



Civil and Administrative Tribunal
New South Wales

Case Name: Walker v The Owners - Strata Plan No 1992

Medium Neutral Citation: [2020] NSWCATAP 192

Hearing Date(s): 18 June 2020

Date of Orders: 16 September 2020

Decision Date: 16 September 2020

Jurisdiction: Appeal Panel

Before: S Westgarth, Deputy President
M Gracie, Senior Member

Decision: (1) Appeal upheld
(2) The order dismissing the application is set aside and in its place order 3 is made.
(3) Pursuant to s 188(2) of the Strata Schemes Management Act 2015, within 21 days of the date of these reasons, the respondent is to make available to the appellant for inspection at a time and place to be agreed between the parties the levy register required by regulations 22 and 23 of the Strata Schemes Management Regulation 2016 in the custody or control of the respondent or held on behalf of the respondent by its strata manager, relating to Strata Plan 1992 for the financial years 2018-2019 and 2019-2020;
(4) Liberty to apply to either party within 28 days of the date of these reasons for any further or other order under s 188(3) of the Strata Schemes Management Act 2015 with respect to the manner in which the records the subject of order 3 are to be made available to the appellant by the respondent.

Catchwords: APPEAL — leave to appeal from decision of Consumer and Commercial Division of Tribunal

STRATA TITLE - order of Tribunal refusing inspection of financial information and accounting records of Owners Corporation - levies - levy register - privacy - exercise of discretion by Tribunal to refuse inspection of records - application of s 182 Strata Schemes Management Act 2015 - inspection of levy register granted

Legislation Cited: Civil and Administrative Tribunal Act 2013
Civil and Administrative Rules 2014
Strata Schemes Management Act 2016
Strata Schemes Management Regulation 2016

Cases Cited: Collins v Urban [2014] NSWCATAP 17
Prendergast v Western Murray Irrigation Ltd [2014] NSWCATAP 69

Texts Cited: None cited

Category: Principal judgment

Parties: Craig Walker (Appellant)
The Owners - Strata Plan No 1992 (Respondent)

Representation: Solicitors:
Appellant (Self Represented)
Sky Living Strata (Respondent)

File Number(s): AP 20/17501

Publication Restriction: Nil

Decision under appeal:

Court or Tribunal: Civil and Administrative Tribunal

Jurisdiction: Consumer and Commercial Division

Citation: N/A

Date of Decision: 23 March 2020

Before: J Bartrop, General Member

File Number(s): SC 20/02429

REASONS FOR DECISION

Introduction

- 1 The appellant appeals from a decision of the Consumer & Commercial Division of the Tribunal made on 23 March 2020.
- 2 The Tribunal dismissed the appellant's Strata Application filed on 18 January 2020 (the Application). In his Application, the appellant sought orders under s 188 of the *Strata Schemes Management Act 2016* (SSM Act) for the Owners Corporation (the respondent) to produce certain financial records with respect to "levies paid for the financial years 18-19 and 19-20 [for] Lots 1 to 48" of Strata Plan 1992 (the SP) at Darling Point, NSW 2027. The applicant is a Lot Owner of the SP.

Summary of the Tribunal's Reasons

- 3 The Tribunal stated in its Reasons for Decision (Reasons) that the records and documents originally sought by the appellant were set out in an email to the respondent's Strata Manager dated 23 November 2019. They were described in the Reasons as "detailed transaction listing for levies paid by each lot owner for the financial years 2018/19 and 2019/20" [3]. The appellant's reasons for requesting the records and documents was attributed to his "suspicions" that there were "unauthorised credits" in the financial and accounting records of the respondent. The Tribunal noted that the appellant "accepted that he had no evidence to support his suspicions or concerns."
- 4 The Tribunal found that the respondent had provided to the appellant certain accounting records including audited accounts which evidenced, among other things, total contributions paid into the Administrative and Capital Works Funds, the total of levies due in a "Statement of Financial Performance" and a record of "Levy Positions" which showed "levies for each lot, any arrears and whether any interest was due or paid on outstanding levies". Another document comprised extracts of an "Aged Arrears List" and showed certain outstanding levies for particular lots and the dates of "last debt recovery".
- 5 The Tribunal found at [24] that under s 93(2)(e) and (f) of the SSM Act, certain information must be included in the financial statements and that the appellant was not entitled to further information comprising the "detailed transaction

listing for levies paid by each lot owner for the financial years 2018/19 and 2019/20” because that information was not required by ss 93(2)(e) and (f).

6 The Tribunal concluded at [25] that “as a matter of discretion” the application under s 188 of the SSM Act should be “rejected” because:

- (1) the documents in evidence “are sufficient to satisfy the [appellant’s] enquiries”;
- (2) there is no evidence the respondent “wrongfully failed to make documents available” to the appellant;
- (3) as a “matter of privacy of all lot owners” detailed records for each lot are not required to be made available; and
- (4) the records sought “are not requirements for the financial statements pursuant to s 93” of the SSM Act.

Appeal Grounds

7 The appellant was self-represented.

8 In the Notice of Appeal filed on 17 April 2020 the appellant asked for leave to appeal on the ground that the decision of the Tribunal was not fair and equitable. There were six reasons in support of leave “listed” in the Notice of Appeal and described as:

- (1) balance of probability;
- (2) new evidence;
- (3) no right of reply to respondent’s submission;
- (4) key financial figures anomaly;
- (5) section 93 used incorrectly as a reason for dismissal of the application; and
- (6) subjective claims of privacy of records.

9 The grounds of appeal were contained in a “20 page bundle” which accompanied the Notice of Appeal. The grounds of appeal were grouped across the same six “listed” items set out as reasons for seeking leave to appeal.

10 Properly understood, the grounds for which leave is sought in the Notice of Appeal are the same as the substantive grounds of appeal raised by the appellant in the “bundle.”

- 11 It is also apparent that the appellant has included within those six listed grounds for leave some questions of law, such as the contention that s 93 was "used incorrectly" by the Tribunal to dismiss his application. We discuss the significance of this later in these reasons.

Reply to Appeal

- 12 The respondent was represented by its Strata Managing Agent, Mr Luke Bowen of "Sky Living Strata".
- 13 A document described as being "in reply to the application of appeal" signed by Mr Bowen was filed in the Tribunal on behalf of the respondent on 25 May 2020. A Reply in the form required by Rule 26 of the *Civil and Administrative Rules* 2014 (the Rules) was not filed. Nothing turns on that omission.
- 14 The respondent did not challenge the basis on which the appellant was seeking leave to appeal.
- 15 The respondent dealt with the substantive matters raised on the appeal by contending that "our position on the original Tribunal application remains current" and "[a]ll documents required to be provided per the [SSM Act] have been supplied to Mr Walker either directly, or by circular of documents ..." by Notices of Annual General Meetings "and similar".

Appellants' Submissions

- 16 As we discussed above, the appellant submitted six reasons in support of his contention that the Tribunal's decision was not fair and equitable, namely:
- (1) the probability that an OC "who has nothing to hide" or an owner "who has nothing to gain" would not oppose the production of the documents;
 - (2) evidence has now been obtained which was provided to him by the respondent since the Tribunal hearing to prove that there is a shortage in levies. The appellant provided a spread sheet demonstrating that there was a shortage in levies accrued and collected in the Administration Fund of \$1009.74 and the Capital Works Fund (with a rounding error of 20 cents);
 - (3) the appellant was not given an opportunity to reply to the respondent's submissions to the Tribunal, which raised thirteen matters of which he disagreed with eleven;
 - (4) section 188 of the SSM Act provides a basis for orders to be made to give the appellant access to the documents he seeks, given the

shortage in the Administration Fund and the Capital Works Fund that he can now establish;

- (5) section 93 of the SSM Act was applied incorrectly by the Tribunal by finding that detailed records are not required; and
- (6) the Tribunal mistakenly accepted the respondent's claims for privacy which was contrary to ss 182 and 188 of the SSMA and Regulation 42 of the *Strata Schemes Management Regulations 2016* (the *Regulations*);

Respondents' Submissions

17 On behalf of the respondent, Mr Bowen submitted:

- (1) the appellant has "no genuine interest in the schedule" which records the payment by owners of their levies which is regarded as "private information". This includes how each levy was paid. By way of example, it was submitted that if an owner has been late in paying a levy (and therefore paid interest) or paid levies by instalments, then it was regarded as not being a matter within "Mr Walker's fair interest";
- (2) the appellant has been given all the information to which he is entitled under the SSM Act;
- (3) the respondent conducts an audit each year containing a summary of the end of year balances for the Administration Fund and the Capital Works Fund; a summary of all levies paid by each owner; a summary of all expenditure; and a summary of levies paid by each owner - and the appellant has all of that information.

Scope and nature of an appeal

18 The appellant has a right to appeal against a decision under appeal as of right on any question of law or otherwise with the leave of the Appeal Panel:

s 80(2)(b) of the *Civil and Administrative Tribunal Act 2013* (CAT Act). The appellant has not sought to expressly raise or identify a question of law and has simply assumed that leave to appeal is necessary.

19 However, in his Notice of Appeal the appellant contended that the Tribunal "incorrectly used" s 93 to dismiss his application and again in his submissions set out above, that the Tribunal did not have the proper regard to ss 182 and 188 of the SSM Act. These raise a question of law, a matter which we will comment upon later in these reasons.

20 For present purposes, it will suffice to summarise the decision of *Prendergast v Western Murray Irrigation Ltd* [2014] NSWCATAP 69, where the Appeal Panel set out at [13] a non-exclusive list of questions of law:

- (1) Whether there has been a failure to provide proper reasons;
- (2) Whether the Tribunal identified the wrong issue or asked the wrong question;
- (3) Whether a wrong principle of law had been applied;
- (4) Whether there was a failure to afford procedural fairness;
- (5) Whether the Tribunal failed to take into account relevant (i.e., mandatory) considerations;
- (6) Whether the Tribunal took into account an irrelevant consideration;
- (7) Whether there was no evidence to support a finding of fact; and
- (8) Whether the decision is so unreasonable that no reasonable decision-maker would make it.

Legislative Scheme under the SSM Act and Regulations

- 21 The appeal primarily concerns the application of several key provisions of the SSM Act and the *Strata Schemes Management Regulations 2016* (the Regulations) to the appellant's request for the disclosure of certain financial and accounting information relating to the Strata Plan. We set out in full below those key provisions of the SSM Act to assist in a better understanding of our reasons that follow.
- 22 Part 5 of the SSM Act is headed "*Financial management*". Division 3 of Part 5 of the SSM Act is entitled "*Financial statements and accounting records of owners corporation*".
- 23 Sections 92, 93 and 94 are within Division 3 of Part 5, and respectively provide:

92. Owners corporation must prepare financial statements and statements of key financial information

- (1) An owners corporation must cause financial statements, and a statement of key financial information, to be prepared for each reporting period for the administrative fund, the capital works fund and any other fund kept by the owners corporation.
- (2) The reporting period for financial statements or a statement of key financial information prepared under this Division is
 - (a) the period that commences on the date of registration of the strata plan and ends on a date that is not earlier than 2 months before the date of the first annual general meeting, and
 - (b) each period that commences on the date up to which those statements were last prepared under this Division and ends on a date that is not earlier than 2 months before the next succeeding annual general meeting.

93. Requirements for financial statements

(1) The financial statements are to be prepared on a cash or accrual basis and to comprise only the following matters—

- (a) a statement of income and expenditure for the administrative fund,
- (b) a statement of income and expenditure for the capital works fund,
- (c) a statement of income and expenditure for any other fund kept by the owners corporation.

(2) The financial statement for an administrative fund or capital works fund must specify the following—

- (a) the fund, and the reporting period, for which it is prepared,
- (b) the balance carried forward in the fund from the previous period,
- (c) the particulars and amount of each item of income of the fund received during the current period,
- (d) the particulars and amount of each item of expenditure from the fund during the current period,
- (e) the amount of the contribution to the fund determined for each person liable to make such a contribution,
- (f) the balance outstanding for each such contribution,
- (g) the cash in the fund at the end of the current period,
- (h) the balance of the fund,
- (i) in respect of each liability to contribute to the fund—any unpaid arrears and any balance outstanding,
- (j) the extent to which, at the end of the current period, the fund is in debit or credit.

(3) The financial statements for any other fund must specify the following—

- (a) the fund, and the reporting period, for which it is prepared,
- (b) the balance carried forward in the fund from the previous period,
- (c) the particulars and amount of each item of income of the fund received during the current period,
- (d) the particulars and amount of each item of expenditure from the fund during the current period,
- (e) the cash in the fund at the end of the current period,
- (f) the balance of the fund,
- (g) the extent to which, at the end of the current period, the fund is in debit or credit.

94. Statement of key financial information

(1) The statement of key financial information for an administrative fund or capital works fund must be in the form approved by the Secretary and specify the following matters—

- (a) the fund, and the reporting period, for which it is prepared,
- (b) the balance carried forward in the fund from the previous period,
- (c) the total income of the fund received during the period,
- (d) the total interest earned by the fund during the period,
- (e) the total contributions paid to the fund during the period and the total of all arrears in contributions payable to the fund,
- (f) the total expenditure for maintenance from the fund during the period,
- (g) the total expenditure for administration costs from the fund during the period,
- (h) the balance of the fund,
- (i) the principal items of expenditure for maintenance proposed during the next year.

(2) The statement of key financial information for any other fund must be in the form approved by the Secretary and specify the following matters—

- (a) the fund, and the reporting period, for which it is prepared,
- (b) the balance carried forward in the fund from the previous period,
- (c) the total income of the fund received during the period,
- (d) the total interest earned by the fund during the period,
- (e) the balance of the fund.

24 Section 96 is also relevant. It provides:

96 Accounting records must be kept by owners corporation

(1) An owners corporation must keep accounting records in accordance with this Division.

Maximum penalty--5 penalty units.

(2) The accounting records may be made and stored in the form determined by the owners corporation.

(3) Separate accounting records must be kept for the administrative fund, the capital works fund and any other fund kept by the owners corporation.

(4) The regulations may prescribe accounting records that are required to be kept by an owners corporation.

25 Part 10 of the SSM Act relates to “*Records and information about strata schemes.*” Division 2 of Part 10 is entitled “*Provision of information about strata schemes*” and contains two provisions relevant for our consideration, namely ss 180 and 182.

26 Section 180 provides:

180. Certain records to be retained for prescribed period

- (1) An owners corporation must cause the following to be retained for 7 years—
- (a) any records, notices and orders required to be kept under this Division or Part 10 of the *Strata Schemes Development Act 2015*,
 - (b) minutes of meetings required to be kept under Schedule 1 or Schedule 2,
 - (c) its financial statements and accounting records,
 - (d) copies of correspondence received and sent by the owners corporation,
 - (e) notices of meetings of the owners corporation and its strata committee,
 - (f) proxies delivered to the owners corporation,
 - (g) voting papers relating to motions for resolutions by the owners corporation and to the election of officers or the establishment of a strata renewal committee (under Part 10 of the *Strata Schemes Development Act 2015*),
 - (h) a copy of any signed strata managing agent agreement or building manager agreement entered into by the owners corporation,
 - (i) records given to the owners corporation by the strata managing agent relating to the exercise of functions by the agent,
 - (j) any other documents prescribed by the regulations for the purposes of this section.

Maximum penalty—5 penalty units.

- (2) The regulations may prescribe a different period for which any or all of the things referred to in subsection (1) are required to be retained.

27 Section 182 provides:

182. Requests for inspection of records of owners corporation

- (1) Persons who may inspect An owner, mortgagee or covenant chargee of a lot in a strata scheme, or a person authorised by the owner, mortgagee or covenant chargee, may request the owners corporation to allow an inspection to be carried out under this section.
- (2) Form of request The request must be made by written notice given to the owners corporation and be accompanied by the fee prescribed by the regulations.

(3) Items to be made available for inspection The owners corporation must make the following items available for inspection by the person who makes the request or the person's agent—

- (a) the strata roll,
- (b) any other records or documents required to be kept under this Part,
- (c) the plans, specifications, certificates, diagrams and other documents required to be delivered to the owners corporation before its first annual general meeting by the original owner or the lessor of a leasehold strata scheme,
- (d) if in its custody or under its control, the certificate of title comprising the common property or, in the case of a leasehold strata scheme, the certificate of title for the lease of the common property,
- (e) any applicable 10-year capital works fund plan,
- (f) the last financial statements prepared,
- (g) every current policy of insurance taken out by the owners corporation and the receipt for the premium last paid for each such policy,
- (h) if a strata managing agent has been appointed, a copy of the instrument of appointment,
- (i) if a strata renewal plan has been given to owners for their consideration under Part 10 of the *Strata Schemes Development Act 2015*, a copy of the plan,
- (j) any other record or document in the custody or under the control of the owners corporation,
- (k) if the duties of the owners corporation under this subsection have been delegated to a strata managing agent, any other records (including records of the strata managing agent) relating to the strata scheme that are prescribed by the regulations,
- (l) if a building manager agreement is in force or has been entered into but has not yet commenced, a copy of the building manager agreement,
- (m) particulars of any service agreement entered into by the owners corporation,
- (n) particulars of any agreement entered into with a local council for a strata parking area,
- (o) if the request is made within 5 years after the end of the initial period, particulars of any orders made under section 27 and copies of any related contracts or other documents.

Maximum penalty—5 penalty units.

(4) Meeting inspections For the purpose of complying with requirements for the giving of notice of a meeting of the owners corporation, the original owner (whether or not having ceased to be an owner) or an agent authorised in writing by the original owner is entitled to inspect the strata roll without payment on making a written application.

Regulations made under the SSM Act

28 The following Regulations are relevant to this appeal:

22 Accounting records

The accounting records required to be kept for the purposes of section 96(4) of the Act are as follows--

- (a) receipts consecutively numbered,
- (b) a statement of deposits and withdrawals for the account of the owners corporation,
- (c) a cash record,
- (d) a levy register.

23 Levy register

(1) The levy register must include a separate section for each lot in the strata scheme that is not a utility lot.

(2) Each of those sections must specify, by appropriate entries, the following matters in relation to each contribution levied by the owners corporation and must indicate whether those entries are debits or credits and the balances for those entries--

- (a) the date on which the contribution is due and payable,
- (b) the type of contribution and the period in respect of which it is to be made,
- (c) the amount of the contribution levied shown as a debit,
- (d) the amount of each payment shown as a credit,
- (e) the date on which each payment relating to the contribution was made,
- (f) whether a payment made was made in cash or by cheque or in some other specified manner,
- (g) whether an amount paid comprised full payment or part payment,
- (h) details of any discount given for early payment,
- (i) the balance of the account.

42. Inspection of records

For the purposes of section 182(3)(k) of the Act, the owners corporation must make available for inspection the accounting records and other records relating to the strata scheme that are kept by the strata managing agent.

Consideration

29 The issues on appeal primarily concern the application of those provisions of the SSM Act and Regulations that we have set out above. The construction and meaning of those provisions of the SSM Act set out above are in dispute to

the extent that the respondent asserts that the appellant is not entitled to documents intruding into the right to privacy of the lot owners and that the particular documents which the appellant still requires are documents to which the appellant has no right to inspect. Those documents (described earlier) correspond to the information required by Regulations 22 and 23 to be contained in the levy register. In short, the issue in this appeal is whether the appellant is entitled to inspect the levy register.

Leave to Appeal

- 30 We are of the opinion that the appeal is to be resolved by determining whether the Tribunal erred in its application of various sections of the SSM Act and by its omission to refer to Regulations 23 and 24 and apply Regulation 42.
- 31 It was common ground that the appellant (along with all other lot owners) has been provided with “the audited key financial information” for the Administrative Fund and the Capital Works Fund that was sent to all owners with the agenda and notice for the respondent’s Annual General Meeting (AGM) on 26 February 2020. There is no dispute that these records, as found by the Tribunal, have been prepared as required by ss 92 and 93 of the SSM Act.
- 32 The Tribunal however incorrectly, in our view, characterised the issue before it as to whether the appellant was entitled to the records sought by reference to s 93 of the SSM Act and in finding that such records “are not requirements for financial statements pursuant to s 93”. The Tribunal misdirected itself in framing the issue that way and in making that finding. The appeal does not directly raise any issue for our consideration under ss 92 and 93 of the SSM Act.
- 33 For the reasons explained above, a question of law arises and leave to appeal is not required.

Right to Access Financial Information and Accounting Records

- 34 The SSM Act requires the respondent to retain its “financial statements and accounting records” (s 180(1)(j) for seven years).

- 35 Section 182(3) of the SSM Act relevantly provides that an owners corporation “must make available for inspection” by the person who makes the request (or the person’s agent), the following:
- (1) any other records or documents required to be kept under this Part (ie: Part 10): subsection (3)(b);
 - (2) “the last financial statements prepared”: subsection (3)(f); and
 - (3) “any other record or document in the custody or under the control of the owners corporation”: subsection (3)(j).
- 36 Additionally, s 182(3)(k) requires disclosure if, as in this case, “the duties of the owners corporation under this subsection have been delegated to a strata managing agent, any other records (including records of the strata managing agent) relating to the strata scheme that are prescribed by the regulations”.
- 37 Regulation 22 describes the accounting records required to be kept for the purposes of s 96(4). Those records include a “levy register”. Regulation 23 states that a levy register must include a separate section for each lot in the Strata Scheme (other than a utility lot) and the balance of the Regulation sets out the entries and matters which the register must contain. These include the amount of each credit and debit.
- 38 Regulation 42 of the Regulations expressly provides “for the purposes of s 182(3)(k) of the Act” that an owners corporation “*must* make available for inspection the accounting records and other records relating to the strata scheme that are kept by the strata managing agent” (emphasis added).
- 39 The essential question is whether the documents sought by the appellant (ie. the levy register for 2019 and 2020) are documents which the respondent must make available for inspection under s 182. The documents the appellant seeks correspond with the description of the levy register required to be kept under Regulations 22 and 23. The levy register forms part of the accounting records required to be kept under s 96(4). The documents which the respondent must make available for inspection under s 182(3) include:
- (1) records of documents required to be kept under Part 10. This includes the documents referred to in s 180 and relevantly such documents include “financial statements and accounting records” (ss 180(1)(c), 182(3)(b);

- (2) any other record of documents in the custody or under the control of the owners corporation (s 182(3)(j))
- (3) if the duties of the owners corporation have been delegated to a strata managing agent, any other records relating to the strata scheme that are prescribed by the Regulations (s 180(3)(k)).

40 The levy register is caught by:

- (1) s 182(3)(b) because it is a document required to be kept under Part 10, namely by s 180(1)(c) which requires the retention of financial and accounting records, including specifically in this case the records prescribed by s 96(4). That section leads to the requirement to keep a levy register (Regulations 22 and 23),
- (2) s 182(3)(j) because it is a document in the control of the owners corporation. We were not informed that the levy register held by the strata manager could not be called upon by the owners corporation to be produced to it by the strata manager, and
- (3) s 182(3)(k) because as we understand it, the duties of the owners corporation under s 182(3) have been delegated to the strata manager and the levy register constitutes part of the records that are prescribed by the Regulations.

Privacy Considerations

- 41 It was common ground that the appellant was refused access to the financial records of the respondent that concerned the “payment entries” of individual lot owners, and which included details of how each owner paid their respective levies, such as whether it was by instalments and if payments are late and owners are charged interest. On that issue, the Tribunal accepted the respondent’s submission that “as a matter of privacy of all lot holders detailed records for each lot are not required to be made available”. The Tribunal gave no reasons for accepting that submission.
- 42 On the appeal, the respondent submitted that certain accounting records involve an individual’s privacy and that general meetings of the respondent had deemed it “inappropriate” to provide the appellant with such information. For the reasons that follow, we find that there is no issue of “privacy” which in this case derogates from the statutory right of an owner to access financial information and accounting records where such a right is expressly provided under the SSM Act.
- 43 In our opinion, the privacy considerations relied upon by the respondent do not arise in this case.

No Basis to Exercise a Discretion

44 We are of the view that the levy register is a document which by s 182 "must" be made available for inspection. However, the question is, does it follow that the Tribunal must make an order for inspection?

45 Section 188 of the SSM Act provides:

188. Order to supply information or documents

(1) The Tribunal may, on application by a person, order an owners corporation, strata managing agent, officer or former strata managing agent of an owners corporation to supply to the applicant information that the Tribunal considers that the owners corporation, strata managing agent, officer or former strata managing agent has wrongfully withheld from the applicant and to which the applicant is entitled under this Act.

(2) The Tribunal may, on application by a person, order an owners corporation, strata managing agent, officer or former strata managing agent of an owners corporation to supply or make available to the applicant a record or document if—

(a) the Tribunal considers that the owners corporation, strata managing agent, officer or former strata managing agent has wrongfully failed to make the record or document available for inspection by the applicant or the applicant's agent, and

(b) the applicant is entitled under this Act to inspect the record or document.

(3) The order may specify the manner in which information is to be supplied or made available.

46 Properly construed, if an applicant establishes a right to access information under the SSM Act, as we have found in this case, then there is generally no discretion enlivened other than with respect to the "manner in which the information is to be supplied or made available" to an applicant under sub-s (3). We say that the discretion is generally not enlivened because absent a reason to relieve the owners corporation from the mandatory obligation to give access under s 182, the Tribunal should make an order under s 188(1) (ie. supply information) or under s 188(2) (ie. supply or make available a record or document). The use of the word "may" in s 188 suggests that the Tribunal may refuse to make an order under s 188(1) or (2) in some circumstances. In our view, there was no reason for the Tribunal to refuse to make such an order in the circumstances of this matter.

47 The Tribunal purported to exercise its discretion to refuse the appellant's application on two bases.

- 48 The first was that the documents already provided were sufficient to satisfy the appellant's enquiries. That reason did not receive any elaboration and it is clear that the contents of the levy register were not contained in documents already provided to the appellant.
- 49 The Tribunal also exercised its discretion to reject the application on the basis of privacy and said that "as a matter of privacy of all lot holders, detailed records for each lot are not required to be made available". In our view, the legislation permits inspection of the levy register and to that extent Parliament has indicated that information contained in the levy register is not protected by considerations of privacy.

Disposition of the Appeal

- 50 For the reasons set out above, we uphold the appeal.
- 51 Section 81 of the CAT Act sets out the orders we are empowered to make on an appeal:

81. Determination of internal appeals

(1) In determining an internal appeal, the Appeal Panel may make such orders as it considers appropriate in light of its decision on the appeal, including (but not limited to) orders that provide for any one or more of the following--

- (a) the appeal to be allowed or dismissed,
- (b) the decision under appeal to be confirmed, affirmed or varied,
- (c) the decision under appeal to be quashed or set aside,
- (d) the decision under appeal to be quashed or set aside and for another decision to be substituted for it,
- (e) the whole or any part of the case to be reconsidered by the Tribunal, either with or without further evidence, in accordance with the directions of the Appeal Panel.

(2) The Appeal Panel may exercise all the functions that are conferred or imposed by this Act or other legislation on the Tribunal at first instance when confirming, affirming or varying, or making a decision in substitution for, the decision under appeal and may exercise such functions on grounds other than those relied upon at first instance.

- 52 Having regard to the "guiding principle" in s 36 of the CAT Act "to facilitate the just, quick and cheap resolution of the real issues in the proceedings" we have decided not to remit the matter back to the Tribunal for further consideration and determination.

- 53 Rather, we have decided to make an order under s 188 of the SSM Act, having regard to our reasons above and the form of the orders sought by the appellant in his Application before the Tribunal.
- 54 As stated below, we order under s 188(2) of the SSM Act that within 21 days of the date of these reasons, the respondent is to make available to the appellant for inspection at a time and place to be agreed between the parties, the levy register required by Regulations 22 and 23 relating to lots 1 to 48 of Strata Plan 1992 for the financial years 2018-2019 and 2019-2020.

Orders

55 We order as follows:

- (1) Appeal upheld
- (2) The order dismissing the application is set aside and in its place order 3 is made.
- (3) Pursuant to s 188(2) of the Strata Schemes Management Act 2015, within 21 days of the date of these reasons, the respondent is to make available to the appellant for inspection at a time and place to be agreed between the parties the levy register required by regulations 22 and 23 of the Strata Schemes Management Regulation 2016 in the custody or control of the respondent or held on behalf of the respondent by its strata manager, relating to Strata Plan 1992 for the financial years 2018-2019 and 2019-2020;
- (4) Liberty to apply to either party within 28 days of the date of these reasons for any further or other order under s 188(3) of the *Strata Schemes Management Act* 2015 with respect to the manner in which the records the subject of order 3 are to be made available to the appellant by the respondent.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.