

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : STRATA TITLES ACT 1985 (WA)

CITATION : THE OWNERS OF ARBOR NORTH STRATA
PLAN 67510 and SUN [2020] WASAT 28

MEMBER : MS R PETRUCCI, MEMBER

HEARD : 4 FEBRUARY 2020

DELIVERED : 4 MARCH 2020

FILE NO/S : CC 1650 of 2019

BETWEEN : THE OWNERS OF ARBOR NORTH STRATA
PLAN 67510
Applicant

AND

ELSA YANG SUN
Respondent

Catchwords:

Strata titles - Meaning of 'structure' s 7(2) of the *Strata Titles Act 1985* (WA) - Whether 'work done' in breach of s 7(2) of the *Strata Titles Act 1985* (WA) - Whether 'work done' will cause significant detriment and inconvenience to other lot proprietors - Meaning of 'significant detriment and inconvenience' - Application for order under s 95 of the *Strata Titles Act 1985* (WA) - Failing to comply with the Tribunal's decision

Legislation:

State Administrative Tribunal Act 2004 (WA), s 95

Strata Titles Act 1985 (WA), s 7, s 103G
Strata Titles General Regulations 1996 (WA), reg 32

Result:

Application successful

Category: B

Representation:

Counsel:

Applicant : Mr P Monaco
Respondent : Non-appearance

Solicitors:

Applicant : GV Lawyers
Respondent : N/A

Case(s) referred to in decision(s):

British Transport Docks Board v Williams [1970] 1 All ER 1135
Hamilton v Thompson [1999] WADC 150
Owners of 7A, 7B, 7C & 7D The Avenue Strata Plan 7644 and Basanovic
[2014] WASAT 51
Reg v Rose & Another [1965] QWN 35
South Wales Aluminium Co Ltd v Assessment Committee for the Neath
Assessment Area [1943] 2 All ER 587
The Owners of 216 Barker Road, Subiaco, Strata Plan 8596 and Stirling Brass
Founders (WA) Pty Ltd [2011] WASAT 161
The Owners of Northwood Rise Strata Plan 50673 and Mill Point Financial
Centre Pty Ltd [2019] WASAT 140
The Owners of The Views, Strata Plan 6669 and Larralee Pty Ltd
[2006] WASAT 126
Uta Pty Ltd v Celenza & Anor [2002] WASCA 360

REASONS FOR DECISION OF THE TRIBUNAL:***Background***

1 The applicant in these proceedings is The Owners of Arbor North Strata Plan 67510 (**strata company** or **applicant**), which is the strata company of a 154 lot strata scheme described on Strata Plan 67510 (**strata plan**) as being a 'multi storey development of brick & concrete comprising of one hundred and fifty four apartment dwellings upon Deposited Plan 72644 and having the address of 1 Rowe Avenue, Rivervale' (**strata scheme**).

2 Ms Elsa Yang Sun (**respondent**) owns Lot 7 on the strata plan which is located on the ground floor adjacent to the main entrance of the strata scheme on the corner of Rowe Avenue and Riverside Road, Rivervale. Lot 7 is very visible from both the main entrance area and from the street (ts 5, 4 February 2020).

3 On 16 August 2019, the strata company's lawyer issued a 'Notice of Breach of Strata Company's By-Laws' to the respondent which stated in part:

[Y]ou have caused to be erected in the courtyard of your lot a temporary portable gazebo with an additional shade cloth attached to the gazebo and lattice attached to the fence and gate of the courtyard that in the opinion of the Council of Owners is not in keeping with the rest of the strata scheme.

(Hearing book page 101)

4 It is alleged by the strata company that the respondent had erected a temporary portable gazebo (pergola) with an additional shade cloth attached to the gazebo and lattice attached to the fence and gate of the courtyard of Lot 7 (**the works**) without the prior approval, expressed by a resolution without dissent, of the strata company and therefore constituted a breach of s 7 of the *Strata Titles Act 1985* (WA) (**ST Act**).

5 At hearing, counsel for the strata company confirmed that the strata company seeks the following two orders as set out in its application:

1. A finding that pursuant to Section 103G of the *Strata Titles Act* (WA) 1985, the Respondent is in breach of Section 7(2) of the *Strata Titles Act* (WA) 1985 and an (sic) order that effective immediately of the date of these orders or such other period as the Tribunal may direct, the Respondent at the sole cost of the

Respondent remove the gazebo with hard plastic roof, shade cloth attachment to the gazebo, lattice attached to the fence and gate situated in the courtyard of the Respondent's Lot being unauthorised works to Lot 7;

2. An order under Section 95(3)(a) of the *State Administrative Tribunal Act* (WA) 2004 declaring that Order 1 is an Order to which Section 95(1) of the *State Administrative Tribunal Act* (WA) 2004 applies.

Proceedings before the Tribunal

6 On 6 December 2019 the Tribunal make its usual orders programming the matter through to a final hearing on 4 February 2020. The orders required the respondent to file with the Tribunal and to provide a copy to the strata company her written response to the application and a copy all documents on which she proposed to rely. Further, both parties were ordered to file with the Tribunal and provide a copy to the other party of a list of persons to be called to give evidence at the final hearing along with a short summary of their evidence.

7 The strata company duly complied with the orders of the Tribunal.

8 The Tribunal prepared a hearing book (Exhibit 1) from the documents filed with the Tribunal before 4 February 2020.

9 The strata company called their strata manager, Ms Dyani Cobbard, and the Chairman of the Council of Owners, Mr Tim Clarke, to give evidence. Mr Clarke handed up two photographs he took of the courtyard of Lot 7 on 4 February 2020 (Exhibit 2). Both exhibits were taken into evidence.

10 Following the final hearing on 4 February 2020, the Tribunal reserved its decision.

The respondent's lack of participation in these proceedings

11 The respondent took no part in these Tribunal proceedings. The respondent did not attend the Tribunal at any time, nor did she contact the Tribunal or make any submissions or comply with the orders of the Tribunal made at the directions hearing on 6 December 2019, apart from one telephone call on 31 January 2020, when a person, on behalf of the respondent, enquired about collecting the hearing book. The Tribunal is satisfied that the application and all correspondence from the Tribunal was sent to the respondent. The Tribunal has no

reason to believe that the documents were not received by the respondent and she is therefore taken to be aware of these proceedings.

12 All the evidence before the Tribunal was provided by the strata company. The respondent has not disputed the strata company's claim. Rather, most recently on 13 November 2019, the respondent sent an email to the counsel for the strata company which stated:

This Elsa Sun, arbor north 7/1 Rowe Ave

I have email to strata that I (sic) have agreed (sic) to remove the item[.]

13 The respondent did not state in the email when she would remove the works. In any event, at the date of the hearing, counsel for the strata company informed the Tribunal that the respondent had not removed any of the works.

The relevant provisions of the ST Act

14 In accordance with s 7 of the ST Act, the erection of, alteration to or extension of a structure on a strata lot must be approved by the other lot proprietors in writing or the strata company by resolution without dissent at a general meeting. Section 7 of the ST Act provides as follows:

Structural erections, alterations and extensions restricted, strata schemes

- (1) This section does not apply to -
 - (a) a lot in a survey strata scheme; or
 - (b) the erection of, alteration to or extension of a structure on a lot in a strata scheme if -
 - (i) each proprietor of a lot in the scheme has in writing given approval to the erection, alteration or extension; and
 - (ii) that approval, if subject to conditions, is given by each proprietor subject to the same conditions; and
 - (iii) a copy of each such approval is served on the strata company.
- (2) The proprietor of a lot shall not cause or permit —
 - (a) any structure to be erected; or

- (b) any alteration of a structural kind to, or extension of, a structure,
on his lot except -
 - (c) with the prior approval of the proprietor of the other lot in the case of a strata scheme in which there are not more than 2 lots; and
 - (d) in any other case with the prior approval, expressed by resolution without dissent, of the strata company.
- (3) Where an application is made to a proprietor in accordance with section 7B the proprietor may refuse to give approval on any ground that is permitted by subsection (5), but not otherwise.
- (4) Where an application is made to a strata company in accordance with section 7B —
 - (a) notice of the general meeting to which the application is to be submitted shall contain or be accompanied by a statement, in the prescribed form, of the effect of paragraphs (c) and (d); and
 - (b) the chairman of the general meeting shall before a vote is taken on the application read out the statement referred to in paragraph (a); and
 - (c) a proprietor may vote -
 - (i) against a resolution to approve the application; or
 - (ii) in support of a resolution to refuse approval of the application,on any ground that is permitted by subsection (5), but not otherwise; and
 - (d) a vote referred to in paragraph (c) is of no effect unless the person casting the vote discloses as a ground for his vote one or more of the grounds permitted by subsection (5).
- (5) The grounds on which approval may be refused are —
 - (a) that the carrying out of the proposal will breach the plot ratio restrictions or open space requirements for the lot ascertained in accordance with section 7A(3); or

- (b) in the case of a lot that is not a vacant lot, that the carrying out of the proposal —
 - (i) will result in a structure that is visible from outside the lot and that is not in keeping with the rest of the development; or
 - (ii) may affect the structural soundness of a building; or
 - (iii) may interfere with any easement created by section 11 or 12;
 or
- (c) any other ground that is prescribed.

- (6) In this section -

structure includes any prescribed improvement;

vacant lot means a lot that is wholly unimproved apart from having merged improvements within the meaning of that expression in the *Valuation of Land Act 1978*.

15

Where a lot proprietor has not received prior approval for the erection of, or extension of a structure to their lot, then an order may be sought by the strata company under s 103G of the ST Act. The relevant parts of s 103G of the ST Act are set out below:

Order granting relief for breach of s. 7(2)

- (1) An application to the State Administrative Tribunal for a finding and an order under this section may be made -
 - (a) by the proprietor of a lot in a two lot scheme; or
 - (b) in the case of any other scheme, by the strata company.
- (2) A finding under this section is a finding that the proprietor of a lot in the scheme has committed a breach of section 7(2).
- (3) An order under this section is an order that the proprietor -
 - (a) stop carrying out any work or any specified work in breach of subsection (2) of section 7; or
 - (b) within a specified time, pull down, remove, or alter anything or any specified thing that is in place as a result of work done in breach of that subsection,

or an order under both of those paragraphs.

- (4) On the making of an application under subsection (1), the State Administrative Tribunal shall -
- (a) make a finding under this section if satisfied that a breach of section 7(2) has occurred;
 - (b) make an order under this section unless satisfied that the work done or intended to be done will not cause any significant inconvenience or detriment to the other proprietors.

The issues for determination

16 The issues for determination by the Tribunal under s 103G of the ST Act are as follows:

- a) Does the strata company have standing to make the application under s 103G(1)(b) of the ST Act?
- b) Are the works a 'structure' and if so, is the Tribunal satisfied that the respondent committed a breach of s 7(2) of the ST Act?
- c) Is the Tribunal satisfied that the 'work done' will cause any significant inconvenience or detriment to the other proprietors?

17 It is necessary for the strata company to satisfy all three requirements in order for its application to be successful.

Consideration of the issues

18 The Tribunal's consideration of each of these issues follows below.

Does the strata company have standing?

19 In these proceedings, the strata company has made the application to the Tribunal. As the strata plan is not a two lot scheme, the application is in accordance with s 103G(1)(b) of the ST Act. Accordingly, the strata company does have standing to make the application.

Are the works a 'structure' and if so, is the Tribunal satisfied that the respondent has breached s 7(2) of the ST Act?

20 As noted above, the works comprised a temporary portable gazebo with an additional shade cloth attached to the gazebo and lattice attached to the fence and gate of the courtyard of Lot 7. The respondent had not sought, and the strata company had not given approval for the works (ts 10, 18-19 and 30, 4 February 2020). The consequence will be that the respondent is in breach s 7(2) of the ST Act provided that the Tribunal is satisfied that the works are a 'structure'.

21 The terms 'structure' or 'structural improvement' are not defined in the ST Act apart from s 7(6) of the ST Act which provides that structure includes 'any prescribed improvement'. The *Strata Titles General Regulations 1996* (WA) (**ST General Regulations**) set out the following in respect of prescribed improvements at reg 32:

Improvements prescribed (Act s. 7(6) structure)

The improvements prescribed for the purposes of the definition of structure in section 7(6) are any dwelling, shop, factory, commercial premises, garage, carport or other building or improvement -

- (a) the construction or erection of which is required to be approved by the local government or any other authority; or
- (b) the area of which is to be taken into account for the purposes of determining the plot ratio restrictions or open space requirements for the lot under section 7A,

whether free standing or annexed to or incorporated with any existing building on the lot.

22 The works in this case are not a prescribed improvement as set out in reg 32 of the ST General Regulations.

23 The term 'structure' ordinarily means something which is constructed in the way of being built up as is a building. In *South Wales Aluminium Co Ltd v Assessment Committee for the Neath Assessment Area* [1943] 2 All ER 587 Atkinson J stated at 592:

... There is nothing to suggest here that the word 'structure' is not to be used in its ordinary sense. ... I suppose it means something which is constructed in a way of being built up as is a building; it is in the nature

of a building. It seems to me it is not in the nature of a building, or a structure analogous to a building, unless it is something with you can say quite fairly has been built up. I do not think that is the only guide or the only test, but roughly, I think that must be the main guide: how has it got there? Is it something which you can fairly say has been built up[?]

24 A structure is not everything which is constructed that would ordinarily be called a building, but every building is a structure. For example, a ship is constructed, but it is not a structure. It is also defined as 'anything composed of parts arranged together in some way'; *Macquarie Dictionary Online* (2020).

25 The structure does not need to be fixed to the ground. In *British Transport Docks Board v Williams* [1970] 1 All ER 1135 the court held that a structure can include a crane, whether mobile or not, and whether or not it also constituted plant. A machine and a caravan can also be a structure: *Reg v Rose & Another* [1965] QWN 35 at 43 per Gibb J.

26 Whether a thing is a structure in any particular case in a mixed question of law and fact having regards to the ST Act in the context of which its meaning must be ascertained.

27 It was submitted by counsel for the strata company that the works in the courtyard of the respondent's Lot 7 are 'structures' for the purposes of s 7(2) of the ST Act. Counsel for the strata company described the gazebo (pergola) with a hard plastic roof as a significant structure, though easily removable (ts 8, 30, 4 February 2020). The lattice was described as plastic (not wooden) lattice which was attached to the gate and all of the fence around the boundary of Lot 7 where the lattice covers about three quarters of the height of the fence (ts 10, 4 February 2020). It was explained at hearing that the lattice has been in place for about four years, initially for privacy as the plants on the outside of Lot 7 were small too small to create a private barrier (ts 11, 4 February 2020). Further, it was explained that the respondent was requested to remove the lattice four years ago and more recently but the respondent failed to remove it (ts 11, 4 February 2020).

28 The Tribunal is satisfied that the gazebo (pergola) with a hard-plastic roof and shade cloth attached is a structure in the context of the ST Act. It is of a significant size as reflected in the photographs (see pages 102 and 104 of Exhibit 1) with four posts and a hard-plastic roof attached. It is not clear if the gazebo (pergola) is fixed to the

ground. However, that is not a requirement for it to be a structure. Similarly, the Tribunal is satisfied that the lattice is a structure. It is of a significant size in that it is attached to the gate and to the fence around the boundary of Lot 7 where the lattice is at a height of about three quarters of the fence.

29 For these reasons the Tribunal concludes that the works erected on the respondent's courtyard of Lot 7 are 'any structure ... erected ... on [her] lot', within s 7(2)(a) of the ST Act. It follows therefore, that both the erection of the gazebo (pergola) and the lattice required 'the prior approval, expressed by resolution without dissent, of the strata company', within s 7(2) of the ST Act.

30 The only evidence before the Tribunal is that the respondent had not obtained prior approval for the works from the strata company by a resolution without dissent. The Tribunal is therefore satisfied that the respondent has breached s 7(2) of the ST Act. The Tribunal will therefore make a finding under s 103G(2) of the ST Act that the respondent has committed a breach of s 7(2) of the ST Act.

Is the Tribunal satisfied that the 'work done' will cause significant inconvenience or detriment to the other proprietors?

31 The final issue for the Tribunal to determine is whether the 'work done' will cause any significant inconvenience or detriment to the other proprietors. Section 103G(4)(b) of the ST Act provides that where the Tribunal finds that 'work done' will not cause any significant inconvenience or detriment to the other proprietors of the strata scheme, it is not mandatory that the offending structure be removed but the Tribunal still retains the discretion to order removal. The effect of a finding under s 103G(4)(b) of the ST Act is to alleviate the obligation to order removal, not to eliminate the Tribunal's power to order removal. The Tribunal retains the power to order removal, a discretionary power to be exercised consistently with the purposes of the ST Act.

32 The words 'work done' in s 103G of the ST Act is to be interpreted consistently with s 7(2) of the ST Act which prohibits a lot proprietor from erecting any structure on a lot without the prior approval of the strata company. Section 103G(3) then confers power on the Tribunal to make an order granting relief for breach of s 7(2) of the ST Act. The words 'work done' appear in s 103G(3)(b) and s 103G(4)(b) of the ST Act. The 'work done' is the erection of any structure (s 7(2)(a) of the ST Act). In this case, the 'work done' is the erection of the gazebo

(pergola) and the erection of the lattice. The gazebo (pergola) and the lattice are the 'things' that are in place as a result of the work done in breach of s 7(2) of the ST Act and are not of themselves the 'work done'. The issue to be determined therefore is whether the work done (the erection of the gazebo (pergola) and the erection of the lattice on the gate and fence in the courtyard of the respondent's Lot 7), will cause any significant inconvenience or detriment to the other proprietors of the strata scheme. The meaning of the words 'significant inconvenience or detriment' is explained later in these reasons.

33 The strata company's position is that the 'work done' to the respondent's courtyard of Lot 7 were done in breach of by-law 7 of Sch 2 as set out in the Management Statement which was registered with Landgate on 12 November 2014 by Instrument N173391. By-law 7 of Sch 2 relevantly provides:

7. **Lot Appearance**

7.1 A Proprietor or occupier must not maintain within the Lot anything visible from outside their Lot that, viewed from outside that Lot, is not in the opinion of Council, in keeping with the rest of the Scheme.

34 In considering s 103G(4)(b) of the ST Act, it is well understood that one of the factors relevant in considering this section of the ST Act is that it must be considered against the grounds of refusal set out in s 7(5) of the ST Act; otherwise it may encourage lot proprietors to 'by-pass the approval process': see *The Owners of The Views, Strata Plan 6669 and Larralee Pty Ltd* [2006] WASAT 126 at [15]; *The Owners of 216 Barker Road, Subiaco, Strata Plan 8596 and Stirling Brass Founders (WA) Pty Ltd* [2011] WASAT 161 (*Barker Road*) at [28]; *Owners of 7A, 7B, 7C & 7D The Avenue Strata Plan 7644 and Basanovic* [2014] WASAT 51, and *The Owners of Northwood Rise Strata Plan 50673 and Mill Point Financial Centre Pty Ltd* [2019] WASAT 140.

35 The words 'significant inconvenience or detriment' in s 103G(4)(b) of the ST Act are not defined in the ST Act. Consequently, these words are to be given their ordinary meaning, and each case need to be assessed on their merits as to whether or not they apply: see *Hamilton v Thompson* [1999] WADC 150, which was cited with approval in *Uta Pty Ltd v Celenza & Anor* [2002] WASCA 360 at [25] (*Uta*). 'Inconvenience' necessitates a disadvantage and connotes something

that causes discomfort, trouble. 'Detriment' is ordinarily defined as damage, loss, harm, prejudice or a disadvantage. Section 103G of the ST Act expressly requires 'significant' inconvenience or detriment and therefore the inconvenience or detriment cannot be immaterial or not important; rather it must be material and of consequence to the other strata lot proprietors.

36 As noted earlier, the question therefore to be determined is whether the 'work done' (being the erection of the gazebo (pergola) and the erection of the lattice on the fence and the gate) in the respondent's courtyard of Lot 7 will cause any significant inconvenience or detriment to the other strata lot proprietors. Some of the factors relevant to the consideration of whether the 'work done' will cause any significant inconvenience or detriment to the other strata lot proprietors were set out in *Barker Road* at [30] as follows:

The question therefore to be determined is whether the Juliette balcony which has been constructed by the respondent has and will continue to cause any significant inconvenience or detriment to the other strata lot proprietors. Some of the factors deemed relevant to this consideration include the following:

- 1) Whether the alteration/works/addition is not in keeping with the rest of the development such that a significant inconvenience or detriment is suffered by the strata lot proprietors. For example, the works create an eyesore, create an unkempt or untidy appearance, degradate from the commonality, harmonious or high standard presentation of the building such that it may result in a diminution of property values.
- 2) Whether the alterations/works/addition may affect the structural soundness of the building. If this risk is established on the evidence it cannot be a question of degree as in most, if not all cases, it would as a matter of course result in a significant detriment being suffered by the strata lot proprietors.
- 3) Whether the alteration/works/addition may interfere with any easement created by s 11 or s 12 of the Act. For the purposes of s 103G(4) of the Act the interference would need to be significant or material.
- 4) Whether the circumstances surrounding the decision to carry on the works in question has the effect of undermining the corporate governance of the strata lot and/or constitutes a deliberate and knowing abandonment of the requirements of the Act and Regulations/by-laws such that it sets a precedent that any strata proprietor may act in a similar manner with disregard of the legislative regime.

- 5) Whether the alteration/works/addition will result in a significant interference with the quiet enjoyment of the strata lot of any other proprietor or of the common property. Although this is not a reason upon which the works could be refused pursuant to s 7 of the Act, this is an issue which squarely falls within consideration of what constitutes a 'significant inconvenience'. Therefore, if there is evidence of a material interference with the quiet enjoyment of a proprietor's lot or the common property as a result of the works which materially impedes their ability to use or enjoy that property (including the ability to rent or sell the premises), then those factors should be considered as part of this determination.
- 6) Whether the alteration/works/addition would result in financial detriment to another strata lot proprietor either by the devaluing of their property, the strata complex in its entirety or by restricting the use of common property (it should be noted that this factor overlaps with the others referred to above).

37

Of course, the factors listed above is not an exhaustive list, rather it is illustrative of some of the factors relevant to the consideration of whether the work has and will continue to cause any significant inconvenience or detriment to the other strata lot proprietors of the strata scheme.

38

The strata company's submissions rely on the following as indicating that the respondent's 'work done' in the courtyard of Lot 7 have caused and will continue to cause significant inconvenience or detriment to the other strata lot proprietors of the strata scheme, namely:

- a) The strata complex is only five years old and the Council of Owners is concerned to not allow a precedent to be set if the works are not removed as none of the proprietors of the other nine lots on the ground floor of the strata complex have any such structures (ts 14, 20, 4 February 2020). Other proprietors had been issued with letters to remove structures on their balconies and they had complied (ts 25, 4 February 2020).
- b) The works are very visible from the main entrance to the strata scheme as Lot 7's courtyard is the first thing that can be seen to the left when walking up the stairs to enter the strata complex as depicted in the photographs on pages 102 and 104 of Exhibit 1.

The works are out of place and not in keeping with the by-laws 7 and 21 that require items kept within the courtyard to be suitable for that area and in keeping with the rest of the strata scheme (ts 14-15, 21, 4 February 2020).

- c) The proprietors of the nine floors above Lot 7 have stated that they do not want to look down into the courtyard of Lot 7 to see what they say is an 'ugly eyesore' (ts 26, 4 February 2020). Because of the 'ugly eyesore', the value of the strata complex has devalued (ts 27, 4 February 2020).
- d) The works on Lot 7 detract from the amenities of the strata complex as upon entering the strata complex the left side (Lot 7) is an 'ugly eyesore' but the right-hand side (another lot) is 'very nice looking' (ts 27, 4 February 2020).

39 The respondent has not disputed the strata company's claims. This is important because in *Uta* at [15] and [40], Justice Mazza found that the respondent carries the onus of demonstrating that there has been no significant detriment to the appellant. In this case, that onus has not been discharged by the respondent.

40 Further, and in any event, the Tribunal is satisfied in this case that the 'work done' in the respondent's courtyard of Lot 7 will continue to cause a significant inconvenience and/or detriment to the other strata lot proprietors of the strata scheme. This is because the photographs at pages 102 to 109 of Exhibit 1 and the photographs in Exhibit 2 clearly show that the gazebo (pergola) with additional shade cloth attached to the gazebo and lattice attached to the fence and gate of the courtyard to Lot 7 are clearly visible from outside the lot and are not in keeping with the rest of the strata complex. The Tribunal accepts that the works are an eyesore and degrade from the high standard of presentation of the rest of strata complex which may result in a diminution of the property value of the strata complex. Further, the Tribunal is satisfied that the circumstances of this case where the respondent 'is just doing things as it suits her' (ts 25, 4 February 2020) by stating she will remove the works but then failed to do so and has failed to participate in these proceedings, has the effect of undermining the corporate governance of the strata complex and constitutes a deliberate and knowing abandonment of the requirements of the ST Act, regulations and

by-laws such that it sets a precedent that any strata lot proprietor may act in a similar manner with disregard of the legislative regime.

41 For these reasons the Tribunal will order pursuant to s 103G(3) of the ST Act that the respondent remove the works within 28 days of these orders.

42 Finally, the Tribunal turns to consider the strata company's application for an order under s 95 of the *State Administrative Tribunal Act 2004 (WA) (SAT Act)*.

Application for an order under s 95 of the SAT Act

43 The strata company also seeks an order under s 95 of the SAT Act. That section relevantly provides:

Failing to comply with decision

(1) A person who fails to comply with a decision of the Tribunal commits an offence.

Penalty: \$10 000.

(2) Subsection (1) does not apply if, or to the extent that, the decision is a monetary order.

(3) Subsection (1) does not apply in relation to a decision unless -

(a) the Tribunal, in the decision, declares that subsection (1) applies; or

(b) after a person fails to comply with the decision, the Tribunal makes an order declaring that subsection (1) applies and the failure continues after notice of that order is served on the person.

(4) If the Tribunal made the decision without giving a person an opportunity to be heard, subsection (1) only applies to that person on the person being given personally or in accordance with subsection (5) -

(a) a copy of the decision that a judicial member or the executive officer has certified to be a true copy; and

(b) a copy of this section.

(5) If the Tribunal is satisfied that it is not possible or appropriate for a person to be personally given the documents referred to in subsection (4), the Tribunal may specify another method for service of the documents on the person under that subsection.

44 Counsel for the strata company explained that on various occasions when the respondent had erected structures in the courtyard of Lot 7, the strata company sent her letters and those structures were removed but then other structures would appear (ts 10, 22, 4 February 2020). However, in respect of these proceedings, the respondent by email stated in November 2019 that the structures would be removed but as at the date of the final hearing the works had not been removed. Mr Clarke said the respondent 'is just doing things as it suits her' (ts 25, 4 February 2020) and the issue of the structures on Lot 7 are a standing item of the Council of Owners agenda (ts 26, 4 February 2020).

45 Given that the issues relating to the respondent's courtyard of Lot 7 have been ongoing for some years, and coupled with the respondent's lack of engagement in these proceedings, the Tribunal finds this is an appropriate case for an order to be made under s 95 of the SAT Act. Accordingly, the Tribunal will make a declaration that s 95 of the SAT Act applies so that failure by the respondent to comply with the Tribunal's order will constitute an offence for which a penalty of up to \$10,000 will apply.

46 In conclusion, for the reasons stated above, the applicant's application is successful.

Orders

The orders of the Tribunal are as follows:

The Tribunal orders:

1. Pursuant to s 103G(2) of the *Strata Titles Act 1985* (WA) the Tribunal finds that the respondent has committed a breach of s 7(2) of that *Strata Titles Act 1985* (WA).
2. Pursuant to s 103G(3) of the *Strata Titles Act 1985* (WA), the respondent must within 28 days of this order in respect of Lot 7 on Strata Plan 67510:
 - (a) remove, at her own cost, the temporary portable gazebo with an additional shade cloth attached to the gazebo and the lattice attached to the fence and gate of the courtyard; and

- (b) reinstate, at her own cost, the courtyard area where the temporary portable gazebo is removed and the fence and gate of the courtyard to its former condition.
3. The Tribunal declares that s 95(1) of the *State Administrative Tribunal Act 2004* (WA) applies to this decision.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

MS R PETRUCCI, MEMBER

4 MARCH 2020