CONSUMER, TRADER & TENANCY TRIBUNAL
NOTICE OF ORDER

THE SECRETARY, THE OWNERS STRATA
PLAN 50785
1–3 McDonald Street
CRONULLA NSW 2230

File No: SCS 09/40324
(Quote in all enquiries)

Application to the Tribunal concerning 1–3 McDonald Street CRONULLA NSW 2230 Australia

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On 10–DEC–2009, the following orders were made:

1. I decline to make the orders sought and the application is dismissed.

Please read this information carefully

- **Display of the Order:** Within 72 hours of receiving this order the owners corporation must put a copy on the scheme notice board, unless the order states otherwise or if the by–laws do not require the owners corporation to maintain a notice board. It must stay there for 14 days. If there is no notice board the owners corporation must give a copy to each person shown on the strata roll.
- **Your Rights of Appeal:** If you wish to appeal against a dismissal of an application by an Adjudicator, you must lodge an appeal to the Tribunal within 21 days of the date the order takes effect. The date the order takes effect will vary. See s210 of the Strata Schemes Management Act 1996 and s99 of the Community Land Management Act 1989. An Appeal from any other order must also be lodged within 21 days of the date the order takes effect, although if sufficient cause is shown, time may be extended to 90 days. Section 81 of the Consumer, Trader and Tenancy Tribunal Act 2001 may also apply.
- An order of the Tribunal may be varied or revoked in certain limited circumstances. Such application may only be made with the approval of the Registrar within 28 days. Orders made by an Adjudicator may be clarified or time extended.
- The only right of appeal against an order of the Tribunal made at hearing is to the District Court on a point of law and must be made within 28 days from the date the order is made. In certain circumstances this time may be extended.
- **Penalty for Non–Compliance:** If an order is not complied with an application may be made to the Tribunal to impose a penalty up to $5,500.00.

More Information: If you need more information your rights and responsibilities or Mediation enquiries please contact Fair Trading Information Centre on 13 32 20.

L Johns
for the Registrar
10/12/09

CONSUMER, TRADER & TENANCY TRIBUNAL
Strata and Community Schemes Division

APPLICATION NO:	SCS 09/40324
STRATA SCHEME:	SP 50785
PREMISES:	1-3 McDonald Street, Cronulla NSW 2230
APPLICANT:	Owners Corporation SP 50785
RESPONDENTS:	1. Universal Finance Holdings Pty Ltd 2. Owners Corporation SP 50785
LEGISLATION:	*Strata Schemes Management Act* 1996
KEY WORDS	Common property; failure to keep in repair; lift tower; interpretation of Special By-Law; soffit

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ORDERS

I decline to make the orders sought and the application is dismissed.

S F Smith
Strata Schemes Adjudicator

2 December 2009

CONSUMER, TRADER & TENANCY TRIBUNAL
Strata and Community Schemes Division

REASONS FOR DECISION

APPLICATION NO: SCS 09 / 40324

APPLICATION

This application is brought by the Owners Corporation of a strata scheme which is a commercial development of 28 lots in suburban Cronulla. The application concerns painting of *'the lift tower soffit'* an area associated with a lift tower structure.

MEDIATION

Before there can be a formal strata adjudication, s.125 of the *Strata Schemes Management Act* (the Act) requires that there must have been at least an attempt at mediation of the dispute. The file indicates that a mediation session was conducted by the Office of Fair Trading on 13 May 2009 but was not successful in resolving the dispute.

POWERS UNDER THE ACT

The *Strata Schemes Management Act* (the Act) set out the circumstances in which an Adjudicator may make orders affecting strata schemes.

s.138 gives power to a Strata Adjudicator to:

> 'make orders to settle a dispute about:...the by-laws of...or...in relation to the operation... of a strata scheme'.

It will be seen that the powers of Adjudicators to make orders in settlement of disputes are wide but they are not unlimited. In fact subsection (3) provides that orders are not to be made under s.138 if some other, more specific, power relating to the dispute is provided for in the Act.

Section 62 of the Act imposes an obligation on the Owners Corporation to keep the common property and is phrased thus:

Section 62

(1) An owners corporation must properly maintain and keep in a state of good and serviceable repair the common property and any personal property vested in the owners corporation.

(2) An owners corporation must renew or replace any fixtures or fittings comprised in the common property and any personal property vested in the owners corporation.

However in this case the assertion is that a Special By-Law in force with respect to the strata scheme requires the Respondent to attend to lift tower maintenance including painting.

I am satisfied that I have jurisdiction under s.138 and that any decision made on the dispute will be binding on the parties.

SUBMISSIONS AND EVIDENCE

The application was made by the strata manager and is in the standard form. It nominates Universal Finance Holdings Pty Ltd as the Respondent. It is assumed (and no where disputed) that Universal is the owner of lot 21. The application attaches various other documents in support of the orders sought. They include copies of correspondence and minutes as well as a copy of the relevant Special By-Law.

Following receipt of the application, as required by s.135, the Registrar called for submissions from all interested parties, in this case the Respondent. A submission was received on behalf of Universal under the hand of Mr Paul Kavatas *'as owner of lot 21'*. It sets out a lengthy written submission and enclosed a copy of the strata plan together with some photos. No material in reply was received from the Owners Corporation.

ANALYSIS

On one level this matter appears to be a question of the true construction of a Special By-Law. It seems that the Respondent does not dispute its obligation to paint and keep in repair the lift tower soffit. Indeed it states that it does that. The Respondent correctly identifies the soffit as *'the under side of a structural component of a building'*. In a dwelling house the surface under the eaves is properly referred to as a soffit, often pronounced *'sof-feet'*. Photos P, Q and

R supplied by the Respondent identify those parts of the structure which might be called soffits and assert that they do not need to be painted. The photos supplied show some parts of the building works which appear to be in need of painting but the soffits as identified do not seem to be among them.

Part of the Respondent's submission mention other parts of the roof structure, an elaborate glass and steel gazebo, which might be caught by the by-law. The Special By-Law is not well drafted and there are latent and patent ambiguities. However, the fine detail of what is covered by Special By-Law 2 is not taken up by the Applicant.

CONCLUSION

It seems possible that the Applicant is at cross purposes with the Respondent as to which parts of the structure are correctly described as soffits and in need of painting. From what I can see no soffit is in need of painting. Moreover, the Respondent does not in general deny its responsibility for the lift tower. The Applicant could have inspected the Respondent's submission and amended its application if appropriate. However, that did not happen and I must consider the application as filed.

ORDERS

I decline to make the orders sought and the application is dismissed.

S F Smith
Strata Schemes Adjudicator

2 December 2009