

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : STRATA TITLES ACT 1985 (WA)

CITATION : CARR and THE OWNERS OF 252 COSY CORNER ROAD, KRONKUP SURVEY-STRATA PLAN 55030 [2022] WASAT 59

MEMBER : MS KY LOH, MEMBER

HEARD : 1 FEBRUARY 2022

DELIVERED : 12 JULY 2022

FILE NO/S : CC 939 of 2020

BETWEEN : HELEN STEPHANIE CARR
Applicant

AND

THE OWNERS OF 252 COSY CORNER ROAD,
KRONKUP SURVEY-STRATA PLAN 55030
Respondent

Catchwords:

Strata titles - Request for documents - Threshold to be met before Tribunal exercises power to order strata company to make available documents for inspection

Legislation:

Building Services (Complaint Resolution and Administration) Act 2011 (WA)
Privacy Act 1988 (Cth)
State Administrative Tribunal Act 2004 (WA), s 9, s 87(1)

Strata Titles General Regulations 1996 (WA), reg 25(1), reg 25(1)(a),
reg 25(1)(b), reg 25(2)

Strata Titles (General) Regulations 2019 (WA), reg 83

Strata Titles Act 1985 (WA), s 14(8), s 101, s 102(1), s 104, s 104(1)(b),
s 104(1)(c), s 107, s 107(2)(a), s 109, s 109(1), s 109(3), s 109(6), s 110, s 111,
s 197, s 200, Sch 5, cl 2(1), cl 2(2), cl 2(3), cl 4, Pt 8, Div 1

Strata Titles Act 1985 (WA) (prior to 1 May 2020), s 35, s 35(1)(f), s 35(1)(g),
s 35(1)(h), s 42B, s 43, s 43(1),

Strata Titles Amendment Act 2018 (WA)

Result:

Application partly allowed

Category: B

Representation:

Counsel:

Applicant : In Person
Respondent : K Rigby (as representative)

Solicitors:

Applicant : N/A
Respondent : N/A

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

Carey v Korda [2012] WASCA 228; (2012) 45 WAR 181

Daniels Corporation International Pty Ltd v Australian Competition and
Consumer Commission [2002] HCA 49; (2002) 213 CLR 543

Engwirda v The Owners of Queens Riverside Strata Plan 55728
[2019] WASCA 190

Esso Australia Resources Limited v Federal Commissioner of Taxation
[1999] HCA 67; (1999) 201 CLR 49

Schreuder v Murray [No 2] [2009] WASCA 145; (2009) 41 WAR 169

Western Australian Planning Commission v Questdale Holdings Pty Ltd
[2016] WASCA 32; (2016) 213 LGERA 81

Wolfenden and Mandurah Homes Pty Ltd [2020] WASAT 127(S)

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 Ms Carr is the owner (**owner**) of Lot 13 of the strata scheme known as 252 Cosy Corner Road, Kronkup (**strata scheme**).

2 The owner applied to inspect documents under previous Tribunal proceedings because the strata company (**strata company**) had sought recovery of unpaid levies from her.

3 Following the provision of documents pursuant to those and these proceedings and further requests made, she now seeks further specified documents.

4 Given that the specified documents confine, rather than expand, the original scope of the owner's request for documents, I will confine her application to the documents now specified.

5 The owner's submissions, however, contain new requests for orders, such as orders compelling acts to be undertaken or monies to be refunded to her.

6 This strays beyond the nature and scope of the owner's original application, and the strata company has not prepared its case to meet the application for new orders. These new orders cannot be entertained in this application, and the owner will need to make a new application for those orders.

7 Despite my request, neither party has specifically identified the documents that have already been provided to the owner.

8 For reasons set out below, I will grant in part the owner's application for orders for inspection of specified documents.

Issue for determination

9 The primary issue for determination is whether I can exercise my power under s 197 of the *Strata Titles Act 1985* (WA) (**Act**) to resolve a scheme dispute between the owner and the strata company about the owner's application for inspection of materials under s 109 of the Act.

10 In addressing this primary issue, the following secondary issues arise:

- 1) Can the Tribunal make other orders under s 200 of the Act beyond the production of documents?
- 2) Can the Tribunal order the production of legal advice to the strata company?
- 3) How should the owner's application for costs for this and every related application be determined?

Legal framework

11 These proceedings commenced following the major amendments to the Act coming into operation on 1 May 2020 under the *Strata Titles Amendment Act 2018* (WA) (**Amendment Act**), and as such those amendments apply to the determination of this application.

12 All references to the provisions of the Act in these reasons are to those in the Act coming into operation from 1 May 2020.

13 All references to the provisions of the *Strata Titles Act 1985* (WA) immediately prior to 1 May 2020 will be referred to as those in the pre-amendment Act (**pre-amendment Act**).

14 The strata scheme was created by the registration of the strata plan on 30 June 2008 under the pre-amendment Act.

15 Clause 2(1) of Sch 5 to the Act provides that the following relevantly continues in existence notwithstanding the coming into operation of the Amendment Act:

- a) a strata scheme;
- b) a lot or common property in a strata scheme;
- c) an estate or interest in a lot or common property in a strata scheme; and
- d) a strata company, its council or its officers.

16 Clause 2(2) of Sch 5 to the Act provides that the strata scheme for which a strata plan is registered immediately before the commencement day is taken to be registered as a strata titles scheme. Further, the strata plan, by-laws and schedule of unit entitlement as registered immediately before 1 May 2020 continue to be registered as scheme documents: cl 2(3) of Sch 5 to the Act.

17 Clause 4 of Sch 5 of the Act provides that by-laws of a strata company as in force immediately before commencement day, save for specified by-laws which do not apply in this case, continue in force as scheme by-laws as if they had been made as 'governance by-laws' or 'conduct by-laws' according to the classification into which they would fall if they had been made on commencement day.

Background

18 The following facts are not in dispute between the parties or are based on uncontroversial documents lodged by the parties in these proceedings.

Factual background

19 The strata scheme is situated at 252 Cosy Corner Road, Kronkup. It is comprised of a parcel of land on survey-strata plan 55030 with 16 lots, including a common property lot (Lot 16).

20 The by-laws of the strata company are set out in its management statement registered with the survey-strata plan on 30 June 2008, which were amended on 8 October 2008, 11 March 2014 and 14 May 2019.

21 Relevantly, the by-laws provide as follows:

- a) Lots 1 to 12 are restricted in use for the purposes of tourist accommodation [sic] may only be occupied by the same person including the proprietors for a period of not more than 3 months in aggregate in any one 12 month period (by-law 16(1));
- b) The strata company shall appoint a manager to manage the common property, and the proprietors of Lots 1 to 12 shall appoint a manager to manage the short stay accommodation (by-law 17(1), as amended on 14 May 2019);
- c) The proprietors of Lots 1 to 12 are granted exclusive use of part of the common property lot (Lot 16), and shall, relevantly:
 - i) at all times and at its cost maintain and keep its exclusive use area in a clean, neat and tidy condition;

ii) be responsible at its cost to repair and maintain all property within the designated area, including the gardens, bitumen driveways, water tank, sewerage system and laundry room (by-law 32, added on 11 March 2014); and

d) Other than the costs referred to in by-law 32 and in accordance with s 42B of the pre-amendment Act, the strata company shall assess contributions to be levied on proprietors for the fund established by the strata company for administrative expenses, in equal shares between the proprietors of all the lots and shall not use unit entitlements to assess the contributions (by-law 29, as amended on 11 March 2014).

22 The owner became the registered proprietor of Lot 13 of the strata
scheme on 12 June 2013.

23 The strata manager was Merrifield Real Estate (**Merrifield**) at that
time, and its appointment was terminated in or about February 2019.

24 The strata company did not appoint a new strata manager until in
or about July 2020, when Logiudice Property Group was appointed.

25 In or about January 2020, the strata company commenced
proceedings against the owner for unpaid levies.

26 The owner then commenced proceedings in the Tribunal, CC 133
of 2020, to seek documents from the strata company.

27 In CC 133 of 2020, the parties consented to orders that the strata
company give the following to the owner by 24 April 2020:

a) a certified copy of all audited transactions from
13 June 2013 to 30 November 2018 for Survey-Strata
Plan 55030 record of account from the Trust Ledger of
'Merrifield Real Estate Pty Ltd ATF JR Stewart
T/A Merrifield Real Estate REBA Trust
Account 57190'; and

b) a copy of the audited Survey-Strata Plan 55030
Merrifield Reserve Fund Ledger for the period
13 June 2013 to 30 November 2018.

28 Ms Kylie Rigby, who at all relevant times was (and still is) the
owner of Lot 9 and a member of the council of owners, provided
documents pursuant to the consent orders on 17 April 2020.

29 The owner questioned how the trust ledger could omit six bank
transfers which she said she had made between January and
September 2018 and made further requests for documents from the
strata company in April or May 2020.

30 Ms Rigby arranged for documents to be further provided to the
owner on 14 May 2020.

31 The owner was still not satisfied with the strata company's
response, and so, amongst other actions, commenced these proceedings
in August 2020.

32 In particular, the owner sought a copy of a 'sub-strata account' held
by Merrifield which had not been provided to her.

33 In November 2020, following enquiries made with Merrifield,
two ledger accounts and two ledger reports for Lots 1 to 12 were
provided by Merrifield to the strata company, and a copy was
forwarded to the owner.

34 On 24 November 2020, Ms Eleanor Logiudice of Logiudice
Property Group further provided documents (by USB) to the owner.

The owner's case

35 The owner's original basis for her application in CC 133 of 2020
to inspect documents was, ostensibly, to locate evidence of the six bank
transfers referred to in [29], in defence of the recovery action brought
by the strata company.

36 In the owner's current application, the documents sought are
expressed in the following terms:

A resolution of this dispute by ordering, for the period 13 June 2013 to
the current date, all bank statements for every account in which
strata company funds are kept, all ledgers, invoices, planning
applications, appointment of strata manager agreements, appointment of
short stay accommodation manager agreements, police reports, building
licenses, insurance claims and payouts, tradesmen invoices, gardeners
fees, rubbish removal costs, proof of purchase of tip passes, legal
advices, correspondence with local and state government departments
and utility providers including Western Power and any other

documents, notes, photographs, texts, register of owners details, and or correspondence of any type to be made available to the applicant by digital access within 14 days.

37 It does not appear that the documents provided by the strata company have assisted the owner in locating that evidence, and she pursues further bank statements, ledgers and accounts that appear to be missing.

38 The owner also pursues further documents due to the 'ongoing obfuscation regarding the management of the strata [company]', in particular her concerns in relation to the following issues:

- a) funds for the non-'exclusive use common property' appear to have been used to maintain Lots 1 to 12, and she seeks source documents to prove this;
- b) the legal firm Lewis Blythe and Hooper appear to have acted only for owners of Lots 1 to 12, although their invoice for legal fees were charged to the administrative fund for Lots 1 to 15, so she seeks a copy of any legal advice provided;
- c) several lot owners within Lots 1 to 12 have allegedly breached the restrictive use condition on the strata scheme preventing those lots from being occupied for more than a total of three months in any 12 month period, and the strata company has allegedly failed to issue notices of breach to the offending lot owners;
- d) whilst the exclusive use by-laws require the owners of Lots 1 to 12 to be responsible for all outgoings and upkeep relating to the 'exclusive use common property', the owner suspects that all lot owners have been paying for such expenses;
- e) she has been charged landlords' insurance even though her lot is not subject to the restrictive use condition on the strata scheme;
- f) the strata company is allegedly required to appoint an on-site manager, but has failed to do so, nor sought approval from the City of Wanneroo or the Western Australian Planning Commission (WAPC) for failing to do so;

- g) legal advice from Haynes Robinson was paid out of the funds of the non-'exclusive use common property', which the owner suspects was for another Tribunal matter, and she seeks a copy of documents authorising that advice (and a copy of that advice);
- h) a large water tank was installed on the 'exclusive use common property' and was budgeted in the administrative funds budget for Lots 1 to 12 at \$15,700. The owner suspects the cost was more than that amount, and challenges that it should come out of administrative funds;
- i) she regards certain comments recorded in the minutes at a general meeting as defamatory;
- j) the cost of the insurance premium for the non-'exclusive use common property' is higher than in previous years, and at a similar level to that for the 'exclusive use common property'. There appears to be only one insurance policy taken out, and she queries why she has been charged in equal shares with each owner of Lots 1 to 12;
- k) it is not clear whether a Western Power rebate contribution has been shared with all lot owners;
- l) there is a CCTV camera located on the laundry building within the 'exclusive use common property', which she suspects is angled in a manner which is a breach of the *Privacy Act 1988* (Cth). She seeks a copy of the CCTV footage;
- m) \$15,000 has been budgeted on 1 July 2020 for legal expenses, and the owner seeks documents justifying that budgeted expense;
- n) she seeks a copy of every certificate issued by the strata company under s 43 of the pre-amendment Act (now s 110 of the Act) for every settlement from 1 June 2013 to current, including the one issued in respect of the recent sale of Lot 7; and

- o) there appears to be considerable expense incurred in gardening the non-'exclusive use common property', which does not reflect her impression of its current state; and
- p) there was an extraordinary general meeting to consider the motion to rescind a proposal for the installation of a bore, and the owner considers the votes cast on two of the lots (owned by Caprice Beach Pty Ltd) should not have been allowed as the levies on those lots had not been fully paid.

39 A more fulsome exposition of the orders sought by the owner is set out in the table at [86].

The strata company's case

40 The strata company says that it has provided all documents in its possession and control regarding the strata company to the owner.

41 In particular, Ms Rigby attests that all documents within her possession and control in relation to the strata company were provided to the owner on 14 May 2020.

42 Further, Ms Logiudice attests that all documents within Logiudice Property Group's possession and control regarding the strata company were provided to the owner on 24 November 2020.

43 At the hearing, Ms Rigby claimed, on behalf of the strata company, legal professional privilege over legal advice provided to the strata company to resist an order for inspection by the owner of such advice.

44 Ms Logiudice stated at the hearing that she was only aware of one insurance policy taken out for the whole complex that covered common areas, although she could not exclude the possibility of any other insurance policy that might be in existence.

45 Finally, the strata company denies that the owner is entitled to costs as she is self-represented.

Legal framework

The Act

46 These proceedings were commenced under s 197 of the Act, which allows the Tribunal to resolve scheme disputes, including a dispute between an applicant under s 107 and the strata company about a matter arising under Pt 8 Div 1 subdivision 6 of the Act.

47 Part 8 Div 1 of the Act deals with the functions of a strata company.

48 In particular, subdivisions 5 and 6 deal, respectively, with records and correspondence which must be made and/or kept by the strata company, and with the provision of information to a person with proper interest in such information.

49 Under s 107 of the Act, a person with a proper interest in information about a strata titles scheme may apply in writing under s 109 of the Act to the strata company for inspection of material.

50 An applicant satisfies the requirement of being a person with a proper interest in information about a strata titles scheme if he or she falls within a class of persons, such as, relevantly, a member of the strata company for the scheme: s 107(2)(a) of the Act.

51 The owners of the lots in a strata titles scheme are members of a strata company: s 14(8) of the Act.

52 Under s 109(1) of the Act, a strata company must make material to which the section applies available for inspection by an applicant or be liable for committing an offence.

53 The material may be made available in electronic or hard copy form: s 109(3) of the Act.

54 The material to which s 109 of the Act applies relevantly includes material kept under s 104 of the Act and other documents within the possession or control of the strata company: s 109(6) of the Act.

55 Under s 104(1)(b) of the Act, a strata company is to, relevantly, make and keep minutes of its general meetings and council meetings, as well as records of council's resolutions and decisions.

56 Under s 104(1)(c) of the Act, a strata company is to keep, relevantly:

- a) records of its income and expenditure and statements of account for each financial year made or kept under s 101;
- b) notices of its general meetings and council meetings;
- c) notices of proposed resolutions and material submitted to strata company members in connection with proposed resolutions;
- d) all correspondence, other notices and orders that a strata company or its council sends or receives; and
- e) a copy of each contract entered into by a strata company, and any variation, extension or termination of such contract, including a strata management contract, an insurance contract, a contract for services or amenities provided to a strata company or strata company members.

57 The period of time for which the documents referred to in [55] and [56] are to be kept are fixed by the *Strata Titles (General) Regulations 2019* (WA) (**Regulations**).

58 Under reg 83 of the Regulations, the documents referred to above are to be kept for the prescribed period of seven years, save for the following types of documents:

- a) records of council's resolutions and decisions - 20 years for special resolutions, unanimous resolutions and resolutions without dissent, seven years in any other case; and
- b) contracts entered into by the strata company - 20 years for an insurance contract, including any variation, extension or termination of such contract, seven years in any other case.

59 Further, a strata company must prepare a budget for each financial year and submit it for approval to its annual general meeting: s 102(1) of the Act.

60 Under s 111 of the Act, nothing in subdivision 6 (which includes
s 107 and s 109) relevantly requires a strata company to give any
information that is the subject of legal professional privilege, or to
make available a document or a part of a document if that would
disclose information that is the subject of legal professional privilege.

The pre-amendment Act

61 The obligations of a strata company to make and keep records, and
to provide information to a proper applicant, prior to 30 May 2020 were
similar to those under the current provisions of the Act.

62 The general obligation on a strata company to make and keep
records was contained in s 35 of the pre-amendment Act.

63 Under those provisions, a strata company was to cause to be:

- a) kept: minutes of its meetings and proper books of account in respect of moneys it received or expended showing the items in respect of which the moneys were received or expended (s 35(1)(f));
- b) prepared from the books of account: proper statement of accounts in respect of each period (s 35(1)(g));
- c) retained for the prescribed period: relevantly, under s 35(1)(h) -
 - i) the minutes and books of account referred to in s 35(1)(f);
 - ii) the statements of account referred to in s 35(1)(g);
 - iii) copies of correspondence a strata company received and sent;
 - iv) notices of its meetings and its council's meetings;
 - v) voting papers relating to motions for resolutions; and
 - vi) such other documents as may be prescribed (which include policies of insurance under reg 25(2) of the *Strata Titles General*

*Regulations 1996 (WA) (the
1996 Regulations).*

64 Regulation 25(1) of the 1996 Regulations prescribed the period for which the records referred to in s 35(1)(h) of the pre-amendment Act are to be kept.

65 Save for policies of insurance, the documents referred to in [63(c)] had to be kept for a period of seven years: reg 25(1)(a) of the 1996 Regulations.

66 Policies of insurance had to be kept for a period of 20 years or a period ending when the policies have ceased to have effect, whichever is the longer: reg 25(1)(b) of the 1996 Regulations.

67 Under s 43(1) of the pre-amendment Act, a strata company was required to make available for inspection, upon written application by, relevantly, a proprietor of a lot, the following documents:

- a) the minutes of general meetings and council meetings;
- b) its books of account;
- c) a copy of its statement of accounts last prepared in accordance with s 35(1)(g) of the pre-amendment Act;
- d) every current policy of insurance effected and receipt for the premium last paid in respect of each policy; and
- e) any other record or document in its custody or under its control.

68 Whilst the exclusion in s 43(1) of the pre-amendment Act to correspondence of a strata company seems peculiar (given it is a document required to be retained under s 35(1)(h)), an applicant may be able to rely on a strata company's obligation to retain correspondence and to seek such correspondence through an application for any record or document in its custody or under its control.

69 This exclusion is not replicated in the current provisions of the Act, as s 109 requires a strata company to make available for inspection to a proper applicant all documents to which it is required to keep under s 104, which expressly includes correspondence.

Legal professional privilege

70 At its heart, legal professional privilege is a rule of substantive law, which a person may invoke to resist giving information or producing documents that would reveal confidential communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or providing legal services (including representation in legal proceedings): *Schreuder v Murray [No 2]* [2009] WASCA 145; (2009) 41 WAR 169 (*Schreuder*) at [58], citing *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* [2002] HCA 49; (2002) 213 CLR 543 at [9] - [11] and *Esso Australia Resources Limited v Federal Commissioner of Taxation* [1999] HCA 67; (1999) 201 CLR 49 at [35], [61] and [62].

71 Legal professional privilege is commonly considered under two categories, namely legal advice privilege (confidential communications made for the dominant purpose of giving or receiving legal advice) and litigation privilege (confidential communications, information or documents brought into existence for the dominant purpose of preparing for litigation): *Schreuder* at [59].

72 In a case of a party defending a claim for production of a document on the basis that the document is protected by legal professional privilege, whilst the ultimate legal onus remains on the party claiming the privilege, an evidential onus may be cast upon the party seeking inspection if the claim for privilege is 'apparently proper': *Carey v Korda* [2012] WASCA 228; (2012) 45 WAR 181 (*Carey*) at [70].

73 What is required to establish a privilege claim will vary depending on the nature of the document and the particular ground on which privilege is claimed: *Carey* at [71]. The example cited in *Carey* of what could readily be capable of sustaining a claim for legal professional privilege on the ground that it was made for the dominant purpose of giving legal advice is where a document is described as a confidential communication from the lawyer to the client: *Carey* at [71].

74 However, each claim will need to be considered on its merits, and the sufficiency of the evidence relied upon by the party disputing the privilege claim for the purpose of meeting its evidential onus will vary according to the ground of privilege claimed and the description of the document given: *Carey* at [71].

Secondary issue 1 - can the Tribunal make any orders other than the production of documents?

75 It is clear that the only threshold for inspecting materials of a strata company is whether the applicant falls within a specified or prescribed class of persons.

76 The owner, being a member of the strata company, is entitled to apply for inspection of all materials specified under s 104 of the Act, without having to establish a purpose or reason for the inspection.

77 As such, if I am satisfied that the documents requested by the owner are those required to be held by the strata company, and is otherwise not protected by legal professional privilege, I will make the orders sought.

78 This is consistent with the view taken by the majority of the Court of Appeal in *Engwirda v The Owners of Queens Riverside Strata Plan 55728* [2019] WASCA 190 at [17], [23] and [24].

79 In that case, his Honours Murphy and Mitchell JJA and considered that the Tribunal is to exercise the power where a strata company has wrongfully failed to make available for inspection a record or document that a lot owner is statutorily entitled to inspect, and the Tribunal has no role to oversee whether the entitlement to inspect documents is exercised 'within reasonable bounds' or whether it involves 'serious potential of misuse, oppression and pettiness'.

80 Further, I will make the orders, even taking into account the attestations of Ms Rigby and Ms Logiudice that they have provided all documents within their possession and control. Notwithstanding orders requiring each to particularise the documents that have been provided to the owner, neither have adequately attended to this task, and so I do not have any sense as to what has been provided to the owner (and whether it could be said that the strata company has complied with the previous Tribunal orders, and whether it has kept all the documents which it is required to keep for the prescribed period of time).

81 However, to the extent that the owner is seeking information rather than existing documents, or the creation of new documents, that clearly falls outside of what can be sought under an application for inspection, and I will dismiss that part of her application.

82 Further, to the extent that she seeks orders compelling the strata company (or other entities) to do certain things, that fall outside the scope of her original application. Whilst I am prepared to constrain her application to those documents identified in her requests as set out in her bundle of documents, I am not prepared to allow her to change the nature of the dispute which the Tribunal was originally asked to resolve - that being in relation to an alleged wrongful failure by the strata company to provide inspection of materials.

83 As such, I will dismiss her application for orders that compel parties to do things.

84 I note that whilst source documents such as invoices are not specifically described as a class of documents under s 104 of the Act, I consider them to be correspondence received by the strata company, and as such are required to be kept under s 104(1)(c) of the Act (and in the case of source documents created before 1 May 2020, under s 35(1)(h) of the pre-amendment Act).

85 Finally, for reasons set out in [88] to [91], I will dismiss her application for access to legal advice.

86 Set out in the table below are the owner's requests for orders, and my determination on those requests:

Bundle of docs of issue of concern	Order sought	Determination
Bundle 1: Common Property, Exclusive and Non Exclusive Areas	<ol style="list-style-type: none"> 1) A copy of the maintenance budget for the assets of the strata company ('SC') located on exclusive use common property for every year since November 2013 2) A copy of the maintenance budget for the assets of the SC located on non exclusive use common property for every year since November 2013 3) On each budget, identify whether the asset actually exists 	<ol style="list-style-type: none"> 1) Partially granted only as to documents from 12 Jul 2015 2) Partially granted only as to documents from 12 Jul 2015 3) Refused: not request for document, but for information
Bundle 2: Lewis Blythe and Hooper Invoices	<ol style="list-style-type: none"> 1) A breakdown of the costs 2) An explanation as to why private individuals have been allowed to access the funds of the strata 3) A copy of any Minutes of Meetings held to appoint a solicitor, the written terms of 	<ol style="list-style-type: none"> 1) Refused: not request for document, but for information 2) Refused: not request for

	<p>appointment and the resolution to allow individual lot owners to access strata funds for the purpose.</p>	<p>document, but for information</p> <p>3) Granted on amended terms</p>
<p>Bundle 3: Invoices rendered from 2013-2021</p>	<ol style="list-style-type: none"> 1) A copy of every electricity invoice issued by any manager for lot 13 in order to determine the exact amount, if any, outstanding 2) A copy of every non exclusive use budget issued by any manager for lot 13 in order to determine the exact amount, if any, outstanding 3) A clear determination of whether the funds claimed as payable were actually expended for every line of proposed annual expenditure for non exclusive use common property by direct reference to that expenditure in the non exclusive use trust account ledger. 	<ol style="list-style-type: none"> 1) Granted on amended terms 2) Granted on amended terms 3) Refused: not request for document, but for information
<p>Bundle 4: Restrictive Use Covenant Breach</p>	<ol style="list-style-type: none"> 1) Full disclosure of every document held by the strata company, including but not limited to emails between any parties regarding the known breaches, due process, production of documents, including City of Albany, West Australian Planning Commission ('WAPC') and any other party whatsoever. 2) Copies of breach notices to any or all strata proprietors, as determined in the strata email to City of Albany on 1 July 2019. If breach notices have not issued, a clear explanation, supported by legislation as to why breach notices have not issued. 3) Legal opinions, costs for "advice" were paid by the strata company, as per the AGM Minutes 2019. 4) [withdrawn at hearing] 5) A schedule of the progress made since the matter 929/2020 was withdrawn at SAT, with particular reference to the efforts to employ a manager. 6) Copies of any agreements to act in a cohesive manner signed by the entire cohort of owners of lots 1 to 12. 7) Any correspondence with WAPC regarding the breach or, suggestions to WAPC to resolve the matter. 8) A schedule of potential by law changes that will need to be accepted by every strata proprietor prior to lodgement at WAPC. 9) [not reproduced – not a request for docs] 10) [not reproduced – not a request for docs] 	<ol style="list-style-type: none"> 1) Granted on amended terms 2) Partially granted on amended terms, not as to request for information 3) Refused: subject to legal professional privilege 4) [withdrawn] 5) Refused: not request for document, but for information 6) Granted on amended terms 7) See 1) above 8) Refused: not request for document, but for information 9) Refused: not request for document 10) Refused: not request for document 11) Refused: not request for document 12) Refused: not request for document

	<p>11) [not reproduced – not a request for docs] 12) [not reproduced – not a request for docs] 13) Provide full written details of any proactive advancement whatsoever that may indicate a direct intention to remedy existing failure of governance. 14) [not reproduced – not a request for docs]</p>	<p>13) Refused: not request for document, but for information 14) Refused: not request for document</p>
<p>Bundle 5: Non Exclusive Use Portion of Common Property Account deliberately misrepresented at hand over</p>	<p>[no request for docs identifiable]</p>	<p>Refused: not request for document</p>
<p>Bundle 6: Haynes Robinson Legal Advice</p>	<p>1) A copy of the advice 2) The resolution to appoint a solicitor 3) Quote for the expenditure 4) Approval for the expenditure</p>	<p>1) Refused: subject to legal professional privilege 2) Granted on amended terms 3) Granted 4) Granted</p>
<p>Bundle 7: Water tank expenditure</p>	<p>1) The invoices relating to the expenditure for approval, purchase, groundworks, plumbing and any other costs associated with the installation 2) The agenda for the meeting called to discuss the tank 3) The resolution/s from the meeting 4) Legible drawings sent to City of Albany 5) The three quotes necessary prior to the purchase of the tank 6) The Minutes of the meeting at which the decision was made 7) A copy of any resolution withdrawing AGM Minutes 2016 [reference to Motion 3.6 not reproduced]. 8) The money for the purchase of the tank be returned to the SC immediately.</p>	<p>1) Granted on amended terms 2) Granted on amended terms 3) Granted on amended terms 4) Granted on amended terms 5) Granted on amended terms 6) Granted on amended terms 7) Granted on amended terms 8) Refused: not a request for document, but for order for payment</p>
<p>Bundle 8: Gaslighting and Defamatory Comments</p>	<p>1) Full details of the misconduct incidents mentioned and witnessed by the attestors. 2) Proof that the assertions regarding the theft of water by Ms Carr are correct. 3) If no proof can be tabled then a written</p>	<p>1) Refused: not request for document, but for information 2) Refused: not</p>

	<p>apology is required. The apology will need to be published to all who attended the meeting with FESA and City of Albany and members of the SC, and any other party who has become a party to the lies.</p> <p>4) A copy of the written legislative directive allowing [names and addresses of other strata owners] to be withheld.</p>	<p>request for document, but for information</p> <p>3) Refused: not request for document, but for order for apology</p> <p>4) Refused: not request for document, but for information</p>
<p>Bundle 9: Missing Statements From 13 July 2020 to today. Advice as to the location of \$30,072.39. No reserve fund account statements.</p>	<p>1) A copy of bank statements from 14 July 2020 to today's date.</p> <p>2) Bank statements for the reserve fund from inception to today's date.</p> <p>3) A trust ledger for the reserve fund from 19th November 2018 to today's date.</p>	<p>1) Granted on amended terms (amalgamated with Bundles 10 and 10A)</p> <p>2) Granted on amended terms</p> <p>3) Granted on amended terms</p>
<p>Bundle 10: Missing Statements 1 to 6. Logiudice Trust docs from 17 July 2020 to today</p>	<p>1) I request copies of statements 1 to 6 from BSB 633 000 Account 164832636.</p> <p>2) If the account has not closed, I request statements from 1st August 2020 to today.</p> <p>3) I request ledgers and statements from 17th July 2020 to 29th January 2021 from Logiudice Property Group Trust Account as these have not been provided.</p>	<p>1) Granted</p> <p>2) Granted on amended terms (amalgamated with Bundles 9 and 10A)</p> <p>3) Granted on amended terms</p>
<p>Bundle 10A: Bank Account statements for undisclosed account balances at 2020 AGM from June 1st 2020 to July 31st 2021. Account Numbers [164832636 and 164841066]</p>	<p>1) I require the statements for the accounts for the period 1 June 2020 to 31 July 2021.</p> <p>2) The whereabouts and statements for any other funds owned by the SC including the funds held by LoGiudice Property Group.</p>	<p>1) Granted on amended terms (amalgamated with Bundles 9 and 10A)</p> <p>2) Partially granted as it relates to statements</p>
<p>Bundle 11: Sub Strata Trust Account Ledger Invoices and relevant documents requested</p>	<p>[in respect of specified transactions relating to Rainbow coast Insurance Brokers and Ramped Technology]</p> <p>1) All copies of written quotes for any expenditure exceeding the limit</p> <p>2) Full details of the services or goods provided</p> <p>3) Advice as to whether the service was</p>	<p>1) Granted on amended terms</p> <p>2) Refused: not request for document, but for information</p> <p>3) Refused: not</p>

	<p>provided to exclusive use, or non exclusive use portion of common property, or individual lots</p> <p>4) Meeting agenda for the proposal of expenditure</p> <p>5) Meeting minutes with voting resolution for the expenditure</p> <p>6) Copies of invoices, schedule of materials, labour hours</p>	<p>request for document, but for information</p> <p>4) Granted on amended terms</p> <p>5) Granted on amended terms</p> <p>6) Granted on amended terms</p>
<p>Bundle 12: Western Power Refund</p>	<p>1) Details of the person who authorised JCE Enterprises Pty Ltd to act on behalf of the SC in relation to the power supply rebate</p> <p>2) A clear understanding as to whom the funds were distributed.</p> <p>3) A one fifteenth share of the funds, being \$263.86</p>	<p>1) Refused: not request for document, but for information</p> <p>2) Refused: not request for document, but for information</p> <p>3) Refused: not request for document, but for order for payment</p>
<p>Bundle 13: costs for exclusive use common property maintenance charged to non exclusive use common property account. Refund required.</p>	<p>[request for one-fifteenth refund of specific amounts]</p>	<p>Refused: not request for document, but for order for payment</p>
<p>Bundle 14: Landlords Insurance Refund Required</p>	<p>1) An apology for the shameful ongoing behaviour</p> <p>2) Full disclosure of the complaints made to any party regarding my occupancy</p> <p>3) A return of \$111.33 unlawfully charged for landlords insurance</p> <p>4) An explanation from the former strata managers, Merrifield Real Estate, as why they failed to read the strata plan prior to accepting the paid position as strata managers, who were supposed to act impartially and in my best interests according to law</p> <p>5) An explanation from the Council of Owners at that time, as why they failed to read the strata plan prior to nominating and accepting positions as office bearers.</p>	<p>1) Refused: not request for document, but for order for apology</p> <p>2) Granted on amended terms</p> <p>3) Refused: not request for document, but for order for payment</p> <p>4) Refused: not request for document, but for information</p> <p>5) Refused: not request for document, but for information</p>

<p>Bundle 15: CCTV Cameras and Trespass</p>	<ol style="list-style-type: none"> 1) A copy of the Meeting agenda and meeting Minutes council for the resolution to install the camera on common property and commence operation. 2) A copy of the required protocols for the collection, storage of CCTV data for the SC and the protections as to privacy as determined in the Privacy Act 1988 3) Copies of all footage held by the SC 4) A log in code, IP address or similar for access to the footage. 	<ol style="list-style-type: none"> 1) Granted on amended terms 2) Granted on amended terms 3) Granted: as 'other documents in the possession or control of the SC' (s 109(6)(c)) and capable of being provided electronically (s 109(3)) 4) Refused: not request for document, but for information
<p>Bundle 16: Failure to Gain Control of the Records</p>	<ol style="list-style-type: none"> 1) The SC to issue proceedings against Merrifield Real Estate for its failure to deliver up the records of account. 2) And if the SC fails to act, then SAT has the power to deal with Merrifields and has the power to deal with the SC. 	<ol style="list-style-type: none"> 1) Refused: not request for document, but for order compelling SC to take action 2) Refused: not request for document
<p>Bundle 17: Approved Budget 01/07/2020</p>	<ol style="list-style-type: none"> 1) I request the Meeting Agenda and Meeting Minutes authorising the appointment of a solicitor, the expenditure limit, three quotes for the work, the scope of work to be provided, and the name of the party being represented. 2) Explain the nature of the defence. EG – defence of the SC's failure to produce documents. 3) I require an explanation as to why the exclusive use area has no charge for management fees, when the bulk of assets are unavailable to my lot. 4) I request a full justification of the costs of both [insurance] policies and copies of both premiums and policies. 5) On the photos of non exclusive use CP provided identify with a red text: <ol style="list-style-type: none"> a) the buildings determined as potentially requiring maintenance; b) the building determined as potentially requiring materials and hardware; c) the building/s determined as potentially requiring miscellaneous expenses; d) the building/s determined as 	<ol style="list-style-type: none"> 1) Partially granted, not as to request for information 2) Refused: not request for document, but for information 3) Refused: not request for document, but for information 4) Partially granted, not as to request for information 5) Refused: not request for document, but for information

	potentially requiring [garden maintenance]	
Bundle 17b: Approved Budget 01/07/2020	[no request for docs identifiable]	Refused: not request for document
Bundle 18: Merrifields allowed Caprice Beach - proprietor of 11 lots to vote when only two lots were financial.	<ol style="list-style-type: none"> 1) A root and branch investigation ordered by SAT to determine Merrifields actions is required to determine the full facts of the matter. 2) If there is a better way to handle it then I request that SAT offer a suggestion as a means of mediating the matter. 	<ol style="list-style-type: none"> 1) Refused: not request for document 2) Refused: not request for document
Bundle 18b: Merrifields allowed Caprice Beach – proprietor of 11 lots to vote when only two lots were financial.	[no request for docs identifiable]	Refused: not request for document
Bundle 19: Section 43 settlement statements	<ol style="list-style-type: none"> 1) Please provide a copy of every Section 43 certificate provided for every settlement from 1/06/2013 to today's date. Ensure the most recent sale, being lot 7, is included. 2) Provide details of the unit 7 proprietor's records. 	<ol style="list-style-type: none"> 1) Partially granted only as to documents from 12 July 2015 2) Refused: not request for document, but for information
Bundle 20: Gardening and Rubbish Collection Invoices	<ol style="list-style-type: none"> 1) Every invoice presented to the SC by Janeen Rae 2) Copies of all receipts for tip passes purchased by the SC 3) Invoices for green waste collection and Vancouver Green Waste tip passes 4) Invoices for rubbish collection and tip passes 5) Copies of every invoice for gardening on the non exclusive use portion of common property from JCE Enterprises Pty Ltd 	
[No Bundle 21]		
[No Bundle 22]		
[No Bundle 23]		
Bundle 24:	I require the matter to be dealt with proactively	Refused: not request

Trespass on common property driveway by Lot 1 survey strata 37046	and the rights of the SC be honoured. Kindly enforce the recitals of the easement documents. If the problem is not pro actively dealt with at this AGM I will take the matter to SAT for review.	for document
[No Bundle 25]		
[No Bundle 26]		
Bundle 27: FOI documents determined by City of Albany	I require discovery of all the documents listed by City of Albany on the Notices of Decision attached.	Granted on amended terms, and as to the only complete Final Notice of Decision provided in Bundle 27
Bundle 28: Failure to maintain common property - tree removal and driveway maintenance	[no request for doc identifiable]	Refused: not request for document
Bundle 29: Failure to alter bylaws to meet planning consent. Failure to provide COO	[Withdrawn at the hearing]	
Bundle 30: [information sent regarding negligent misrepresentation of strata accounts and other issues]	[no request for doc identifiable]	Refused: not request for document
Bundle 30A: failure to appoint an on site manager	<ol style="list-style-type: none"> 1) Documents for formal arrangements regarding management agreements in keeping with previous agreements, between the strata company and unit 1 to 12 holders and unit 1 to 12 holders and the management company, to be tabled. 2) Documentation of the steps taken by the strata managers and the SC to sanction the SC and the strata owners for failure to act within the bylaws. These actions constitute serious breaches of the bylaws and the actions contravene restrictive use 	<ol style="list-style-type: none"> 1) Granted on amended terms 2) Refused: not request for document, but for information

	conditions instigated by WAPC.	
Bundle 30B: AGM Minutes 2021	[no request for doc identifiable]	Refused: not request for document
[No Bundle 31]		
Bundle 32: 6 th September 2021 Misrepresented Accounts. Levies and outstanding invoices.	This strata needs an administrator as soon as possible.	Refused: not request for document, but for order appointing administrator

87 Where I have granted a request that does not specify the date of the documents sought, save for the insurance policies sought under Bundle 17, I will limit the documents to be produced to be those dated 12 July 2015 onwards, given that all other documents need only be kept by the strata company for seven years: reg 83 of the Regulations (for documents created from 1 May 2020) and reg 25(1)(a) of the 1996 Regulations (for documents created before 1 May 2020).

Secondary issue 2 - can the Tribunal order the production of legal advice to the strata company?

88 Section 111 of the Act makes it clear that legal professional privilege applies, and thus can be claimed, in respect of documents for which a strata company is required to keep.

89 I am satisfied that it is 'apparently proper' for a claim for legal professional privilege to be claimed by the strata company over 'legal advice', which would be a document which, on its face, was confidential communication prepared for the dominant purpose of providing legal advice.

90 Indeed, the strata company's resistance thus far in disclosing the legal advice indicates its belief that such documents are to remain confidential and not to be disclosed to a third party.

91 The owner, who bears the evidential onus of proving that the documents are not privileged, has not led any evidence or made any submissions in the discharge of that onus, and so I will dismiss her application in respect of any legal advice.

Secondary issue 3 - should the Tribunal make an order for costs?

92 Whilst the owner has not incurred any fees for legal representation, she can seek the costs of the application fees for filing her application(s).

93 My consideration of the relevant principles for costs recovery are set out in my previous decision of *Wolfenden and Mandurah Homes Pty Ltd* [2020] WASAT 127(S) (*Wolfenden*), and save for references to the costs provision of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), remain relevant to this costs application.

94 As stated in *Wolfenden* at [18], the starting point under s 87(1) of the *State Administrative Tribunal Act 2004* (WA) (**SAT Act**) is that each party is to bear its own costs: *Western Australian Planning Commission v Questdale Holdings Pty Ltd* [2016] WASCA 32; (2016) 213 LGERA 81 (*Questdale*) at [50].

95 It is relevant to consider whether and to what extent the strata company's conduct in connection with the proceedings has impaired the attainment of the Tribunal's objectives under s 9 of the SAT Act to have the proceedings determined fairly and in accordance with the substantial merits, with as little formality and technicality as possible, and in a way which minimises the costs to the parties: *Questdale* at [54].

96 Whilst it may be said that the strata company has not assisted the Tribunal by failing to substantively comply with the programming order to adequately particularise documents which have been provided to the owner, the owner has similarly failed to provide particularisation.

97 As such, I am placed in the position of making orders for production of documents in a vacuum of knowledge as to whether documents which fall within the orders have in fact already been provided to the owner.

98 With both parties being of minimal assistance equally in this regard, I will refuse the owner's application for costs of her application fees.

Conclusion

99 For reasons set out above, I will grant the owner's request for inspection of the documents referred to in the orders at [102] as indicated in the table at [86].

100 I will further order that the strata company is to provide the documents in bundles which correspond to the type of documents enumerated in the order.

101 This is to ensure that the owner is able to specifically identify the documents which relate to each issue of her concern, rather than a blanket disclosure of all documents held by the strata company.

Orders

102 The Tribunal makes the following order:

1. Within 10 days of this order, the respondent shall make available for inspection by the applicant a copy of the following documents:
 - (a) the maintenance budget for the assets of the strata company located on exclusive use common property for every year since 12 July 2015;
 - (b) the maintenance budget for the assets of the strata company located on non-'exclusive use common property' for every year since 12 July 2015;
 - (c) any minutes of meetings relating to appointment of Lewis Blythe and Hooper, the written terms of the appointment (save for instructions communicated to Lewis Blythe and Hooper made for the dominant purpose of receiving legal advice or legal services) and any resolution as to payment of legal fees issued by Lewis Blythe and Hooper;
 - (d) all electricity invoices issued by any manager for Lot 13 on survey-strata plan 55030 ('Lot 13') since 12 July 2015;

- (e) all non-'exclusive use common area' budgets issued by any manager for Lot 13 since 12 July 2015;
- (f) any document relating to the alleged breach of the restrictive use condition on the strata scheme which prevents Lots 1 to 12 from being occupied for more than a total of three months in any 12 month period, including correspondence from/to the City of Albany and the Western Australian Planning Commission;
- (g) any breach notice to any of the owners of the lots in the survey-strata scheme, as determined in the strata company's email to the City of Albany on 1 July 2019;
- (h) any resolution relating to the appointment of Haynes Robinson (for which the firm was paid on 3 February 2020 in the amount of \$2,837.70), a copy of any quotes for the expenditure and a copy of the approval for the expenditure;
- (i) the invoices relating to the expenditure for approval, purchase, groundworks, plumbing and any other costs associated with the installation of the water tank installed on exclusive use common property in about the third trimester of 2019;
- (j) the agenda for any meeting called to discuss the water tank referred to in order 1(i) installed on the exclusive use common property, and a copy of the minutes of any such meeting, and a copy of any resolution(s) from any such meeting;
- (k) any drawings sent to the City of Albany related to the water tank referred to in order 1(i);
- (l) any quotes for the purchase of the water tank referred to in order 1(i);

- (m) any resolution withdrawing Motion 3.6 of the Minutes of the Annual General Meeting of 2016;
- (n) the bank statements of account BSB 633 000 Account 164841066 for the period 1 June 2020 to 12 July 2022;
- (o) the bank statements for the reserve fund for the period 12 July 2015 to 12 July 2022;
- (p) the trust ledger for the reserve fund from 19 November 2018 to 12 July 2022;
- (q) the bank statements No. 1 to 6 of account BSB 633 000 Account 164832636, and any other bank statements from that account from 1 June 2020 to 12 July 2022;
- (r) the ledgers and statements from 17 July 2020 to 29 January 2021 from Logiudice Property Group Trust Account;
- (s) in respect of payments to Rainbow Coast Insurance Brokers and Ramped Technology & Management Systems from 12 July 2015 to current:
 - (i) any written quotes for the expenditure;
 - (ii) the agenda of any meeting for the proposal of the expenditure;
 - (iii) the minutes of any meeting and the resolution for the expenditure; and
 - (iv) any invoice, and any schedule of materials and labour hours.
- (t) any document from 12 July 2015 to 12 July 2022 relating to any complaints made to any party regarding the owner's occupancy;
- (u) any agenda and minutes of meeting for the resolution to install and operate the

CCTV camera on the laundry building on the exclusive use common property;

- (v) any protocols for the collection, storage of CCTV data for the strata company and the protections as to privacy as referred to in the *Privacy Act 1988* (Cth) in relation to the CCTV camera referred to in order 1(u);
- (w) any footage from the CCTV camera referred to in order 1(u) in the possession or custody of the strata company;
- (x) in relation to the approved item on the budget of 1 July 2020 for administrative legal fees of \$15,000:
 - (i) any agenda and/or minutes of the meeting authorizing the appointment of a solicitor;
 - (ii) any quotes for the work; and
 - (iii) the terms of engagement of any solicitor;
- (y) a copy of every Section 43 certificate provided for every settlement from 12 July 2015 to 12 July 2022, including the most recent sale of Lot 7;
- (z) all documents in the possession or custody of the strata company which are listed on the City of Albany's Notice of Decision under the *Freedom of Information Act 1992* (WA) to the applicant dated 27 January 2021; and
- (aa) any document of any formal arrangement or any management agreement between the strata company, the owners of Lots 1 to 12, and a management company from 31 August 2018 to 12 July 2022.

2. In complying with order 1 above, the respondent is to provide the documents in bundles which correspond to the class of documents enumerated above.
3. The application is otherwise dismissed.

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

MS K Y Loh, MEMBER

12 JULY 2022