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# STRATA RECORDS NOT PROTECTED BY PRIVACY LAWS

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## STRATA RECORDS NOT PROTECTED BY PRIVACY LAWS

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NCAT's Appeal Panel has decided that strata records are not protected by privacy laws and that an owner is entitled to inspect strata records that relate to other owners. This decision clarifies that a strata manager cannot withhold strata records which an owner has a right to inspect under the *Strata Schemes Management Act 2015*.

### **The Facts**

In *Walker v The Owners -Strata Plan No.1992* [2020] NSWCATAP 192, the Appeal Panel of NCAT heard an appeal by a lot owner, Mr Walker, against a decision by NCAT to refuse to order an owners corporation to provide him with a copy of a levy register for his building which he requested from his strata manager.

Mr Walker wanted the owners corporation to provide him with a copy of the levy register for all lots over the last two financial years. The levy register showed all levy payments made by the owners of all of the lots in Mr Walker's building.

Mr Walker wanted the levy register because he was concerned that there were "unauthorised credits" in the financial and accounting records of the owners corporation.

### **The Dispute**

The strata manager of the owners corporation had refused to provide Mr Walker with a copy of the levy register. This was for a variety of reasons including the fact that Mr Walker had already been provided with various financial records of the owners corporation including records attached to the notice of annual general meeting. It was also because the levy register contained details of levy payments that had been made by other owners which the owners corporation considered Mr Walker had no genuine interest in and contained private information about other owners.

Mr Walker applied to NCAT for orders to force the owners corporation to provide the levy register to him. His claim was rejected. NCAT considered that the documents the strata manager had provided Mr Walker were sufficient to satisfy his enquiries and as a "matter of privacy of all lot owners" detailed records for each lot owner were not required to be made available to Mr Walker.

### **The NCAT Appeal**

Mr Walker appealed against NCAT's decision. His appeal was successful. The Appeal Panel of NCAT reviewed the provisions in the *Strata Schemes Management 2015* and the *Strata Schemes*



*Management Regulation 2016* which require the owners corporation to prepare and retain financial statements including a levy register and give lot owners a statutory right to inspect those records.

Ultimately, the Appeal Panel concluded that those provisions indicate that an owners corporation *must* make available for the inspection of an owner the accounting and other records relating to the strata scheme that are kept by the strata manager including the levy register where a proper request to inspect those records has been made by an owner under section 182.

The Appeal Panel rejected the owners corporation's argument that certain accounting records, including the levy register, involve an individual's privacy and that it was inappropriate for Mr Walker to have access to private information of that type. The Appeal Panel held that if the *Strata Schemes Management Act 2015* gives an owner a right to access information, then the owner is generally entitled to inspect that information and that NCAT's conclusion that "as a matter of privacy of all lot holders, detailed records for each lot are not required to be made available" to Mr Walker was wrong.

The Appeal Panel considered that "the legislation permits inspection of the levy register and to that extent Parliament has indicated that information contained in the levy register is not protected by considerations of privacy". For those reasons, the Appeal Panel ordered the owners corporation to make available to Mr Walker for his inspection the levy register held by the strata manager.

### **An Earlier Case**

The decision in the *Walker* case is consistent with an earlier decision of the CTTT. In that earlier decision, the CTTT held that information recorded on the strata roll of an owners corporation including the names and contact details of lot owners was not protected by privacy laws and had to be made available for the inspection of other owners after a proper request to inspect the strata records was made in accordance with the strata legislation: see *Legge v Network Strata Services Pty Ltd* [2013] NSWCTTT 45.

### **Conclusion**

The *Walker* case confirms that a strata manager or owners corporation cannot refuse to make available for the inspection of an owner records which the owner is entitled to inspect under the *Strata Schemes Management Act 2015* on the grounds of privacy and that those records are not protected by privacy laws.

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### About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collection.

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