

## Contents

SP52948 – Correspondence between EC members and BCS Strata Management on 10 <sup>th</sup> of October 2012, confirming no income from BigAir ISP .....	2
SP52948 – Correspondence between EC members confirming no income received, and fair annual income from BigAir to be \$20,000.00, blaming BCS Strata Management on 1 <sup>st</sup> of September 2013 .....	3
SP52948 – Grace Lawyers earned \$4,172.30 in attempt to expel BigAir from the complex and failed to achieve that task in 2013/2014.....	4
SP52948 – Grace Lawyers formally requested BigAir leave complex on 31 <sup>st</sup> of January 2013 .....	5
SP52948 – Photos taken of BigAir equipment on Block C on 6 <sup>th</sup> of October 2014.....	6
SP52948 – Decision to engage Telecommunications Ombudsman and enforce eviction of BigAir at AGM on 26 <sup>th</sup> of November 2014 .....	11
SP52948 – Lot 158 Motion for recovery of lost income from BigAir – disallowed without valid reason by BCS Strata Management at AGM 2016 and Waratah Strata Management at AGM 2017 .....	12
SP52948 – Waratah Strata Management email to BigAir with frustration about lack of actions on 14 <sup>th</sup> of February 2018 .....	13
SP52948 – Waratah Strata Management email to BigAir on 16 <sup>th</sup> of February 2018 .....	15
SP52948 – Waratah Strata Management desperate email to Grace Lawyers on 8 <sup>th</sup> of March 2018.....	17
SP52948 – Waratah Strata Management email to BigAir asking for proposal on 6 <sup>th</sup> of April 2018 .....	19
SP52948 – Waratah Strata Management email to EC members with proposal from BigAir on 10 <sup>th</sup> of April 2018.....	21
SP52948 – Waratah Strata Management email to BigAir with proposal requesting payment in amount of at least \$20,000.00 on 13 <sup>th</sup> of April 2018.....	23
SP52948 – Waratah Strata Management email to EC members with BigAir counter offer with payment in amount of \$12,000.00 on 3 <sup>rd</sup> of May 2018.....	24
SP52948 – Email from Waratah Strata Management to BigAir requesting payment in amount of \$20,000.00 on 18 <sup>th</sup> of May 2018.....	25
SP52948 – BigAir offer of settlement with only \$12,000.00 payment using bullying language on 5 <sup>th</sup> of June 2018.....	26
SP52948 – Email from Waratah Strata Management to EC members BigAir asking for confirmation if \$12,000.00 was sufficient and planning discussion at EC meeting scheduled for 21 <sup>st</sup> of June 2018 on 6 <sup>th</sup> of June 2018 .....	30
SP52948 – Document search at Waratah Strata Management on 31 <sup>st</sup> of May 2019 found no evidence of EC members formally approving BigAir offer via emails or letters.....	31
SP52948 –Waratah Strata Management signed BigAir Settlement Deed 15 <sup>th</sup> of June 2018 without planned discussion at EC meeting scheduled for 21 <sup>st</sup> of June 2018.....	32
SP52948 –Waratah Strata Management issued Tax Invoice to BigAir on 15 <sup>th</sup> of June 2018 without planned discussion at EC meeting scheduled for 21 <sup>st</sup> of June 2018.....	35
SP52948 – Extract from Minutes of EC meeting on 21 <sup>st</sup> of June 2018 alleging that the offer was accepted at that meeting without disclosure that Waratah Strata Management had already signed the Settlement Deed on 16 <sup>th</sup> of June 2018.....	37
SP52948 –Secret calculation by EC members and Waratah Strata Management for losses incurred by illegal ISP running in the complex since 31 <sup>st</sup> of January 2014 - found in document search on 20 <sup>th</sup> of September 2019.....	38

SP52948 – Correspondence between EC members and BCS Strata Management on 10<sup>th</sup> of October 2012, confirming no income from BigAir ISP

**Sent:** Friday, 10 August 2012 2:53 PM  
**To:** Peter Bone; Paul Banoob  
**Cc:** ruthluka@L...; Gary Webb; John Ward  
**Subject:** RE: SP 52948 - Latest documentation

Peter,

Given the extraordinary level of objection over rooftop microwave antennae will you please confirm that the current WHome network does not have an antenna on the roof and that it will require a general meeting to approve such (would have to wait until mid October 2012). If there is already an antenna on the roof relating to this service, it may be possible to approve the upgrade at committee level. I recollect that the original approval for the installation of this equipment and the power it consumes was to be compensated to the Owners Corporation by an annual fee equivalent to a commission on the revenue derived. It was probably only 5 or 10% but I do not recollect seeing any income come through. Clearly if they wish to install equipment they must be making income and we should enquire as to where that commission is.

SP52948 – Correspondence between EC members confirming no income received, and fair annual income from BigAir to be \$20,000.00, blaming BCS Strata Management on 1<sup>st</sup> of September 2013

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

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

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

SP52948 – Grace Lawyers earned \$4,172.30 in attempt to expel BigAir from the complex and failed to achieve that task in 2013/2014

Grace Lawyers charged \$4,172.30:

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

31 January 2014

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

**WITHOUT PREJUDICE SAVE AS TO COSTS**

**URGENT**

**Also by Email: [facilities@bigair.net.au](mailto:facilities@bigair.net.au)**

Dear Sir

**THE OWNERS - STRATA PLAN NO 52948  
TELECOMMUNICATIONS INSTALLATION  
1-15 FONTENAY RD, MACQUARIE PARK 2113**  
Our Ref: 131862

We refer to your correspondence dated 15 January 2014.

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

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

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

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

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

Please kindly confirm once the equipment has been removed.

  
**Ian McKnight  
Partner  
Grace Lawyers Pty Ltd**

Partners:  
Colin Grace  
Daniel Radman  
James Nickless  
Ian McKnight  
Peter Ton

New South Wales  
Level 5, 287 Elizabeth Street  
Sydney NSW 2000  
PO Box 20727  
World Square NSW 2002  
DX 11508 Sydney Downtown

PH: 02 9284 2700  
FX: 02 9284 2799

Queensland  
Level 18, 333 Ann Street  
Brisbane QLD 4000

PH: 07 3232 1119  
FX: 07 3232 1200

Victoria  
Level 22, HWT Tower, 40 City Road  
Southbank VIC 3006

PH: 03 9674 0474  
FX: 03 9674 0400

EM: [enquiries@gracelawyers.com.au](mailto:enquiries@gracelawyers.com.au)  
W: [www.gracelawyers.com.au](http://www.gracelawyers.com.au)  
ABN 55 116 196 500



SP52948 – Photos taken of BigAir equipment on Block C on 6<sup>th</sup> of October 2014

Some of the photos taken on 6<sup>th</sup> of October 2014 on roof of Block C. They also show poor isolation practices on cabling:



MARS ANTENNAS & R-SYSTEMS LTD.

ANTENNA  
MA - WA58 - 1X MNT

N: M216410200015

N: 49178 DATE: 10/10

MADE IN ISRAEL



06.10.2014 18:17





www.ubnt.com

# PowerBridge M5

Carrier Class AirMax Bridge

1319G DC9FD86A88D6

CE RoHS Compliant

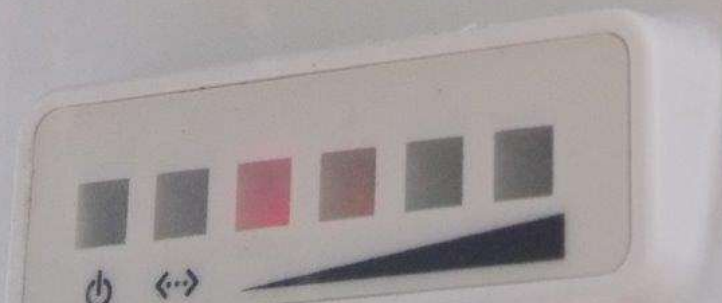
M/N: PowerBridgeM5  
24V 1A POE

UBIQUITI NETWORKS

FCC ID: SWX-M5P IC: 8545A-M5P

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

N28998



06.10.2014 18:14

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

P/N : 1990120000

S/N : 847003616



ID:CC100056087

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

06.10.2014 18:15

SP52948 – Decision to engage Telecommunications Ombudsman and enforce eviction of BigAir at AGM on 26<sup>th</sup> of November 2014

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

**MOTION 2:** The meeting noted the following matters;

**BigAir Contract:**

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

12<sup>th</sup> of November 2014: Under intense pressure from Lot 158, who had extensive telecommunications experience and ran thorough investigation about BigAir, and raised cases with Australian Media and Communications Authority and Telecommunications Industry Ombudsman (file number 2014/10/03580), the following was reported in the agenda for the Annual General Meeting:

**WHOME (now BigAir) BREACH OF CONTRACT**

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

Motion was carried at AGM on 26<sup>th</sup> of November 2014:

**MOTION 17:** That the Executive Committee be authorised to take such action as is reasonably necessary to cause the company known as BigAir (formerly known as WHome) to remove their equipment from the premises maintained in breach of contract. Such action is to include the pursuit of a complaint with the Telecommunications Ombudsman. An order by the ombudsman to reconcile the breach in commercial terms (including maintaining equipment on site) may be accepted as an alternative resolution. – **Carried.**

SP52948 – Lot 158 Motion for recovery of lost income from BigAir – disallowed without valid reason by BCS Strata Management at AGM 2016 and Waratah Strata Management at AGM 2017

**Motion: Recovery of lost revenue from BCS Strata Management for illegal operation by ISP BigAir**

The Owners Corporation SP52948 by GENERAL RESOLUTION (A ONE LOT/ONE VOTE FORMAT), confirms and approves the following:

- BCS Strata Management and EC members included this as Motion 17 in the agenda for AGM 2016 but failed to include Explanatory Notes, and without due notice to the requestor of the Motion,
- BCS Strata Management shall reimburse owners corporation for failing to act in best interest of owners corporation (compensation claim due to professional negligence), acting in non-compliance with Motion 17 carried at AGM 2014, delaying eviction of the ISP although it had no dependence on the rollout of the NBN, and allowing wireless ISP BigAir to run business without contract or approval since 31<sup>st</sup> of January 2014 in the following manner:
- Penalty rate of \$2,000.00 plus GST per each calendar month (or pro-rata), with 10% yearly interest rate, calculated since 31<sup>st</sup> of January 2014,
- All disclosed legal costs incurred by Grace Lawyers since 31<sup>st</sup> of January 2013, amounting to \$1,394.25 (GST inclusive), with 10% yearly interest rate since the date they were paid from common funds, and any other such expenses by Grace Lawyers or other legal service providers, pending financial audit by owners corporation within one month after the resolution at general meeting.
- If carried, the first bulk payment into owners corporation funds shall include all months since 31<sup>st</sup> of January 2014 and be enforceable within 30 days after the general meeting,
- Payments into owners corporation funds shall continue until such time when BigAir removes their equipment from the complex, or different decision is made by owners corporation,
- Payments into owners corporation funds shall be monthly and strictly monitored by members of the EC,
- To the extent of any inconsistency with previous by-laws or motions, this motion prevails.



SP52948 – Waratah Strata Management email to BigAir with frustration about lack of actions on 14<sup>th</sup> of February 2018

## Robert Crosbie

---

**From:** Robert Crosbie  
**Sent:** 14 February 2018 4:11 PM  
**To:** 'BigAir Facilities'  
**Subject:** RE: FW: SP 52948, 1-15 Fontenoy Road, Macquarie Park.

Steve,

The saga continues. We last spoke on 28 September 2017. You said BigAir had been taken over by another company blah blah blah and you would get back to me with a written proposal. Still waiting.

We have a committee meeting tomorrow night. I believe the committee are sharpening an axe.

Regards,

Robert Crosbie  
Waratah Strata Management  
P.O. Box 125, Eastwood NSW 2122  
Ph (02) 9114 9599  
Fax (02) 9114 9598  
[www.waratahstrata.com.au](http://www.waratahstrata.com.au)

---

**From:** Robert Crosbie  
**Sent:** 25 August 2017 3:48 PM  
**To:** 'BigAir Facilities' <[facilities@bigair.net.au](mailto:facilities@bigair.net.au)>  
**Subject:** RE: FW: SP 52948, 1-15 Fontenoy Road, Macquarie Park.

Steve,

We spoke a few weeks ago and you advised that you had a proposal that you were getting management approval for and would then be sending to us. We will start preparing the AGM agenda next week so we need to receive your proposal as soon as possible so it can be discussed at the AGM.

Please understand that if a new agreement acceptable to the Owners Corporation is not put in place with Big Air at this AGM it is very likely the Owners Corporation will take whatever action is necessary to remove the WHome equipment from the property due to the breach of that contract and the costs being incurred by the Owners Corporation in having that equipment on the property.

Regards,

Robert Crosbie  
Waratah Strata Management  
P.O. Box 125, Eastwood NSW 2122  
Ph (02) 9114 9599  
Fax (02) 9114 9598  
[www.waratahstrata.com.au](http://www.waratahstrata.com.au)

---

**From:** Robert Crosbie  
**Sent:** 09 June 2017 2:39 PM  
**To:** BigAir Facilities <[facilities@bigair.net.au](mailto:facilities@bigair.net.au)>  
**Subject:** RE: FW: SP 52948, 1-15 Fontenoy Road, Macquarie Park.

**SP52948 – Waratah Strata Management email to BigAir on 16<sup>th</sup> of February 2018**

## Robert Crosbie

---

**From:** Robert Crosbie  
**Sent:** 16 February 2018 5:54 PM  
**To:** 'BigAir Facilities'  
**Subject:** RE: FW: SP 52948, 1-15 Fontenoy Road, Macquarie Park.

Peter,

Thank you for your email. This matter was discussed at our committee meeting last night. You will see from the extensive correspondence that this issue has been outstanding for many years and the committee are quite disgusted with the way they have been treated by WHome and all of the subsequent entities that have owned this equipment.

Your prompt response to advise what action you propose to take would be appreciated.

Regards,

Robert Crosbie  
Waratah Strata Management  
P.O. Box 125, Eastwood NSW 2122  
Ph (02) 9114 9599  
Fax (02) 9114 9598  
[www.waratahstrata.com.au](http://www.waratahstrata.com.au)

**From:** BigAir Facilities [mailto:facilities@bigair.net.au]  
**Sent:** 14 February 2018 5:58 PM  
**To:** Robert Crosbie <[redacted]@waratahstrata.com.au>  
**Cc:** Peter Brownsdon <[redacted]@bigair.net.au>  
**Subject:** Re: FW: SP 52948, 1-15 Fontenoy Road, Macquarie Park.

Hi Robert,

By way of introduction i have replaced Stephen Bull in Commercial Facilities team at BigAir.

I will bring myself up to speed tomorrow and will likely need to have a phone call just to introduce myself.

In the meantime my direct number is 0424 909 018

Kind Regards,  
Peter Brownsdon

On 14 February 2018 at 13:11, Robert Crosbie <[redacted]@waratahstrata.com.au> wrote:

Steve,

The saga continues. We last spoke on 28 September 2017. You said BigAir had been taken over by another company blah blah blah and you would get back to me with a written proposal. Still waiting.



SP52948 – Waratah Strata Management desperate email to Grace Lawyers on 8<sup>th</sup> of March 2018

15

**Robert Crosbie**

---

**From:** Robert Crosbie  
**Sent:** Wednesday, 8 March 2017 10:16 AM  
**To:** 'enquiries@gracelawyers.com.au'  
**Subject:** SP 52948, 1-15 Fontenoy Road, Macquarie Park

Your Ref 131862

We have recently taken over the management of the above property from BCS. Back in 2013/2014 Ian McKnight attended to an issue for this strata plan in relation to BigAir Group Ltd and a telecom tower that was installed in the building.

This issue currently remains unresolved and we are trying to get a clear understanding of what occurred at that time however the records received from BCS are incomplete. We are aware of the following correspondence, but do not have a copy of the letters concerned. We ask you to provide a copy of the following correspondence from your records:

- Grace Letter to BigAir dated 15/11/13
- Grace Letter to BigAir dated 13/12/13
- BigAir letter to Grace dated 2/12/13
- BigAir letter to Grace dated 15/1/14

We have a strata committee meeting next Thursday 16 March which will discuss this issue. We will advise further following that meeting if we need you to take any further action in this matter.

Regards,

**Robert Crosbie**  
Waratah Strata Management  
P.O. Box 125, Eastwood NSW 2122  
Ph (02) 9114 9599  
Fx (02) 9114 9598  
[www.waratahstrata.com.au](http://www.waratahstrata.com.au)

SP52948 – Waratah Strata Management email to BigAir asking for proposal on 6<sup>th</sup> of April 2018

It would be appreciated if you could please discuss this option with the committee at your next meeting.

BigAir would like to understand what the committee believes is reasonable as well in this scenario.

Regards,  
Peter Brownsdon

**Peter  
Brownsdon**

Commercial  
Facilities Manager  
p 1300 244 247  
m 0424 909 018

20 Wynyard Street,  
Belmont WA 6104,  
Australia

[www.superloop.com](http://www.superloop.com)



The information contained in this email and any attachments may be confidential. This email and any attachments are also subject to copyright. No part of them may be reproduced, adapted or transmitted without the written permission of the copyright owner. If you are not the intended recipient, any such interference with disclosure or copying of this information is unauthorized and prohibited. If you have received this email in error, please immediately advise the sender by return email and delete the message from your system. Email communications may be stored for archival purposes.

On 6 April 2018 at 15:16, Robert Crosbie <[REDACTED]@waratahstrata.com.au> wrote:

Peter,

Please advise whether you have a proposal for us for the communication tower at the above property. We have a strata committee meeting taking place next Thursday 12 April and would like to have a proposal to discuss at that meeting.

Regards,

**Robert Crosbie**

Waratah Strata Management

P.O. Box 125, Eastwood NSW 2122

Ph (02) 9114 9599

Fx (02) 9114 9598

[REDACTED]@waratahstrata.com.au



SP52948 – Waratah Strata Management email to EC members with proposal from BigAir on 10<sup>th</sup> of April 2018

## Robert Crosbie

**From:** Robert Crosbie  
**Sent:** Tuesday, 10 April 2018 6:17 PM  
**To:** 'tk\_sydney@'; 'marianna.paltikian@'; 'everolth@'; 'jgore5@'; 'genellegodbee@'; 'zelleev@'; 'mcdonald151@'; 'pogo@'; 'jeffrey@'  
**Subject:** FW: SP 52948, 1-15 Fontenoy Road, Macquarie Park

SC Members,

We have received the following proposal from Superloop/BigAir/WHome.

This can be discussed at Thursdays meeting.

Regards,

**Robert Crosbie**  
Waratah Strata Management  
P.O. Box 125, Eastwood NSW 2122  
Ph (02) 9114 9599  
Fx (02) 9114 9598  
@waratahstrata.com.au

**From:** Peter Brownsdon [ ]@superloop.com]  
**Sent:** Tuesday, 10 April 2018 3:20 PM  
**To:** Robert Crosbie <@waratahstrata.com.au>  
**Subject:** Re: SP 52948, 1-15 Fontenoy Road, Macquarie Park

Good afternoon Robert,

Thank you for your time this afternoon.

As mentioned the history on this site has been rather lengthy from both sides.  
The equipment was previously servicing tenants in the building on a previous recoup to the owners based on revenue from tenants.

To bring this item to a close BigAir suggests the following:

- BigAir perform a make good within 60 days to have all equipment and poles removed from the rooftop
- BigAir perform a make good to remove conduit and equipment cabinet installed within the plant room
- BigAir provide a nominated fee of \$2000 to compensate for previous usage
- BigAir draft a Deed of Release to release both parties from any previous arrangements

It would be appreciated if you could please discuss this option with the committee at your next meeting.

BigAir would like to understand what the committee believes is reasonable as well in this scenario.

Regards,  
Peter Brownsdon

SP52948 – Waratah Strata Management email to BigAir with proposal requesting payment in amount of at least \$20,000.00 on 13th of April 2018

Robert Crosbie

**From:** Robert Crosbie  
**Sent:** Friday, 13 April 2018 11:50 AM  
**To:** 'Peter Brownsdon'  
**Subject:** RE: SP 52948, 1-15 Fontenoy Road, Macquarie Park  
**Attachments:** DOC130418-13042018123136.pdf; DOC130418-13042018123358.pdf

Peter,

This matter was discussed at a strata committee meeting held last night and we are instructed to respond as follows.

The equipment has been in place since December 2003. WHome had agreed to pay 5% of all of its income from that equipment (see copy attached). Steve Bull from BigAir had proposed to pay \$2,500 per annum licence fee, plus \$500 per annum for electricity consumption (see copy attached). We have not been the strata managers for the entire period since December 2003, but we are not aware that any compensation for this equipment or electricity usage has ever been paid.

The offer of \$2,000 for around 15 years of this equipment being located on the property and using the common property electricity for that time is therefore totally inadequate. A reasonable compensation amount would need to be at least \$20,000. Subject to the payment of an agreed compensation amount, the Owners Corporation has no objection to the equipment being removed within 60 days and the property made good.

Regards,

Robert Crosbie  
Waratah Strata Management  
P.O. Box 125, Eastwood NSW 2122  
Ph (02) 9114 9599  
Fx (02) 9114 9598  
[redacted]@waratahstrata.com.au

**From:** Peter Brownsdon [redacted]@superloop.com]  
**Sent:** Tuesday, 10 April 2018 3:20 PM  
**To:** Robert Crosbie <[redacted]@waratahstrata.com.au>  
**Subject:** Re: SP 52948, 1-15 Fontenoy Road, Macquarie Park

Good afternoon Robert,

Thank you for your time this afternoon.

As mentioned the history on this site has been rather lengthy from both sides. The equipment was previously servicing tenants in the building on a previous recoup to the owners based on revenue from tenants.

To bring this item to a close BigAir suggests the following:

- BigAir perform a make good within 60 days to have all equipment and poles removed from the rooftop
- BigAir perform a make good to remove conduit and equipment cabinet installed within the plant room
- BigAir provide a nominated fee of \$2000 to compensate for previous usage
- BigAir draft a Deed of Release to release both parties from any previous arrangements

SP52948 – Waratah Strata Management email to EC members with BigAir counter offer with payment in amount of \$12,000.00 on 3<sup>rd</sup> of May 2018

**Robert Crosbie**

---

**From:** Robert Crosbie  
**Sent:** Thursday, 3 May 2018 9:38 AM  
**To:** 'tk\_sydney@', 'marianna.paltikian@', 'everolth@',  
'jgore5@', 'genellegodbee@', 'zellev@',  
'mcdonald151@', 'pogo@',  
'jeffrey@'  
**Subject:** FW: SP 52948, 1-15 Fontenoy Road, Macquarie Park

SC Members,

We have received the following \$12,000 counter-offer from Superloop/BigAir to settle our claim with them for their internet installation in the building.

I propose to vote on this motion by way of an email vote in accordance with Schedule 2 Sec 9(2) of Strata Schemes Management Act.

Please do a "reply to all" email to indicate whether you vote for or against the following motion:

1. That the Owners Corporation accept the offer from Superloop of \$12,000 being full consideration of the Owners Corporations income rights from its contract with W Home Pty Ltd and its successors dated December 2003, subject to (a) Superloop removing all of its equipment and poles from the rooftop, its conduit and equipment cabinet from the plantroom and making good any damage caused to the building within 60 days; and (b) a Deed of Release being signed by both parties.

Regards,

**Robert Crosbie**  
Waratah Strata Management  
P.O. Box 125, Eastwood NSW 2122  
Ph (02) 9114 9599  
Fx (02) 9114 9598  
@waratahstrata.com.au

**From:** Peter Brownsdon [mailto: @superloop.com]  
**Sent:** Wednesday, 2 May 2018 5:46 PM  
**To:** Robert Crosbie < @waratahstrata.com.au>  
**Subject:** Re: SP 52948, 1-15 Fontenoy Road, Macquarie Park

Hi Robert,

This is correct.

Regards,  
Peter

**Peter Brownsdon**  
Commercial  
Facilities Manager  
p 1300 244 247  
m 0424 909 018





SP52948 – Email from Waratah Strata Management to BigAir requesting payment in amount of \$20,000.00 on 18<sup>th</sup> of May 2018

**Robert Crosbie**

---

**From:** Robert Crosbie  
**Sent:** Friday, 18 May 2018 11:31 AM  
**To:** 'Peter Brownsdon'  
**Subject:** RE: SP 52948, 1-15 Fontenoy Road, Macquarie Park

Peter,

I have referred the following proposal to the strata committee and it has not been accepted for the following reasons:

- This matter has been ongoing since 2003. The estimated lost revenue during that period in accordance with the original WHome agreement is in the vicinity of \$10,000.
- The cost of the Owners Corporations electricity used by your equipment during the 15 years is estimated at \$500 - \$1,000 per annum, so \$7,500 - \$15,000 in total.
- The Owners Corporation incurred significant legal expenses in 2013-2014 trying to resolve this issue.
- WHome and BigAir have not acted in good faith with the Owners Corporation during that period as they have continually failed to meet the contract obligations to make payments and have failed to enter into a meaningful discussions to resolve this situation. It is yet to be seen whether Superloop will act in good faith in this matter.

For these reasons, the Owners Corporation require payment of the full amount of \$20,000 previously discussed.

Regards,

**Robert Crosbie**  
Waratah Strata Management  
P.O. Box 125, Eastwood NSW 2122  
Ph (02) 9114 9599  
Fx (02) 9114 9598  
[robert@waratahstrata.com.au](mailto:robert@waratahstrata.com.au)

**From:** Peter Brownsdon [mailto:[peter.brownsdon@superloop.com](mailto:peter.brownsdon@superloop.com)]  
**Sent:** Wednesday, 2 May 2018 5:46 PM  
**To:** Robert Crosbie <[Robert@waratahstrata.com.au](mailto:Robert@waratahstrata.com.au)>  
**Subject:** Re: SP 52948, 1-15 Fontenoy Road, Macquarie Park

Hi Robert,

This is correct.

Regards,  
Peter

**Peter Brownsdon**  
Commercial  
Facilities Manager  
p 1300 244 247  
m 0424 909 018



SP52948 – BigAir offer of settlement with only \$12,000.00 payment using bullying language on 5<sup>th</sup> of June 2018

5 June 2018

Robert Crosbie  
Waratah Strata Management

By email: [\\_\\_\\_\\_\\_@waratahstrata.com.au](mailto:_____@waratahstrata.com.au)

Dear Mr Crosbie

**Without prejudice except for costs**

**BigAir – Macquarie Gardens**

I act for BigAir and refer to correspondence exchanged between BigAir and you regarding rental payment to the Owners of Strata Plan 52948 (**the Body Corporate**) in relation to a facility (**the facility**) installed at Macquarie Gardens, 1-15 Fontonoy Road, North Ryde NSW 2153 (**the building**).

I understand that the facility was installed on the building by W Home pursuant to an agreement with the Body Corporate dated 19 December 2003 (**the facility agreement**). I am instructed that BigAir acquired the facility from W Home in 2007.

The facility agreement includes the following relevant terms:

- SkyNetGlobal, which I assume is a trading name for W Home, will pay the Body Corporate 5% of all income derived from the facility [Special Condition (a)]. (**rent**).
- The Body Corporate will pay for the supply of electricity to the facility [clause 3.5].

I am instructed that rent has not been paid by BigAir to the Body Corporate since BigAir acquired the facility from W Home and that over several years various settlement offers have been made and rejected by both parties. I understand the latest offers exchanged are as follows:

- The Body Corporate has offered to settle this matter on payment of \$20,000 from BigAir. This figure is based on:
  - a) Estimated lost revenue since 2003 of \$10,000
  - b) Estimated electricity costs since 2003 of \$500 - \$1000 per annum or \$7500 - \$15,000 total
  - c) Legal expenses.
- BigAir has offered to settle this matter on payment of \$12,000 to the Body Corporate. This figure is based on:
  - a) \$7000 representing an estimate of 5% of the income derived from the facility in the period between 2007 and 2018.
  - b) An additional payment of \$5000 as an incentive to settle this matter.

BigAir has instructed me that the \$7000 figure is an estimate of 5% of income derived from the facility since it was acquired in 2007, which is based on an extrapolation of its 2013 income review that showed total income between 2007 and 2013 was \$84,270, with 5% of that amount being \$4213.54. BigAir stated that its income derived from the facility has subsequently declined. I asked BigAir to provide an updated figure of income derived from the facility to provide an accurate assessment of the amount that the Body Corporate would be entitled to under the facility agreement, assuming the facility agreement remains on foot and binds BigAir, which is not necessarily accepted.

BigAir has instructed me that:

- \$126,736.31 income has been derived from the facility in the period from its acquisition in 2007 to 31/05/2018. 5% of this amount is \$6336.82.

Accordingly, the total amount that the Body Corporate would be entitled to receive under the facility agreement since 2007 is \$6336.82. Despite this, I am instructed that BigAir currently remains willing to settle this matter by:

- Paying \$12,000 to the Body Corporate; and
- Removing the facility within 60 days and undertaking reasonable remediation works to the building. (**BigAir's First Offer**)

BigAir's First Offer is made on the basis that the Body Corporate provide me an executed copy of the attached Settlement Deed **within 21 days** of the date of this letter. BigAir requires that the parties execute the Settlement Deed as it requires certainty that this matter is finalised.

If the Body Corporate does not return an executed copy of the Settlement Deed within 21 days of the date of this letter, BigAir's First Offer lapses and the offer available to the Body Corporate to settle this matter is:

- BigAir pays \$6336.82 to the Body Corporate; and
- BigAir removes the facility within 60 days and undertakes reasonable remediation works to the building. (**BigAir's Second Offer**)

Again, this offer is based on the parties executing a Settlement Deed, which will be similar to the attached deed except for the monetary amount payable to the Body Corporate. BigAir reserves the right to withdraw BigAir's Second Offer at any time.

I consider that BigAir's offer is generous and represents a significant increase above the amount the Body Corporate should expect to be paid. Of course it is up to the Body Corporate to decide whether to accept BigAir's offer, but in making its decision the Body Corporate should consider:

- BigAir has no liability for W Home's debts to the Body Corporate.
- NSW has a 6 year statute of limitations, which limits the Body Corporate's ability to recover amounts related to the facility and the facility agreement to 2012.
- The facility agreement provides that the Body Corporate is responsible for payment of electricity charges. The \$500 - \$1000 per annum or \$7500 - \$10,000 for 15 years claimed for electricity is arbitrary and unsubstantiated. Further, BigAir has no responsibility for debts incurred by W Home during the period that it owned the facility.
- The \$20,000 claimed is arbitrary.
- BigAir has no responsibility for legal expenses incurred by the Body Corporate in attempting to negotiate rent. BigAir has also incurred legal expenses in this matter.

- This matter should be finalised and pursuing it further will cause the Body Corporate to incur additional costs that it is unlikely to recover.

To accept BigAir's First Offer, please execute the attached Settlement Deed and send it back to me within 21 days. I will then date and execute the deed on behalf of BigAir and send a copy to you.

Yours sincerely



**Tony Dooley**

Director

TXD Law

T +61 423 942 454

E [redacted]@txdlaw.com.au

SP52948 – Email from Waratah Strata Management to EC members BigAir asking for confirmation if \$12,000.00 was sufficient and planning discussion at EC meeting scheduled for 21<sup>st</sup> of June 2018 on 6<sup>th</sup> of June 2018

**Robert Crosbie**

# Big Air

**From:** Robert Crosbie  
**Sent:** Wednesday, 6 June 2018 5:37 PM  
**To:** 'tk\_sydney@'; 'marianna.paltikian@'; 'everolth@'; 'jgore5@'; 'genellegodbee@'; 'zellew@'; 'mcdonald151@'; 'pogo@'; 'jeffrey@'  
**Subject:** FW: BigAir - Macquarie Gardens  
**Attachments:** BigAir - Macquarie Gardens - letter to R Crosbie 5 June 2018.pdf; BigAir - Macquarie Gardens - settlement deed.pdf; Revenue generated from R2MAC.xlsx; Revenue1FontenoyRoad.xlsx

SC Members,

Please see the attached letters from BigAir. I suggest this be discussed at the committee meeting on 21 June.

Regards,

**Robert Crosbie**  
Waratah Strata Management  
P.O. Box 125, Eastwood NSW 2122  
Ph (02) 9114 9599  
Fx (02) 9114 9598  
[robert@waratahstrata.com.au](mailto:robert@waratahstrata.com.au)

Accept \$12,000 ?

no	yes
Marianna	yes
Stan	yes
Thomas	yes
Maurice	yes
Jeffrey	yes
John	yes

**From:** Tony Dooley [mailto:[tony@txdlaw.com.au](mailto:tony@txdlaw.com.au)]  
**Sent:** Tuesday, 5 June 2018 3:49 PM  
**To:** Robert Crosbie <[robert@waratahstrata.com.au](mailto:robert@waratahstrata.com.au)>  
**Subject:** BigAir - Macquarie Gardens

Dear Mr Crosbie

Please refer to the attached letter and other documents on behalf of BigAir.

Regards

Tony Dooley – Director  
P: 0423 942 454  
E: [tony@txdlaw.com.au](mailto:tony@txdlaw.com.au)

**txdlaw**  
Lawyers & Consultants



SP52948 – Document search at Waratah Strata Management on 31<sup>st</sup> of May 2019 found no evidence of EC members formally approving BigAir offer via emails or letters

At document search at Waratah Strata Management on 31<sup>st</sup> of May 2019, no evidence was found of EC members making the decision to accept BigAir offer (emails, paper EC meeting, or letters) before Waratah Strata Management signed the Settlement Deed on 15<sup>th</sup> of June 2018.

SP52948 –Waratah Strata Management signed BigAir Settlement Deed 15<sup>th</sup> of June 2018 without planned discussion at EC meeting scheduled for 21<sup>st</sup> of June 2018

Flup 7/7

## Settlement Deed

### Parties

BigAir Group Pty Ltd 098 572 626  
(BigAir)

Owners of Strata Plan 52948

BCMS Pty Ltd

Locked Bag 22

Haymarket NSW 1238

(the Owners Corporation)

CI-Waratah Strata Management  
P.O. Box 125  
Eastwood NSW 2122

### Recitals

A. BigAir owns a facility (**the facility**) installed on common property at Macquarie Gardens, 1-15 Fontoney Road, North Ryde NSW 2153 (**the building**), which is owned by the Owners Corporation. A dispute has arisen regarding BigAir's liability to pay the Owners Corporation for locating and operating the facility at the building (**the Dispute**).

B. The Parties have agreed to settle the dispute in accordance with the terms of this Deed.

### It is agreed:

1. BigAir must pay \$12,000 to the Owners Corporation (**Settlement Sum**).
2. The Settlement Sum is payable:
  - (a) Within 21 days of the Owners Corporation issuing a valid tax invoice to BigAir.
  - (b) By electronic funds transfer into the Owners Corporation's nominated bank account.
3. BigAir must remove the facility from the Building within 60 days of the Owners Corporation providing an executed copy of this Deed to BigAir, subject to the Owners Corporation providing BigAir and its contractors access to the Building for this work to occur at times reasonably requested by BigAir.
4. Following removal of the facility, BigAir must within a reasonable period reasonably remediate any damage caused to the Building by the facility or its removal, subject to the Owners Corporation providing BigAir and its contractors access to the Building for this work to occur at times reasonably requested by BigAir.
5. Upon execution of this Deed, receipt of the Settlement Sum, removal of the facility and reasonable remediation of the facility site, the parties forever release, discharge, indemnify and hold each other harmless from all past, present or future claims, actions, suits, demands, damages, expenses and liabilities of any description whatsoever, howsoever arising connected with or incidental to:
  - (a) the Dispute; and
  - (b) any other circumstances or matters whether connected with the Dispute or otherwise, which were or could reasonably have been known to the Parties as at the date of this Deed.

- WARATAH
6. The release and indemnity referred to in this document includes a release in favour of any Party's directors, related bodies corporate, officers, employees and agents from time to time.
7. The Parties undertake not to assert a claim or commence or maintain any action in laws or equity against each other in relation to the facts and circumstances giving rise to the Dispute. This document may be raised or pleaded as a complete defence to the continuance or commencement of any proceedings in respect of the subject matter of the Dispute.

8. The contents of this Deed are strictly confidential. A Party must not disclose or permit to be disclosed either directly or indirectly the contents of this Deed, or details of any discussions or negotiations between the parties in relation to this Deed, except:

- (a) With the express consent of the other Party.
- (b) To the extent required by law; and
- (c) On a confidential basis to their insurers, legal, financial or accounting advisors.

9. The Parties agree that:

- (a) Each Party must bear its own legal costs of, and incidental to, this Deed and the Dispute.
- (b) The laws of New South Wales govern this Deed and each Party agrees to submit to the jurisdiction of New South Wales.

Executed as a Deed this 15 of June 2018

Signed on behalf of BigAir by its solicitor

.....  
Tony Dooley  
TXD Law

Signed on behalf of the Owners Corporation by its strata managing agent

.....  
Robert Crosbie  
Waratah Strata Management



SP52948 –Waratah Strata Management issued Tax Invoice to BigAir on 15<sup>th</sup> of June 2018 without planned discussion at EC meeting scheduled for 21<sup>st</sup> of June 2018

# WARATAH

Strata Management

Address: P.O. Box 125, Eastwood NSW 2122 Phone: 02 9114 9599 Fax: 02 9114 9598  
Email: enquiry@waratahstrata.com.au Web: www.waratahstrata.com.au

## TAX INVOICE

Issued on behalf of Strata Plan 52948

Address: 1-15 Fontenoy Road, Macquarie Park NSW

ABN: 79 491 891 602

Date: 15 June 2018

To: BigAir Group Pty Ltd

Amount: \$10,909.09

GST: \$ 1,090.91

Total Owing: \$12,000.00

For: Facility Settlement Deed Sum

Bank Account Details

Account Name: Waratah Strata Management P/L Trust A/c SP 52948

BSB: [REDACTED]

Account Number: [REDACTED]

Yours faithfully,

**WARATAH STRATA MANAGEMENT PTY LTD**

*Robert Crosbie*

Strata Manager



SP52948 – Extract from Minutes of EC meeting on 21<sup>st</sup> of June 2018 alleging that the offer was accepted at that meeting without disclosure that Waratah Strata Management had already signed the Settlement Deed on 16<sup>th</sup> of June 2018

**MINUTES OF A STRATA COMMITTEE MEETING  
THE OWNERS - STRATA PLAN 52948**

**ADDRESS OF THE STRATA SCHEME:**

Macquarie Gardens, 1-15 Fontenoy Road, Macquarie Park NSW 2113

**DATE, PLACE & TIME OF MEETING:** A meeting of the Strata Committee of The Owners - Strata Plan 52948 was held on 21/06/2018 at 06:00 PM at the offices of Waratah Strata Management, Suite 200, 160 Rowe Street, Eastwood.

**PRESENT:**

Lot #	Unit #	Attendance	Owner Name Representative
21	21	Yes	Thomas Karolewski
88	88	Yes	Marianna Paltikian
112	112	Apology	Carlos Fornieles Montoya
142	142	Apology	Genelle Godbee
147	147	Yes	Moses Levitt
151	151	Yes	Maureen McDonald
181	181	Yes	Stan Pogorelsky
200	200	Yes	John Gore
218	218	Apology	Jeffrey Wang

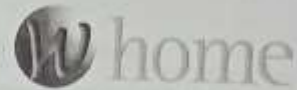
**IN ATTENDANCE:** Arpenik Vartazarian (92)  
Robert Crosbie - Waratah Strata Management

**CHAIRPERSON (acting):** Robert Crosbie

**Minutes of the meeting:**

- 1 MINUTES**  
Resolved that the minutes of the previous strata committee meeting be confirmed as a true record of the proceedings of that meeting.
- 2 FINANCIAL REPORT**  
The financial reports for the current financial year were tabled, discussed and resolved as follows:
  - The strata manager is to check the \$4,206.35 invoice in pool cleaning to see whether that cost has been correctly allocated.
  - The strata manager is to check the Energy Australia and Origin Energy electricity invoices to ensure the correct sequence of payments has been made.
- 3 MATTERS ARISING FROM PREVIOUS MINUTES**  
The following matters arising from the previous minutes were discussed and resolved as follows:
  - Telecommunications Equipment - A settlement payment from BigAir in the amount of \$12,000 (being \$7,000 for the 5% income in the original WHome agreement and \$5,000 for electricity and other costs) has been accepted and BigAir are going to remove their equipment from the building within 60 days.

SP52948 –Secret calculation by EC members and Waratah Strata Management for losses incurred by illegal ISP running in the complex since 31<sup>st</sup> of January 2014 - found in document search on 20<sup>th</sup> of September 2019



19 DEC 2003

Dear Mr Fry,

(15)

into

Visit the knowledgebase [www.rockend.com/customer-lounge](http://www.rockend.com/customer-lounge)

Big Air \$76,609  
3/7/07 - 2/12/13 = 77 months  
= \$994.92 pm.

W home  
8/12/03 - 2/7/07 = 43 months  
x \$995 pm.  
= \$42,785

Big Air  
3/12/13 - 3/3/17 = 39 months  
x \$995 pm  
= \$38,805

\$76,609  
\$42,785  
\$38,805  
\$158,199  
(159 months)  
(13.25 years)  
@ 5%  
= \$7,909.95

rockend  
The leader in strata software

Real estate and strata software to: ✓ build your business ✓ grow profits  
✓ automate mundane manual tasks ✓ deliver the best experience to your customers

2019-09-20 12:08:31

## SP52948 – Waratah Strata Management refused to notify owners about Australian Taxation Ruling 2015/3

Taxation Ruling TR 2015/3 does not alter the Taxation Office's view of the taxation of strata title bodies, the main aspects of which may be summarised as follows:

- Income from personal property which the strata title body owns in its own right (such as its own money and other moveable property such as washing machines, driers, lawn mowers) is taxed in the hands of the strata title body, including:
  - Interest on bank accounts and investments.
  - Search and certificate fees from non-proprietors. Costs or fees for providing searches or certificates should be generally deductible against this income.
  - Laundry money from a coin-operated washing machine, telephone money from a pay telephone, or hire fees from movable property. Expenses relating to this income, including depreciation, are deductible against this income. If a portion of this income is received from proprietors, the portion is excluded as mutual income.
  - Proceeds from the sale of an item of personal property.
- Income received from proprietors is broadly excluded from taxation under the principle of mutuality. Examples include:
  - Levies.
  - Interest on arrears.
  - Laundry money received from proprietors.
- Income from common property (other than personal property) is taxable in the hands of the individual proprietors in proportion to their unit entitlements. Paragraphs 42 and 43 include an example of the increasingly common situation of income received from a telecommunication company for placing a cellular telephone tower on a strata building's roof. The Taxation Office's view of this income is that it is taxable in the hands of proprietors even if there is no physical distribution of this income to proprietors or where the rental income is paid directly to the strata title body (refer paragraph 96). Deductions against this income are also allowable in proportion to proprietors' unit entitlements under Division 40 and Division 43 of the Income Tax Assessment Act 1997.

In those instances where a strata title body makes a physical distribution of funds to proprietors, the income tax position is:

- Where any surplus contributions are returned to proprietors, such surpluses are not assessable income to proprietors.
- Where the distributed funds represent profits from outside sources (i.e. from non-proprietors), the distribution is taxable to the proprietors and may be franked by the strata title body under the imputation system.
- Where the funds are a distribution of income from common property, the funds are taxable in the hands of proprietors as noted in point 3 above. Care should be taken not to duplicate this income to proprietors since this income is taxed in the hands of proprietors regardless of any physical distribution.

As a result of being GST registered an owners corporation must include GST on the levies it raises (being for a taxable supply) and pay this GST to the ATO.