



Risk Assessment Report

for

[name withheld]

of

[address withheld]

on

12 October 2021

Pink Inspection Services

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We are not practising lawyers

Whilst some of our employees or contractors might be practising lawyers in businesses not associated with Pink Inspection Services, no employee or contractor involved in the preparation of this report has done so in their capacity as a practising lawyer. This means we are not permitted to provide legal advice.

Buyers requiring legal advice should speak to their lawyers.

Questions about this report

Should you have any questions concerning this report, please telephone the inspection manager, Michael Poynder, on 0401 371 077.

Risk assessment report

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Background

Our report

We have been instructed to provide a risk assessment report on the records of the strata scheme for this lot at this address.

Our report includes an assessment of issues of material significance we have identified during our inspection of the records. In determining materiality, we have taken into account those issues which are likely to be of concern generally to the majority of potential buyers. We have not undertaken a risk assessment of other issues relevant to a buyer personally, unless this report identifies such an assessment has been requested.

The executive summary in Section 1 contains our conclusions concerning the information described in Section 2.

Where appropriate, we include in Section 3 relevant articles of interest we have prepared relating to issues/features which arise in this complex which may affect a decision to buy. For instance, where the complex is a factory conversion, we include in Section 3 an article on the issues buyers need to understand when buying into factory converted strata complexes.

This report is prepared and submitted subject to the qualifications in Section 4.

Definitions and interpretation

Definitions

'Act' means the *Strata Schemes Management Act 2015*.

'*aggregate unit entitlement*' of lots the subject of the scheme, means the sum of the unit entitlements of those lots.

'AGM' means annual general meeting.

'*building management committee*' or '*BMC*' (if one exists for the scheme) means the building management committee established under the strata management statement for the scheme.

'*Contract for Sale*' means, unless otherwise stated, the edition current as at the date of this report of the Law Society of NSW and Real Estate Institute of NSW standard form of contract for the sale of land in NSW.

'*council*' means the council of the area under the *Local Government Act 1993* in which the scheme is situated.

'ECM' means executive committee meeting.

'*initial period*' means the period commencing on the day on which the owners corporation is constituted and ending on the day on which there are owners of lots the subject of the scheme (other than the original owner) the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement.

'*Part*' or '*part*' as the case may be, means a part of this report bearing the number following the word.

'*subject lot*' means the lot or lots, the subject of this report.

'*scheme*' means the strata plan, the subject of this report.

'SCM' means strata committee meeting.

'*Tribunal*' or '*CTTT*' or '*NCAT*' means the NSW Civil and Administrative Tribunal or where appropriate, any of its predecessors.

Interpretation

In general terms, although this report may have been prepared for a lawyer or conveyancer, unless otherwise stated, the wording of the report assumes it has been prepared for the buyer alone.

In this report, unless otherwise stated:

- words in the report that appear in the singular, also apply to the plural

- a reference to a gender, applies to all genders
- words referring to a 'person' or 'persons', include references to legal persons, such as a company, unincorporated association, rather than just natural persons
- references to statutes and other laws are taken to refer to amendments of those statutes or laws from time to time
- headings are for ease of reference only and do not affect its interpretation
- where there is an inconsistency between information provided in this report and information in an attachment to the report, the information in the attachment will prevail, unless otherwise stated.

Changes to terminology effective 30 November 2016

References in this report to '*capital works fund*' or '*capital works fund report*' is the new description used to replace '*sinking fund*'. It came into operation as a result of the introduction of the new Act on 30 November 2016. Another change is the change of name of an '*executive committee*' to now be called a '*strata committee*.'

Report

Our inspection of the records of this strata plan reveals the complex consists of 15 lots. The strata plan was registered in 2020.

The percentage of unit entitlements attributed to this lot when compared with all unit entitlements in the complex is 6.7%. This should be kept in mind, particularly in relation to voting rights and should a special levy be struck.

Current quarterly levies to 30 November 2021 for the subject lot are:

- (a) Administrative fund: \$825.70
- (b) Capital works fund: \$33.50

1. Executive summary

1.1 Report conclusions

Based on the records inspected by us, we make the following conclusions:

Major concerns*

We did not sight any matters of major concern

Concerns*

Our concerns which we identify in this report are as follows:

High level of arrears of levies could cause cashflow problems - In Part 2.7(a) we note that there are current arrears of levies in the administrative and capital works funds totalling \$7,656.00. Although the attached balance sheet discloses there is a balance of \$11,529.76 in the administrative fund, it treats arrears of levies as assets even though they are outstanding. That means the fund only has around \$4,000 in its account.

This is a common situation where the majority of lots continue to be owned by the developer who is in the process of selling them. The strata manager confirmed with us that most of the arrears are owed by the developer.

From a practical point of view, our concern is that the annual insurance premium will fall due on 9 December 2021. For the current year the premium is \$11,548.19. Although another round of levies will fall due for payment on 1 December 2021, given the potential for further arrears to accrue, the owners

corporation could face cash flow problems when it comes to pay the premium if arrears continue to remain at this level.

If a special levy is raised to pay for the premium, your share will be \$67 per \$1,000 of special levy raised.

You may want to see if you can negotiate with the vendor to bring all arrears of levies up to date from the proceeds of sale of your unit.

Basement parking issues raised by you – In your email to us last night you mentioned that the occupant of Unit 15 is storing a boat and a car in the basement car park.

Attached is a plan of the car park. You will see that Unit 15 only has a single car park. It is likely the occupant of the unit is storing the boat in the visitor car park next to their car park. This is not permitted and is a breach of by-laws.

You can raise this matter with the strata manager. It will have an effect on you because as there are so few visitor car parks, your visitors will have nowhere to park.

The plan also shows your storage areas.

Building inspection recommended – Although more a suggestion than a concern, we always recommend buyers of new strata apartments arrange for a building inspection to be undertaken. That is because the complex is still under warranty, and it is much easier for the builder to rectify defects at this time because they are likely to be onsite over the near future rectifying other defects.

Some defects are not apparent to non-professionals. They can include water membranes being too thin, gaps in doors and cupboards being too wide and not complying with the Building Code of Australia, and oversized cracking in walls.

If defects are identified during the building inspection, they can be sent to the developer to get the builder to remedy. Your conveyancer may want to include a special condition in the Contract for Sale to that effect.

It is quite possible that your unit may never undergo an independent assessment by a building inspector if you do not undertake it now. That means defects may be present when the building warranty expires.

As far as a building warranty is concerned, you will see there is a warranty document with the Contract for Sale. Your conveyancer will be able to explain to you important details concerning the warranty.

The warranty is important to you. Because the developer is named after the street address, it is likely it is a special purpose vehicle that will be wound up as soon as all units in the complex are sold. That means legal proceedings against them will not be possible.

The builder is *[name withheld]*. Here is a link to its website.

Capital works fund balance is too low to meet proposed expenditure – In Part 1.3 we refer to proposed expenditure on tiling and CCTV. It is common in new strata complexes for works such as these to be undertaken. In most cases special levies will be struck to meet the cost. Again, you will pay \$67 per \$1'000 of special levy struck.

This is not a major concern. Firstly, the works are discretionary and can be deferred until the owners corporation is in a better financial position if the expense is too high. Secondly, it is quite possible that you may want these works to be undertaken and are prepared to pay a special levy.

We also state in Part 1.2 that the balance in the fund is probably below recommended levels. We were unable to determine how much because a capital works fund report has not yet been obtained.

This is not a concern at the moment. It is common for balances in this fund to be low at this stage in the life of a strata complex. That is because the fund is used to pay for age-related repairs which are likely to be few at this stage.

Assessment of financial circumstances

In Part 1.2 we comment that arrears of levies are likely to cause cash flow problems when the annual insurance premium falls due in December 2021 and a special levy may be required. We also state that the balance in the capital works is likely to be too low at this stage, but we are not concerned for the reasons explained.

Assessment of capacity to meet future materially significant* expenditure

In Part 1.3 we comment that it is likely the owners corporation cannot afford this expense which can be deferred until the financial position improves.

Assessment of risks arising from missing documents.

In Part 1.4 we state we did not sight a building valuation or a work health and safety report. We comment on the significance of this in this part.

Building inspection recommended

In Part 1.5, we recommend a building inspection be conducted by a qualified inspector experienced with strata complexes for the reasons explained.

1.2 Assessment of financial circumstances

The records reveal that the administrative fund holds \$11,529.76 and the capital works fund holds \$1,507.74, both as at 5 October 2021.

* For important comments on these terms see Part 4.5. [\[Materiality\]](#)

Administrative Fund

The administrative fund is used to pay for the day to day expenses of the owner's corporation. Examples include common area lighting and cleaning costs, gardening costs, insurance premiums and the fees of the strata manager.

The records disclose that the annual insurance premium will fall due again in December 2021. The premium is one of the major expenses in the financial year of the owners corporation and for the current financial year is \$11,548.19. As we state in Part 1.1, given the current arrears of levies, it is possible a special levy may be required to meet the cost of the insurance premium when it falls due.

Capital Works Fund

We did not sight a capital works fund report. That means we were unable to determine the recommended balance in the capital works fund for the current financial year.

A capital works fund report identifies items of programmed repair and maintenance work that must be conducted on buildings at the complex over the coming years. Examples of such work include re-painting interior and exterior surfaces and re-carpeting of common areas.

The report also includes a calculation of how much money must be paid progressively into the capital works fund and held each year to enable the owner's corporation to build up a fund to pay for such works as and when they are needed, without the need to strike special levies or take out loans.

Because we did not sight a capital works fund report, we were unable to determine the current recommended balance for the current financial year. That means we could not determine the adequacy of the current level of funding in the account.

This does not concern us in recently constructed strata complexes. The fund is primarily used for age-related repairs which are low in the early life of a strata complex.

It is to be hoped that a capital works fund report will soon be prepared and levies struck to match the recommendations.

1.3 Assessment of capacity to meet future proposed/possible materially significant* expenditure

Consideration needs to be given as to whether there are sufficient funds held by the owners corporation to meet these expenses after capital works fund related expenses are taken into account. If there are insufficient funds, options open to the owner's corporation include one or a combination of the following:

- Some or all of the items of expense may be deferred or cancelled

* For important comment on the meaning of 'materially significant' see Part 4.5. [\[Materiality\]](#)

- A special levy could be struck, administrative fund and capital works fund levies could be increased, or a loan taken out to pay/help pay for the expenditure
- The annual capital works fund levies could be increased.

Apart from cancellation, if any of these other events occur, the percentage of unit entitlements relating to the subject lot as referred to in Part 1.1 above should be considered.

In Part 2.12 below we disclose proposed and possible materially significant* expenditure sighted over the period of the minutes we inspected as:

‘Install stepping tiles at front gate entry – Motion 9 in the attached minutes of the March 2021 SCM includes a resolution to ask council if this can be ‘done.’ We were unable to determine what transpired or the likely cost.

Install CCTV – The above motion refers to quotes being requested for this work. We did not sight any quotes.’

It is apparent from the balance in the fund that the owners corporation cannot afford these expenses. From your point of view, because they are discretionary they are not a major concern. They can be deferred until the owners corporation is in a stronger financial position. If a special levy is struck to pay for them, you will pay \$67 per \$ thousand of special levy struck.

1.4 Assessment of risks arising from missing documents

In Part 2.9 we state we did not sight the document(s) listed below. We assess the importance of this to a buyer as follows:

Building valuation

Under the Act, valuations are required of buildings in strata complexes every five years to ensure appropriate levels of insurance are maintained. A valuation assesses the replacement value of the complex if it is damaged or destroyed and has to be repaired or rebuilt.

Because we did not sight such a valuation, we were unable to determine if the building is adequately insured. If it is not, further funds may be needed to be raised to rebuild the complex if it is damaged or destroyed. If it is over insured, the owner’s corporation is spending money unnecessarily.

Work health and safety report

Under WH&S legislation, owners of buildings are required to obtain and keep current WH&S reports relating to their buildings. This requirement is particularly designed to protect workers such as cleaners who may be working at the complex. Examples of the type of risks identified in such reports include trip hazards and poorly lit stairs.

WH&S legislation provides for exemptions from the obligation of owners corporations to obtain WH&S reports if they are solely residential. That exemption does not apply if a strata complex is mixed residential/commercial and/or the owners corporation employs workers.

Often this is difficult to determine. A good example is if an owner conducts a business by renting their apartment through Airbnb.

We were unable to determine if the exemption applies to this complex.

Because of the undesirability of a complex being unsafe, and because of the difficulty owners corporations have in making a correct determination of whether the exemption applies, most owners corporations take a conservative view and assume that WH&S reports must be obtained.

Because we did not sight a current WH&S report, we were unable to determine if the buildings are compliant from a work health and safety perspective.

If an injury results to an employee because of a problem that could be identified in such a report, legal proceedings could be taken against the owners corporation. In addition, an insurer could reject liability if the risk was not disclosed to the employee or remedied by the owners corporation because a WH&S report had not been obtained.

You should discuss these issues with your conveyancer. If you become an owner, we recommend you or your conveyancer write to the strata manager asking for this report to be obtained for the reasons described.

1.5 Building inspection recommended

Because of the age of the complex and our comment below, we recommend a building inspection be conducted.

We refer to our comments in Part 1.1. Because this complex has been constructed recently, it is likely to be still within the builder's warranty period. A building inspection could have the added benefit of identifying warranty related defects. A list of those defects can then be provided to the strata manager to send to the builder for rectification.

The inspector should be licensed and have experience with strata complexes. A copy of this report and the attachments should be provided to the inspector as a guide.

Comment

Sometimes owners corporations do not disclose in the records made available for our inspection information of concern to buyers. They do this to prevent buyers from finding out issues that may mean they decide not to proceed with a purchase.

Although this practice is likely to be considered illegal and may leave owners corporations and their management open to proceedings including for misleading and deceptive conduct, the practice persists. This is particularly so with poorly advised owners corporations, including those which are self-managed.

A building inspection by a qualified inspector familiar with strata complexes may reveal hidden issues, particularly those relating to structural problems.

2. Particulars of the scheme

2.1 Address of the subject lot(s)

[address withheld]

2.2 Lot number and strata plan number

Lot 14 in strata plan *[number withheld]*

2.3 Date of inspection

12 October 2021

2.4 Date range of minutes inspected

19 March 2021 (Strata Committee Meeting) to 19 March 2021 (Annual General Meeting)

2.5 Management

Managing agent: *[details withheld]*

Address: *[details withheld]*

Phone number: *[withheld]*

Date of appointment: 19 March 2021

Appointed by Tribunal: No

Assigned manager: *[withheld]*

Caretaker/building manager: None sighted

Strata committee: See motion 5 in the attached minutes of the March 2021 AGM

Auditor: Not appointed

2.6 Strata roll

Owner *[withheld]*

Address *[withheld]*

2.7 Levies

(a) Scheme

Annual administrative fund levy	\$49,295.00
Annual capital works fund levy	\$2,000.00
Payable quarterly from	1 March 2021
Total current levy arrears	\$7,656.00

(b) Lot 14

Administrative fund levy	\$825.70 per quarter
Capital works fund levy	\$33.50 per quarter
Special levy	NA
Other	NA
Paid to	30 November 2021
Arrears	Nil

(c) Details of special levies struck during the period we inspected records

None sighted

(d) Proposals for future special levels

None sighted

2.8 Bank account balances as at 5 October 2021 (brackets indicate deficit)

Administrative fund	\$11,529.76
Capital works fund	\$1,507.74

2.9 Important documents

Unless otherwise stated, only current documents will be regarded as sighted.

(a) Insurance

(i) Certificate of currency of insurance

A certificate of currency of insurance is attached. Headline insurance details are referred to in Part 2.18 below.

(ii) Building valuation not more than five years old.

Not sighted

(b) *Capital works fund report*

Not sighted

(c) *Annual fire safety statement*

Sighted, dated 10 November 2020

(d) *Work health and safety report*

Not sighted

(e) *Lift registration certificate*

Not applicable. There does not appear to be a lift.

2.10 Materially significant* notices, orders or proceedings

(a) *In the Tribunal*

None sighted

(c) *In courts*

None sighted

(d) *Local council*

None sighted

(e) *Building defect claim*

None sighted

2.11 Materially significant* expenditure

Repairs (building complex)

Year	Work	Cost
	None sighted of material significance	

* For important comment on the meaning of 'materially significant' see Part 4.5. [\[Materiality\]](#)

* For important comment on the meaning of 'materially significant' see Part 4.5. [\[Materiality\]](#)

Repairs (subject lot)

Year	Work	Cost
	None sighted	

Recurring Repairs (building complex)

Year	Work	Cost
	None sighted	

2.12 Materially significant* information

(a) *Proposed/possible materially significant* expenditure*

Install stepping tiles at front gate entry – Motion 9 in the attached minutes of the March 2021 SCM includes a resolution to ask council if this can be 'done.' We were unable to determine what transpired or the likely cost.

Install CCTV – The above motion refers to quotes being requested for this work. We did not sight any quotes.

(b) *Other*

None sighted

2.13 Strata plan

(a) *Date of registration*

9 December 2020

(b) *Original owner*

[withheld]

(c) *Is the scheme in the initial period?*

No

2.14 Certificate of title

(a) *Sighted*

Yes, search copy dated 15 December 2020 of edition 1 dated 9 December 2020.

- (b) *Number of lots*
15
- (c) *Aggregate unit entitlement*
1,000
- (d) *Unit entitlement of subject lot*
67
- (e) *Percentage of unit entitlements compared to aggregate unit entitlement*
6.7%
- (f) *Subdivision of scheme or lots*
None sighted.

2.15 By-laws passed/registered since the scheme was registered

- (a) *Subject matter*
None sighted
- (b) *Registration numbers of by-laws*
None sighted
- (c) *Unregistered bylaws*
None sighted

2.16 Materially significant* breaches of by-laws

We sighted breaches of by-laws and complaints, as follows:

None sighted

2.17 Keeping of animals

See motion 5 in the attached by-laws with the Contract for Sale.

* For important comment on the meaning of 'materially significant' see Part 4.5. [\[Materiality\]](#)

2.18 Insurances

Attached is a copy of a certificate of currency containing details of the insurance policy held by the owner's corporation relating to building and general insurance.

Headline information:

Insurer:	XL Insurance Company SE (Australia Branch)
Broker and contact details:	Coverforce Insurance Broking Pty Ltd phone 9376 7888
Policy expiry date:	9 December 2021
Policy current premium:	\$11,548.19
Excess on building related claims:	\$750 basic excess, \$2,500 on unoccupied lots, \$2,500 on all burst pipes/water damage claims.

Comment

Your lender will require a copy of a certificate of currency of insurance before making funds available to you to settle. Strata managers are not required under their management agreements or by law to obtain a certificate of currency. Sometimes, as a courtesy they often obtain these certificates, and we then make a copy available to buyers.

If the certificate is not attached to this report, or if the current policy expires before settlement, an updated certificate of currency can be obtained by contacting the broker through the contact details identified above. Most brokers will refer buyers to their website where the certificate can be downloaded for a fee.

If the insurer and/or broker have changed, contact details for the broker can be obtained by contacting the strata manager whose details are provided in Part 2.5 of this report.

3. Relevant articles

None applicable

4. Qualifications

4.1 Records inspected

The information provided in this report and the conclusions reached, are based on the records made available to us by the strata management business at the time of our inspection.

Other than in obvious cases, we have no means of independently verifying that all records have been made available to us.

If relevant records have not been made available, the information in this report may be misleading or incorrect.

4.2 Copies

For the purposes of this report, we have assumed that copies of documents we have sighted, whether hard copies or electronic, are true copies of the original documents.

4.3 No warranty

This report is a record of relevant information in documents provided to us by the strata manager during our inspection. It does not amount to a warranty that any of those documents are valid, enforceable or correct.

4.4 Time constraints

Strata managers generally limit our inspection times to between 60 and 90 minutes. Apart from time of day considerations, this is because of a variety of reasons including:

- there are a large number of strata inspectors wishing to inspect records and often the offices of the strata manager can only accommodate one or two inspectors at a time;
- most strata managers have their records stored on computer and there are often insufficient terminals for a number of strata inspections to be conducted at one time; and
- with popular properties, there may be other inspectors lined up wanting to inspect the same records.

The problem is compounded because we as inspectors rarely know the volume of records we will be required to inspect until we actually arrive for the inspection. That often means we will be unable to conduct lengthy searches even if we are permitted to do so by the strata manager, because we have other search appointments on that day we must keep.

Where we state in our report that we were unable to inspect certain records because of time constraints, we are able to make another appointment with the strata manager to inspect the balance of the records. In that event, further fees and charges will usually apply.

4.5 Materiality

- (a) In determining whether an issue is of 'major concern' or of 'concern', we have applied objective considerations. That means:
- in the case of an issue of major concern, we have taken the view that most potential buyers would regard the issue as of such significance that it could determine whether they would proceed with a purchase of the subject lot; and
 - in the case of an issue of concern, we have taken the view that most potential buyers would regard the issue simply as of concern, and as something they should take into account or seek further information about when considering whether to proceed with a purchase of the subject lot.

Buyers who are reading this report should keep in mind issues of personal importance to them. That may mean an issue expressed in this report as simply of concern may be of major concern to them.

For example, a possible expense of \$1,000 which may be imposed on them as buyers, is not in our view an issue of major concern to most buyers and will not be disclosed as such in our report. However, for a first home buyer with limited savings, it could be of major concern to them.

Buyers should also keep in mind that an issue described as being of concern may become of major concern when all information about the issue is known. For example, a by-law which requires the owner of the subject lot to install and maintain an air conditioning unit in a particular way may become a major concern if investigations disclose the air conditioner was not installed or maintained in accordance with the by-law.

- (b) The terms 'material' and 'materially significant' mean:
- we have taken into account those issues which are likely to be of concern to most potential buyers of this lot in the complex. We have not undertaken a risk assessment of other issues relevant to a buyer personally, unless this report identifies such an assessment has been requested; and
 - thresholds/levels of importance have been applied in selecting the information disclosed. They are based on the financial capacity and size of the scheme, and the significance of the information to most potential buyers of this lot in the complex. That means if information does not reach the level of importance we apply based on these factors, it will not be included in the report.

In ordering this report, buyers have been invited to specify issues of personal significance to them. For example, if a buyer is a smoker, a by-law banning smoking in the complex may be of material significance and should be disclosed to us when ordering the report. We take the view that such a by-law would not be of concern to most buyers and therefore would not be described as such in our report.

If you as a buyer have failed to provide such information that is personally important to you when ordering this report, you should contact us immediately.

4.6 Compliance

Except to the extent materially relevant to a purchaser of a lot in this scheme, this report does not include any comment on whether the strata manager, the owners corporation or any other organisation, committee or individual involved with the scheme is complying with practice or accounting obligations imposed on them by law.

4.7 Benefit of this report

This report has been prepared for the benefit of the client and that person's advisors. The report may not be relied on, used or reproduced by any other person without the written permission of Pink Inspection Services.

Pink Inspection Services reserves the right to on sell this report and attachments to other persons including prospective buyers of this unit or other units in the complex.

4.8 Communication with strata managers

On most occasions, no contact is made by us with strata managers to discuss matters relevant to our report. This is because:

- generally, strata managers will not talk with us because they say:
 - (i) their professional indemnity insurance does not cover any information they disclose to us; and
 - (ii) their clients are the lot owners making up the owners corporation, and there is a conflict of interest in providing information to us as a third party that may materially impact on a sale; and
- if the strata manager at a later stage denies or disputes what was said in a conversation with us, it is often difficult to prove what was said.

This means, it is preferable that if questions need to be asked of the strata manager, they be asked by the client or their representative, in writing through the vendor or the vendor's representative such as the agent having the conduct of the sale. If we disclose the contents of a conversation we have had with a strata manager in this report, this should be kept in mind.

4.9 Status of relevant articles in Part 3

Where relevant articles prepared by us have been included in Part 3, they are included to provide general information only. It is possible that none of the issues/features referred to in the article as being of concern or interest to a buyer may be present in the complex, the subject of this report.

5. Missing documents

It is our experience that strata managers almost always have separate files to the files made available to us for our inspection. In some instances, it becomes obvious to us that documents or information are missing from the records made available to us. A common example is where the records of the strata manager refer to a building defect report which was not in the records made available to us.

Where that occurs and the strata manager is unavailable to assist us, we will point this out in our report and recommend that you follow up the strata manager to seek the missing documents or information.

It is our experience that many strata managers respond to such a request by claiming that the missing documents or information were always with the records made available to us, even if that is not the case. In other words, they will claim our inspector missed seeing the relevant documents or information.

We have often sought explanations from strata managers about why they so often make such incorrect claims. They have informed us informally, that their insurers have instructed them to respond in this way. They claim that to admit that documents or information were not initially made available for our inspection, is an admission of liability which may lead to a successful claim of damages against the strata manager.

Attachments
