving them the proper information to form an informed opinion to make their decision at AGM 2012 and at other times.

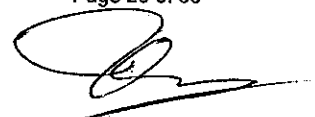
Old levies were for \$200.00 per lot owner (copy of minutes of EC meeting annexed in F2 S8) who had additional gas device connected to common supply.

Evidence and further comments in F2 S2, F2 S4, F2 S8, F2 S9, F2 S10.

12. Submission in support of SSMA 1996 Section 101

Strata Manager did not record the date the following orders and notices were obeyed:

- CTTT orders in Directions Hearing in file SCS 12/32675 on 8th of August 2012



- CTTT notice about non-compliance with orders in file SCS 12/32675 on 19th of September 2012
- CTTT notice about non-compliance with orders in file SCS 12/32675 on 9th of October 2012
- DFT Mediation file SM12/1537JR opened on 4th of January 2013 (Respondent declined to attend on 20th of February 2013)

13. Submission in support of SSMA 1996 Section 136

Owners on the strata roll were not served a copy of the notices and orders (the Act Section 136 (1) (c), nor the records about them displayed on notice boards for all owners to review in a timely manner (the Act Section 136 (1) (a) applies to all documents before the AGM 2013 held on 4th of December 2013, when the motion to not use notice boards for such situations was carried without detailed agenda), on the following recent occasions:

- CTTT notice of Direction Hearing in file SCS 12/32675 issued on 29th of June 2012
- CTTT orders in Directions Hearing in file SCS 12/32675 on 8th of August 2012
- CTTT notice about non-compliance with orders in file SCS 12/32675 on 19th of September 2012
- CTTT notice about non-compliance with orders in file SCS 12/32675 on 9th of October 2012
- CTTT order about rehearing in file SCS 12/32675 on 17th of December 2012
- CTTT notice about interim orders file SCS 12/50450 on 9th of October 2012
- CTTT notice about new file SCS 12/50460 on 9th of October 2012
- CTTT notice in file SCS 12/50460 on 23rd of October 2012
- CTTT notice in file SCS 12/50460 on 20th of November 2012
- CTTT notice in file SCS 12/50460 on 2nd of January 2013
- CTTT notice in file SCS 12/50460 on 2nd of February 2013
- CTTT notice in file SCS 12/50460 on 24th of April 2013
- CTTT order in file SCS 12/50460 on 7th of May 2013
- DFT Mediation file SM12/1537JR opened on 4th of January 2013
- Unsuccessful DFT mediation in file SM 12/1537JR when the Respondent declined to attend on 20th of February 2013
- DFT Mediation in file SM 12/1537JR reopened under mysterious conditions on 5th of March 2013
- DFT Mediation in file SM12/1537JR failed for the second time on 27th of March 2013
- CTTT notice in file SCS 12/50460 on 24th of April 2013



- CTTT notice in file SCS 13/50737 on 19th of November 2013
- CTTT notice in file SCS 13/50737 on 27th of November 2013
- District Court orders in file 2013/360456 on 2nd of December 2013
- CTTT notice for Hearing in file SCS 13/50737 on 9th of December 2013
- District Court orders and notations of Her Honour Judge Truss made on 6th of December 2013
- Hazard and Risk Assessment and registration for elevators expired at time of Napier & Blakeley's building report in July 2012 (required by OH&S Act)
- Annual survey of fire safety measures and statements, as listed in Napier & Blakeley's building report in July 2012 (required by AS 1851.2005)
- Boiler plantrooms' requirement for additional lighting to meet OH&S as listed in Napier & Blakeley's building report in July 2012
- Main domestic water supply did not have backflow prevention device installed as required by AS 2500:1 and OH&S Regulation 2001, Division 1 Clauses 34 & 35, as listed in Napier & Blakeley's building report in July 2012
- Plantrooms used for storage, making them unsafe for repairs and maintenance, to meet OH&S as listed in Napier & Blakeley's building report in July 2012
- Elevator non-compliance with current Lift Code AS 1735.2 – 2001, Work Health & Safety Act 2011, and BCA Building Regulations 2011, as listed in Napier & Blakeley's building report in July 2012.

14. Submission in support of SSMA 1996 Section 102

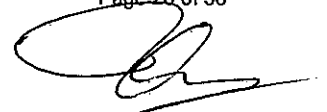
14.1 Minutes of EC meeting held on 9th of July 2012 not recorded in the Minutes Book until after the Hearing on 15th of April 2013 – nine months after the event and only forced because of my CTTT case.

14.2 Minutes of the EC meeting held on 22nd of October 2012, which elected office bearers for FY 2013, annexed and marked "DB56".

- The agenda for this meeting was never sent to owners;
- Minutes of this meeting were never sent to owners;
- The office bearers were hidden from the CTTT proceedings in file SCS 12/32675 and SCS 12/50460, and instead announced that the Strata Manager Mr. Peter Bone carried out duties of all office bearers since the AGM 2012.

15. Submission in support of SSMA 1996 Section 104

- Ballot paper destroyed straight after the adjourned AGM 2001 (annexed in F11 S5).
- Agenda for the adjourned AGM 2001 missing in the Minutes Book.



- Income from SkyNet Global in period 2003 to 2013 not recorded or collected.
- Contract with SkyNet Global signed by Strata Manager Mr. John Fry on 3rd of December 2003, (suddenly "recovered" in December 2013, upon my persistence).
- Water and gas reimbursement to selective townhouse owners for period 1998 to 2013 not properly applied and recorded.
- Records of the Strata Manager relating to the exercise of his functions.
- Public liability insurance for owner of Lot 3 in compliance with the Special By-Law 4 for every year since 2003 when it was registered till the AGM 2012, and again since AGM 2013.
- Tenders for all major contracts since year 1999 (caretaker, strata manager, elevator, fire services, and others).

16. Submission in support of SSMA 1996 Section 108

Partial evidence that repeated requests to obtain documents was not served by the Respondent and did to achieve final settlement on 9th of November 2013 even after the Directions Hearing and recommendations by Senior Member Ms. S. Thode:

16.1 Copy of my payment in advance for document viewing on 7th of November 2012 is annexed and marked "DB57".

16.2 Copy of an email response from Branch Manager Mr. Paul Banoob promising to provide me with missing documents on 13th of November 2012 is annexed and marked "DB58".

16.3 Copy of my payment in advance for document viewing on 11th of September 2013 is annexed and marked "DB59".

16. 4 Copy of my document viewing on 16th of September 2013 with Strata Manager's written notes is annexed and marked "DB60".

16.5 Copy of my payment in advance for document viewing on 15th of October 2013 is annexed and marked "DB61".

16.6 Copy of my payment for photocopying costs on 18th of October 2013 is annexed and marked "DB62".

16.7 Copy of my document viewing on 17th of October 2013 with Strata Manager's written notes is annexed and marked "DB63".

16.8 My summary for denial of access to correspondence by EC and the Solicitor on 3rd of February 2013 is annexed and marked "DB64". It was presented to Strata Manager Mr. Peter Bone during document viewing on 17th of October 2013.

I was denied access to the documents allegedly due to "lack of privileges".

- Correspondence from the Strata Manager and the members of the EC is NOT PRIVILEGED and any owner has legal right to view such documents as per SSMA 1996 Section 108. Members of the EC and the Strata Manager are NOT COVERED by the common law legal profession privilege.



- NSW Supreme Court made a judgment in 2012 that owners had right to inspect such files but the jury was still out on whether a lot owner who was directly involved in the litigation with an owners corporation was entitled to inspect legal advice given to the owners corporation concerning the litigation:

In **Eastmark Holding Pty Ltd v Kabraji (No 3) 2012 NSWSC 1463**, the Supreme Court held that the developer of a large residential building in Berry Street, North Sydney was entitled to inspect legal advice given to the owners corporation of the building concerning litigation in which the developer was involved.

This was the official ruling that applied to my request at the time, so Solicitor Mr. Adrian Mueller failed to present the proper legal advice. In early February 2013, the ruling of the NSW Supreme Court was still valid!

- Strata Manager failed to provide me with the invoice to pay for access to the documents.
- Only in recent case the NSW Court of Appeal made a different decision: **The Owners - Strata Plan No. 74602 v Eastmark Holdings Pty Limited [2013] NSWCA 221** NSW Court of Appeal confirmed the primary judge's decision that section 108 of the Strata Schemes Management Act 1996 does not override important common law privileges and immunities such as legal professional privilege.
- The law is silent about rights of owners who are involved in legal actions but carry proxy votes vested in them.

16.9 A copy of my email sent to Strata Manager and the EC on 9th of November 2013 requesting document viewing for those that were not provided in previous visits is annexed and marked "DB71".

16.10 At EGM held on 4th of December 2013 without detailed agenda and completed in record time of 30 minutes (annexed in "DB2"), the following resolution was carried for Motion 8:

That the Owners Corporation notes the voluminous and repetitive correspondence received from [redacted] which has been excessive and unnecessary for the good order and conduct of the affairs of the Owners Corporation and resolves not to respond to any such further correspondence (unless it is absolutely necessary or appropriate to do so) given that to dealing with and responding to this correspondence will likely result in increased administrative costs likely to affect the Owners Corporation in adverse manner.

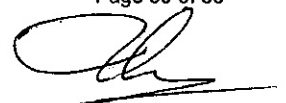
16.11 Copy of my email to Strata Manager on 4th of December 2013 documenting why I should be able to attend the EGM and that document viewing as per S108 was overdue is annexed and marked "DB65".

17. Submission in support for Orders in compliance with SSMA 1996 Section 153 and 154

Because AGM 2013 and EGM 2013 held on 4th of December 2013 (and quite probably the EGM scheduled for 20th of December 2013) were conducted in non-compliance with the Act, I pose a question if the Tribunal has option to exercise its rights to invalidate resolutions at the AGM 2013 and the two EGMs without a new application (to save money and effort to all parties).

18. Submission in support of SSMA 1996 Section 68

From 1997 to this day, water and gas reimbursements to selective townhouse owners were paid from the Admin Fund without any disclosure in financial statements (at EC or general meetings), and without Special By-Law registration until 6th of May 2013.



- The water usage reimbursements for townhouse owners were introduced by five members of the EC on 17th of March 1998 with retrospective claims from 1st of September 1997, without a general meeting, or a special resolution.
- At the EC meeting on 21st of July 1999 proposal to include gas usage reimbursements was listed.
- At AGM held on 29th of September 1999, water and gas usage reimbursements were "ratified" without a Special Resolution or Special By-Law registered within two years after the meeting.

19. Submission in support of SSMA 1996 Section 75A

SP52948 has never implemented a proper 10-year Sinking Fund Plan. It is purely based on CPI figures and does not take into account expenses of a capital nature and major maintenance works to proactively manage the common property or meet regulatory standards.

19.1 Photos taken by me in the complex (October 2011 annexed in F7 S5, June 2012 annexed in F7 S6, October 2012 annexed in F7 S7, December 2012 annexed in F7 S13, June 2013 annexed in F14 S6);

Extract from the NSW Strata Title Management magazine Issue Feb 2011 with recommendation to apply new coats to exterior of buildings every 7-8 years in Australian harsh climate is annexed in F7 S10.

19.2 Napier & Blakeley's building report highlighting number of issues, annexed in F13 S12;

19.3 ThyssenKrupp has just released their Risk Implementation Plan for elevators and the cost for dealing with

- High Risks (rectification required within one year from now) is quoted at budgeted price of \$149,644.00;
- Medium Risks (rectification required within three years from now) is quoted at budgeted price of \$20,336.00;
- Low Risks (rectification required within five years from now) is quoted at budgeted price of \$99,400.00.
- Major upgrade item within one year from now:

Lift Car Landing Door Equipment	\$250,000.00
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- Other upgrade items within next five years come up to figure of \$385,000.00, additional \$150,000.00 in the following two years afterwards (within seven years from now), and additional \$200,000.00 within next 10-15 years.

A copy of their report is annexed and marked "DB66".

A copy of their Hazard and Risk Assessment is annexed and marked "DB67";

19.4 Comprehensive OH&S assessment was not provided to owners or seemingly completed in the last several years;

19.5 Plumbing, sewage, and maintenance costs are increasing at significant rate. EC and the Strata Manager fail to acknowledge it (as seen in the agenda for AGM 2013). The real costs are shown in my spreadsheet annexed and marked "DB74".



There is also an issue about quality of repairs. Illustrative example is repairs in Lot 191 (six times in period of around one year).

Copies of invoices for these repairs are in Exhibit "DB86" and shall be provided at the Hearing.

19.6 Other proactive maintenance schedules are unknown, without estimates for expenditure done by any professional body.

19.7 I raised questions about pergolas as they are seemingly not part of common property at the time of registration. Annexed and marked "DB79" are copies of EC meetings which discussed or documented work being done on pergolas but not resolving the issue of common property.

Copy of SP52948 registered blueprints are in Exhibit "DB87" and shall be provided at the Hearing.

20. Other selected issues in regards to Strata Manager

20.1 No major contracts (caretaker, elevator, fire services, insurance (in most years), strata manager) have been properly tendered and decisions made at general meetings since 1999.

Illustrative example for caretaker's contract that was never tendered:

In FY 1999, before Universal Property Services won the contract:	\$186,611.00
FY 2000: Universal Property Services:	\$220,168.00
FY 2001: Universal Property Services:	\$220,624.00
FY 2002: Universal Property Services:	\$218,938.00
FY 2003: Universal Property Services:	\$218,167.00
FY 2004: Universal Property Services:	\$222,376.00
FY 2005: Universal Property Services:	\$227,995.00
FY 2006: Universal Property Services:	\$228,438.00
FY 2007: Universal Property Services:	\$232,844.00
FY 2008: Universal Property Services:	\$235,560.00
FY 2009: Universal Property Services:	\$244,287.00
FY 2010: Universal Property Services:	\$254,080.00
FY 2011: Universal Property Services:	\$245,094.00
FY 2012: Universal Property Services:	\$255,673.00
FY 2013: Universal Property Services:	\$256,605.00 (real \$248,946.00)

Around 18% increase in the contract costs was immediately incurred when Universal Property Services became caretaker for the strata complex without a tender.

The size of the contract (well above \$200,000.00 per year) would justify the need to seek alternative quotes in any prudently run complex.

20.2 Elevator maintenance contract. My report of issues with contract clauses, excessive yearly increases in contract values, and much higher costs than reported by the EC and the Strata Manager is annexed and marked "DB68".

My report was presented to EC members and the Strata Manager for AGM 2013 but it was silently ignored.

20.3 Caretaker's contract. Universal Property Services has been employed as caretaker in the complex since late 1999. Alternative quotes at contract renewals were never sought or provided to EC or owners.



In the minutes of EC meeting held on 18th of February 2004 (annexed and marked "DB72"), owners and ordinary EC members were led to believe that Resident Manager did not provide full quote for the caretaker's contract to compete against Universal Property Services who were employed since late 1999 without a tender.

There was, however, an undisclosed full quote the Resident Manager. I discovered this caretaker's offer accidentally in September 2013 during document viewing in accordance with the SSMA 1996 Section 108.

In the minutes of EC meeting held on 21st of April 2004 (annexed and marked "DB73"), the contract with Universal Property Services was renewed without details of the contract given to owners.

- With the GST included, The Resident Manager would have charged the following for the maintenance contract in 2004 and onwards:

1 Caretaker
1 Gardener
1 Cleaner

Total (with GST) \$144,740.00

- For the same services, excluding the security guards, Universal Strata Services charged the following in FY 2005/2006:

Caretaking/Cleaning (exclusive GST)	\$105,796.01
Gardening (exclusive GST)	\$42,053.01
Total (with GST)	\$162,631.22

- The approximate savings, in favor of engaging the Resident Manager in 2005 would have been \$17,891.00 per year (12.36% savings). If we apply similar figures over other years, it seems very plausible that owners corporation would have saved at least \$200,000.00 since 1999.

An extract from this undisclosed quote is annexed and marked "DB69".

20.4 Building painting in 2005. Annexed in F11 S10 and S11 are original submissions in regards to processes and costs for painting the exterior of buildings in 2004/2005.

- I obtained new evidence that shows the following figures.

The total cost of the painting was \$556,640 as reported by the Strata Manager, who even provided different value of the contract to the one that Chairperson stated at AGM 2004. Without access to financial statements (that is one of the main issues over many years as expense transaction reports have never been provided), it is difficult to confirm which version is correct – the one from the Chairperson or the one from the Strata Manager. In both cases, it is undeniable that the contract for the painting project was not approved by the EC or owners corporation in full;

- The EC officially approved only:

\$446,380.00 (initial contract value)
\$23,540.00 (Block D extra coat of paint)
\$21,780.00 (Block A extra coat of paint)
\$21,780.00 (Block B extra coat of paint)

34
Total: \$513,480.00 (GST inclusive)

- The cost "blowout" from the originally approved value of \$446,380.00 was 24.7%
- None of the above expenses was approved at general meetings;
- Missing is the explanation for other \$43,160.00 that was spent on the project (if we take into account EC-"approved" extra coats of paint).

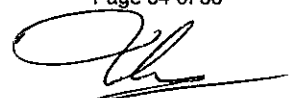
I provided report to EC and the Strata Manager after the AGM 2013 because Chairperson Mr. Bruce Copland attempted to challenge my statements. My email was silently ignored.

A summary of the building painting project is annexed and marked "DB70".

20.5 Tender for electricity supply in 2011. Details still not provided to owners. Instead of significant savings (promised maximum increases of around 7-8% per year), our costs grew by more than 18% in each of last two years.

20.6 Wireless Internet services by SkyNet Global.

- The original contract was approved by a few members of the EC at a meeting on 15 November 2003 (Mrs M. Macdonald, Mrs. E. Saulits, Mr. U. Aranwela, Mr. G Raichman, Mr. J. Ward, and Mr. Bruce Copland), whilst only the Chairperson Mr. Bruce Copland and the previous Strata Manager Mr. John Fry were involved in contract negotiations and its review (they "relied" on a by-stealth introduced Special By-Law 7 that approved the Executive Committee to enter into contracts as registered in the Land and Property NSW on 18 October 2003 - the date of the AGM was 1 October 2003 so this By-Law was registered in record time).
- The contract was signed by Strata Manager on 8th of December 2003 for five years in the first instance.
- The earnings for the owners corporation never eventuated and the Strata Manager failed to manage the contract properly.
- The contract was not reviewed since that time, in spite of the fact that the wireless services did not benefit the owners (only one or two documented owners using it). At renewal at the end on 2008, no action was taken by the Strata Manager.
- The ISP was running a very successful business for 10 years without any liabilities or expenses.
- When the EC finally decided to take some action in August 2013, BigAir (who owns SkyNet Global now) threatened Macquarie Gardens that we could remove their equipment in spite of the fact that the license to run their business expired long ago, that they never paid for electricity usage, that they never paid owners a percentage for each new customer connection, and that they never paid for leasing our common property.
- In spite of all denials by the EC and the Strata Manager (especially the Chairperson Mr. Bruce Copland), it is now confirmed that there is no contract and that the ISP business running in our complex for more than nine years is not only illegal because of breach of contract rules, but helped the third-party company make serious profits at owners' expense! By Mr. Copland's own "calculations", just the "lease" of the common property should have brought at least \$20,000.00 per year. Add to it the lost income of 5% per each new subscriber (as per original contract), lost income from electricity expenses... and losses to owners of \$210,000.00 or even higher are certain.



- In spite of continuous statements that Strata Manager lost the contract, it showed on Raine & Horne's website in early December 2013, annexed and marked "DB75".
- A copy of letter from Grace Lawyers sent to BigAir on 13th of December 2013 is annexed and marked "DB78". It confirms SP52948 received no payments since the beginning of the contract in late 2003 and confirming that the contract was terminated on 15th of November 2013. SP52948 now requested full reimbursement of late payments with 10% interest per annum.

20.7 Persistent lack of detailed agenda for EC and general meetings.

20.8 Numerous accounting errors and undisclosed expenses of significant importance (an example are engineering costs in FY 2011, annexed in F3 S27).

20.9 Significant expenses approved without decisions at general meetings or without additional quotes. To list a few:

2005/2006: Building painting app. \$556,000.00 (around \$110,000.00 above the value that the EC approved)
 July-October 2010: Electrical upgrade (includes failed Optus proposal): app. \$110,000.00
 April 2011: Firedoor leversets \$8,976.00 (plus losses for return of lockable leversets without compensation)
 April 2011: Repaint of Townhouses and rear pergolas \$61,490.00
 September 2010: Failure of two-phase for lift power supply in Block A without obtaining statements from the two lift contractors: app. \$50,000.00
 Mar 2012 to December 2013: Engagement of Solicitor Mr. Adrian Mueller above \$33,000.00

20.10 Strata Manager approved Solicitor Mr. Adrian Mueller's engagement to attend District Court session on 6th of December 2013 without consultation by the EC or owners corporation. Now seeking it be approved at urgent EGM scheduled for 20th of December 2013 retrospectively.

Conclusion

Competition and Consumer Act 2010 imposes on sellers a "statutory condition" that goods and services must be "fit for their intended purpose".

The strata agency failed (and still fails) to provide services in accordance with:

1. ITSM Strata Management Agreement number 2671 that was signed by the Strata Plan 52948 on 16 June 1999:

Clause 7.1

The Strata Manager will comply with the Act (SSMA 1996), the Agents Act and Regulations including Rules of Conduct, as well as the Code of Conduct of the Institute of Strata Title Management.

2. The following breaches of the Strata Community Australia Code of Ethics are listed:

Failure to comply with the SCA 1.2 i.
 Failure to comply with the SCA 1.3 i. to xi. inclusive
 Failure to comply with the SCA 2.1 e.
 Failure to comply with the SCA 2.1 j.

3. Failures to act in accordance with the Property Stock and Business Agents 2002.



4. The Strata Manager engaged in providing false, misleading, or misconstrued statements to the Department of Fair Trading and CTTT, or failed to disclose evidence at other times.

Due to lack of professional conduct and poor ethics, the financial losses to the owners corporation 52948 amount to hundreds of thousands of dollars.

As per the Act Section 30, since the Strata Manager was delegated duties of office bearers at various times in the past, and carried out all roles of office bearers since the AGM 2012, the agent is guilty of an offence under provisions of this Act (instead of the owners corporation) for any breach of duty while the delegation remains in place.

I make this solemn declaration by virtue of the *Statutory Declarations Act 1959* as amended and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Signed

Declared at EASTWOOD

On 18 Dec 2013

In the presence of authorized witness, who states:

I, RONALD LEE, a JUSTICE OF THE PEACE,

certify the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR ~~I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and~~

2. I have known the person for at least 12 months OR ~~I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was~~

Signature of authorized witness:  (inclusive of initialed annexed pages 1 to 36)

Date: 18/12/2013

RONALD KUAN HENG LEE
A Justice of the Peace in and for
the State of New South Wales
Registration No: 151339

