

# Strata Titles (WA): To the benefit of all, and disadvantage to none!



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## Dilemmas galore

Strata councils often face dilemmas. They often have to decide how to deal with competing demands from lot owners in the same scheme. This can be more challenging when the properties have quite different characteristics.

Take the example of a strata scheme with say 20 lots, built on sloping terrain. The two properties at the top of the slope have better views, while the two at the bottom have more convenient access to the main road. Unfortunately, with ageing of water pipes and pumps (which are common property), the water pressure progressively becomes weaker for the higher lots.

The problem could be solved by upgrading the pumps.

However, those pumps are located mid-way up the slope next to the two lots there. Engineers advise that upgraded pumps will continually generate a level of continuous noise that will be a nuisance to the mid-level properties.

Would it be reasonable for the two higher level properties to insist that the strata company install the upgraded pumps to the detriment of the mid-level properties?

## Treat all lot owners equally

A strata company has a general duty to control and manage common property for the benefit of all lot owners.

In this scenario, it is within the scope of that general duty that the strata company must undertake proper management and control of the common property; namely the water pumps and pipes. The strata company must maintain, and if necessary, renew and replace them. This applies whether deterioration arises from fair wear and tear, or inherent defect or any other cause.

This much is clear because of section 91 of the *Strata Titles Act 1985* (as amended).

The State Administrative Tribunal decision in *Sisto v The Owners of Glenway Gardens Apartments*<sup>1</sup> established that:

*'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 proprietors as a whole.'*

In this scenario, every lot owner could reasonably expect to have water pressure that is within a normal range, and which is the same for every lot.

***'Do nothing to interfere unreasonably with any lot owner's use or enjoyment of their own property.'***

<sup>1</sup> [2005] WASAT 282.

## Discharging the obligation can potentially disadvantage some lots

But then, would the strata company be entitled to cause noise disturbance to some lot owners, just so all lot owners can benefit from regular water pressure?

The answer lies in section 83 of the *Strata Titles Act*, which provides in effect that no lot owner is permitted to:

*'use, or permit the use of, the lot or common property of the strata titles scheme in a way that interferes unreasonably with the use or enjoyment of another lot or the common property...'*

This provision prohibits lot owners from causing the strata company to permit an upgrade of the pumps, if it would result in a nuisance to the mid-level properties.

## Potentially give special treatment for some lots

The engineers advise that one solution would be for the higher lot properties to install water tanks on their lots to mediate the flow and therefore the pressure.

Now, the owners of those higher properties will ask for the strata company to pay for the installation of the upgraded tanks.

This would involve a special levy on all the properties which would benefit only those two higher level properties. However, strata company funds should not benefit individual lot owners. They are to be used for the benefit of all lot owners.

Nevertheless, the strata company can contend that normal and sufficient water pressure is a reasonable expectation of all lot owners. It can also argue that the issue of water pressure comes under the proper control and management of the water infrastructure for the scheme.

Furthermore, the water infrastructure includes all equipment required to supply water to all lots at the right pressure. Therefore, it can be said that installing water tanks on the individual higher lots falls within the scope of that control and management of common property.

In this scenario, the water tanks installed on private lots can be said to be part of the common property. This is because they are extensions of the water pumps and pipes into the particular lots.

Although the above scenario deals with water infrastructure in a strata scheme, the reasoning would apply to any other kinds of infrastructure.

The key is to ensure that while all lots need to be treated equally, sometimes, it can look like some are getting preferential treatment. In fact, they are being assisted only towards getting treated on a par with other lots.

Always remember that one should do nothing to interfere unreasonably with any lot owner's use or enjoyment of their own property.

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