CONSUMER, TRADER & TENANCY TRIBUNAL

Rec. 23/10/12

The Secretary, Owners Corporation SP 50785
1–3 McDonald Street
CRONULLA NSW 2230

File No: SCS 12/49745
(Quote in all enquiries)

Application to the Tribunal concerning 1–3 McDonald Street CRONULLA NSW 2230 Australia – SP50785

On 27.9.12 the Registrar received an Application for an Order. A copy of the application is attached.

You may lodge a written submission in respect of the application stating whether you agree or disagree. Your written submission must be received by the Registrar by Tuesday 20.11.12. You should not include any information which you do not want disclosed to the other parties.

Copies of submissions are not forwarded to parties, however you may inspect the file at the Registry. File inspections are available by appointment only until Friday following the close of submissions date. An appointment to inspect the file can be arranged by contacting the Registry. Any photocopies of submissions requested at the file inspection will incur a fee. You should be aware that other persons may inspect the file.

Following the close of the submission period the file will be forwarded to an Adjudicator for written decision.

The file number should be quoted on your submission.

MG

M Goyal
Deputy Registrar
19/10/12

Please read this information carefully

- **Display of this Notice:** When the Owners Corporation receives this notice and a copy of the application it must put a copy on the scheme notice board immediately (unless the by laws do not require one to be maintained) and keep it there until the date for making submissions expires. The Owners Corporation must immediately serve a copy of the notice and application on each person shown on the strata roll.
- **Content of Submissions:** Written submissions should include information relevant to the order asked for including photographs, technical reports and minutes of meetings. Disputes about by–laws, should include a copy of any relevant registered by–laws. Disputes about repairs to common property or damage to a lot should include a copy of the registered strata plan. These are available from the Land Titles Office, Queens Square, Sydney.
- **Adjudicator or Hearing:** Orders under sections 138 to 170 will be referred to the Strata Schemes Adjudicator for determination. Orders under sections 182 to 192 and 202 to 204 must be referred to the Tribunal for determination. You can appeal to the Tribunal from a decision of an Adjudicator. In addition, an Adjudicator may refer an application to the Tribunal if, for example, the legal complexity or importance of the application or other good reason justifies referral. You will be notified if the application has been referred to the Tribunal.
- **Applications to the Adjudicator:** These are decided on the material in the application and submissions. There is no hearing. The decision and the reasons for that decision are made in writing.
- **Applications to the Tribunal:** There is a hearing. Witnesses may give evidence and make submissions. You may represent yourself or be represented.
- **Notice of Decision:** In all cases a notice of the final order is sent to the person who applied, the person it is against, anyone who sent in a submission and the Owners Corporation.

- **Appeal Rights:** A decision of an Adjudicator may be appealed to the Tribunal. The Tribunal may admit new evidence. A decision of the Tribunal may be appealed to the District Court on a limited basis, in relation to questions of law only.
- **Further Inquiries:** If you need more information about your rights and responsibilities please contact Fair Trading Information Centre on 13 32 20.

Level 3, 4–8 Woodville Street, HURSTVILLE NSW 2220
PO Box 148, HURSTVILLE BC NSW 1481
Ph: 1300 135 399 Fax: 8567 0099
www.cttt.nsw.gov.au

CONSUMER, TRADER AND TENANCY TRIBUNAL
Strata and Community Schemes Division

APPLICATION FOR AN ORDER BY AN ADJUDICATOR

Under the *Strata Schemes Management Act 1996* or the *Community Land Management Act 1989*

CTTT Consumer, Trader & Tenancy Tribunal

If you have not attempted mediation you should get advice from NSW Fair Trading before lodging this form

A copy of this application and any attached information will be provided to other parties.

1. **Have you tried to settle this dispute through mediation?**

☑ **Yes** If yes, you must attach evidence of the mediation outcome *(a copy of the letter given to you by the mediator)*

☐ **No** If No, Why?

2. **Address of the scheme**

☑ **Strata Scheme**

☐ **Community Scheme**

(Please tick one)

1-3 McDONALD STREET
CRONULLA NSW 2230

3. **What is the Strata Plan No. or Community Plan DP No.?**

50785

If a Community Scheme, is your lot in a:

☐ Community Plan ☐ Neighbourhood Plan
☐ Precinct Plan ☐ Strata Corporation

If a Community Plan, how many lots are shown on the plan?

4. **Your Name**

Individual applicant or corporation

(PAUL KAVADAS) UNIVERSAL FINANCE HOLDINGS PTL

Your postal address:

c/- P.O.Box 355
ROUND CORNER 2158

Daytime telephone: 02-9654.3751
Email address: cmstrata@bigpond.com

5. **Are you:**

(Tick where appropriate)

If Strata Plan:

☑ Lot owner of Lot No. 21
☐ Owners corporation
☐ Original owner
☐ Lessor
☐ Council, public authority or statutory body
☐ Other

If Community Plan:

☐ Owner/proprietor of Lot No.
☐ Association
☐ Strata Corporation
☐ Occupier
☐ Manager
☐ Other

6. **Who is the application against?**

Individual or corporation *(If more than one party attach a separate list)*

THE OWNERS CORPORATION SP 50785

Other party's postal address:

P.O.Box 2727
TAREN POINT 2229

Daytime telephone: 9540-4199
Email address: nhowell@stratatitle.com.au

7. **Who is the other party?**

If Strata Plan:

☐ Lot owner of Lot No.
☑ Owners corporation
☐ Tenant/occupier of Lot No.
☐ Lessor
☐ Other

If Community Plan:

☐ Community Association
☐ Precinct Association
☐ Neighbourhood Association
☐ Owner/proprietor of Lot No.
☐ Occupier
☐ Other

RECEIVED
27 SEP 2012
CONSUMER TRADER & TENANCY TRIBUNAL
HURSTVILLE

OFFICE USE ONLY:

Receipt No: 1253400
Date: 27-09-2012
App Fee $76.00
Receipt Total: $76.00
File No: 12/49745
Classification:

8. **Address of Managing Agent or Secretary of the Owners Corporation/Association?**

P.O.Box 2727
TAREN POINT
NSW 2229

9. **List all CTTT reference numbers**
For previous applications involving the same or related dispute (ANNEXURE "S")

MEDIATION FILE: SM12/0475 PK & SCS 09/40324 (ANNEXURE "G")

10. **If known, specify the section of the Act under which the application is made?**
Insert the appropriate section of the Act. *(Refer to the table of orders on pages 3 to 7)*

☑ *Strata Schemes Management Act 1996* Section(s) 52, 65A, 78, 157 & 62

☐ *Community Land Management Act 1989* Section(s)

11. **What order/s do you want?**
Write down or attach the order you want the Adjudicator to make *(Refe to the table of orders on pages 3 to 7)*. Time limits apply for certain applications. You should refer to the legislation before making the application about the types of orders an Adjudicator can make.

Please see attached "ANNEXURE 1" and appendices "A" to "S"

12. **What are your reasons for requesting the above order/s?**
Explain why you are lodging the application and why the order/s should be made. Additional information may be attached to this application form.

Failure of the OC to comply with sections of the Strata Schemes Management Act, fraud on minority exercised by the O.C., deprevations of proprietary rights & registration and enforcement of illegally registered By laws. Refund of "additional levies" paid to the OC contrary to the requirements of the SSMA.

13. **Your Name(s)** *(Please print)*

Paul Kavadas Nominee & owner of Lot 21 & UFC P/L.

Your Signature(s)

per

Your position title *(If Owners Corporation or Association)*

OWNER OF Lot 21

Date

24.9.2012

Fee details: You must pay the application fee when lodging your application. Refer to the separate fee schedule. If a fee is not paid, the listing of your application may be delayed or dismissed. You may pay a reduced fee if you hold a Centrelink concession, Health Care Card, Veteran's Affairs Pension, NSW Seniors Card, or a full-time student allowance. You must enclose a photocopy of your current card or allowance advice with the application.

Return this request form to: Registrar, Consumer, Trader and Tenancy Tribunal

For all CTTT Registry Offices ☎ T: 1300 135 399 🖷 F: 1300 135 247 www.cttt.nsw.gov.au

Sydney Registry
Level 12, 175 Castlereagh Street
Sydney NSW 2000
GPO Box 4005, Sydney NSW 2001

Newcastle Registry
Level 1, 175 Scott Street
Newcastle NSW 2300
PO Box 792, Newcastle NSW 2300

Hurstville Registry
Level 3, 4-8 Woodville Street
Hurstville NSW 2220
PO Box 148, Hurstville BC NSW 1481

Tamworth Registry
Suite 3- 5, Kable Korner Complex
Cnr Kable Ave & Darling St
PO Box 1033, Tamworth NSW 2340

Liverpool Registry
Level 3, 33 Moore Street
Liverpool NSW 2170
PO Box 723, Liverpool BC NSW 1871

Wollongong Registry
Level 3, 43 Burelli Street
Wollongong NSW 2500
PO Box 319, Wollongong NSW 2520

Penrith Registry
Ground Floor, 2-6 Station Street
Penrith NSW 2750
PO Box 988, Penrith NSW 2751

CTTT
Consumer, Trader & Tenancy Tribunal

1) APPLICATION

A BYLAW 42

B AMENDED BYLAW 42 ÷ 42.5

C BYLAW 21

D PHOTOS

E STRATA PLAN

F GLAZING WORKS (PLANS)

G CTTT DECISION

HI (H) BYLAWS 1 & 2 (I) SECOND BYLAW 1.

JK MOTION TO AMEND BYLAW 2 AGM 20.4.2011

L DEMAND LETTERS FROM O.C RE: BYLAW 2

M E.C. Meeting re: GAZEBO Maintenance

N NOTICE OF E.C. Meeting of 21.12.2011 RE: GAZEBO

O LETTER TO O.C. re: S62 Repairs

PQ MINUTES OF E.C. 26.7.2012

R LETTERS TO O.C.
LETTER FROM SOLICITOR: DEMAND

S MEDIATION

T

U

VW

XYZ

AVERY™
PP Divider A-Z Grey
Re-order Code 85922

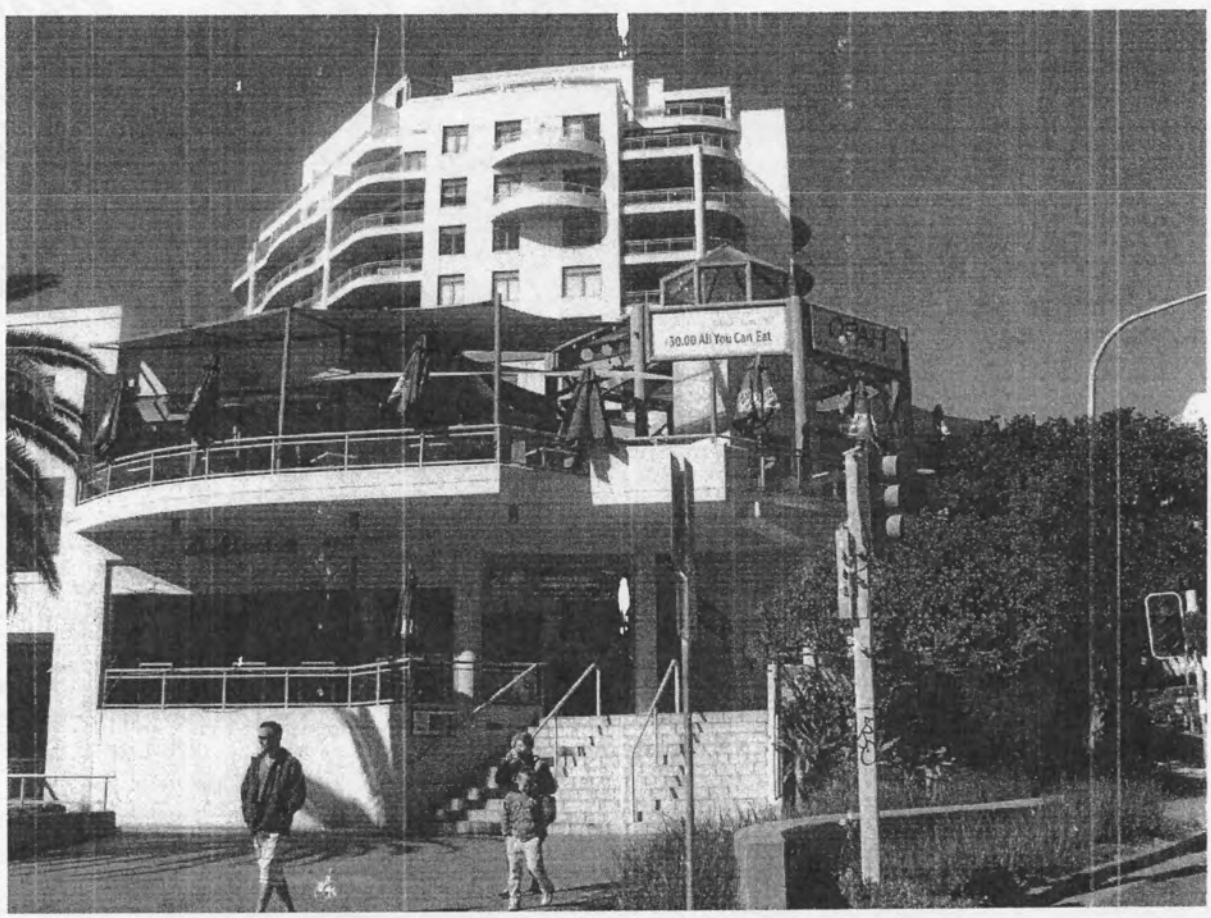
ANNEXURE 1

APPLICATION TO CTTT

PAUL KAVADAS v STRATA PLAN 50785

ISSUES:

1. BYLAW 2 : Rescind or Amend
2. BYLAW 42 : Rescind
3. BYLAW 42.5 : Rescind
4. BYLAW 21 : Clarify
5. LIFT : Identify maintenance responsibilities
6. REFUND : Extra levies paid by Lot 21



1-3 McDONALD STREET CRONULLA SP50785

The Registrar 14.9.2012
CTTT

Dear Sir,

RE: **Application P. Kavadas on behalf of Universal Finance Holdings Pty Ltd against the owners of Strata Plan 50785 – 1-3 McDonald Street, Cronulla.**

My name is Paul Kavadas, I am the owner and nominee of Universal Finance Corporation Pty Ltd (UFH), the registered owners of Lot 21 in SP50785. We purchased the unit some years ago and the Lot since registration of the SP has been used as a restaurant.

There are a number of issues that I have with the Owner's Corporation (OC) and neither the numerous discussions and attempts by us to resolve those issues nor the attendance to Mediation has resolved the dispute as the OC is not addressing the questions raised. They appear either unwilling or unable to address any of the issues we have raised despite the fact that at the Mediation they were represented by members of their Executive Committee (EC) by their Solicitor Adrian Mueller.
A further issue is the fact that we have received from the OC copies of bylaws generally attached to Notices for GM's or EC meetings which appear to be registered with LPI and yet enquiries with LPI reveal that there are no records of some of the bylaws. The same appears to be the case with OC website. The entire issue of bylaws is extremely complicated and at present the OC through its EC appears either unable or unwilling to respond in a positive manner to our queries.
The following bylaws that we refer to are the bylaws as forwarded to us by the OC.

ISSUES:

1) ***SPECIAL Bylaw 42 & 42.5 (Annexures A & B)***.
In our opinion the approval and registration of Bylaw 42.5 by the OC constitutes a breach of s52(1)(a) and 65A(5)(b) of the Strata Schemes Management Act 1996 (the Act) resulting from the alteration of Bylaw No.42 (amended to 42.5) on 11th September, 2008.
The approval and registration of Bylaw 42.5 was undertaken without any written consent or acceptance sought or obtained from the owner of Lot 21 and on appearances neither from any of the other Commercial Owners, the lots of which are directly affected and subjected to expenditure created by the alteration.

a) In compliance with s52(3) within a period of 2 years from registration of the bylaw we submitted to the OC our written objection to the alteration of Bylaw 42. The objection by Lot 21 was given to the OC and remained without any response. Following a lengthy delay the first communication we received was a letter of demand from the OC Solicitors J S Mueller & Co.

b) The Bylaw imposes levies against individual owners in a commercial manner and is contrary to the directions and obligation imposed by s78 of the Act as the levies imposed are not raised on the basis of the unit entitlement.(U/E)

2) ***SPECIAL Bylaw No.21 (Annexure "C")***
Entitles the occupants of Lot 21 to use a strip of ***exclusively defined section of the open common area (CP)*** fronting their Lot for the purpose of placing tables and chairs to service their clients. The bylaw renders the owners of Lot 21 responsible for the cleaning and maintenance of the defined strip of open area allocated but specifically ***excludes any maintenance or repair of a structural nature.*** Despite the limitations of the bylaw, the OC demands from the owner of Lot 21 to exclusively maintain and keep the "structural sections" (GAZEBO) that is a free standing structure covering a major section of the open common area and is partially attached to the existing eaves-overhang that existed above the exclusively allocated strip of open space". (***See Annexure "D" Photos P8 10 & P11).***
(Defined area comprises of a strip of Common Property fronting Lot 21 approx. 2.5m wide & having a total of about ***100*** *sq.m):* ***(See "area 7" on page 3 of Annexure "C")***

3) ***SPECIAL Bylaw No.2 (Annexure "H")***
Specifies special privileges and reconfirms the ***exclusive rights over specific sections of the common area*** (same area 7 as per Bylaw 21) upon which Lot 21 is given now leave to erect and maintain the "Glazing Works" and retain its exhaust system.
The Glazing Works were successfully completed in 2004 where the exhaust system was installed and used since registration of the Strata Scheme.
Additionally the Bylaw, without affording any exclusive rights or special privileges to the owners of Lot 21 over the Elevator & Elevator Tower it compels them to ***exclusively and properly maintain and keep the elevator & elevator tower in a state***

of good and serviceable repair and keep indemnifying the OC for the costs and charges under the elevator maintenance contract that the OC has entered into plus all repair expenses.

3) ***Bylaws 42 & 42.5 & BYLAW 2.***
On establishing invalidity and reversal or amendment of the above bylaws we are seeking a refund of the original and additional (extra quarterly & annual) charges imposed by the amendment to bylaw No.42.(42.5) and by Bylaw 2 which remain in place and have Lot 21 to be in constant arrears and subjected to interest, charges and unable to vote. We note that the installation and use of the exhaust system is again covered also in Bylaw No.2 also.

RATIONALE:

Issue No.1:

A) **Special Bylaw No.42** was registered sometime in 1996 and was designed to raise special levies that affect exclusively a small section of the Strata Scheme, the Commercial Lots 1, 2, 3, 4, 5, 12 & 21 in SP80785.

B) An amendment was introduced and called Bylaw 42.5 was introduced and registered under s52 of the Act on 11.9.2008 based on a resolution passed at a General Meeting on 26.3.2008.

C) We consider the introduction of Bylaw 42.5 (***Annexure "B")*** and amendment of bylaw 42, pursuant to s43(4) of the Act to have no force or effect to the extent that it is ambiguous, uncertain and inconsistent with this Act, any other Act or Laws.
Furthermore it was approved without the prior written consent of the concerned owners or owners that are directly affected by the amendment.

D) We further consider that both bylaws 42 & 42.5 are drafted in a very poor and ambiguous way and enforced by the OC in breach of s78 of the Act as the levies imposed on select individual owners are not based on unit entitlement and are not in compliance with s78 of the Act and as such invalid.
(Refer to Supreme Court decision in "The owners SP60919 v CTTT & ors [2009] NSWSC 1158)

E) **BYLAW 42.5 Exhaust systems & Grease Traps**
*" **The owner shall be permitted to have the use of those parts** of the CP as is necessary for the purpose of the provision of an exhaust system and grease trap for the lot ("the use") on the following terms and conditions:*

a) *The owner shall during the period of the use pay a License fee of $2,500.00 for each quarter or any part thereof* ***where the use might cease.*** *The License fee shall be automatically charged to each Commercial Lot* ***levy*** *account, and be adjusted by the CPI at the first quarter following the beginning of each calendar year;*

b) *Provided not less than 75% of the EC have determined that the terms of the bylaw have not been breached in respect of any lot, the payment referred to in the preceding sub-clause 42.5(a) will be waived.*

F) **Clause 42.5(a)** imposes a severe level of extra contribution upon the owner of Lot 21 which is inconsistent with s78 of the Act and which despite our objections and the acceptance of the OC that the bylaw as registered is unclear and invalid, continue to charge and demand payment of the amount specified in the Bylaw.

G) **Clause 42.5(b)** is invalid, unclear and used in a discriminatory manner by the EC that appears to have the power to charge (penalise) or remove the contributions payable. In this instance even though we have not breached any sections of these bylaw's or conditions as defined, we have been penalised and charged on appearances because we did objected to the illegal amendment and registration of bylaw 42.5 and the terms of Bylaw 2 as interpreted by the owners corporation.

H) Under 42.5(b) the EC at will is able to impose or waive the contributions specified under 42.5(a).

I) We find both clauses (a) & (b) of 42.5 to be unclear and ambiguous. We also find that the interpretation of (a) & (b) as presented by the OC discriminates against Lot 21 as we consider that there is a reasonable alternate interpretation, as intended by the drafting of the bylaw and the conditions that were present at the time.

J) The change of the bylaw introduced an increase of some 150% to a contribution imposed by the OC against the individual owners of commercial properties alone, for the use of their own exhaust system & grease traps, which are items, constructed, installed and totally maintained at the cost of the individual commercial owner and causes no costs to the OC.

K) We raised our objections for the registration of bylaw 42.5 to the OC in May 2010 & again in June and our objection was totally ignored and not addressed.***(See Annexure "R" (1 & 2)***

L) Following a deliberate delay by the OC and without any response to us, they handed the matter of arrears over to their Solicitors J S Mueller & Co who issued letters of demand and debt collection notices, based on arrears that were already under question, disputed and unanswered. (See Annexure "R" (3).

M) We responded to the Solicitor's demands and explained that we considered the bylaw, generating a large portion of the debt, to be illegally amended and that the a nounts claimed were not correct. In fact we paid what we considered to be the correct amount representing standard levies struck pursuant to s78 of the Act.

N) The Solicitor submitted to us a copy of an amended but still incomplete "owner's ledger" and responded that the bylaw was valid by virtue of the application of s52(3) of the Act.***(Annexure "R" (4&5)***

O) In response we submitted copies of letters we forwarded to the OC objecting to the bylaw well within the period of 2 years (May 2010) of its registration and drew his attention to the deliberate delay and failure of the OC to respond to our correspondence or to amend the amounts claimed.

Following this the Solicitor sought instructions form the OC and there has been no further correspondence from him since then.

P) The OC continued to submit levy notices directly to us and include all the levies & charges payable under bylaw 42.5.

Q) We repeatedly requested by means of a motion at meetings, by phone and in writing both, the removal of the charges and the repeal of the bylaw but despite verbal agreement all requests have been ignored. At an EC meeting the members present accepted that the alteration of the Bylaw was invalid and should be repealed.

R) We object to the amendment of bylaw 42 & 42.5 as it is inconsistent with the requirements of s52(1)(a), 65A(5)(b) and 78(4) as follows::-

s52(1): *"An owners corporation may make, amend or repeal a bylaw to which this division applies, but only":*

a) ***With the written consent of the owner or owners of the lot or lots concerned*** *and, in the case of a strata leasehold scheme, the lessor of the scheme.*

s65A: *An owner's corporation may make or authorise changes to common property subject to the following conditions:.-*

A bylaw made for the purposes of this section:

(a) Must not be amended or repealed unless a special resolution has first been passed at a general meeting of the owners corporation and ***the owners corporation has obtained the written consent of the owner concerned.***

S78(2): *Contributions levied by an OC must be levied in respect of each lot and are payable (subject to this section and s77) by the owners* ***in shares proportional to their unit entitlements of their respective lots.***

I consider myself (Lot 21) and the other commercial proprietors to be "concerned owners" ***directly affected*** and yet the bylaw was amended and registered without any prior written approval by me and to my

knowledge from any other commercial proprietors.
(***Copies of Bylaws 42 & 42.5 are annexed marked "A"& "B).***
In addition to noncompliance with s52(1), s65A & S78(2) of the Act we refer to the "Young" case where "concerned owners" must consent to the Bylaw if it is to be valid. We further refer to the very important recent decision in *J. E. James v SP11478 (2012)NSWSC 590*, where Justice Ball deviated from the Young case but again determined that:
"The owner's consent to an Exclusive Use Bylaw is a pre-condition and must be fulfilled before the Bylaw is made".

Issue 2

1) **Special Bylaw No.21.** Registered [.8.1996
"The Proprietor for the time being of Lot 21 and their successors in title and persons authorised by those Proprietors ("Authorised users") are entitled to the exclusive use and enjoyment of that part of the common property designated in the plan annexed hereto and forming part of this bylaw ("open area") for the purposes of placing and maintaining on the open area, tables and chairs to be used by members of the public for consumption of food or beverages purchased from the occupant of the lot on the following terms and conditions:-
   A. The authorised user shall be responsible for the proper maintenance and keeping in a state of good and serviceable repair and the cleaning of the open area so that it remains clean and tidy at all times ***but excluding any maintenance or repair of a structural nature."***

2) Lot 21 comprises of a Restaurant located on the top floor of the building and my predecessors had obtained, with the approval of the OC exclusive use of a defined strip of open patio area fronting the restaurant to place tables and chairs in order to serve their clients. The area of exclusive use is defined as "area 7" and is clearly shown on page 3 of Special Bylaw 21
(Annexure "C" & Photos P2, P6, P8, P10 & P11 in Annexure "D")

3) The patio (open area) as referred to above is situated next to some sort of a steel structure which comprises of a structural steel frame (columns & beams) and is partially covered by a frame which contains glass panes, plastic and open spaces and is sitting in an ***asymmetrical fashion over the existing Lift Tower & Lift.*** We refer to it as "Gazebo***".(See Annexure "D" P16, P17, P18 & P19)***

The Gazebo appears to have been placed over the Lift Tower after the completion of the Lift Tower and is independently supported by a series of metal structural columns that are all located on Common Property. The columns support the Gazebo by means of beams & rafters.

(See Annexure "D", Photos P5, P7, P8, P10 & P11).
There is no direct connection between the Gazebo and the exclusive area referred to in the Bylaw. The only connection to Lot 21 is by means of some support braces that are extending over a void & open area used for the stairs and are attached to the existing overhang of the eaves which is located above the glazing works.
(SEE Photos P2, P8, P10 & P11 on Annexure "D").

4) The Gazebo was never considered for inclusion in this bylaw and in fact by virtue of the wording of the bylaw it is specifically excluded. It is and has always been part of the Common Property and as such the maintenance and up-keep of the same is the responsibility of the OC pursuant to s62 of the Act and not that of the owners of Lot 21 as claimed by the OC. If one looks at the documentation attached to bylaw 21 (***Annexure "C" Page 3 and Annexure "F" pages 2 & 3)*** the following aspects can be identified.
The area allocated to Lot 21 (***area marked as area 7 on page 3 of Annexure "C")*** forms only a small proportion of the "open area" comprising the common property patio at that level & which is not allocated to Lot 21.
The same can be observed on pages ***2 & 3 of Annexure "F"*** where it is also demonstrated that the Gazebo is clearly a free standing structure that has no association with "area 7" or the Glazing works. The bylaw clearly refers to the exclusive use of the "open area 7" alone as shown on the annexed plans and that is the only area that is under the responsibility of Lot 21. In effect Lot 21 has no exclusivity of the entire patio/open area at that level.

5) On the letters of demand the OC informs us that an expert report was obtained and that the Gazebo is in need of urgent repairs that could cause imminent damages. We were not given a copy of the report but on visual inspection we find the condition of the Gazebo to be one of total negligence by its caretakers and most of the beams and trusses have deteriorated and are covered with extensive rust and flaking paint. We note the failure of the OC to comply with s62 of the Act.
(See Annexure "L" (1-3) and Photos P12 to P15 of Annexure "D").
As a result of demands by the owners corporation to force the owners of Lot 21 to maintain the Gazebo structure (at an approximate cost of $87,000.00 based on quotes obtained by the OC), we are seeking a declaration that establishes the responsibility of the OC for the maintenance and upkeep of the Gazebo which clearly forms part of the common property irrespective of the fact that it is partially attached to sections of the roof that is over the area exclusively

allocated to and used by Lot 21.
As mentioned above the exclusively used area (area 7) forms only a small section of the total open area that was always and remains still the responsibility of the OC an area which was to be utilised by the users of the proposed, at the time, bridge. The Gazebo covers only areas that have always been and remain under the responsibility and control of the OC.
The claim for repairs of the Gazebo by Lot 21 was the subject of an Adjudication application by the OC which was dismissed.
(See Annexure "G" for CTTT determination)
(A Copy of Bylaw 21 is annexed hereto & marked "C").

Issue 3
Special Bylaw No.2.

1. Following the granting of the exclusive use of the ***open patio area pursuant to Bylaw 21*** (area 7) my predecessors and the OC agreed to allow Lot 21 to demolish the boundary wall fronting the open area of the level and extend the restaurant areas to cover and incorporate the allocated portion of the open area (area 7 under bylaw 21) in accordance with a DA that was approved by the Council & the OC by enclosing the same with a glazed wall (Glazing Works) along the boundaries of the existing overhand of the roof over Lot 21. Bylaw No.2 was created in 2003 to cover the demolition of the existing boundary Glazing wall and to cover the construction of the "Glazing Works" and the enclosure of the strip of the open space (area 7) as referred to in bylaw 21 and as detailed on the attached plans.
   (See Annexure "F" pages 1 to 3)
   Bylaw 2 contains an agreement that the owners of lot 21 are responsible for the maintenance and upkeep of the "glazing works", and the section of the common property upon which the "glazing works" were to be erected together with the ***"roof" over Lot 21*** which was the existing roof over Lot 21 that has not been altered by the glazing works, including now the non reflective glazed mansard roof constructed as part of and over the "glazing works" that were mounted and secured under the existing fascia.
   (See annexure "F" page 1,2 & 3 & Photo P6, P8 & P10 on Annexure "D").

2. Because of the anticipated long period before completion of the Glazing Works and since Lot 21 is the last stop for the elevator, a temporary agreement was reached, even though no exclusive rights were given to Lot 21 for the elevator & elevator tower, that all maintenance costs and damages to the elevator and elevator tower,

resulting from the work performed, including the regular maintenance costs (with due consideration to the frequent use of the elevator by lot 21 during the construction period) would be the responsibility of the owners of Lot 21.

3. Upon completion of the works, the undisputed inference of the reference to the "term" in the bylaw, is that the agreement was temporary and for a defined period only, after which time the responsibilities for the maintenance of the elevator & elevator tower would revert back to the OC. The bylaw was registered in 2003 and the works were completed some 10 months later.
   (***See Annexure "H" Bylaw 2 clauses (xviii, iii & iv)***

4. During the temporary agreement the owners of Lot 21 agreed to pay all the costs of the elevator's maintenance ***even though they did not have exclusive use or special privileges over the elevator and elevator tower*** which have always remained parts of the common property. Even after the expiration of the term, Lot 21 was not released of its obligation and continued to be charged for ***the exclusive obligation to meet ALL costs of maintenance and upkeep of the elevator and elevator tower*** despite the fact that for all intents and purposes the "term" had expired and the elevator remained open and as always was available and used by all residents and visitors at will.
   Somehow the section of the bylaw referring to the payment of ALL costs by Lot 21 was not repealed (as intended by the Bylaw) upon expiration of the reasonable term and Lot 21 continues to pay ALL expenses for the elevator's maintenance.
   We are further concerned that if this situation continues , given the lack of co-operation and the interpretation adopted by the OC & EC of the Strata Scheme we could well be expected to replace the elevator once it reaches certain age.
   (A copy of Bylaw 2 is annexed hereto marked "H").
   As a result of the interpretation the EC gives to the wording of the bylaw, that the Gazebo is the roof of the lift tower, they have and continue to demand payment not only for the maintenance contract costs and repairs of the lift & tower but now extended their demands to cover the payment or the restoration of the Gazebo.
   (See Annexure "L" (1-3) and issues 2 & 3 as above)

5. The Bylaw is very specific in the definition of each item that is included:

A: ***The Elevator****: The common property elevator adjacent to the North/Western boundary of Lot 21.*

a) ***The elevator tower****: The structure housing the elevator (including the walls, surrounding stairs and roof) adjacent to the North/Western boundary of Lot 21.*
b) ***The Exhaust system:*** *The exhaust system installed* ***on the roof*** (of Lot 21).
c) ***The Glazing works:*** *Means the works undertaken by the owner to install the glazing (including all ancillary structures) depicted on the plan.*
d) ***Owner:*** *means the owners of Lot 21.*
e) ***The Roof:*** *Means the common property above Lot 21.*

B: Rights:

(a) Special privilege (to Lot 21) in respect of common property to erect & keep the ***Glazing Works*** *to and on the common property.*
(b) *The exclusive use of those parts of the common property occupied by the* ***Glazing works.***
(c) A special privilege in respect of the ***roof*** (above lot 21***) to install and maintain the Exhaust System*** (exclusively used by lot 21*).*

C: Conditions:

(i) The owner must properly maintain and keep the ***common property to and on which the glazing works are erected or attached*** *in a state of good and serviceable repair.*
(ii) the owner must properly maintain and keep the ***Glazing Works*** *in a state of good and serviceable repair and must replace the Glazing Works as required from time to time.*
(iii) The owner must properly maintain and keep the elevator in good and serviceable repair and this obligation includes indemnifying the owners corporation for the costs and charges under the Elevator maintenance contract that the owners corporation has entered into ***until Sutherland Shire Council agrees to the terms of the Development Application in relation to the construction of the bridge over Gerrale Street are complied with and the bridge is constructed and commissioned.***
(iv) The owner must properly maintain and keep the Elevator Tower in a state of good and serviceable repair ***until Sutherland Shire Council agrees that the terms of the Development Application in relation to the construction of the bridge over Gerrale Street are complied with and the bridge is constructed and commissioned.***
(xviii) The owner will indemnify the OC for all the following costs incurred by the OC and will pay those amounts to the OC when requested:
a) The costs of considering and making this bylaw

b) The costs of considering, approving and certifying the glazing works and
c) the costs of ***repealing this bylaw after the expiry of the term.***

1) Bylaw 2 was drafted and created to give Lot 21 authority to erect the glazing works over the open area initially allocated to Lot 21 by virtue of Bylaw No.21 (area 7) on the Northern boundary of Lot 21 and in order to not only enhance the presentation of the restaurant and protect its clients but also **to compliment the presentation of the entire complex because the anticipated construction of the bridge would have landed the visitors whenever using the bridge, at the front of the restaurant.**
It is important to note that the referred to proposed bridge and its direction to Geralle St as supposed to have been constructed at the time, is shown on the plans contained in pages 2 & 3 of Annexure "F". An additionally important aspect that should be noted is that the lift entrance as marked on Page 3 of "F" is opening onto common property and is facing the proposed bridge, which was the original purpose of the installation of the lift, and not that of the restaurant or Lot 21.
Bylaw 21 *excluded any structural maintenance which is what the OC & its EC are now demanding from the owners of Lot 21. To undertake, the restoration and repair to the Structure that is located above the roof of the Lift Tower structure, the Gazebo.*
*I further draw attention to the terms used under the "****Conditions****" **Sec C(1) of Bylaw 2** which explicitly allocates the responsibility for Lot 21 over "..the common property to and on which* ***the glazing works are erected or attached*** *in a .....). Close observation of the glazing works clearly shows that even the supports (braces) used to secure the Gazebo to Lot 21 are attached to the existing eaves-overhang and not onto the glazing works. To my knowledge the roof over Lot 21 was never altered.*
(See Photos P6, P8, P10 & P11 of Annexure "D")

2) The Exhaust system on the roof of Lot 21 was included as a necessity for the operation of the restaurant and to facilitate the cooking in the Kitchen in compliance with Council's regulations since the Strata was registered. **(See Bylaw 2 B(c)).**

3) The right of all proprietors to use any part of the common property which includes the elevator is an indisputable proprietary right.

4) Even so, the complete costs of the maintenance of the elevator was undertaken by the at the time owners of Lot 21 as a temporary measure on the basis of two factors.

a) The continuous (but not exclusive) use of the elevator by the contractors during the construction of the glazing works and the extensive renovations undertaken to Lot 21 in order to accommodate the enclosure of the common property area (Area 7) and necessary renovations of the restaurant on the inference that this obligation will terminate on completion of the Glazing Works. No other reason exists that supports the claim of the OC that Lot 21 is responsible, exclusively, for the elevator costs.

b) The fact is that the maintenance of the lift by lot 21, as inferred, was terminable upon completion of the works in addition to the undertaking by the OC that the payment of expenses by Lot 21 would terminate when the bridge that forms part of this Bylaw was to be constructed as agreed between the OC, the original developer and Sutherland Council was completed. The bridge was to be constructed following approval of an application by the OC that met Council compliance requirements.
The undertaking to construct the bridge by the owners corporation did not materialise as the OC ***failed to comply*** and as such the proposal was abandoned.

c) In accordance with the bylaw the exclusive obligations for the maintenance of the elevator and elevator tower terminates upon completion of the bridge. This is not just implied but clearly stated **under the Bylaw's "conditions" "C (iii) & (iv)'.(Annexure "C").** The termination is further referred to by the contents of Bylaw 2 under **"B Rights"** where the first paragraph reads:
"Subject to conditions in paragraph "C" of this Bylaw, the owner will have <u>for the term</u>……".

5) The elevator and elevator tower have been at all times parts of the common property and no exclusive use or any special privileges were requested or given to Lot 21 before or after completion of the GLAZING Works, even though there was an undertaking by Lot 21 to pay the elevator costs while the construction was carried out.
The Gazebo on the other hand as it is evident in ***Photos P17 & P18 of Annexure "D",*** [redacted] the Gazebo structure is irregularly fitted or sits on top of the Lift Tower roof and does not cover the Lift tower entirely. If in fact removed completely it would have no effect on the performance and function of the roof of the lift tower and the lift itself. This fact alone voids the claim of the OC that the Gazebo is the roof of the lift tower which is essentially the basis of their claim.

I further draw attention to the following documents :

a) Notice & Minutes of E.C. Meeting (ECM) of 27.3.2012 ***(Annexure "M" (1-6)(Motion 2(E), Motion 5 & Motion 6)***

b) Minutes EC meeting 26.7.2012 ***(Annexure "P" motions 5,6& 10)*** Finally the OC identifies existi ng problems and considers repairs or replacement options to the Atrium Structure ***adjacent*** to Lot 21.

c) Resolved to appoint a Solicitor to identify the "legally responsible person" for the maintenance of the Gazebo (Atrium).
Adrian Mueller was appointed, had a meeting with the EC and attended Mediation where no agreement was reached. So far no reasonable proposal, meeting arrangement or formal offer has been submitted by the OC or their appointed Solicitor.
(See Annexure "P" page 3, Motion 10).
The OC requested that we do not submit our application to the CTTT (Which was completed on 9.1.2012) so they could have legal opinion and respond to our demands. So far 8 months later they have not responded with any reasonable solution to any of the four (4) issues we address here.

6) Following a meeting with the EC we requested their consideration to the repealing and amendment of this bylaw, before we applied to the CTTT for an order. We were refused without any consideration and furthermore informed that if we succeed through the CTTT the elevator will be closed and the restaurant will suffer.

7) The elevator was originally installed to service the proposed bridge to Geralle St., and has always been open and used by a variety of owners as it part of the common property and accessible to all owners and visitors of the complex. The elevator starts from the parking basement, street level, past Lot 1 on level 2 (a bar & coffee shop) and terminates at level 3 where lot 21 is located.
(See Strata Plan Annexure "E").

8) Being a part of the common property the elevator is maintained under a contract negotiated exclusively by the OC and all needed repair works are reported by the various users to the OC who in turn arranges for the repairs. (I note that even false call charges by the elevator suppliers are demanded and paid by Lot 21) The owners of Lot 21 have never been invited to any financial negotiations with regards to the contract and are not .informed of any repairs. Yet on the basis of the temporary agreement Lot 21 is compelled to pay ALL the costs of the maintenance contract as well any repairs, false calls and compliance inspections undertaken under the instructions of the OC or any other irrelevant to Lot 21 user.

9) The costs of the contract maintenance have seriously escalated well above the CPI increases and quotes obtained by us from alternate suppliers indicate that a much better contract can be achieved if properly negotiated.

10) The responsibility of the maintenance of the elevator tower was also exclusively allocated to lot 21 and, again, even though accepted on a temporary basis it is still in place. I note here that in order to compliment the presentation of the restaurant the occupants of Lot 21 have always maintained and painted the elevator tower (at their level) and all surrounding walls. They are also forced to clean the entire open area as the OC cleaners do not attend that level at any time.
The underlining implication is that if Lot 21 objects or fails to pay the upkeep costs of the elevator, besides being unfinancial, their right to use the elevator, as expressed by the EC, could be removed.
We note that the elevator tower and enclosure commences from the basement and is accessible to the public on the ground floor and not just limited to the Restaurant floor. ***(See Strata Plan Annexure "E")***
The obligation imposed on the owners of Lot 21 by the OC and the comments expressed by members of their EC amounts to ***not only a fraud on a minority but also deprivation of the owner's rights*** as expressed by the Court in the "Young" case by finding that "***under s20 of the Development Act a lot owner's entitlement to use the common property in a Strata Scheme is a proprietary right and not a contractual right despite s44 of the Management Act"***
And as expressed by Justice Ball in the James v SP11478 case whereby he directed that "The doctrine of fraud on the minority is confirmed as applying to Strata Schemes. When an OC exercises its powers it must do so for a proper purpose and in a way which will not operate oppressively against minority owners"
Undoubtedly Justice Ball's statement & confirmation fits the discriminatory and oppressive attitude of this OC against Lot 21.

11) The Bylaw under **"C" "conditions"** and more particularly under **sub-clause "(xviii)(c)** refers to the "***repeal of the bylaw*** at the costs of the owners of Lot 21" "after the expiry of the term".
This is again, a clear inference and allows a logical assumption that the term, even though not specified in the bylaw was to remain in place only for a certain period, the period during which the construction of the Glazing Works were undertaken and it would have terminated anyway if the OC met its obligations and undertakings as expressed in the Bylaw with regards to the

construction of the Bridge.

12)The same bylaw Under "C Conditions" bears a heading "Maintenance of Glazing Works" to which cl (i) & (ii) refer to. Under cl (iii) & (iv) it deals with the elevator & elevator tower whereby condition of the "term" is refer to as "... ***until*** Sutherland Shire Council agrees that the terms of the DA in relation to the construction of the bridge over Gerrale St., are complied with" So far since the registration of bylaw 2 on 30/9/2003, in fact since registration of the Strata Scheme when the concept of the bridge was first approved by the Council and determined and adopted by the OC, no bridge has been constructed and on appearances the OC has not submitted any conditions acceptable by the Council as referred to in the Bylaw.
In fact on the basis of discussion with the EC and the Management of the Strata Scheme I was informed that the proposal for a bridge has been abandoned. I am not aware though, if the motion to construct & commission the bridge was ever rescinded.
The ensuing logic since the OC abandoned the Bridge proposal, would then be that the bylaw should have been repealed after completion of the Glazing Work s which was sometime in mid-2004 based on the decision of the OC not to honour its undertaking.

13) I would consider that under the terms of a DA a period of 1 year (30.9.2004) would have been a reasonable period for the OC to comply and meet its commitments in relation to this bylaw.

14) From our point of view the Elevator and Elevator Tower are parts of the common property, remain so and continue to service the needs of all residents & visitors and as such the responsibility of the OC.

15) Based on the failure of the owners corporation to comply with its conditional undertaking to construct the Bridge and the discriminatory effect the bylaw delivers against Lot 21 sections of bylaw 21 should be repealed or amended to completely remove the obligation of Lot 21 to ***exclusively*** pay for the maintenance and upkeep of the elevator and the elevator tower considering that Lot 21 does not have exclusive rights and control of the elevator and has no control over the maintenance contract or any control of its upkeep and maintenance costs.
I would also re-iterate the contributions paid by Lot 21, given the circumstances, constitute a fraud on a minority and deprivation of the owner's rights as well as failing to comply with s78 of the Act. As such the total amount paid by Lot 21 should be refunded

including any resultant interest and charges.

16) We need to also strongly protest against the clear threat expressed by the EC members that "if the bylaw is repealed we will close the elevator and you will lose your rights of the Glazing Works".
Such statements and threats are discriminatory and offensive.
Parliament clearly did not intent an owner's entitlement to use the bylaw repeal provisions of ss157-159 as being sufficient to take away an owner's proprietary rights to use common property.
Furthermore this oppressive attitude constitutes a fraud on the minority. (James v SP11478)
(Refer to items 10 & 11 above)

17) Pursuant to the Act we find the OC to be responsible for the continuous expenses of the elevator & elevator tower that Lot 21 is subjected to and furthermore to be responsible for the maintenance, upkeep and cleaning of the large section of the open area which so far they have neglected and compel the owner of Lot 21 to maintain & for its own purposes keep cleaning.

18). The owners corporation failed to comply with its undertaking (at the time of the bylaw) to construct and commission the bridge. As such we consider that the "***term***" as referred to in the bylaw (in our opinion no more than one year) expired in 2004 and as such should be amended to reflect the correct intention of the agreement.

19) Since 2003 we have been paying ALL the costs for the maintenance and repairs of the elevator and for the maintenance and upkeep of the Elevator Tower and the cleaning of the common property, even though we had no benefit of their exclusive use.

20) We submitted a motion to the OC at their AGM of 21.4.2011 to amend bylaw 2 to the extent that the responsibility for the maintenance of the Elevator and Elevator Tower should revert back to the OC. The motion was put forward and defeated. It was though reported in the minutes of the meeting as being "out of order". ***(See Annexure "J").***

We are seeking to have the section of the bylaw that refers to the payment of all expenses for the elevator & elevator tower repealed or amended pursuant to s159 of the Act with due consideration to the fact that the bylaw was drafted with a triple purpose.

a) **The first and primary** purpose of the Bylaw was to facilitate the transportation of people that were to use the proposed, designed

and approved in principle, bridge from Geralle St., to the 3rd level of the building and through the elevator to the ground floor.

b) **The second** purpose was to allow the permanent construction of the Glazing Works over the defined open area (area 7) allocated to Lot 21 by virtue of Bylaw No.21 as that would enhance the presentation of the complex to the visitors that would use the proposed bridge.

c) **The third** purpose was to temporarily have Lot 21 pay for the costs of the elevator over the construction period as it was to be used extensively by Lot 21 at the time. This part of the agreement was temporary and terminable either after completion of the glazing works and or after construction of the bridge.

We further support our claim on the grounds that the only reason we continue to pay all the expenses is the based on the failure of the OC to comply with the expressed conditions of the Bylaw and its failure to honour its undertakings as contained in the bylaw.

In addition and pursuant to s157(3) of the Act, we believe that we are entitled to have a refund of the elevator maintenance contribution levied on Lot 21 since 2004 over and above the regular contributions levied by the owners corporation from time to time pursuant to s78 of the Act.
We are entitled to a refund because the additional contributions levied upon Lot 21 are not consistent with the requirements of s78(4) of the Act as they are not calculated on the basis of Unit Entitlement.
There are obviously a number of justified reasons as to why Lot 21 should not have been exclusively responsible for such expenses and none to justify the obligation imposed on Lot 21 and more so after the expiration of the term.

We must also consider the fact that as consequence of their interpretation of the bylaw, the EC imposes unreasonable and unfounded demands on Lot 21 for the maintenance of the Gazebo which is nothing more than a decorative free standing structure the only purpose of which is to enhance the presentation of the entire building. The cost demanded from Lot 21 by the OC for the restoration of the Gazebo are in the vicinity of some $87,000.00 even though the convenient interpretation of the bylaw by the OC is incorrect and has no basis as argued above.
We attach under "Annexure "***D***" one of many photos taken from different location around Sydney where the same style & type of Gazebo is constructed above buildings or towers having no other purpose or function but to simply enhance and decorate the presentation of the complex.
(See photos 19 & 20 of Annexure "D")

We also attach correspondence from the OC (22.3.2011 & 6 & 7.4.2011) confirming directions to Lot 21 to undertake necessary repairs on the Gazebo. ***(See Annexure "L" pages 1-4).***

We note the comments in paragraph 2, similar in both letters that "We refer to Special Bylaw 2 which was passed by the OC to **provide you with Exclusive Use** of common property **which includes the lift and the tower structure** which houses the lift.....").

Bylaw 2 **does not provide exclusive use of the lift and the tower structure**. It provides exclusive use of the "Glazing Works" only and temporary exclusive responsibility for the costs of the maintenance of the lift.

The same letter refers to the expert's inspection and establishes the "urgent need" to remove the glass panels off the Gazebo.

We note that the OC failed to affect any repairs as required by s62 of the Act despite the item been included in the Notice of the EC for a meeting on 21.12.2010. Which clearly indicates that they were aware of the defects of the Gazebo since 2010 at least, and yet repairs still remain outstanding? ***(See Annexures "M", "N", "O" & "P")***

Issue 4:

1. Bylaw 42.5 has not been approved in compliance with s 52(1), s65A(5) & s78 of the Act and as such is not valid. As a consequence the bylaw should be rescinded.
2. Furthermore the applicable charges including interest and fees imposed and paid by Lot 21 as well as the outstanding charges relating to this bylaw should be reversed.
3. The grease traps & exhaust systems were in place & in compliance with local authority's regulations since 1999 and furthermore covered by alternate bylaws.
4. The amendment of bylaw not only fails to meet the OC obligations under Act but it also discriminates against commercial lots and in particular Lot 21 and as such should be rescinded.
5. **Section 52(1)** of the Act requires the written consent of the owner of Lot 21 for a bylaw to be capable of depriving its owner of his rights in relation to common property.
6. In the "Young" case the Court determined that as the owner did not submit a consent form the new bylaw amounts to a fraud on the minority under the principles of the ***Corporation Act 2001 (Cth) or an expropriation of the owner's rights under the principles established in Gambotto v WCP Limited (1995) 182 CLR 432.***
   We also refer to James v SP11478 as referred to above in "Issue 3", under item 10 on page 14.

7. The Courts further found that under **s20 of the Development Act** a lot owner's entitlement to use common property in a Strata Scheme is a proprietary right, not a contractual right despite s44 of the Management Act.
8. We hold the EC responsible for its failure and negligence in advising the OC in relation to their obligations under the relevant sections of the Act and for their failure to obtain written consents prior to the meeting where the bylaw was passed. It is also my understanding that no written consents whatsoever were sought or obtained by the owner's corporation prior to the meeting. We also hold the OC responsible for its failure to comply with s62 of the Act.
9. The EC despite their agreement, at a recent EC meeting, that the bylaw not only fails to comply with relevant sections of the Act but is also badly drafted and extremely ambiguous in its delivery has failed to remedy the situation and is not dealing with the issues we raised. Despite their agreement they do not appear that they are prepared to cease and reverse the charges applied to Lot 21 based on the invalidity of bylaw 42.5 & sections of Bylaw 2. As a result Lot 21 remains in arrears and unable to vote.

In conclusion we are applying for the following orders.

1 Bylaws 42 & 42.5 be repealed.

2 A ruling based on the interpretation and intention and the wording of the Special Bylaws 2 & 21 determining if the liability and responsibility for the maintenance and restoration of the "Gazebo", the free standing decorative common property structure above the Lift, is the responsibility of the owners of Lot 21 or that of the OC.

3. Repealing of Bylaw 2 and re-drafting the same bylaw with the exclusion of the responsibility of Lot 21 for the maintenance and upkeep of the elevator, elevator tower and surrounding common property.
   Alternatively an amendment to the registered bylaw to delete Sections "C(iii), (iv) & (xviii)" of Bylaw 2..

4. Refund of the extra charges created by the illegal Bylaw 42.5 plus fees, charges and interest imposed by the OC over the disputed amounts.

6. Refund of all charges paid by Lot 21 under Bylaw 2 for the elevator maintenance contract, repairs, fees & interest charged and amounts demanded by the OC and paid by Lot 21, for the maintenance, upkeep and compliance of the common property elevator since

30.9.2004, the time we consider to be the intended termination of the agreement under this bylaw.
(For items 5 & 6 we seek leave to submit the correct amount due, which can only be established once the OC provides proper and updated statements).

7. An order on the OC to provide details of expenditure relating to the elevator since 2003 and a detailed owner's ledger highlighting the charges associated with the lift maintenance, bylaws 42 & 42.5 as well as various charges & interest. We note that several requests to the OC failed to produce the accounts requested.

8. An order on the OC under s62 of the Act for the OC to repair and restore the "Gazebo" structure to a safe and sound condition in accordance with the detailed report, recommendations and scope of works obtained from Chris Moane of IBC by the OC.
We note that the report even though discussed in our presence & referred to in correspondence has not been made available to us.

9. An order for cost.

As a comment at this stage we are informed by the LPI that there is no Bylaw No.2 and no Bylaw No.42 or 42.5. We are informed by the OC that bylaw No.2 has been repealed and replaced by bylaw No.27. There is no record of bylaw No.27 with the LPI.
The entire situation is extremely confusing and at this stage if there are any repeals or amendments of bylaws those have been without our written consent and most likely invalid.
I also note that under ***Annexure "H" (pages 1 & 2)*** *there is a listing of* ***SPECIAL Bylaw No.1 and Bylaw No.2 (pages 3-10).***
Bylaw 1 *under annexure "H" refers to Lots 2 & 4 and yet another* ***Bylaw 1*** under ***Annexure "I"*** refers to Lots 1, 2, 3, 4, 5, 12 & 21. As stated above all bylaws listed in this document were supplied by the OC & LPI.

Yours faithfully
Paul Kavadas owner of Lot 21
C/- Tony Conides (Mob 0414-670829)
P.O.Box 355,
Round Corner 2158