
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : STRATA TITLES ACT 1985 (WA)

CITATION : SINGH and UNITINGCARE WEST [2022] WASAT 18

MEMBER : MS C CONLEY, MEMBER

HEARD : 27 OCTOBER 2021

DELIVERED : 8 MARCH 2022

FILE NO/S : CC 1120 of 2021

BETWEEN : GAJENDER PAL SINGH
Applicant

AND

UNITINGCARE WEST
First Respondent

THE OWNERS OF PICCADILLY SQUARE
(STRATA SCHEME 10672)
Second Respondent

Catchwords:

Strata titles - Common property - Resolution for installation of three bike rails and bollard on common property - Whether installation of bike rails and bollard falls within duties of strata company under s 91 of *Strata Titles Act 1985* (WA) - Whether resolution invalid due to inconsistency with s 119 of *Strata Titles Act 1985* (WA) or *Perth Parking Management Act 1999* (WA)

Legislation:

Perth Parking Management Act 1999 (WA), s 4, s 6, s 7, s 8(1), s 9, s 9(1), s 10, s 15(1), s 15(3)

Perth Parking Management Regulations 1999 (WA) reg 4, reg 6, Sch 1

Planning and Development Act 2005 (WA)

State Administrative Tribunal Act 2004 (WA), s 47(1)

Strata Titles (General) Regulations 2019 (WA), reg 80, reg 80(1), reg 81

Strata Titles Act 1985 (WA) (Prior to 1 May 2020), s 32(3)(d), s 42(8), Sch 1, Sch 2

Strata Titles Act 1985 (WA), s 3, s 7(b), s 10(1), s 10(2), s 10(3), s 13(5)(c), s 14(5)(d), s 14(6), s 14(8), s 47(3), s 91, s 91(1), s 91(1)(b), s 91(2), s 92(1), s 92(3), s 92(4), s 93, s 93(3), s 102, s 102(5), s 102(5)(b), s 102(8), s 116, s 116(1)(i), s 117, s 117(1)(b), s 117(2), s 119, s 119(1), s 119(2), s 119(3), s 119(3)(a), s 120, s 120(2)(b), s 122(1), s 123(7), s 129, s 129(1), s 129(2), s 129(3), s 130(1), s 130(5), s 133, s 135(1), s 197, s 198(5), Sch 1, Sch 2A, cl 53C(2)(b), Sch 5, cl 2(1)(b), cl 4

Strata Titles Amendment Act 2018 (WA)

Result:

Application dismissed

Category: B

Representation:

Counsel:

Applicant	: In Person
First Respondent	: MA Atkinson
Second Respondent	: In Person

Solicitors:

Applicant	: N/A
First Respondent	: Atkinson Legal
Second Respondent	: N/A

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

Banning and The Owners of 106 Terrace Road Perth - Strata Plan 6289
[2006] WASAT 296

Birchwood Consolidated Pty Ltd (Receivers and Managers Appointed) (In
Liquidation) v Kelly [2021] WASC 448

Laffin and Renouf [2016] WASAT 48

Rucci & Anor v The Owners of 95 Manudrah Terrace, Mandurah - Strata Plan
20610 [2002] WADC 33

Seghezzi and The Owners of 9 The Avenue Crawley Strata Plan 27842
[2013] WASAT 53

Sisto and The Owners of Glenway Gardens Apartments [2005] WASAT 282

The Owners of Metro Inn Apartments Strata Plan 11800 v Transmetro
Corporation Ltd [2001] WASCA 135

The Owners of Rosneath Farm Survey Strata Plan 35452 and Rowell & Anor
[2007] WASAT 95

Velovski and The Owners of Hector Gardens - Strata Plan 6448
[2004] WASTR 12

Zaffino and The Owners of 20 Kings Park Road West Perth Strata Plan 11161
[2017] WASAT 160

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 The applicant is the owner and occupier of Lot 7 in a strata scheme located in Aberdeen Street in Perth (Scheme).

2 The first respondent is the owner and occupier of Lots 1, 4, 5, 6 and 10 in the Scheme.

3 The second respondent is the strata company for the Scheme (**Strata Company**).

4 The Scheme was created upon the registration, on 2 August 2002, of Strata Plan 10672 (**Strata Plan**). The Scheme comprises 12 commercial lots, namely Lots 1-8, 10, 12-13 and 16.

5 There are a number of car bays located on common property in the Scheme. Forty-five of those car bays are licensed as non-residential car bays under the *Perth Parking Management Act 1999* (WA) (**PPM Act**).

6 At an Annual General Meeting (**AGM**) held on 30 July 2021, it was resolved by ordinary resolution (**Resolution 9**) that the Strata Company, inter alia:

...

- (1) Approves, by way of exercise of the strata company's power to control and manage the common property for the benefit of all owners or, alternatively, the strata company's power to alter the common property, the installation of 3 bicycle rails (Bike Rails) and a single bollard (Bollard) on common property on and subject to the following conditions:

- (a) The Bike rails and Bollard will be purchased by UnitingCare West as agent for the strata company, but at the expense of UnitingCare West.

- (b) The installation of the Bike Rails and Bollard will be arranged by UnitingCare West as agent for the strata company, but at the expense of UnitingCare West.

...

- (3) Authorises UnitingCare West to purchase and install the Bike Rails and Bollard as agents for the strata company, provided that UnitingCare West bears the expense of so doing in

compliance with the conditions in paragraph (1)(a) and (b) of this resolution[.]¹

7 The applicant initially applied to the Tribunal seeking orders under s 47(3) of the *Strata Titles Act 1985* (WA) (**ST Act**) for the enforcement of scheme by-laws. However, on 13 August 2021, the applicant was given leave to amend his application. The application was amended, by substituting for the orders originally sought, the amended orders and amended grounds set out in the applicant's statement of Issues, Facts and Contentions (**SIFC**) filed with the Tribunal on 3 September 2021.

8 In the applicant's SIFC, the applicant has sought the following orders:

1. The resolution of Strata Company (The owners of Piccadilly Square, SP 10672) to approve the installation of Bicycle Rails and Bollard on common property passed at AGM dated 30 July 2021 be declared invalid.
2. The strata company or its agents to refrain from proceeding with the installation of Bike Racks or bollards on common property.
3. First and second respondents to jointly and severally pay the applicant's costs of and incidental of application.

9 In support of his application, the applicant has referred to s 91, s 119, s 133 and s 197 of the ST Act.

Issues for determination

10 The issues for determination by the Tribunal are:

- a) whether the installation of the bike rails (**Bike Rails**) and bollard (**Bollard**) falls within control and management of the common property for the benefit of all the owners of lots under s 91(1)(b) of the ST Act;
- b) whether the installation of the Bike Rails and Bollard falls within improvements or alterations to the common property under s 91(2) of the ST Act (including as sustainability infrastructure); and

¹ Exhibit 1 at pages 137-139.

- c) whether a resolution in respect of a matter arising under s 91(1)(b) or 91(2) of the ST Act must be a resolution without dissent;
- d) whether the Strata Company may authorise the first respondent as its agent to purchase and install the Bike Rails and Bollard at the expense of the first respondent;
- e) whether Resolution 9 is contrary to s 119 of the ST Act;
- f) whether Resolution 9 is contrary to the PPM Act.

The legislative framework

11 Section 91 of the ST Act relevantly provides:

- (1) A strata company must -
 - [(a) deleted]*
 - (b) control and manage the common property for the benefit of all the owners of lots; and
 - (c) keep in good and serviceable repair, properly maintain and, if necessary, renew and replace —
 - (i) the common property, including the fittings, fixtures and lifts used in connection with the common property; and
 - (ii) any personal property owned by the strata company,and to do so whether damage or deterioration arises from fair wear and tear, inherent defect or any other cause.
 - [(d)-(k) deleted]*
- (2) A strata company may improve or alter the common property in a manner that goes beyond what is required under subsection (1).

Note for this subsection:

Expenditure above a certain amount incurred for the purposes set out in subsection (2) must be authorised by special resolution, except for expenditure on sustainability

infrastructure, which may be authorised by ordinary resolution:
see section 102[.]

12

Section 119 of the ST Act provides:

- (1) In performing its functions, a strata company is to have the objective of implementing processes and achieving outcomes that are not, having regard to the use and enjoyment of lots and common property in the strata titles scheme -
 - (a) unfairly prejudicial to or discriminatory against a person; or
 - (b) oppressive or unreasonable.
- (2) In achieving that objective, a strata company -
 - (a) must take into account any failure of a person to act consistently with this Act or the scheme by laws; and
 - (b) must consider the merits of any proposal put to it and the options that are reasonably available in any particular circumstances; and
 - (c) must be aware that -
 - (i) a resolution or other conduct may be overturned for failure to meet that objective despite the fact that it reflects the will of the majority of members of the strata company as expressed through the exercise of their voting powers; and
 - (ii) the fact that a person has chosen to become the owner of a lot does not prevent the person challenging the performance of a function for failure to meet that objective.
- (3) Without limitation, a strata company acts oppressively or unreasonably in passing or not passing a resolution if -
 - (a) the resolution would not have been passed, or not have been passed as a particular type of resolution, but for the fact that a person was improperly denied a vote on the resolution; or
 - (b) the resolution would have been passed, or would have been passed as a particular type of resolution, if a person had properly been given an opportunity to vote on the resolution.

The Tribunal proceedings

13 On 20 September 2021 the Strata Company, through its Council of
Owners (**Council**), notified the Tribunal that it would abide by the
orders of the Tribunal.²

14 Prior to the hearing, the applicant and the first respondent filed
submissions and documents with the Tribunal.

15 A final hearing of the application was conducted on
27 October 2021 (**Hearing**).

16 At the Hearing, a number of facts were either agreed or said not to
be in dispute.³ They include, relevantly for present purposes, the
following facts:

- a) the unit entitlements shown on the Strata Plan
total 100;
- b) the by-laws of the Scheme are those within Sch 1 and
Sch 2 of the ST Act as they were before 1 May 2020,
except as modified by cl 4 of Sch 5 of the ST Act in
effect since 1 May 2020;
- c) the only by-law relevant to this matter is Sch 2
by-law 1:

Vehicles

A proprietor, occupier, or other resident of a lot shall not park or
stand any motor or other vehicle upon common property except
with the written approval of the strata company[.]

- d) the parcel the subject of the Strata Plan (**Parcel**) is
located at 5 Aberdeen Street, Perth, a near Central
Business District (**CBD**) location;
- e) there are no by-laws banning bikes from the Parcel, nor
requiring the Strata Company's approval for bikes to
park on the Parcel;
- f) the Scheme comprises 12 commercial lots: Lots 1-8,
10, 12-13 and 26;

² Exhibit 1 at page 219.

³ ts 5-14, 27 October 2021.

- g) there are no lots 9, 11, 14 or 15 within the Scheme (because of resubdivision);
- h) the applicant owns Lot 7 and consequently an undivided share of the common property;
- i) the first respondent owns and occupies Lots 1, 4, 5, 6 and 10 and consequently an undivided share of the common property;
- j) the car bays are non-residential car bays and there are more than five of them on the Parcel;
- k) the Scheme includes a significant amount of vacant common property land that is given over solely for use as car bays;
- l) most of the car bays have been allocated by the Strata Company for use by an owner, or the occupier and invitees of their lot or lots;
- m) the first respondent has had car bays allocated to it, for use by its invitees;
- n) the applicant has had car bays allocated to him, for use by him, Express Visa Migration Services Pty Ltd⁴ and its invitees;
- o) the car bays have been line marked for many years, including marking indicating the name of the owner or occupier to which it has been allocated or that it is 'private parking' or for use by disabled visitors, etc;
- p) the Bollard and Bike Rails the subject of Resolution 9 are to be located on a part of the common property used to this point as a car bay (**Subject Car Bay**);
- q) the Subject Car Bay has been allocated by the Strata Company to the first respondent for a long time;
- r) car bays are used reasonably heavily by occupiers in the Scheme, and their invitees, but also by people who are not an occupier or invitee (that is, by people who

⁴ The applicant's business.

park on the Parcel because of its convenient near-city location but then leave the Parcel);

- s) there are no bike rails or other facilities for bikes currently on the common property;
- t) there is currently also nowhere for people on bikes visiting the Scheme to leave or lock them up out of the way of other people using the Parcel;
- u) sometimes, people leave a bike on the Parcel close to or on a path immediately in front of the lots and this can block, restrict or inhibit access to lots for other people on the Parcel;
- v) in December 2019 the then Council, at the request of the applicant, issued a breach notice to the first respondent relating to, inter alia, bikes on the common property path and alleged that this was an occupational health and safety risk;
- w) at a meeting on 20 February 2020, the then Council, including the applicant, voted against the first respondent's request that, at no cost to the Strata Company, it be allowed to place bike racks on the common property;
- x) this proposal was part of a Scheme-wide landscaping plan and was not approved as the only location acceptable to the Council was too narrow to enable secure bike parking. Proceeding with this location would have resulted in adjacent vehicles being damaged if bikes fell;
- y) the Strata Company held its 2021 AGM on 30 July 2021 (2021 AGM);
- z) the owners of 10 of the 12 lots were present at the 2021 AGM, either personally or by proxy, and entitled to vote;
- (aa) the owners of Lots 2 and 13 were present at the 2021 AGM by a proxy given to the Chairman;

- (bb) the applicant was physically present at the 2021 AGM, but then owed an amount to the Strata Company and was therefore not entitled to vote on the motions requiring an ordinary resolution to pass (because of s 120 of the ST Act);
- (cc) the subject of this application is Resolution 9 at the 2021 AGM.
- (dd) before voting on Resolution 9, Mr Morse of the first respondent explained the work proposed to those present, including the applicant;
- (ee) the first respondent as the owner of Lots 1, 4, 5, 6 and 10 voted for Resolution 9, as did the owner of Lot 13 - a total of six lots, with collective unit entitlements of 56;
- (ff) the owners of Lots 8, 12 and 16 voted against Resolution 9 - a total of three lots with collective unit entitlements of 37;
- (gg) the Chairman decided to abstain from voting on Resolution 9 on behalf of Lot 2;
- (hh) the owner of Lot 8 left the 2021 AGM after voting on Resolution 9;
- (ii) the applicant chose not to pay what he owed to the Strata Company to allow him to vote on Resolution 9;
- (jj) owners each had the opportunity to decide whether to attend the 2021 AGM personally or not;
- (kk) owners each had the opportunity, if they chose not to attend the 2021 AGM, to instruct a proxy to attend, to instruct them on what to say regarding Resolution 9, and to direct how they were to vote on Resolution 9;
- (ll) financial owners present at the 2021 AGM, personally or by proxy, were each given a chance to vote on Resolution 9;

- (m) the Scheme is a solely commercial scheme, including some retail uses and some uses that operate outside of office hours; and
- (n) as the Scheme is a solely commercial scheme, it needs to remain open and accessible to customers of the occupiers, to visit the Parcel.

17 At the Hearing, the applicant gave evidence to the effect that:

- a) he was opposed to the installation of the Bike Rails and Bollard for a number of reasons. First, the breach of the PPM Act. Second, the consequence of the things that will happen on the common property if the Bike Rails and Bollard are installed: a reduction in the number of car bays at the complex; the Bike Rails will provide an incentive for homeless people to camp on the common property, secure their bikes and camp over there; they might need to put fences in to control the problem and he would have to bear the cost for the fences; they would have to increase security for the premises and additional costs; and the Bike Rails will be in an open area so that will be another occupational health and safety issue;⁵
- b) he accepted that the Bike Rails and Bollard were proposed to be located in a car bay that had been allocated to the first respondent;⁶
- c) no car bay is exclusive and he was not aware of any exclusive use by-laws in place for the car bays;⁷
- e) he accepted that people visit the Scheme on bikes and that they do not have any control over that;⁸
- e) he has seen people who visit the Scheme riding bikes and parking their bikes but was not sure whether they were visiting any particular lot owner or not;⁹
- f) the police come on bikes;¹⁰

⁵ ts 19, 27 October 2021.

⁶ ts 27, 27 October 2021.

⁷ ts 28, 27 October 2021.

⁸ ts 28 and 44, 27 October 2021.

⁹ ts 28, 27 October 2021.

- g) he accepted that, when he was appointed to liaise with the strata manager, many breach notices were issued by the strata manager at his request to the first respondent including a breach notice that said that 'bicycles are parked in the walkway which is an occupational health and safety risk';¹¹
- h) he accepted that his belief was that the bikes being left or parked on common property was an occupational health and safety risk;¹²
- i) he does not want bikes left on the walkway in front of his lot or the common property;¹³
- j) in his opinion, there is no difference in the occupational health and safety risks of having bikes left on the walkway as against bikes located in/secured to rails;¹⁴
- k) he accepted that far less circulation space is needed for bikes than cars;¹⁵
- l) he believes cycling is not safe and he does not accept that cycling improves health outcomes;¹⁶
- m) he accepted that: cycling is cheaper than other means of transport; cycling can reduce the number of trips taken by motor vehicles that contribute to greenhouse emissions; cycling improves accessibility by allowing people who do not have a car to access a place more easily; and the government is promoting cycling;¹⁷
- n) he accepted that if he had been financial, that would not have altered the outcome of Resolution 9;¹⁸
- o) he accepted that Resolution 9 approved the installation of the Bike Rails and Bollard on many conditions

¹⁰ ts 28, 27 October 2021.

¹¹ ts 29, 27 October 2021.

¹² ts 30 and 35, 27 October 2021.

¹³ ts 31, 27 October 2021.

¹⁴ ts 35, 27 October 2021.

¹⁵ ts 37, 27 October 2021.

¹⁶ ts 38 and 39, 27 October 2021.

¹⁷ ts 39, 27 October 2021.

¹⁸ ts 41, 27 October 2021.

including the Bike Rails and Bollard would be purchased and installed by the first respondent as agent for the Strata Company;¹⁹ and

- p) he believed that in order to reduce the number of car bays under the PPM Act the consent of all the owners would be needed.²⁰

18 I accept the applicant's evidence outlined above.

19 In the applicant's bundle of documents, the applicant provided copies of 54 breach notices issued to the first respondent by ESM Strata, the Strata Company Manager, on behalf of the Council between 11 December 2019 and 19 March 2020 (**Breach Notices**). Attached to the Breach Notices are photographs which show people on the common property of the Scheme. A number of those photographs show people visiting the Scheme with or on bicycles and bicycles left standing or lying on the walkways and in the car park area.²¹

20 At the Hearing, Mr Troy Morse gave evidence to the effect that:

- a) he is the Strategic Asset Manager for the first respondent and has responsibility for the first respondent's lots in the Scheme;²²
- b) the first respondent is a registered not-for-profit agency and community housing provider which provides support for a range of disadvantaged people, being people exiting homelessness, people exiting the justice system, children in out-of-home care, people with disabilities, and people experiencing financial hardship, and a range of other services;²³
- c) the Tranby Engagement Hub (**Tranby**) provides crisis support for people experiencing homelessness in and around the City of Perth CBD and First Nations people who are coming down from country and require some primary support;²⁴

¹⁹ ts 42, 27 October 2021.

²⁰ ts 53, 27 October 2021.

²¹ Exhibit 2.

²² ts 63, 27 October 2021.

²³ ts 64, 27 October 2021.

²⁴ ts 64, 27 October 2021.

- d) the Subject Car Bay has been marked as a UnitingCare West car bay for over five years;²⁵
- e) in his opinion, if a bike is appropriately secured to a bike rail, it is far more secure than a bike that is not secured to a fixture;²⁶
- f) in his opinion, the appearance of the Scheme would be detracted if there were bikes left unsecured along the walkway, and it would be greatly improved if there were appropriate bike parking installations made, so that bikes could be securely parked on the Scheme;²⁷
- g) a previous proposal to install bike rails did not proceed because he was not able to get agreement with the Council on an appropriate location for the bike parking rails;²⁸
- h) from his observations, he would expect that cycling reduces traffic congestion simply by there being less cars on roads and it would reduce the noise and pollution by cars;²⁹
- i) it is his understanding that all local planning schemes have included elements of bike parking facilities and amenities into developments and that retrospective inclusion is also looked upon favourably by local government authorities;³⁰
- j) the City of Perth has approved the development application for the installation of the Bike Rails on the Scheme;³¹
- k) an explanation was given by him at the AGM in general terms about the proposed works and he spoke in favour of the motion whilst others spoke against the motion;³²

²⁵ ts 65, 27 October 2021.

²⁶ ts 66, 27 October 2021.

²⁷ ts 66, 27 October 2021.

²⁸ ts 68-69, 27 October 2021.

²⁹ ts 70, 27 October 2021.

³⁰ ts 70-71, 27 October 2021.

³¹ ts 71, 27 October 2021.

³² ts 71, 27 October 2021.

- l) the approximate cost of buying and installing the Bike Rails and Bollard is \$1 450;³³
- m) the first respondent has not received any breach notices from the Strata Company since the Tranby service ended;³⁴

21 The evidence of Mr Morse outlined above was not contested. I therefore accept that evidence.

22 In the first respondent's bundle of documents, the first respondent provided the Tribunal with copies of the following documents:

- the Western Australian Planning Commission's (WAPC) *Policy No. DC 1.5 Bicycle Planning*;
- extracts from the WAPC's *Guidelines for preparation of integrated transport plans* - May 2012;
- Austroads Research Report *Bicycle Parking Facilities*;
- extracts from WAPC's *State Planning Policy 7.3 Residential Design Codes Volume 2*; and
- WAPC's *Draft Medium Density Code*.³⁵

23 In the applicant's final submissions,³⁶ the applicant contended that:

- a) the Strata Company cannot exercise its discretion to improve or alter common property in the absence of a resolution without dissent and that Resolution 9 is invalid; and
- b) the decision to install the Bike Rails and Bollard on the common property is merely a wish of the first respondent, not the Strata Company performing its duty under s 91 of the ST Act;
- c) Resolution 9 is inconsistent with s 91 of the ST Act;
- d) Resolution 9 is inconsistent with s 119 of the ST Act;

³³ ts 72, 27 October 2021.

³⁴ ts 73 and 77, 27 October 2021.

³⁵ Exhibit 3.

³⁶ Filed on 8 December 2021.

- e) Resolution 9 is inconsistent with the PPM Act; and
- f) the installation of the Bike Rails and Bollard on common property adjacent to car bays is not in the best interests of anyone.

24 The first respondent contended that:

- a) Resolution 9 was not a resolution of a kind which was required to be made as a resolution without dissent;
- b) the applicant had not established any basis for the Tribunal to intervene to overturn Resolution 9;
- c) the applicant's application should be dismissed under s 47(1) of the *State Administrative Tribunal Act 2004* (WA) and s 198(5) of the ST Act;
- d) the applicant has not demonstrated that there was no basis for Resolution 9 under s 14(5)(d), 91(1)(b), s 102 and s 133;
- e) Resolution 9 had a reasonable and proper basis; and
- f) the applicant has not demonstrated that Resolution 9 is inconsistent with the PPM Act.³⁷

25 Following the Hearing, the applicant and the first respondent filed closing submissions.³⁸

Jurisdiction of the Tribunal

26 The Tribunal has jurisdiction to resolve scheme disputes, including a dispute between scheme participants about:

- a) the performance of, or a failure to perform, a function conferred or imposed on a person by the ST Act;³⁹
- b) a function a resolution or decision of a strata company or the council of a strata company, including its validity.⁴⁰

³⁷ First respondent's Responsive SIFC filed on 20 September 2021 and first respondent's Final Submissions filed on 17 November 2021.

³⁸ First respondent's Final Submissions filed on 17 November 2021 and applicant's Final Submissions filed on 8 December 2021.

³⁹ Section 197(1)(a)(ii), ST Act.

27 The strata company for the strata titles scheme and a member of
the strata company for the strata titles scheme are all included within
the definition of 'scheme participant'.⁴¹

28 A strata company is comprised of the owners for the time being of
lots in the strata titles scheme and the owners are, therefore, members
of the strata company.⁴²

29 The applicant and first respondent are, as owners of lots in the
Scheme, members of the Strata Company and hence scheme
participants. This matter involves a dispute between the applicant and
the first respondent about the validity of Resolution 9 and the
performance of functions of the Strata Company under s 91 of the
ST Act which are 'scheme disputes'. Accordingly, this matter falls
within the Tribunal's jurisdiction to deal with scheme disputes under
s 197 of the ST Act.

Dealing with common property by the strata company

30 The common property in a strata titles scheme is, relevantly, 'that
part of the parcel of land subdivided by the strata titles scheme that
does not form part of a lot in the strata titles scheme'.⁴³

31 Common property includes, for a strata scheme, those parts of a
scheme building that do not form part of a lot.⁴⁴

32 Common property is held by the owners of lots in a strata scheme
as tenants in common in shares proportional to the unit entitlements of
their respective lots.⁴⁵

33 There are a number of cases in which the Tribunal has examined
works undertaken or proposed to be undertaken on common property.
Some of those cases involved works undertaken or proposed to be
undertaken by owners of lots in a scheme. Other cases involved works
undertaken or proposed to be undertaken by the strata company for
a scheme.

⁴⁰ Section 197(1)(a)(iv), ST Act.

⁴¹ Section 197(2)(a) and s 197(2)(d), ST Act.

⁴² Section 14(8), ST Act.

⁴³ Section 10(1), ST Act.

⁴⁴ Section 10(2), ST Act.

⁴⁵ Section 13(5)(c) and 7(b) and Sch 5 cl 2(1)(b), ST Act; and see also *Birchwood Consolidated Pty Ltd (Receivers and Managers Appointed) (In Liquidation) v Kelly* [2021] WASC 448 at [23] per Allanson J.

34 However, it is important to note that there is a clear distinction between works undertaken by owners and works undertaken by a strata company on the common property. This is because of the powers conferred on a strata company under the ST Act to deal with common property.⁴⁶

35 In *Sisto and The Owners of Glenway Gardens Apartments* [2005] WASAT 282 (*Sisto*) the Tribunal observed that:

... There is no clear dividing line between what constitutes works undertaken as part of the control and management of common property, and what comprises works which are improvements of the common property going beyond control and management. The latter type of works is outside the duty imposed upon the strata company by s 35.⁴⁷ The Act is strangely silent as to the circumstances in which a strata company can affect improvements to the common property[.]⁴⁸

36 In *Maber & Anor and The Owners of Strata Plan 11391* [2007] WASAT 99 (*Maber*) the Tribunal stated that a strata company 'should only deal with common property on the authority of a specific statutory provision' and, '[i]n the absence of any specific statutory authority enabling the strata company to carry out alterations and improvements to common property (beyond works encompassed within control and management) a by-law under s 42(8) is required'.⁴⁹

37 However, *Sisto* and *Maber* were decided prior to the amendment of the ST Act by the ST Amendment Act which came into operation on 1 May 2020. The ST Act is no longer 'strangely silent' as to the circumstances in which a strata company can affect alterations or improvements to the common property. This is because s 91(2) of the ST Act now makes express provision for the improvement or alteration of the common property by a strata company.

38 The general duties of the strata company in respect of the common property are now set out in s 91 of the ST Act. The duties fall into three categories. First, control and management. Second, repair, maintenance, renewal and replacement. Third, improvements or alterations. The duties in respect of the first two categories are

⁴⁶ For example, s 91 - s 93 and s 116(1)(i) of the ST Act.

⁴⁷ The duty to control and manage the common property is now contained in s 91(1)(b) of the ST Act following the amendments made by the *Strata Titles Amendment Act 2018* (WA) (**ST Amendment Act**).

⁴⁸ *Sisto* at [25] per Judge Chaney and Member B De Villiers.

⁴⁹ *Maber* at [29] per Judge Chaney. Section 42(8) of the ST Act, prior to amendment by the ST Amendment Act, enabled the making by a strata company of an exclusive use by-law.

expressed in mandatory terms whereas the duty in respect of the third category is expressed in discretionary terms.

Control and management of the common property for the benefit of all the owners

39 Section 91(1)(b) of the ST Act imposes a duty on a strata company to control and manage the common property for the benefit of all the owners of lots.

40 The terms 'control' and 'manage' are not defined in the ST Act and bear their ordinary dictionary definitions.

41 The term 'control' means 'to exercise restraint or direction over; dominate; command'.⁵⁰

42 The term 'manage' means, relevantly, 'to take charge or care of: *to manage an estate*' or 'to handle, direct, govern, or control in action or use'.⁵¹

43 In *Sisto* the Tribunal stated:

... In our view, the proper control and management of the common property includes taking reasonable steps, possibly including the erection of new structures, to ensure that it is maintained and presented in a way which accords with the reasonable expectations of the proprietors as a whole. It is a question of fact and a matter of degree as when the erection of new structures on common property goes beyond control and management.⁵²

44 Further, the Tribunal stated in *Sisto* that a decision made to alter the common property can be justified as coming within the obligation to control and manage the common property where the alteration is necessary on the grounds of safety and/or security.⁵³

⁵⁰ *Macquarie Dictionary Online*.

⁵¹ *Macquarie Dictionary Online*.

⁵² *Sisto* at [30] per Judge Chaney and Member B De Villiers.

⁵³ *Sisto* at [26] referring to *Rucci & Anor v The Owners of 95 Manudrah Terrace, Mandurah - Strata Plan 20610* [2002] WADC 33 and *Velovski and The Owners of Hector Gardens - Strata Plan 6448* [2004] WASTR 12; *Banning and The Owners of 106 Terrace Road Perth - Strata Plan 6289* [2006] WASAT 296 (*Banning*) at [32] per Senior Member Raymond; *Seghezzi and The Owners of 9 The Avenue Crawley Strata Plan 27842* [2013] WASAT 53 (*Seghezzi*) at [13] per Senior Member Raymond.

45 In *Banning* and *Seghezzi* the Tribunal held that the provision of car parking bays fell within the control and management of common property.⁵⁴

46 In *The Owners of Rosneath Farm Survey Strata Plan 35452 and Rowell & Anor* [2007] WASAT 95 (*Rosneath*) the Tribunal considered the meaning of words 'for the benefit of all proprietors' and said:

In my view, the expression 'for the benefit of all proprietors' ... means that the strata company's control and management of the common property must be for the benefit of the whole corporate body of proprietors, and must not be for the benefit of individual proprietors where that benefit undermines the corporate benefit. Any assessment of what is for the benefit of all proprietors will depend upon the facts of each case[.]⁵⁵

47 In *Maber* the Tribunal stated:

It is not to the point to ask whether other proprietors will suffer a material disadvantage or detriment. The question is whether what is done by a strata company pursuant to its authority ... is 'for the benefit of all proprietors'. Whether that is so requires an examination of the substance and object of the particular action or proposed action[.]⁵⁶

48 In *Zaffino and The Owners of 20 Kings Park Road West Perth Strata Plan 11161* [2017] WASAT 160 (*Zaffino*) the Tribunal found that proposed end of trip facilities and a proposed bike rack were properly characterised as improvements to the common property that went beyond management and control or maintenance.⁵⁷ The Tribunal also found that the proposed bike rack was to the benefit of all proprietors because '[t]here are obvious and clear benefits to all the proprietors that it is encouraged that bikes are stored in the basement and are not brought into the lift as has occurred in the past'.⁵⁸ However, the Tribunal found that the proposed end of trip facilities were for the benefit of the commercial lots but not for the benefit of the residential lots and, therefore, were not for the benefit of all the proprietors.⁵⁹

49 I find that the proposal to install the Bike Rails and Bollard on the Subject Car Bay falls within the control and management of the

⁵⁴ *Banning* at [36] per Senior Member Raymond; *Seghezzi* at [22]-[26] and [52] per Senior Member Raymond.

⁵⁵ *Rosneath* at [27] per Member T Carey.

⁵⁶ *Maber* at [27] per Judge Chaney.

⁵⁷ *Zaffino* at [42]-[44] per Member Quinlan.

⁵⁸ *Zaffino* at [40] per Member Quinlan.

⁵⁹ *Zaffino* at [41] per Member Quinlan.

common property by the Strata Company. This is for the reasons which follow.

50 First, it is not in dispute that bicycles are used by visitors to the Scheme and, given that there are no bike racks, the parking of bicycles on the walkways and car park area of the Scheme creates obvious occupational health and safety risks to owners and visitors to the Scheme. Therefore, I find that the installation of the Bike Rails and Bollard is necessary on the grounds of safety.

51 Second, given that bicycles are used by visitors to the Scheme, the provision of the Bike Rails and Bollard will provide a safe and secure place for bicycles to be parked since visitors will be able to secure their bicycles to the Bike Rails to prevent their theft and have their bicycles protected from damage from other vehicles by the Bollard. Therefore, I find that the installation of the Bike Rails and Bollard is necessary on the grounds of security.

52 It is my view that *Zaffino* may be distinguished because in the circumstances presently under consideration the Bike Rails and Bollard may be justified on the grounds of safety and security.

53 Third, if the provision of car parking falls within control and management of the common property as was held in *Banning* and *Seghezzi*, then so too should the provision of parking for other forms of transport such as bicycles.

54 Fourth, there is some support in *Sisto* for the control and management of the common property involving the erection of new structures.

55 I also find that the proposal to install the Bike Rails and Bollard on the common property is for the benefit of all the owners of lots. This is for the reasons which follow.

56 First, I find that the installation of the Bike Rails and Bollard will mitigate the occupational safety risks to all owners of lots and their visitors posed by bicycles left on the common property. There are clear benefits if bicycles brought onto the Scheme are safely stowed in the Bike Rails and protected by the Bollard.

57 Second, I find that the Bike Rails will be available for use by all
lots, for staff and visitors.⁶⁰

58 Third, the Bike Rails and Bollard will be installed at no cost to the
Strata Company.

59 Fourth, there is no evidence that a fence or additional security will
be required, or that costs will be incurred by the owners of lots for the
provision of a fence or security, if the Bike Rails and Bollard are
installed.

60 Fifth, contrary to the contention of the applicant, the test is not
what is in the best interests of everyone.

61 Accordingly, in light of my findings above, I conclude that the
proposed Bike Rails and Bollard fall within the duty of the Strata
Company under s 91(1)(b) of the ST Act to control and manage the
common property for the benefit of all the owners of lots.

Improvements or alterations to the common property

62 Given my conclusion above at [61], it is not necessary to consider
whether the proposed Bike Rails and Bollard fall within s 91(2) of the
ST Act. However, for completeness, I will address this matter.

63 Section 91(2) of the ST Act gives the Strata Company a discretion
to improve or alter the common property in a manner that goes beyond
what is required under s 91(1) of the ST Act.

64 The terms 'alter' and 'improve' are not defined in the ST Act and
bear their ordinary dictionary definitions.

65 The term 'alter' means 'to make different in some particular;
modify'.⁶¹

66 The term 'improve' means, relevantly, 'to bring into a more
desirable or excellent condition' and 'to make (land) more profitable or
valuable by enclosure, cultivation, etc.; increase the value of (property)
by betterments, as buildings'.⁶²

67 The reference to 'goes beyond' in s 91(2) of the ST Act is clearly a
reference to works which cannot be characterised as falling within

⁶⁰ ts 70 and 76-77, 27 October 2021.

⁶¹ *Macquarie Dictionary Online*.

⁶² *Macquarie Dictionary Online*.

paragraphs (a) and (b) of s 91(1), but which go further than control and management, maintenance, renewal and replacement, of the common property.

68 I find that the installation of the Bike Rails and Bollard on the Subject Car Bay will alter the common property to the extent that the Subject Car Bay will no longer be able to be used for the parking of cars and other such vehicles and will have structures attached to it to facilitate the parking of bikes on the Subject Car Bay.

69 As I have outlined above, in *Zaffino*, the Tribunal found that the proposed bike rack was an improvement to the common property that went beyond control and management. Accordingly, I find that the installation of the Bike Rails and Bollard on the Subject Car Bay is an improvement.

70 Accordingly, if contrary to my conclusion above at [61], the Bike Rails and Bollard do not fall within s 91(1)(b) of the ST Act, I find that they fall within the duty of the Strata Company under s 91(2) of the ST Act to improve or alter the common property in a manner that goes beyond what is required under s 91(1) of the ST Act.

Sustainability infrastructure

71 Sustainability infrastructure means 'infrastructure that is designed or is likely to avoid, remedy or mitigate adverse effects on the environment'.⁶³ Examples of sustainability infrastructure are 'solar panels, clothes lines and rainwater tanks'.⁶⁴

72 I find that the Bike Rails and Bollard are sustainability infrastructure. This is because their installation is consistent with the promotion by State and local government agencies of cycling as a mode of transport because of the recognition of the adverse environmental effects of motor vehicles.⁶⁵

Resolutions under the ST Act

73 Section 133 of the ST Act provides that resolutions passed at a general meeting may be ordinary resolutions unless the ST Act requires otherwise.

⁶³ See the definition of 'sustainability infrastructure' in s 3, ST Act.

⁶⁴ See the examples set out underneath the definition of 'sustainability infrastructure' in s 3, ST Act.

⁶⁵ Exhibit 3.

74 Section 117(2) of the ST Act provides that a strata company must not, except as authorised by resolution without dissent, perform or exercise a function that the regulations allow to be exercised only as authorised by resolution without dissent. Currently, there are no functions that the *Strata Titles (General) Regulations 2019* (WA) (**ST Regulations**) allow to be exercised only as authorised by resolution without dissent.

75 There are a number of matters in respect of common property which under the ST Act require a resolution without dissent. For example:

- a) temporary common property leases;⁶⁶
- b) the surrender of temporary common property leases;⁶⁷
- c) a transaction affecting the common property;⁶⁸ and
- d) a determination that the insurance obligations in respect of common property for a single tier strata scheme are not to apply.⁶⁹

76 There are other matters in respect of common property which require a special resolution. For example, expenditure above the amount set in the ST Regulations for improvement or alteration of the common property under s 91(2) of the ST Act, other than for sustainability infrastructure.⁷⁰

77 A resolution of a strata company is an ordinary resolution if two conditions are satisfied.⁷¹ First, for a resolution passed other than at a general meeting, 14 days' notice of the terms of the proposed resolution is given to each member of the strata company before voting on the resolution opens. Second, the resolution is passed when counted as required under s 122(1) of the ST Act by more than 50% of the number of lots for which votes are cast (by number) or by more than 50% of the sum of the unit entitlements of the lots in the scheme for which votes are cast.

⁶⁶ Section 92(1), ST Act.

⁶⁷ Section 92(3), ST Act.

⁶⁸ Section 93(3), ST Act.

⁶⁹ Sch 2A, cl 53C(2)(b), ST Act.

⁷⁰ Section 102(5)(b), ST Act; reg. 80 and reg 81, ST Regulations.

⁷¹ Section 123(7), ST Act.

78 Further, under s 129(1) of the ST Act all owners of lots in a strata titles scheme and first mortgages of those lots must be given at least 14 days' notice of every general meeting of the strata company for the scheme. The notice must include the information referred to in s 129(2) of the ST Act.

79 A quorum must be present at the time when the general meeting proceeds to business otherwise no business may be transacted.⁷²

80 At a general meeting of a strata company for a strata titles scheme other than a 2-lot scheme, a quorum is constituted if there are present persons who are entitled to cast the votes attached to 50% of the lots in the scheme.⁷³ A person who is a proxy of a person entitled to cast the vote attached to a lot is to be counted for the purposes of determining whether a quorum is present.⁷⁴

Resolutions required in respect of dealing with the common property under s 91 of the ST Act

81 In *Sisto* the Tribunal expressly rejected a proposition that a strata company had to seek authorisation for works which came within the control and management of common property:

The applicant's primary contention in relation to the 2003 Annual General Meeting is that it was not open to the meeting to adopt the budget incorporating an item of \$50 000 for the proposed works until such time as the owners had passed either a unanimous resolution or a resolution without dissent authorising the work to be done. As we have already concluded, that proposition is not correct. Given that the works come within the control and management of common property, it was open to the strata company to include in its budget an item to enable the works to be done, and it was sufficient to adopt that budget for the resolution to be passed by simple majority.⁷⁵

82 Similarly, in *Laffin and Renouf* [2016] WASAT 48 (*Laffin*) the Tribunal held that:

The law is clear. The common property of a strata scheme is owned jointly by the proprietors of all the lots. The strata company of the strata scheme has the power and duty to control and manage the common property and to keep the common property in good repair and properly maintained. Where works can be properly categorised as coming within the power of the strata company to control and manage

⁷² Section 130(1), ST Act.

⁷³ Section 129(3), ST Act.

⁷⁴ Section 130(5), ST Act.

⁷⁵ *Sisto* at [43] per Judge Chaney and Member B De Villiers; see also [2] and [36].

the common property or to keep it maintained and repaired, then all that is required to enable the strata company to carry out those works, is for the cost of them to be included in the budget adopted at the annual general meeting of the strata company; see *Sisto* at [27], [28], [36] and [43].⁷⁶

83 Although *Sisto* and *Laffin* were decided prior to the amendment of the ST Act by the ST Amendment Act, those cases make it clear that there was no requirement prior to those amendments for a Strata Company to seek authorisation for works falling within control and management, or indeed maintenance, renewal and replacement, of the common property. Rather the focus was on approval of the budget necessary to carry out those works. The reason for this is that there was statutory authorisation for the works.

84 The ST Act now provides that if a budget, or variation of a budget, provides for expenditure on common property under s 91(2) of the ST Act, other than expenditure on sustainability infrastructure, and that expenditure exceeds the amount prescribed in reg 80 of the ST Regulations,⁷⁷ information must be provided to the members of the strata company as required by the ST Regulations and the expenditure must be authorised by special resolution.⁷⁸ Expenditure on sustainability infrastructure may be authorised by ordinary resolution.⁷⁹

85 There is case authority to the effect that a resolution without dissent is required for a strata company to erect any structure on the common property.⁸⁰ However, the reason why a resolution without dissent was said to be required was because, prior to May 2020, a strata company did not have statutory authority to make alterations or improvements to the common property which went beyond the duty to control and manage the common property.

86 In my view, s 91 of the ST Act gives a strata company statutory authority to deal with the common property in accordance with that section subject to the following: the requirements in s 102 of the ST Act relating to the budget of a strata company; any regulations or scheme by-laws that require a special resolution, resolution without dissent or unanimous resolution or steps to be taken for expenditure of

⁷⁶ *Laffin* at [33] per Member Aitken.

⁷⁷ The amount that applies for the purposes of s 102(5) is the amount determined by multiplying the number of lots in the strata titles scheme by \$500: reg 80(1), ST Regulations.

⁷⁸ Section 102(5), ST Act.

⁷⁹ Section 102(5), ST Act and the note to s 91(2), ST Act.

⁸⁰ *Laffin* at [34] per Member Aitken; *Zaffino* at [47] per Member Quinlan.

a particular class;⁸¹ and any restriction imposed or direction given by ordinary resolution.⁸²

87 Resolution 9 is not a resolution authorising the Strata Company to carry out works under s 91 of the ST Act or a resolution approving the budget, or variation of a budget, for expenditure by the Strata Company on common property. Instead, the effect of Resolution 9 is:

- a) approval by the Strata Company in the exercise of the Strata Company's powers under s 91(1)(b) or s 91(2) of the ST Act, of a proposal to purchase and install the Bike Rails and Bollard on common property with the cost to be borne by the first respondent; and
- b) the grant of authority to the first respondent, as agent for the Strata Company, to purchase and install the three Bike Rails and Bollard.

88 There is nothing in the ST Act which requires that a resolution, such as Resolution 9, made in respect of control and management of the common property, or a resolution made in respect of improvements or alterations to the common property, be made by resolution without dissent. Accordingly, having regard to s 133 of the ST Act, such a resolution may be an ordinary resolution.

89 The meeting held on 31 July 2021 at which Resolution 9 was discussed was an AGM. Accordingly, notice of the meeting had to be given in accordance with s 129 of the ST Act. Fourteen days' notice of the terms of the proposed resolution did not have to be given to each member of the Strata Company before voting on the resolution opened because the meeting was a general meeting.

90 There are 100 unit entitlements for the lots in the Scheme. The first respondent as the owner of Lots 1, 4, 5, 6 and 10 voted for Resolution 9, as did the owner of Lot 13 - a total of six lots, with collective unit entitlements of 56. Accordingly, Resolution 9 was passed by more than 50% of the sum of the unit entitlements of the lots in the scheme for which votes are cast.

91 Accordingly, I find that Resolution 9 is not a resolution which was required to be a resolution by dissent and that the resolution is a valid ordinary resolution.

⁸¹ Section 102(8), ST Act.

⁸² Section 135(1), ST Act.

92 Further, I also find that given that the Strata Company is not
expending money in respect of the installation of the Bike Rails and
Bollard, it was not necessary for a budget or variation of a budget to be
approved by way of resolution under s 102 of the ST Act.

Authorisation of agent by Strata Company

93 A strata company has, subject to the ST Act, 'all the powers of a
natural person that are capable of being exercised by a body
corporate'.⁸³

94 Section 116 of the ST Act sets out some of the powers of a strata
company to perform its functions, but that section does not otherwise
limit the powers of a strata company to perform its functions.

95 Section 117 prohibits a strata company from exercising certain
powers such as mortgaging common property.⁸⁴

96 The governing body of a strata company is the council of the strata
company.⁸⁵

97 The functions of a strata company are to be performed by the
council of the strata company, subject to the ST Act and to any
restriction imposed or direction given by ordinary resolution.⁸⁶

98 The council of a strata company may employ or engage, on behalf
of the strata company, any person as it thinks is necessary to provide
any goods, amenity or service to the strata company.⁸⁷

99 In *The Owners of Metro Inn Apartments Strata Plan 11800 v
Transmetro Corporation Ltd* [2000] WASC 293, the Supreme Court
held that a Strata Company had the power to enter into a management
agreement for the employment of an agent in connection with the
control and management of the common property and the exercise and
performance of the powers and duties of the Strata Company.⁸⁸
Although s 32(3)(d) of the ST Act as it existed prior to 1 May 2020 has
not been replicated in the ST Act as it currently stands, s 14(5)(d) and

⁸³ Section 14(5)(d), ST Act.

⁸⁴ Section 117(1)(b), ST Act.

⁸⁵ Section 14(6), ST Act.

⁸⁶ Section 135(1), ST Act.

⁸⁷ By-law 8(2)(b), Sch 1, ST Act (and see also By-law 8(2)(b) of the ST Act prior to amendment by the ST Amendment Act).

⁸⁸ At [46], [49] and [57] per Owen J. This decision was upheld on appeal in *The Owners of Metro Inn Apartments Strata Plan 11800 v Transmetro Corporation Ltd* [2001] WASC 135.

by-law 8(2)(b), Sch 1, ST Act provide sufficient authority for the employment of agents.

100 I find that the Strata Company had the power to authorise the first respondent, as agent for the Strata Company, to purchase and install the Bike Rails and Bollard. This is because Resolution 9 is in effect a direction given by ordinary resolution, as permitted by s 135(1) of the ST Act, that the functions of the Strata Company under s 91 of the ST Act in respect of the Bike Rails and Bollard are to be performed by the first respondent rather than the Council. Further, there is nothing in the ST Act to preclude the employment of an agent to perform the functions of the Strata Company under s 91 of the ST Act.

Installation of Bike Rails and Bollard at no cost to the Strata Company

101 There are a number of circumstances in which a strata company may agree to works being undertaken on the common property at no cost to them. For example:

- a) the strata company might have received a grant for the works to be undertaken and the grant completely covers the cost of the works;
- b) the owner of a lot may have offered to undertake the works, as agent for the strata company, at no cost; and
- c) the owner of a lot may have offered to pay for the works to be undertaken by the strata company.

102 There is nothing in the ST Act or the ST Regulations which would preclude a strata company from agreeing to carry out works under s 91 of the ST Act where no costs are incurred by the strata company.

103 Accordingly, I find that it was open to the Strata Company to agree to the works being carried out by the first respondent, as the agent of the Strata Company, on condition that the first respondent bear the cost of the works.

Objectives of implementing processes and achieving outcomes

104 Section 119(1) of the ST Act sets out the objective of a strata company in performing its functions. The subsection essentially operates as a command to a strata company that, in the performance of its functions, the strata company must implement processes and achieve

outcomes that are not, having regard to the use and enjoyment of lots and common property in the strata titles scheme:

- a) unfairly prejudicial to or discriminatory against a person; or
- b) oppressive or unreasonable.

105 Section 119(2) of the ST Act sets out three things that the strata company must do in achieving the objective set out in subsection (1). First, the strata company must take into account any failure of a person to act consistently with the ST Act or the scheme by-laws. Second, the strata company must consider the merits of any proposal put to it and the options that are reasonably available in any particular circumstances. Third, the strata company must be aware that a resolution or other conduct may be overturned for failure to meet that objective despite the fact that it reflects the will of the majority of members of the strata company as expressed through the exercise of their voting powers. Further, the fact that a person has chosen to become the owner of a lot does not prevent the person challenging the performance of a function for failure to meet that objective.

106 Section 119(3) of the ST Act gives two examples of when a strata company acts oppressively or unreasonably in passing or not passing a resolution. The first example is where the resolution would not have been passed, or not have been passed as a particular type of resolution, but for the fact that a person was improperly denied a vote on the resolution. The second example is where the resolution would have been passed, or would have been passed as a particular type of resolution, if a person had properly been given an opportunity to vote on the resolution.

107 There is no evidence to support a finding that the Strata Company did not take into account any failure of a person to act consistently with the ST Act or the scheme by-laws.

108 There is no evidence to support a finding that the Strata Company did not consider the merits of the proposal in respect of Resolution 9 and the options reasonably available to it. In fact, the evidence is to the contrary.

109 First, there was evidence that at a strata meeting on 20 February 2020 the Strata Company had rejected a proposal for bike rails to be installed on the common property as part of an approval

landscaping plan.⁸⁹ Accordingly, this was not the first time the Strata Company had considered such a resolution prior to the AGM on 31 July 2021.

110 Second, Mr Morse gave evidence that at the 2021 AGM an explanation for Resolution 9 was given and people spoke for and against the motion.⁹⁰ The minutes for that meeting also contain a note that '[a]n explanation of the proposed work given by Troy Morse'.⁹¹

111 The applicant did not vote in respect of Resolution 9. This was because the applicant owed money to the Strata Company and was not, by virtue of s 120(2)(b) of the ST Act, entitled to cast the vote attached to his lot.⁹² Accordingly, I find that the applicant was not improperly denied a vote.

112 Given my finding that the applicant was not improperly denied a vote, it follows that there is no basis upon which I can make a finding that the Strata Company acted oppressively or unreasonably in passing Resolution 9. In particular, there is no basis on which I can make a finding that Resolution 9 would not have been passed but for the fact that a person was improperly denied a vote.⁹³

113 Further, there is no evidence otherwise to support a finding that the Strata Company acted oppressively or unreasonably in passing Resolution 9.

114 There is no evidence to support a finding that the Strata Company was unfairly prejudicial to or discriminatory against the applicant. Again, the evidence is to the contrary.⁹⁴

115 First, Mr Morse gave evidence that the Subject Car Bay to be used for the Bike Rails and Bollard was currently allocated to the first respondent and was not either of the car bays allocated to the applicant's business.⁹⁵ Accordingly, there is no evidence that the installation of the Bike Rails and Bollard on the Subject Car Bay will result in a loss of amenity to the applicant.

⁸⁹ Exhibit 1 at page 131.

⁹⁰ ts 71, 27 October 2021.

⁹¹ Exhibit 1 at page 139.

⁹² ts 40-41, 27 October 2021.

⁹³ Section 119(3)(a), ST Act.

⁹⁴ Exhibit 1 at page 134.

⁹⁵ ts 65, 27 October 2021.

116 Second, Mr Morse gave evidence that the Bike Rails will be
available for use by all lots.⁹⁶

117 Third, the concerns that the applicant had about the installation of
the Bike Rails and Bollard was purely speculative.

The PPM Act

118 The PPM Act makes provision for the management of parking in
certain parts of the metropolitan area, namely the 'Perth parking
management area' which is an area of land set out in a map in the *Perth
Parking Management Regulations 1999* (WA) (**PPM Regulations**).⁹⁷

119 Under the PPM Act, the owner of land in the Perth parking
management area must not permit a vehicle to be parked on the land or
in or on the building unless, amongst other requirements, the owner has
a car parking bay licence that permits the vehicle to be parked there.⁹⁸

120 The term 'vehicle' is defined in s 4 of the PPM Act and means:

- (a) a motor vehicle (except a motorized wheel chair, a power assisted pedal cycle or a toy);
- (b) a caravan, trailer or semi trailer (whether or not the caravan, trailer or semi trailer is connected to a motor vehicle);
- (c) a vehicle drawn by an animal, or an animal used for drawing a vehicle.

121 The term 'motor vehicle' means 'a self-propelled vehicle (except an aircraft or a vessel) that is not operated on rails'.⁹⁹

122 The term 'vehicle' does not include a bicycle.

123 The owner of land in the Perth parking management area may apply to the Chief Executive Officer of the Department of Transport (CEO) for a car parking bay licence.¹⁰⁰ The application must be accompanied by the information about the number of car parking bays approved and the uses for which they have been approved.¹⁰¹

⁹⁶ ts 42-43, 70 and 76-77,

⁹⁷ Section 6, PPM Act and reg 4 and Sch 1, PPM Regulations.

⁹⁸ Section 7, PPM Act.

⁹⁹ See the definition of 'motor vehicle' in s 4, PPM Act.

¹⁰⁰ Section 8(1) of the PPM Act.

¹⁰¹ Regulation 6, PPM Regulations.

124 The CEO may issue a licence to an applicant to permit one or more vehicles to be parked on the land specified in the application.¹⁰² The CEO may impose conditions on the licence including the number of car parking bays to be made available on the land.¹⁰³ The CEO must not issue a licence unless the applicant has obtained any approvals under the *Planning and Development Act 2005* (WA).¹⁰⁴

125 A licensee may apply to the CEO for the car parking bay licence to be varied, and the CEO may vary the licence if he or she would be able to issue a licence under s 9 in the same terms as the proposed varied licence.¹⁰⁵

126 If the land on which vehicles are permitted to park is part or all of the common property or a lot in a strata titles scheme within the meaning of the ST Act, then the strata company for that scheme is the owner of the land for the purposes of the PPM Act.¹⁰⁶ This means that a strata company may apply for, be issued with, and seek to vary, a car parking bay licence under the PPM Act. A strata company may also be liable for a contravention of s 7 of the PPM Act if it fails to obtain a licence required under the PPM Act.

127 The ability of a strata company to apply for, be issued with, and seek to vary, a car parking bay licence under the PPM Act is consistent with the duty of a strata company under s 91(1)(b) of the ST Act to 'control and manage the common property for the benefit of all the owners of lots'.

128 Aberdeen Street in Perth is clearly marked as being within the area of land described as the Perth parking management area in Sch 1 to the PPM Regulations.

129 At the hearing it was not in dispute that:

- a) on 23 June 2021 the Department of Transport issued a Perth Parking Proposed Licence Renewal to the Strata Company in respect of 45 car parking bays and the proposed fee for the licence was based on the

¹⁰² Section 9(1), PPM Act.

¹⁰³ Section 10, PPM Act.

¹⁰⁴ Section 9(1), PPM Act.

¹⁰⁵ Section 15(1) and s 15(3), PPM Act.

¹⁰⁶ Paragraph (a) of the definition of 'owner' in s 4, PPM Act.

number of car parking bays authorised by the licence;¹⁰⁷ and

- b) on 9 August 2021 the CEO issued a Perth Parking Licence to the Strata Company (**Licence No. 1511**).¹⁰⁸ Licence No. 1511 states that there are 45 licensed car parking bays under that licence. There are no conditions attached to the licence.

130 During the hearing, Mr Morse gave evidence that there are approximately 62 car bays on the plan¹⁰⁹ and that he had telephoned the strata manager and asked him to action a review of the car bays licensed under the PPM Act (because the number of car parking bays under the licence did not match the number of car parking bays on the plan).

131 Accordingly, I find that the Parcel is within the Perth parking management area and that the Strata Company has been issued Licence No. 1511 under the PPM Act in respect of 45 car parking bays, although there are more than 45 car parking bays on that Parcel.

132 Licence No. 1511 authorises the Strata Company to permit a vehicle to be parked on the common property of the Parcel. Neither the PPM Act nor Licence No.1511 require the car parking bays on the common property of the Parcel to be used only for the parking of vehicles.

133 Whilst it is an offence contrary to s 7 of the PPM Act for the Strata Company to permit a vehicle to be parked on the common property of the Parcel without a car parking bay licence that permits the vehicle to be parked there, it is not an offence under the PPM Act for the Strata Company to use a car parking bay for some other purpose which does not involve the parking of a vehicle. If the Strata Company uses a car parking bay on the common property for the parking of bicycles, then no contravention of s 7 of the PPM Act arises.

134 If the Strata Company wishes to vary the number of car parking bays the subject of the current licence because a car parking bay on the common property is no longer being used for the parking of vehicles, then it may apply to the CEO under the PPM Act to do so.

¹⁰⁷ Exhibit 2 at pages 679-681.

¹⁰⁸ Exhibit 4.

¹⁰⁹ Exhibit 1 at page134.

135 Accordingly, I find that the installation of the Bike Rails and
Bollard on the Subject Car Bay does not contravene s 7 of the
PPM Act.

136 Given my finding at [135] that the installation of the Bike Rails
and Bollard on the Subject Car Bay would not contravene s 7 of the
PPM Act, the Strata Company has not exposed, and would not expose,
itself to a potential penalty under the PPM Act.

Conclusion

137 For the reasons outlined above, the applicant is not entitled to a
declaration that Resolution 9 is invalid or an order requiring the Strata
Company to refrain from installing the Bike Rails and Bollard on the
Subject Car Bay. This is because:

- a) the installation of the Bike Rails and Bollard on the
Subject Car Bay is within the power of the
Strata Company to control and manage common
property under s 91(1)(b) of the ST Act or, in the
alternative, to alter or improve common property under
s 91(2) of the ST Act;
- b) Resolution 9 is not invalid because there is no
requirement for such a resolution to be a resolution
without dissent;
- c) Resolution 9 constitutes a direction for the purposes of
s 135(1) of the ST Act that the functions of the Strata
Company under s 91 of the ST Act in respect of the
Bike Rails and Bollard are to be performed by the first
respondent;
- d) Resolution 9 does not contravene s 119 of the ST Act;
and
- e) Resolution 9 is not inconsistent with the PPM Act.

138 It follows that the application does not succeed.

Orders

The Tribunal orders:

1. The application is dismissed.

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

MS C Conley, MEMBER

8 MARCH 2022