
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : STRATA TITLES ACT 1985 (WA)

CITATION : CARSON and CROSBIE [2022] WASAT 23

MEMBER : DR B MCGIVERN, MEMBER

HEARD : 9 DECEMBER 2021

DELIVERED : 18 MARCH 2022

FILE NO/S : CC 1804 of 2021

BETWEEN : MARK ANDREW CARSON
ADAM MICHAEL FARRAND
Applicants

AND

DEBRA CROSBIE
Respondent

Catchwords:

Strata titles scheme - Lots and common property in a two-lot survey-strata scheme connected to a bore on respondent's lot - Bore and reticulation paid for and installed by previous lot owners - Respondent intending to disable access to bore water for applicants' lot and common property - Whether bore a 'utility service' - Whether 'utility service easement' exists

Legislation:

Strata Titles (General) Regulations 2019 (WA), Pt 5

Strata Titles Act 1985 (WA), s 3, s 14, s 33, s 61, s 62, s 63, s 63(1), s 63(2), s 63(3), s 64, s 90, s 127, s 140, s 197, s 197(1), s 197(1)(a), s 197(2), s 197(4),

s 200, Pt 8, Div 1, Pt 4, Div 2, Pt 13, Pt 5, Div 3,
Strata Titles Amendment Act 2018 (WA)

Result:

Application dismissed

Representation:

Counsel:

Applicants : In Person
Respondent : N/A

Solicitors:

Applicants : N/A
Respondent : N/A

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

Commissioner of Police v Thayli Pty Ltd [2020] WASC 43

Rechichi and Johnston [2021] WASAT 79

Redset Nominees Pty Ltd and The Owners of Spinnakers Apartments Strata
Plan 53824 & Ors [2021] WASAT 96

REASONS FOR DECISION OF THE TRIBUNAL:

(This application was heard on 9 December 2021. An oral decision was delivered on 18 March 2021. The following reasons comprise the reasons that were delivered orally, subject only to minor editing).

Introduction

1 On 8 March 2022, I made orders dismissing the application and listing this hearing to deliver my reasons for that decision. These are my reasons.

2 At its heart, this proceeding concerns a dispute about access to a bore (**Bore**) and associated reticulation infrastructure situated within a two-lot survey-strata scheme in Greenwood (Survey Strata Plan 56471) (**Scheme**).

3 The Scheme comprises two lots and an area of common property constituting a driveway flanked by garden beds. The applicants own Lot 2 (known as 10 O'Hara Court, Greenwood). The respondent owns Lot 1 (known as 8 O'Hara Court, Greenwood), on which the Bore is situated.

4 To date, Lot 2 and the Scheme common property have accessed water from the Bore via reticulation infrastructure comprising controllers and underground pipes (**Reticulation**). The respondent has communicated her intention to disable that access. The applicants seek orders from the Tribunal to prevent such action.

Procedural background

5 The applicants commenced the proceeding on 8 November 2021 by filing an application (**Principal Application**) under s 197(4) of the *Strata Titles Act 1985* (WA) (**ST Act**). In these reasons, any reference to a statutory provision is (unless otherwise stated) a reference to the ST Act.

6 The following day, the applicants also filed an application for orders to be made on an interim basis (**Interim Application**). Both applications proposed orders in the following terms (**Proposed Orders**):

[1] Continued access to the jointly owned shared bore and reticulation infrastructure.

- [2] Have the jointly owned shared bore and reticulation infrastructure registered as a utility service easement under s.63 [of the ST Act] on Strata Title Plan.
- [3] Have the jointly owned shared bore and reticulation infrastructure registered as a common property (utility and sustainability) infrastructure easement under s.64 [of the ST Act] on Strata Title Plan.
- [4] Have the jointly owned shared bore and reticulation infrastructure registered as a by-law of the Strata Company on the Strata Title Plan.
- [5] Direct the owner of 8 O'Hara Court Greenwood, Ms. Debra Crosbie to engage in Strata Company meetings to develop a written agreement for the maintenance and running costs of the jointly owned shared bore.
- [6] Direct the owner of 8 O'Hara Court Greenwood, Ms. Debra Crosbie to engage in Strata Company meetings to develop a written agreement for the maintenance and running costs of the shared common property.
- [7] Direct the owner of 8 O'Hara Court Greenwood, Ms. Debra Crosbie to engage in Strata Company meetings into the future to ensure the proper running of the Strata Company in accordance with the provisions of the Strata Title Act 1985.

7 Pursuant to directions made on 15 November 2021, the Principal Application and the Interim Application were to be heard and determined together at a final hearing held on 9 December 2021.

Issues

8 To determine the proceeding, I have needed to decide the following matters:

- a) Is the proceeding a 'scheme dispute' within the meaning of s 197(4) of the ST Act, and if so, to what extent?
- b) Does an easement under the *Strata Titles Amendment Act 2018* (WA) (**STA Act**) exist in relation to the Bore or Reticulation?
- c) Does the Tribunal have discretion to make any or all of the orders sought by the applicants? If so, should it exercise that discretion in favour of the applicants?

Evidence

9 Prior to the hearing, the Tribunal compiled a hearing book which contained the materials filed by the parties prior to the hearing. The hearing book was taken into evidence as Exhibit 1 and includes:

- a) the survey-strata plan for the Scheme;
- b) witness statements filed by the applicants¹ from:
 - a. Mr Christopher Finn (8 November 2021);
 - b. Ms Janice Vella (8 November 2021);
 - c. Ms Elizabeth Clarke (7 November 2021);
 - d. Mr Dario Nardi (7 November 2021); and
 - e. Mr Gary John Carson (14 November 2021);
- c) photographs and schematic drawings filed by the applicants;
- d) various correspondence passing between the parties; and
- e) contracts for the sale of land filed by each party in connection with the purchase of their respective Lots.²

10 The applicants attended the hearing, and both gave evidence and made oral submissions. They called one witness, Mr Gary Carson. The respondent did not attend the hearing.

Material facts

11 Because the respondent did not attend the hearing, the evidence led by the applicants is uncontested. I make the following findings of material fact from the evidence contained in Exhibit 1, and from the applicants' further oral evidence given at the hearing.

The Scheme

12 The Scheme was created upon the registration on 1 April 2009 of Survey-Strata Plan 5647³ (**Plan**) on a parcel of land at 8 O'Hara Court,

¹ Exhibit 1, pages 124-128.

² Exhibit 1, pages 174-181 and 129-130.

³ Exhibit 1, pages 13-18.

Greenwood. As noted previously, the Scheme comprises two lots and an area of common property. More specifically, as appears from the sketch on the Plan:⁴

- a) the parcel of land comprising the Scheme is roughly trapezoid in shape, with the front (northern) boundary being around 18 metres in length, abutting O'Hara Court. The parcel widens to the rear, with the southern boundary being around 40 metres in length;
- b) Lot 1 occupies an area of 493m², situated to the front and eastern aspects of the parcel, with around 12.5 metres of street frontage to O'Hara Court, extending to a narrow portion of the rear of the parcel on the eastern side;
- c) Lot 2 occupies an area of 368m² situated to the rear and western aspects of the parcel, without direct street frontage; and
- d) Lot 2 is accessed via a common property driveway which runs along the north-eastern boundary of the parcel, beginning with a width of around 5.5 metres, and widening to around 6.9 metres where it abuts Lot 2.

- 13 One encumbrance is registered against the Plan, being an intrusion easement pertaining to an area of common property where the corner of the roof and gutter of Lot 1's residence overhangs the driveway.⁵

The Bore

- 14 Immediately prior to the applicants and respondent becoming owners of the Scheme Lots, Mr Finn owned the whole of Lot 1, as well as a share, together with Ms Vella, of Lot 2.

- 15 On or about 16 August 2008, Mr Finn and Ms Vella jointly paid for and installed what they described (in their witness statements)⁶ as 'a shared bore' (**Bore**) and 'reticulation infrastructure' (**Reticulation**) to service all lots and the common property in the Scheme, as follows:

⁴ Exhibit 1, page 13.

⁵ Exhibit 1, pages 14, 16.

⁶ Exhibit 1, pages 124, 125.

- a) here are reticulation points throughout the Scheme, connected to the Bore by below-ground pipes forming a reticulation circuit;
- b) the Bore, and master station controller and solenoids for the Reticulation, are located on Lot 1;
- c) a slave station controller for reticulation points in Lot 2 and the common property is located on Lot 2.

16 Mr Finn and Ms Vella agreed that the electricity and maintenance costs of running the Bore and Reticulation would be shared between them.

17 The applicants became the registered proprietors of Lot 2 on 23 January 2012,⁷ having purchased the lot from Mr Finn and Ms Vella under a contract for sale of land executed on 12 December 2011⁸ (**Applicants' Contract**). In the Applicants' Contract:

- a) Mr Finn is stated to have the address 8 O'Hara Court (Lot 1), and Ms Vella is stated to have the address 10 O'Hara Court (Lot 2); and
- b) the 'Special Conditions' include a statement that:

Buyer is aware there is a shared bore, where usage is paid for and any maintenance/repairs is [sic] jointly shared[.]

18 Sometime later, Mr Farrand and Mr Finn entered into a written agreement (**Bore Agreement**) pertaining to the shared use of the Bore,⁹ in terms that:

- a) granted to the owners of Lot 2 the use of the Bore and Reticulation for the reticulation of their property and the common property gardens;
- b) in return for the use of the Bore, the owners of Lot 2 would pay a fee of \$150 per annum;
- c) in the event that the solenoids located on Lot 1, or any part of the Bore, were not functioning correctly, both

⁷ Exhibit 1, page 19.

⁸ Exhibit 1, pages 129-130.

⁹ Exhibit 1, page 40.

owners would share the costs to have it repaired immediately; and

- d) maintenance costs for the Bore were not included in the Bore Agreement - if such costs arose, they would be discussed by the owners.

19 The respondent purchased Lot 1 from Mr Finn pursuant to a contract for sale of land executed 27 February 2014 (**Respondent's Contract**).¹⁰ Neither the Special Conditions nor the Sale of Strata Lot Disclosure Statement in the Respondent's Contract mentioned the Bore or Reticulation, or the Bore Agreement.

The dispute

20 For some time, between 2014 and 2021, the applicants and respondent enjoyed a largely amicable relationship.¹¹ The applicants continued to access water from the Bore to reticulate their garden and the common property garden beds.

21 The applicants gave evidence, which I accept, that they agreed to take over the costs and maintenance of the common property garden beds, and the respondent did not seek an annual fee for them to access the Bore water. (The witness statements from each of Ms Clarke and Mr Nardi, who occupy neighbouring properties, are to the effect that the applicants regularly maintain the driveway and associated garden beds).

22 It appears that from or around early 2021, the relationship between the parties soured. That change appears to have been precipitated by a quantity of rainwater running off the respondent's roof onto the common property driveway, and tensions between the parties about how to remedy that situation. It appears that the local council (the City of Joondalup) was asked to intervene in that matter and, shortly thereafter, the respondent switched off the applicants' 'access via the slave controller to the Bore'.¹²

23 In March 2021, the applicants sought (voluntary) mediation through the City of Joondalup in relation to the parties' dispute about

¹⁰ Exhibit 1, pages 174-181.

¹¹ The evidence of Mr Gary Carson was directed largely to this matter.

¹² ts 17, 9 December 2021.

access to the Bore.¹³ The respondent declined mediation¹⁴ but reactivated the Bore access within a few days.¹⁵

24 In or about early October 2021, the respondent again disabled access to the Bore from the slave controller (effectively disconnecting all reticulation points outside Lot 1). On 15 October 2021, the applicants received a letter from the respondent in the following terms:

... [T]he bore water supply to your property will be disconnected 1 month from the date of this letter, which should give you sufficient time to make alternative arrangements for your reticulation water supply[.]

25 In the same letter, the respondent asked that all communication about the matter be directed to Mr Simon Ward.

26 The applicants again requested mediation to be facilitated through the City of Joondalup, which request was also declined.

27 By letter dated 2 November 2021,¹⁶ the applicants sought a meeting of the strata company on 4 November 2021 to discuss the following agenda items:

- maintenance of the shared common property;
- costs associated with the shared common property;
- easements including utilities s 63;
- rectification of stormwater drainage;
- shared common property infrastructure;
- governance by-laws Sch 1; [and]
- conduct by-Laws Sch 2.

28 By email dated 3 November 2021, Mr Ward on behalf of the respondent, advised that the disconnection of the Bore had been put on hold pending the respondent's receipt of advice in relation to her position, and declining to attend mediations or strata company meetings 'until the facts [were] known'.

29 The applicants commenced this proceeding on 8 November 2021.

30 By email dated 10 November 2021, Mr Ward on behalf of the respondent wrote to the applicants reiterating that the respondent would not attend mediations or meetings with the applicants and stating that:

¹³ Exhibit 1, page 67.

¹⁴ ts 18, 9 December 2021.

¹⁵ ts 19, 9 December 2021.

¹⁶ Exhibit 1, page 103.

- a) the Bore would be disconnected on 9 December 2021 unless the applicants could produce a document signed by the respondent upon her purchase of Lot 1 showing her agreement to share the Bore;
- b) the respondent did not give permission to the applicants to plant trees in the common property garden beds; and
- c) (though not relevant to this proceeding) the respondent would not pay towards any further drainage works as the drainage problem was on the applicants' property.

The parties' positions

31 The applicants' contentions may be summarised as follows:

- a) the Bore and Reticulation have been in place since 2008, and the cost of its installation was shared by the (previous) owners of the Scheme lots;
- b) the ownership of, and right to access, the Bore is shared jointly between the owners of the lots from time to time;
- c) the agreement to share the Bore and Bore water was transferred from the former owners of the lots (Mr Finn and Ms Vella) to the current owners (the parties to this proceeding);
- d) the supply of water from the Bore constitutes a utility service;
- e) there is a utility service easement (or other easement) in relation to the Bore and Reticulation that relevantly burdens Lot 1, and benefits Lot 2 and the common property;
- f) the parties are jointly responsible for running and maintaining the Bore and the Scheme common property; and
- g) in the circumstances, the Tribunal should exercise its discretion to make the Proposed Orders.

32 The applicants rely in particular on s 63 of the ST Act (though also made reference to s 64) in support of their position.

33 As the respondent did not attend the hearing, she made no oral submissions in response to the applications. She did, however, file a bundle of documents on 29 November 2021 in support of her position. Those documents contain notes made by her 'spokesperson'¹⁷ Mr Ward, from which it appears that the respondent's position is that:

- a) when the respondent acquired Lot 1, no disclosure was made to her concerning any interest in or about the Bore burdening the lot;
- b) the respondent acquired Lot 1 unencumbered by any interest that would entitle the applicants to access the Bore or Reticulation on Lot 1;
- c) any rights that the applicants might previously have had in connection with the Bore and Reticulation were extinguished upon transfer of the land to the respondent;
- d) the access that the respondent has granted to the applicants in connection with the Bore is not an interest in land and can be revoked by her;
- e) the applicants have no rights in connection with the Bore; and
- f) the Tribunal cannot make orders that would have the effect of granting the applicants any right to access the Bore.

Is this a 'scheme dispute'?

34 As is well established, the Tribunal is a creature of, and exercises only such power as is conferred by, statute (in this case, the ST Act).

35 In ***Rechichi and Johnston*** [2021] WASAT 79, I considered the nature and sources of the Tribunal's powers to deal with scheme disputes involving proposed structural alterations and:

¹⁷ By letter dated 21 November 2021, filed with the Tribunal on 22 November 2021, the respondent stated that she authorised Mr Ward to 'be [her] spokesperson and to act on [her] behalf'.

- a) noted that the ST Act confers broad jurisdiction on the Tribunal to determine scheme disputes (under Pt 13), but also confers specific powers to deal with disputes concerning particular subject matter;
- b) held that the Tribunal's jurisdiction to resolve 'scheme disputes' under s 197 (which is in Pt 13) is so broad as to include and incorporate (at least in disputes between scheme participants) the jurisdiction conferred under other more specific provisions (relevantly, s 90) of the ST Act; and
- c) however, determined (at [26]) that:
 - a) where a dispute is properly characterised as being a dispute about subject matter falling under a specific provision or provisions of the ST Act (in this case, s 90), then the jurisdiction of the Tribunal to deal with that dispute is limited by the terms of that provision / those provisions; and
 - b) where the subject matter of the dispute in question and/or the relief sought falls outside the scope of any specific provisions, then the Tribunal must decide:
 - i) whether the Act, properly construed, evinces an intention to 'cover the field' of the subject matter within the constraints of the specific provisions; or
 - ii) whether it has 'residual' power to deal with it under its broad jurisdiction in Pt 13.

36 As noted in *Redset Nominees Pty Ltd and The Owners of Spinnakers Apartments Strata Plan 53824 & Ors* [2021] WASAT 96 (*Redset Nominees*):

That approach and reasoning is consistent with established approaches to statutory construction, which include:

- a) where statutory provisions intersect, a construction that favours the greatest congruity or coherence between those provisions is to be favoured;
- b) each provision in a legislative instrument should have 'work to do'; and

- c) accordingly, if it is clear that a specific provision was intended to deal with a topic, it will usually prevail over general provisions in relation to that topic.¹⁸

37 In this case, there is no doubt that the proceeding meets, or is capable of meeting, the description of a 'scheme dispute' under s 197(1), being:

- a) a dispute between 'scheme participants' within the meaning of s 197(1)(a) and s 197(2), namely the applicants and respondent, who are each 'members' of the strata titles scheme (being an owner for the time being of a lot in the Scheme); and
- b) to the extent that it is about the existence of an easement under the ST Act, and about responsibility for the maintenance of common property in the Scheme, concern matters 'arising under this Act or the scheme by-laws' as contemplated by s 197(1)(a).

38 It is important to emphasise, however, the Tribunal does not exercise a general jurisdiction to determine contractual disputes or disputes concerning interests in land (except as dealt with under the ST Act).

Does an easement under the ST Act exist?

39 Relating to the above points:

- a) the existence or otherwise of an easement relating to the Bore and Reticulation can only be determined to the extent that it is a 'matter arising under the Act'; and
- b) to that extent, in accordance with the specific provisions under the ST Act dealing with easements.

40 The ST Act deals with two classes of easement:

- a) short form easements (dealt with in s 33 - forming part of Pt 4, Div 2 entitled 'Scheme Plans'); and
- b) statutory easements (dealt with in Pt 5, Div 3, which creates, as a matter of law, four specific kinds of easement, as follows:

¹⁸ *Redset Nominees* at [30].

- i) easements for support, shelter and projections of lots (s 61) and common property (s 62);
- ii) utility service easements, which exist for the benefit and burden of each lot and the common property (s 63); and
- iii) common property (utility and sustainability infrastructure) easements (s 64).

Is there a short form easement?

41 As is clear from s 33 read together with the associated regulations in Pt 5 of the *Strata Titles (General) Regulations 2019* (WA), a short form easement (which may deal with various matters including for one or more utility service) must be registered on the scheme plan in question. Once registered, the easement runs with the land.

42 Having regard to the encumbrances registered on the Plan, there is no such easement relating to the Bore or Reticulation in this case.

43 Section 33 specifically provides that it does not derogate from any other method by which an easement or restrictive covenant may be created over a parcel. I turn, therefore, to the question of statutory easements.

Is there a statutory easement?

44 Of the easements created under Pt 5 Div 3 - and as is (appropriately) reflected in the applicants' submissions - only s 63 has any arguable connection with the subject matter of this dispute.

- a) Clearly, this matter does not involve any question of 'support, shelter or projections' as contemplated by s 61 and s 62.
- b) Further, s 64 creates a class of easement that benefits the common property, and applies only if 'a strata company has entered into a contract (an infrastructure contract) with a person', and '[s 64] is applied to the infrastructure contract by ordinary resolution of the strata company'. Nothing in the evidence suggests that these threshold criteria are met in this case.

45 Turning, then, to utility service easements under s 63, that section provides:

- (1) An easement (a *utility service easement*) exists for the benefit and burden of each lot and the common property in a strata titles scheme to the extent reasonably required for the provision of utility services to each lot and the common property.
- (2) A utility service easement entitles the strata company, and the owner of a lot, in the strata titles scheme -
 - (a) to install and remove utility conduits; and
 - (b) to examine, maintain, repair, modify and replace utility conduits.

46 Relevantly, pursuant to s 3:

utility service means -

- (a) the collection and passage of stormwater; or
- (b) the supply of water for drinking or any other use; or
- (c) a sewerage and drainage service; or
- (d) a garbage collection service; or
- (e) a gas, electricity or air service, including air conditioning and heating; or
- (f) a communication or data service, including telephone, radio, television and internet; or
- (g) a service classified by the regulations as a utility service; or
- (h) another like service.

47 In this case, as outlined above, it is uncontentionous that the Bore itself is situated within in Lot 1. (I note that survey strata titles are interests in land, although the Survey-Strata Plan may specify and thereby limit the depth and height of the land. Although it appears from the Plan¹⁹ that the depth of each lot is limited to 60 metres, there is nothing to suggest that the Bore is below that depth and does not form part of the respondent's property. In the event, for the reasons that follow, little turns on that matter).

¹⁹ Exhibit 1, pages 13-18.

48 The applicants contend that the Bore constitutes a 'utility service' under sub-para (b) of the definition of that term because it constitutes the supply of water for reticulation (being 'any other use').

49 Further, they argue that the Reticulation constitutes 'utility infrastructure' which is defined as 'infrastructure and equipment necessary for, or related to, the provision of a utility service', and includes 'utility conduits' (being 'a conduit for the provision of a utility service including pipes, wires, cables and ducts').²⁰

50 The applicants referred to **Redset Nominees**²¹ in support of those contentions, and of their applications.

51 As is emphasised by that decision however, it is important to construe legislative provisions by reading them as a whole, in context, including by reference to the purpose they serve.²²

52 Relevant to this case, the easement created by s 63:

- a) exists only to the extent reasonably required for the provision of utility services to each lot and the common property: s 63(1);
- b) extends to the installation, removal, maintenance, repair and replacement of utility conduits: s 63(2); and
- c) must be exercised, as far as practicable, so as to minimise interference with the use and enjoyment of lots and common property in the strata titles scheme: s 63(3).

53 Reading s 63 as a whole, it is clear that the burdens and benefits created by the easement:

- a) are directed to the *connection of* lots (and common property) to a utility service to *facilitate* the provision of a utility service that the lot owner is otherwise permitted to access; and
- b) are not directed to the underlying entitlement *to connect to and draw from* a utility service.

²⁰ ST Act, s 3.

²¹ Specifically, at [74]-[80].

²² **Redset Nominees** at [28], citing *Commissioner of Police v Thayli Pty Ltd* [2020] WASC 43 at [29] and [31].

54 That is, a utility service easement assumes, and arises from, an existing right to connect the lot (or common property) to the relevant utility service. It does not facilitate or support an asserted right to do so.²³

55 Further, the requirement in s 63(3) to minimise, *as far as reasonably practicable*, interference with the use and enjoyment of any other lot would, in the absence of a right to connect to the utility service, usually render any benefits under a utility service easement nugatory. That is, if there is little or no practical utility in establishing and maintaining a physical connection to the service, there would be no reasonable grounds to interfere with another lot.

56 Accordingly, for the Tribunal to find and to make orders giving effect to an easement under s 63, it must be satisfied that the applicant has an entitlement to access the utility service in question. The entitlement to the supply of a utility service will also bear upon the reasonableness and extent of any interference with another lot to facilitate the connection proposed.

a) In most cases, those entitlements (to connect to and draw on a utility service) are not matters of dispute between the parties and can be assumed. ***Redset Nominees*** was such a case - it concerned a utility service easement that enabled the applicants' existing power supply to be connected from one part of a lot, across common property, to another part of the lot. The right to access power from the electricity provider was not in question.

b) The Tribunal might also be satisfied of the existence of such entitlements by taking of evidence, for example from the utility service provider.

57 This is not such a case. There is no independent service provider and there is a dispute between the parties about the applicants' entitlement to connect to and draw water from the Bore. The determination of that entitlement lies outside the Tribunal's jurisdiction.

²³ By way of example, notwithstanding that the definition of 'utility service' includes 'air conditioning', it could not be argued that s 63 would permit one lot owner in a strata complex to connect to and draw cooling from their neighbour's multi-system inverter.

Can and should the Tribunal make the Proposed Orders?

58 The Tribunal's power to make orders to resolve a proceeding under the ST Act derives from s 200, which confers a broad discretion to 'make any order it considers appropriate'. However, as I have observed in previous decisions:

[T]he discretion of the Tribunal under those [remedial] provisions is properly exercised only once the merits of an underlying dispute have been considered and determined under (other) relevant provisions of the ST Act, and in a manner reflective of those merits.²⁴

59 As to the orders proposed by the applicants:

Proposed Orders 1-4 (pertaining to the Bore and Reticulation)

60 It is plain from the terms of Proposed Orders 1-4,²⁵ and from the applicants' submissions in support of their applications, that the applicants:

- a) do not seek so much to preserve the physical infrastructure of the Reticulation connecting Lot 2 and the common property to the Bore (and indeed there is no evidence to the effect that the respondent seeks to disturb that infrastructure); but rather
- b) seek to establish joint ownership of the Bore and Reticulation and to preserve the supply of Bore water to Lot 2 and the common property.

61 It follows from the reasoning and conclusions above that I do not consider it appropriate to make, and decline to make, an order in those terms.

62 I note that the second and third Proposed Orders are in terms that easements under s 63 and s 64 be registered - in that regard, I observe that had I found easements under s 63 or s 64 to exist then it would be unnecessary for me to order their registration (since statutory easements have force under and by reason of the Act itself).

Proposed Orders 5-7 (engagement in strata company meetings)

63 Very little of the applicants' submissions were addressed to the merits of making orders in terms of Proposed Orders 5, 6 and 7 - which

²⁴ *Redset Nominees* at [82].

²⁵ See [6] above.

are concerned with the future conduct of the respondent relating to the management of the Scheme common property and strata company more broadly. They are in terms that would direct the respondent to:

- a) engage in strata company meetings to 'develop a written agreement' for the maintenance and running costs of both the Bore and the common property; and
- b) engage in strata company meetings 'into the future' to 'ensure the proper running of the Strata Company in accordance with the provisions of the [ST Act]'.²⁶

64 Briefly addressing the merits of the matters underlying those Proposed Orders, I note that:

- a) Pursuant to s 14 of the ST Act, a strata company comprises the owners for the time being of the lots in the strata titles scheme (in this case, and at this time, the applicants and the respondent).
- b) The functions of a strata company are set out in Pt 8, Div 1 of the ST Act. Those functions notably include:
 - i) a 'general duty' to control and manage the common property for the benefit of all the owners of lots, and to keep the common property and any personal property owned by the strata company in good and serviceable repair (with the power also to improve and alter the common property);
 - ii) to ensure that insurance is in place in respect of all insurable assets of the scheme and in respect of any damage to property, death, bodily injury or illness for which the strata company could become liable in damages; and
 - iii) to undertake the 'financial management' of the scheme.
- c) There are various provisions in the ST Act relating to the calling and holding of meetings of the strata company, and for contributions to be raised by levies.

²⁶ See [6] above.

- d) Strata companies must raise contributions from owners to discharge their obligations and functions.²⁷
- e) The ST Act entitles but does not require owners to attend meetings of the strata company.²⁸

65 It is plain that:

- a) as a matter of law, both parties comprise the strata company for the Scheme and so have a statutory duty to maintain the common property²⁹ in the Scheme; and
- b) the strata company may raise funds by levying contributions in proportion to owners' unit entitlements, to meet such obligations.

66 However, relevant to the exercise of discretion in this case:

- a) orders should be clear in terms of the demands or restraints imposed on a party. Orders to 'develop an agreement' and to take action for an unspecified time 'into the future' are inherently uncertain; and
- b) further, an order requiring the respondent's attendance at (and engagement in) strata company meetings would in my view be inconsistent with the ST Act .

67 It follows that I decline to make orders in terms of Proposed Orders 5, 6 and 7.

Interim order

68 Finally, I note for completeness that, at the conclusion of the hearing of the applications, I made an interim order to preserve the status quo between the parties pending determination of the dispute. That order expired on 8 March 2022 and has no further effect.

Orders

69 The Tribunal orders:

²⁷ ST Act, Pt 8, Div 1, Sub-div 2 (Financial management). But see ST Act, s 140 (Special rules for 2, 3, 4 or 5-lot schemes).

²⁸ ST Act, Pt 8, Div 3, Sub-div 2 (Meetings of strata company). Notably, pursuant to s 127, there is no requirement for a 2-lot scheme to hold annual general meetings. See also ST Act, s 140 (Special rules for 2, 3, 4 or 5-lot schemes).

²⁹ Being the driveway and associated garden beds.

1. The application is dismissed.

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

DR B MCGIVERN, MEMBER

23 MARCH 2022