

---

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**ACT** : STRATA TITLES ACT 1985 (WA)

**CITATION** : THE OWNERS OF HIGH RISE STRATA PLAN  
8245 and THE OWNERS OF HIGH RISE STRATA  
PLAN 8245 [2021] WASAT 40

**MEMBER** : MS R PETRUCCI, MEMBER

**HEARD** : 6 JANUARY 2021 AND 20 JANUARY 2021

**DELIVERED** : 16 MARCH 2021

**FILE NO/S** : CC 1395 of 2020

**BETWEEN** : THE OWNERS OF HIGH RISE STRATA PLAN  
8245  
Applicant

AND

THE OWNERS OF HIGH RISE STRATA PLAN  
8245  
Respondent

---

*Catchwords:*

*Strata Titles Act 1985 (WA) from 1 May 2020 - Strata scheme (other than a single tier strata scheme) - Obligation of strata company to effect and maintain required insurance - Insurance lapsed - Discretion of Tribunal to exempt strata company from maintaining required insurance - Exemption subject to conditions - Factors to consider in granting exemption from maintaining required insurance - Turns on own facts*

*Legislation:*

*State Administrative Tribunal Act 2004 (WA), s 15*

*Strata Titles Act 1985 (WA), s 3(1), s 10(1), s 14(1), s 91(1)(a), s 97, s 98, s 99, s 100(1)(a), Sch 2A, Pt 5, Sch 3, cl 12, Sch 5, cl 30(1), Pt 8, Div 1*

*Strata Titles Act 1985 (WA) (prior to 1 May 2020), s 35, s 103J*

*Strata Titles Amendment Act 2018 (WA), s 15*

*The Strata Schemes Management Act 2015 (NSW), s 172*

*Result:*

Exemption under s 97(3) of the ST Act refused for the insurance period  
31 August 2020 to 31 August 2021

Application unsuccessful

*Category:* B

**Representation:**

*Counsel:*

Applicant : N/A

Respondent : N/A

*Solicitors:*

Applicant : N/A

Respondent : N/A

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

Thomas Baric and The Owners of Killara - Strata Plan 732 (1997) WASTR 878

**REASONS FOR DECISION OF THE TRIBUNAL:**

***Introduction***

1 The applicant, The Owners of High Rise Strata Plan 8245 (**strata company**) has brought proceedings in the Tribunal seeking an exemption from compliance with the requirement to have insurance under s 97 of the *Strata Titles Act 1985 (WA) (ST Act)*. The respondent in these proceedings is also the strata company.

2 Strata Plan 8245 was registered on 5 August 1980 (**strata plan**). The relevant strata scheme comprises 72 lots (**the strata complex**) located at 17 Welsh Street, South Hedland and is described in the strata plan as being 'A seven storey concrete and brick residential building' situated on lot 55 of Port Hedland lot 2066 on Deposited Plan 36485 with the name 'High Rise'. It is, however, more commonly known as 'Lawson Apartments'.<sup>1</sup> Lawson Apartments has shared amenities including a swimming pool, barbecue area, playground, carport and landscaped gardens and is situated approximately 8.5 kilometres southwest of the Port Hedland airport with the surrounding environs primarily residential in nature.<sup>2</sup>

3 These proceedings commenced after the major amendments to the ST Act coming into operation on 1 May 2020 under the *Strata Titles Amendment Act 2018 (WA)*. This means the provisions of the ST Act, as they are following the amendments, apply to the determination of this application: cl 30(1) of Sch 5 of the ST Act. All references to the provisions of the ST Act in these reasons are to those in the ST Act as of 1 May 2020 unless expressly stated otherwise.

4 In its application<sup>3</sup> to the Tribunal of 26 October 2020, the strata company seeks the following orders:

1. The Owners of High Rise Strata Plan 8245 be exempt from compliance with section 97 of the Stata Tiles Act 1985; and
2. [withdrawn]<sup>4</sup>
3. The Owners of High Rise Strata Plan 8245 be permitted to arrange and maintain self insurance for the strata titles scheme.

---

<sup>1</sup> ts 15, 6 January 2021.

<sup>2</sup> Exhibit 20 at page 3 of the report prepared by Mr Mark Klenke for AON Risk Services Australia Limited.

<sup>3</sup> Exhibit 1.

<sup>4</sup> On 15 December 2020, the strata company withdrew order 2 of the orders it sought in its application.

5           Although not expressly stated in its application, the Tribunal  
understands the strata company's application for an exemption under  
s 97(3) of the ST Act to be for the current insurance period from  
31 August 2020 to 31 August 2021 (**2020/21 insurance year**).

6           The strata company's application falls within the Tribunal's original  
jurisdiction (s 15 of the *State Administrative Tribunal Act 2004* (WA)  
(**SAT Act**).

7           For the reasons set out below, the Tribunal has refused to exempt  
the strata company from compliance with s 97 of the ST Act for the  
2020/21 insurance year. This means the strata company's application  
is unsuccessful.

***Relevant procedural history and evidence***

8           The matter was heard over two days on 6 January 2021 and  
20 January 2021.

9           Ms Karen Richardson, a lot owner and the current chairperson of  
the Council of Owners, attended the hearing in person and gave oral  
evidence and made submissions for the strata company.

10          Ms Kyra Murphy, also a lot owner, (and the former strata manager  
for the strata company) attended the hearing in person and gave oral  
evidence.

11          The following witnesses were called by the strata company to give  
evidence:

- Ms Deborah Pirie, account manager for PSC Property Lync  
Pty Ltd;
- Ms Erika Maylam, sales consultant, Crawford Realty, Hedland;  
and
- Ms Rachael Ferrante, employee of Richardson Strata  
Management Services (current strata manager for the  
strata company).

12          The Tribunal is satisfied that Ms Richardson and Ms Murphy gave  
their oral evidence in an honest and straight forward manner.

13 In regards to the witnesses, the Tribunal is satisfied they were each qualified to give their evidence. The Tribunal accepted the witnesses' evidence.

14 In accordance with the Tribunal's usual practice in matters of this nature, the hearing was conducted on the basis that all of the documents filed with the Tribunal would be regarded as being in evidence, subject to any proper objection. No objection was made. The Tribunal therefore accepted the following documents into evidence:<sup>5</sup>

- Exhibit 1:  
The strata company's application dated 26 October 2020.
- Exhibit 2:  
Copies of the strata plan and Notification of Change of By-laws registered with Landgate on 8 November 2017 (by instrument number N759539).
- Exhibit 3:  
Minutes of the strata council meeting held on 30 September 2019 by circular email.
- Exhibit 4:  
Affidavit of Ms Deborah Pirie, account manager for PSC Property Lync Pty Ltd declared on 23 October 2020.
- Exhibit 5:  
Valuation by Mr Mark Klenke, certified practising valuer of Aon Valuation Services, dated 8 November 2019 of buildings and site improvements at 17 Welsh Street, South Hedland for insurance purposes.
- Exhibit 6:

---

<sup>5</sup> Although forming part of 'evidence' of the strata company's contentions and submissions in Exhibit 1 are taken to be submissions, rather than evidence.

Australian Tropic Cyclone Outlook for 2020 and 2021 issued on 12 October 2020 by the Bureau of Meteorology.

- Exhibit 7:

PSC Property Lync Pty Ltd tax invoice 0018507 dated 19 August 2019 for the strata company's insurance cover for the period 31 August 2019 to 31 August 2020.

- Exhibit 8:

Edge Underwriting Pty Ltd (**Edge Underwriting**) schedule of insurance undated but with invoice number 0018507 for the strata company's insurance cover for the period 31 August 2019 to 31 August 2020 for \$311,386.

- Exhibit 9:

PSC Property Lync Pty Ltd tax invoice 0019886 dated 15 November 2019 for the strata company's insurance cover for the period 11 November 2019 to 31 August 2020 for \$766 (for increase BSI).

- Exhibit 10:

Schedule of Insurance to support tax invoice number 0019886.

- Exhibit 11:

Offer of insurance from Cowden Insurance Brokers (**Cowden Brokers**) for \$1,027,174.70.

- Exhibit 13:

Offer of insurance from Edge Underwriting for \$560,135.

- Exhibit 14:

Balance sheet for the financial period 1 July 2020 to 30 November 2020 reflecting net assets or total owners funds for the strata complex of \$1,053,328.41.

- Exhibit 15:

Sales information provided by Ms Erika Maylam, sales consultant, Crawford Realty, Hedland.

- Exhibit 16:

Commercial legal expenses and management of liability insurance for the period 31 August 2020 to 31 August 2021. Public and/or legal liability insurance and workers' compensation insurance.

- Exhibit 17:

Letter dated 10 September 2020 from Ms Ferrante to lot owners regarding building insurance.

- Exhibit 18:

Australian Competition & Consumer Commission Northern Australia Insurance Inquiry, Final report, November 2020.

- Exhibit 19:

Email of 29 September 2020 from Ms Ferrante to the Council of Owners setting out final terms of insurance offered by Edge Underwriting and Cowden Brokers with supporting documentation from PSC Property Lync Pty Ltd.

- Exhibit 20:

Email of 16 November 2020 from Ms Ferrante to lot owners, agents and mortgagees providing a copy of the orders of the Tribunal and a copy of the application filed with the Tribunal and copies of supporting documents.

- Exhibit 21:

Email of 3 November 2020 from Ms Ferrante to lot owners informing of the next directions hearing at the Tribunal.

- Exhibit 22:

Email of 8 January 2021 from Ms Ferrante to the lot owners and mortgagees seeking comment on the

imposition of special levy of between \$12,748.40 to \$14,569.60, depending on unit entitlement, to cover an insurance premium of \$1,027,450.

- Exhibit 23:

Responses received regarding the imposition of a special levy.

- Exhibit 24:

Balance Sheet for the financial period 1 July 2020 to 20 January 2021 reflecting net assets or total owners funds for the strata complex of \$1,115,627.53.

15 The application proceeded in the Tribunal on the basis that the standard scheme by-laws apply, that is, the provisions set out in Sch 1 - Governance by-laws and Sch 2 - Conduct by-laws of the ST Act apply to the strata scheme (cl 12 of Sch 3 of the ST Act).

16 Following the hearing on 20 January 2021, the Tribunal reserved its decision.

17 Next, the Tribunal sets out the relevant facts.

***Relevant facts***

18 The facts are uncontroversial and the Tribunal makes the following findings of fact:

- (a) The strata complex is comprised of 72 residential lots. The strata complex is seven levels and is therefore not a single tier strata scheme.
- (b) The strata complex is located in South Hedland, which is above the 26<sup>th</sup> parallel.<sup>6</sup>
- (c) The strata complex was insured for the period 31 August 2019 to 31 August 2020 (**2019/20 insurance year**).
- (d) For the 2019/20 insurance year, the strata company paid an insurance premium of \$312,152 to New India

---

<sup>6</sup>The 26th parallel is a line that divides Australia from east to west. It begins at Shark Bay in Western Australia, north of Geraldton, serves as the boundary between South Australia and the Northern Territory and runs into the Pacific north of the Sunshine Coast, Queensland.



Assurance Co Ltd via Edge Underwriting.  
The premium covered:

- (i) property (including buildings, common area and loss of rent/temporary accommodation);
  - (ii) crime (fidelity guarantee);
  - (iii) group PA (voluntary workers);
  - (iv) office bearers' liability; and
  - (v) legal expenses.
- (e) The insurance premium of \$312,152 for the 2019/20 insurance year did not include public liability insurance. That insurance was paid for separately by the strata company.
- (f) Cowden Brokers offered to the strata company insurance for the 2020/21 insurance year for a premium of \$1,027,174.70. For this premium, the building would be insured for \$45,557,000 and the common area property for \$455,570. Further, the premium covers:
- (i) property (including loss of rent/temporary accommodation of \$2,183,355) with an excess of \$250,000 for each cyclone event;
  - (ii) public liability with an excess of \$50,000 for each occurrence;
  - (iii) fidelity guarantee with an excess of \$50,000 for each loss;
  - (iv) personal accident (voluntary workers);
  - (v) office bearers' liability, health and safety, audit and legal expenses with an excess of \$50,000 for every claim; and
  - (vi) unit owners' fixtures and improvements with an excess of \$50,000 for every loss.
- (g) Edge Underwriting offered to the strata company insurance for the 2020/21 insurance year for a premium

of \$560,135. For this premium, the building would be insured for \$43,694,000, the common area property for \$448,560 and removal of debris \$1,162,000. This insurance premium does not provide cyclone cover and public liability cover. Further, the premium covers:

- (i) material loss or damage including flood, theft or any attempt thereat, fidelity guarantee, fusion (motors not exceeding 3kW or 4HP), rewriting of records, employees and directors' personal property, glass, cost of clearing blocked drains, pipes, filters and pumps (B), liability to make enquiries, unpacking expenses, and expediting expenses, and cost of clearing drains; and
  - (ii) consequential loss of profits including loss of rent/temporary accommodation of \$2,554,428.
- (h) As at 20 January 2021, the strata company held net assets of \$1,115,627.53. Of the net assets figure, \$404,063.69 is recorded as 'levies receivable'.
- (i) As at 20 January 2021, the strata company held insurance for the 2020/21 insurance year against damage to property, death, bodily injury or illness for which the strata company could become liable in damages to an amount of not less than \$10,000,000.
- (j) As at 20 January 2021, the strata complex did not have insurance for the 2020/21 insurance year against fire, storm and tempest (excluding damage by sea, flood or erosion) for the strata complex building and common property.

### ***Legal framework***

19 Section 14(1) of the ST Act provides that upon registration of a strata scheme, the owners from time to time shall comprise a strata company.

20 Part 8 of the ST Act concerns strata companies. Specifically, Div 1 of Pt 8 deals with functions of the strata company and sub-division 2 of Div 1 of Pt 8 (s 97 to s 99) sets out the requirements regarding insurance.

21 In addition to containing provisions about insurance that is relevant to all strata schemes (s 97 to s 99), there are separate provisions for single tier strata schemes (Pt 5 of Sch 2A). A single tier strata scheme is a strata scheme in which no lot or part of a lot is above or below another lot. As already noted earlier, this case does not concern a single tier strata scheme. Accordingly, the provisions contained in Pt 5 of Sch 2A do not apply.

22 Section 97(1) requires the strata company to have insurance in place as follows:

(1) A strata company must ensure that the following insurance is in place for the strata titles scheme -

(a) all insurable assets of the scheme must be insured against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake -

(i) to replacement value; or

(ii) to replacement value up to, for an event of a specified kind, a maximum amount specified in the contract of insurance that is a reasonable limitation in the circumstances;

and

(b) the strata company must be insured against damage to property, death, bodily injury or illness for which the strata company could become liable in damages to an amount of not less than \$10,000,000 or, if some other amount is determined under the regulations, that amount.

Note for this subsection:

1. The owner of a lot in a survey-strata scheme is responsible for insurance of the kind referred to in paragraph (a) for infrastructure on the lot.
2. The owner of a lot is responsible for insurance of the kind referred to in paragraph (b) for damages for which the owner could become liable.

23 The term 'insurable asset' is defined in s 3(1) of the ST Act as follows:

*insurable asset* of a strata titles scheme -

(a) means -

- (i) the common property of the scheme (including the fixtures and improvements on the common property); or
  - (ii) the parts of scheme buildings that comprise lots in the scheme (including the paint and wallpaper); or
  - (iii) anything included in this definition by the regulations;
- but
- (b) does not include -
    - (i) fixtures or improvements on the common property that are not themselves common property; or
    - (ii) carpet and temporary wall, floor and ceiling coverings in a scheme building; or
    - (iii) fixtures removable by a lessee at the expiration of a tenancy; or
    - (iv) anything excluded from this definition by the regulations;

24 The term 'replacement value' is defined in s 3(1) of the ST Act as follows:

*replacment value* of an insurable asset means -

- (a) the amount required to rebuild, replace, repair or restore the asset so that, on completion of the work, the asset is no less extensive and in no worse condition than when the asset was new; and
- (b) the amount required for costs of demolition, site clearance and the remuneration of architects, surveyors, engineers and other persons whose services are necessary for the rebuilding, replacement, repair or restoration of the asset;

25 The need for a strata company to effect insurance in respect of 'insurable assets' arises from the nature of lot ownership in a strata titles scheme.

26 Section 97(1) of the ST Act provides that the strata company must ensure the required insurance is in place for the strata titles scheme. However, it is a defence to not having the required insurance in place if the strata company can prove pursuant to s 97(2) of the ST Act that, despite having taken all reasonably practicable steps available to it to obtain the required insurance (as set out in s 97(1) of the ST Act) but no insurer is willing to enter into a contract of insurance, on reasonable

terms, that meets the requirements. In such a case, the strata company must obtain whatever insurance it can obtain on reasonable terms that most closely meets the requirements.

27 In these proceedings, the strata company does not rely on s 97(2) of the ST Act as it received two offers of insurance. One from Edge Underwriting and the other from Cowden Brokers.

28 However, the strata company seeks an order pursuant to s 97(3) of the ST Act which provides:

- (3) The Tribunal may, on application by a strata company, exempt it from compliance with this section subject to conditions specified in the exemption.

29 The only other provision in s 97 of the ST Act which is relevant in these proceedings is s 97(7) which provides:

- (7) Nothing in this section derogates from -
- (a) any other requirement imposed on a strata company to obtain insurance (for example, for workers' compensation or by resolution of the strata company); or
- (b) the power of the strata company to obtain other insurance in its capacity as a body corporate.

30 Finally, other obligations of a strata company include duties:

- (a) under s 91(1)(a) of the ST Act, to control and manage the common property (which, pursuant to s 10(1), is that part of the land subdivided by the strata titles scheme that does not form part of a lot in the strata titles scheme and temporary common property) for the benefit of all the owners of lots; and
- (b) under s 100(1)(a) of the ST Act, to establish a fund (an administrative fund) for administrative expenses that is sufficient for the control and management of the common property, for the payment of any premiums of insurance and the discharge of any other obligations of the strata company.

### *The strata company's case*

31 The strata company's position for seeking an exemption under s 97(3) of the ST Act may be summarised as follows:

- (a) Prior to the collapse of the mining boom, strata lots in the strata complex were selling for between \$1 million to \$1.2 million and higher. Now the same strata lots in the strata complex are selling for between \$50,000 to \$55,000.<sup>7</sup> These much reduced values for the strata lots reflect the very high strata fees which includes insurance.<sup>8</sup> Using the reduced values, it would only cost about \$4.560 million to buy the strata complex. This is significantly less than the replacement cost of \$45 million for the strata complex recommended by the insurers<sup>9</sup> and which does not take into account the value of the land which would probably be the most expensive part given the age of the strata complex.<sup>10</sup> Therefore, the proposed insurance premium for the 2020/21 insurance year is a massive increase on the previous year which was \$311,286.<sup>11</sup> It does not make financial sense for the owners to pay an insurance premium in excess of \$1 million which will in effect be the price to purchase all of the units within three years.<sup>12</sup> If the strata company is required to pay the insurance premium in excess of \$1 million, the strata company will go into default fairly quickly because about 75% of lot owners simply cannot afford to pay a levy up to \$15,000 to cover the insurance when a unit is valued at between \$50,000 to \$60,000.<sup>13</sup> Debt collection will increase as a result.<sup>14</sup> Lot owners cannot afford to sell in the current market because they will lose everything they have owned.<sup>15</sup> If reasonable insurance cannot be obtained, 70% to 80% of the lot owners in the strata complex are likely to declare bankruptcy.<sup>16</sup>
- (b) The strata complex is unique in that it is the only complex in South Hedland with more than four storeys.<sup>17</sup> Many insurance underwriters refused to offer

---

<sup>7</sup> ts 21, 6 January 2021.

<sup>8</sup> ts 65, 6 January 2021.

<sup>9</sup> ts 22, 6 January 2021.

<sup>10</sup> Ibid.

<sup>11</sup> ts 42, 6 January 2021.

<sup>12</sup> Ibid.

<sup>13</sup> ts 104, 20 January 2021.

<sup>14</sup> Ibid.

<sup>15</sup> ts 102, 20 January 2021.

<sup>16</sup> ts 64, 6 January 2021.

<sup>17</sup> ts 42, 6 January 2021.

insurance for the strata complex for the 2020/21 insurance year for the following reasons:

- (i) the age of the strata complex;
  - (ii) it is more than four storeys;
  - (iii) it is located above the 26<sup>th</sup> parallel in 'cyclone territory';
  - (iv) there is limited availability of people in the area to do repair work; and
  - (v) the replacement cost of the strata complex is in excess of \$45 million.<sup>18</sup>
- (c) The strata company has made only a few claims on their insurance policies over the years. For example, seventeen years ago, a cyclone took off part of the roof of the strata complex. The cost to repair the roof was about \$500,000. Besides that claim, the strata company has only made small claims on insurance including in 2015 when the strata company made claims totalling \$139,500 which included a claim for fusion totalling \$76,000. Since 2015 there have been a few claims on insurance totalling \$6,935.<sup>19</sup>
- (d) The strata company proposes to put aside \$500,000 into an insurance fund and then each subsequent year to raise \$250,000 through the budget until the strata company can secure the amount of the insurance premium (in excess of \$1 million). For year one the amount in the insurance fund would be \$500,000 then for year two it would be \$750,000 (\$500,000 + \$250,000) and so on. The amount put aside would be used to cover any insurance claims until the Government does something about the 'ludicrous premiums ... above the 26<sup>th</sup> parallel'.<sup>20 21</sup>

---

<sup>18</sup> ts 43, 49-50 and 60, 6 January 2021.

<sup>19</sup> ts 60-61, 6 January 2021.

<sup>20</sup> ts 23, 6 January 2021.

<sup>21</sup> ts 68-69, 6 January 2021.

### *Consideration*

32 It is useful to start by briefly describing where the strata complex is located in northern Australia, and then to note relevant points from the Australian & Consumer Commission (ACCC) three year inquiry which commenced in 2017 into concerns about insurance affordability and availability in northern Australia.<sup>22</sup>

### **South Hedland**

33 The strata complex is located in South Hedland which is part of the Pilbara and which accounts for 20% of Western Australia's total land mass (or approximately two thirds of the area of New South Wales or double the size of Victoria). The Pilbara is remote and distances between the main centres of Karratha, Port Hedland, Newman, Tom Price and Onslow are large. The Pilbara is bordered by the Indian Ocean to the west and extends across the Great Sandy Desert to the Northern Territory border in the east.<sup>23</sup>

34 The climate of the Pilbara is arid and tropical. The region experiences high temperatures and low irregular rainfall that follows the summer cyclones. The average annual rainfall in the region is between 200 to 250 millimetres which mainly falls between December and May, usually with heavy downpours including tropical cyclones.<sup>24</sup> According to the Bureau of Meteorology, there is an average to slightly above average number of tropical cyclones expected for the 2020 to 2021 Australian tropical cyclone season (November to April).<sup>25</sup>

35 The economy of the Pilbara is very dependent on the resources industry. Because of the dominance of the extractive industries the Pilbara is extremely vulnerable to sharp falls in commodity prices. The economic downturn since 2012 has had a major impact on the economy with a decline in population, extreme falls in property prices and personal wealth.<sup>26</sup>

---

<sup>22</sup> Australian Competition & Consumer Commission 'Northern Australia Insurance Inquiry' Final report November 2020.

<sup>23</sup> 'Transitioning Regional Economies' report by Regional Development Australia, Pilbara, February 2017, page 3.

<sup>24</sup> Ibid, pages 3-4.

<sup>25</sup> Exhibit 6.

<sup>26</sup> Above n 22, page 27.



## ACCC inquiry

36 According to the ACCC, extreme and destructive weather events are a common occurrence in northern Australia.<sup>27</sup> The threat of seasonal storms, cyclonic activity and floods characterise daily living. For small communities, towns and regional cities in northern Australia, the affordability of strata insurance is increasingly recognized as a major challenge to their liveability and prosperity.<sup>28</sup>

37 The ACCC found that strata premiums, are, on average, considerably higher in northern Australia than the rest of Australia and have increased more over the last decade, particularly for properties with more than 50 units. The main driver of higher insurance premiums in northern Australia, according to the ACCC is the higher natural peril risk. Premium components for cyclone, and in some places flood, make up a large proportion of premiums in northern Australia, but particularly large in north Western Australia.<sup>29</sup> Further, the ACCC reported that the strata markets are particularly concentrated in each region of northern Australia, and nationally. The competition for strata properties with 11 or more units and with sums insured over \$5 million is soft, especially for properties with a higher exposure to cyclone and water damage risk.<sup>30</sup> There are fewer available insurers and insurer intermediaries for these properties according to the ACCC, and those remaining appear to be reducing their exposure to these risks by increasing underwriting restrictions on the type and location of strata property they are willing to insure.

38 According to the ACCC the highest average rates of non-insurance in northern Australia can be observed in many of the north Western Australian postcodes, with many postcodes showing rates of non-insurance in excess of 35%. Further, the ACCC noted that eight out of the 10 most expensive regions to insure in 2018-19 were located in the north of Western Australia and these postcodes were facing average premiums that are between three and 10 times the average price for the southern part of Australia.<sup>31</sup> The ACCC found that cost is a major factor

---

<sup>27</sup> Exhibit 18, page vii.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid, page viii.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid, pages 273-274.

for consumers in the decision not to purchase insurance.<sup>32</sup> The highest premiums for strata insurance products are in north Western Australia.<sup>33</sup>

39 The ACCC observed an unusual competitive dynamic where insurers in northern Australia employ measures to manage their exposure in regions that are risky or volatile by increasing their premiums so as to lose customers in certain regions, or by no longer selling or renewing policies in certain areas once they reach a certain exposure.<sup>34</sup> In conclusion, the ACCC noted a growing concerns about the availability of strata insurance throughout northern Australia.<sup>35</sup>

### **Lawson Apartments, South Hedland**

40 The strata complex (Lawson Apartments, the subject of these proceedings), is located in South Hedland. Due to the economic downturn since 2012, it is reported that there have been extreme falls in property prices including the strata complex.<sup>36</sup> Ms Richardson's evidence is that strata lots purchased for in excess of \$1 million dollars in the strata complex are now for sale at \$60,000. Ms Maylam concurred with Ms Richardson's evidence.

41 The strata company's concern regarding the availability of strata insurance and the cost of insurance is echoed in the findings of the ACCC.

42 The issue for the Tribunal in this matter, is whether to exercise its discretion to exempt the strata company from complying with the insurance requirements of s 97 subject to any conditions.

43 The term 'insurance' is not defined in the ST Act. It ordinarily means:<sup>37</sup>

[T]he act, system, or business of insuring property, life, the person, etc., against loss or harm arising in specified contingencies, as fire, accident, death, disablement, or the like, in consideration of a payment proportionate to the risk involved.

44 Due to the valuable nature of common property to the strata company and its lot owners, the ST Act contains special provisions regarding insurance for the strata company. As noted earlier, these

---

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid, page xi.

<sup>35</sup> Ibid, page 390.

<sup>36</sup> Above n 22, page 27.

<sup>37</sup> *Macquarie Dictionary Online*.

provisions are set out in subdiv 2 of Div 1 of Pt 8 of the ST Act entitled 'Insurance' extending from s 97 to s 99 of the ST Act. Neither the lot owners nor the strata manager is obliged to effect insurance under s 97 to s 99. However, there are two types of insurance that the strata company must effect, which in general terms are:

- (a) full replacement insurance for all 'insurable assets' against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake; and
- (b) damage insurance against property, death, bodily injury or illness.

45 The strata company bears the onus to ensure the policy issued by the insurer covers the matters required by s 97(1) of the ST Act.

46 Importantly s 97(1)(a) refers to 'replacement value'. This type of insurance provides that in the event of the building's destruction, the insurer is to pay whatever it costs for the construction of an as new building.

47 In this case, the strata company:

- (a) had in place insurance for the strata titles scheme insurance up to 31 August 2020 (the 2019/20 insurance year);
- (b) does not have in place from 31 August 2020 (that is the 2020/21 insurance year), the required insurance for the strata titles scheme in relation to all insurable assets of the scheme to replacement value or to replacement value up to, for an event of a specified kind (for example, tempest) a maximum amount specified in the contract of insurance that is a reasonable limitation in the circumstances as required by s 97(1)(a) of the ST Act; and
- (c) before making its application to the Tribunal, the strata company made enquiries about having the insurance in place for the strata titles scheme to meet the requirements of s 97(1)(a) of the ST Act from 31 August 2020 (2020/21 insurance year).

48 It is clear from the submissions made by the strata company that in the strata company's view, it does not make commercial sense for a lot owner to pay \$14,000 or more for strata levies including an insurance

premium when the owner's unit will sell for no more than \$60,000 and that debt collections will 'go through the roof' as 75% of the lot owners won't be able to pay the levy and won't be able to sell their unit.<sup>38</sup> However, there is nothing in s 97(1) or s 97(3) of the ST Act which in anyway qualifies the requirement for insurance by reference to the financial capacity of the lot owners.

49           The strata company did not refer the Tribunal to any relevant case law.

50           The Tribunal notes there is no case law on s 97(3) of the ST Act (or its predecessor at s 103J). Although there are similar provisions to s 97(3) of the ST Act in the legislation of other Australian States (for example s 172 of *The Strata Schemes Management Act 2015* (NSW), the Tribunal was not able to find any decided cases on the issue of granting an exemption to a strata company from having insurance in place.

51           In a different context, in the case of *Thomas Baric and The Owners of Killara - Strata Plan 732* (1997) WASTR 878 (*Baric*) the Strata Titles Referee ordered the strata company to arrange to have particular building works carried out and that it raise a levy sufficient to meet the costs involved in the undertaking, completion and supervision of that work. The Strata Titles Referee stated with reference to the strata company's duty under s 35 of the ST Act (as it was before 1 May 2020) that:

I appreciate that the necessary works involve cost factors which may create difficulties for some or even many proprietors of lots in the scheme but, in the event of major damage to or deterioration of the building or the death or injury to any person as a result of the necessary remedial works not being carried out, the cost to lot proprietors could be much more than the cost of carrying out repair and remedial work now.

52           The issue raised in *Baric* is relevant in this matter. That is, the cost to the lot owners from an insurable event happening (for example from a cyclone) could be much more than the cost of paying the insurance premium now.

53           The difficulties in raising funds as foreshadowed by the strata company can be resolved by the strata company holding a general meeting or meetings, at which resolutions are passed to raise the necessary levies and the authorising of the strata company to commence

---

<sup>38</sup> ts 104, 20 January 2021.

action against defaulting owners, and authorising the strata company to raise the necessary funds by borrowing, in the event of any shortfall.

54 The concern of rising insurance premiums for strata complexes is not limited to the strata company. This is clear from the ACCC inquiry as noted earlier, where the ACCC reported the growing concern about the availability of strata insurance throughout northern Australia as well as the increasing premiums.

55 The strata company's concern for the ability of lot owners to pay an increased levy to cover the insurance premium when the value of units is decreasing is understandable. However, ultimately, if a lot owner cannot afford to pay his or her share of the strata levies which include proper insurance, that owner will either have to borrow the necessary funds, or consider disposing of the property, even in a weak property market. While that result may be unfortunate, the same situation would arise for the owner of a property held under a conventional freehold title, who realises that insurance (or any other expense to do with the property) has become too expensive.

#### **Discretion in s 97(3) of the ST Act**

56 The ST Act does not set out any guiding principles for the Tribunal to consider in exercising its discretion to make an order under s 97(3) of the ST Act.

57 The Tribunal may make an order under s 97(3) of the ST Act exempting the strata company from compliance with s 97(1) of the ST Act subject to any conditions specified in the exemption.

58 Ms Richardson for the strata company put the following proposal forward at hearing in seeking an exemption under s 97(3) of the ST Act:<sup>39</sup>

[T]he strata company proposal is to place the sum of \$500,000 in an account solely for the use of covering insurance claims that would otherwise be covered if the property was insured, and each year to ensure that should any claims be paid out that that amount is maintained.

...

[I] would suggest the strata company would raise a further – in their budget, \$250,000. And throughout the course of the year those funds would also be transferred to the insurance fund.

---

<sup>39</sup> ts 102-103, 20 January 2021.

59 Ms Richardson explained that the above proposal would enable the strata company to have \$500,000 available for insurance claims in the first year, followed by \$750,000 (\$500,000 + \$250,000) in year two and so on until the strata company received \$1.250 million in year four.<sup>40</sup> The strata company's position is that the \$1.250 million paid over the four years will 'cover any possible [insurance] claims that may arise'.<sup>41</sup>

60 In the Tribunal's view, there are at least three difficulties with the proposal put forward by the strata company. First, the \$1.250 million is sufficient to cover some insurance claims but it would not be enough to cover the cost of the strata complex if it had to be replaced due to an insurable event (for example, a cyclone which destroyed the strata complex) as the replacement cost is in excess of \$45 million. Second, the Balance Sheet as at 20 January 2021 already has outstanding levies of \$404,063 (or approximately 36% of net assets). In what Ms Richardson and Ms Maylam described as an already weak property market for this strata complex, it is likely to be difficult for the strata company to recover the already outstanding levies as well as a further levy to cover the strata company's proposal. Third, the fact that the required level of insurance coverage is expensive (in this case in excess of \$1 million) does not of itself mean the strata company cannot comply with its obligations. While there may be reasons why the strata company does not want to pay an insurance premium in excess of \$1 million, it is not the case here that the strata company cannot comply with its insurance obligations. In other words, it is unlikely that an insurance premium which is considered to be very expensive and which has increased in a short period of time would support the conclusion that the strata company cannot comply with its obligations.

61 Reading s 97(3) in the context of s 97 of the ST Act and the ST Act as a whole, the Tribunal considers that a strata company *may* be exempted from compliance with s 97(1) of the ST subject to any conditions specified in the exemption where:

- (a) a reasonable strata company could in the circumstances properly form the view that the strata company in question has taken all reasonably practicable steps to obtain the required insurance and *no* reasonable offer of insurance was received; or

---

<sup>40</sup> Ibid 103.

<sup>41</sup> Ibid 104.

- (b) a reasonable strata company would properly conclude that the strata company in question cannot comply with its insurance obligations; or
- (c) the strata company has at all times during the relevant insurance period sufficient liquid assets to the replacement value of the insurable assets.

62 Of course the range of considerations is not closed and other matters may be relevant in a particular case, although apart from the proposal (as set out above), no other considerations were suggested by the strata company in the circumstances of this case.

63 In the Tribunal's view, the proposal put forward by the strata company does not fall into the range of considerations that the Tribunal would exempt under s 97(3) of the ST Act.

64 Insurance is vital for protecting assets and improving resilience. In strata titles schemes, insurance cover and any changes thereto will have implications for all strata lot owners (and occupiers). If the strata company has insufficient or no insurance for the insurable assets of the strata titles scheme, this will leave strata lot owners unprotected and vulnerable, should an insurable event arise. This is particularly true for strata owners on lower incomes, as they are least able to absorb losses or readily replace or fix damaged property.

### ***Conclusion***

65 While the Tribunal acknowledges that South Hedland and the strata complex is unique, for the reasons set out above, the exemption sought under s 97(3) of the ST Act for the insurance period 31 August 2020 to 31 August 2021 (2020/21 insurance year) is refused. This means the strata company's application is unsuccessful.

### ***Orders***

The Tribunal orders:

1. The exemption sought by applicant, The Owners of High Rise Strata Plan 8245, under s 97(3) the *Strata Titles Act 1985* (WA) for the insurance period 31 August 2020 to 31 August 2021, is refused.

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

MS R PETRUCCI, MEMBER

16 MARCH 2021