

**Publication Date: January 9, 2018**  
**YSP Podcast Transcript: Episode 094. In Conversation: what to do about a LAAN  
and how to dedicate a community lot to council**

Listen to this podcast episode here: <https://www.yourstrataproperty.com.au/094-in-conversation-what-to-do-about-a-laan-and-how-to-dedicate-a-community-lot-to-council>

**Intro:** Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to [www.yourstrataproperty.com.au](http://www.yourstrataproperty.com.au).

**Amanda Farmer:** Hello, and welcome. I'm Amanda Farmer and I have with me today the lovely Reena Van Aalst. Hi, Reena.

**Reena Van Aalst:** Hi, Amanda. How are you doing?

**Amanda Farmer:** I'm doing very well. It's time to say happy New Year.

**Reena Van Aalst:** Yes, can't wait.

**Amanda Farmer:** Yes, this is our first episode of the New Year. We are actually recording this a little bit before New Year. We are, being women, very organised, very efficient, and we do record our episodes a little bit before they go to air. So, when this goes to air, I think I will be in sunny, hopefully, Florida. What are you up to, Reena?

**Reena Van Aalst:** We'll be down on the South Coast actually, around that time. So I'm looking forward to some rest and rejuvenation.

**Amanda Farmer:** I am sure that's exactly what you're doing right now. You deserve it.

**Reena Van Aalst:** Thank you.

**Amanda Farmer:** Now let's jump straight into our challenge for this week, Reena.

**Reena Van Aalst:** Well, this is the first time that I've come across this particular encounter with Fair Trading where a lot owner actually has complained against the previous title managing agent in relation to their recordkeeping. So this owner had probably come to do a search, let's say in August. About 3 weeks ago I had a call from Fair Trading to say that they'd received a complaint about their previous managing agent in relation to their recordkeeping. So they asked me to make available all their files that I had received, which I did.

There were actually three people that came, which I was quite surprised. It wasn't just one person. And they were there for about I think 2 hours going through all the files and of course, they couldn't get through everything and they asked me if they could take the files away, which they have. I kept a record of what files that they'd taken, which unfortunately I need one now because if there's an audit coming, I mean, I can't. I've written to them, and I still haven't heard, which I'll have to follow up.

But yes, I wasn't sure if you have heard of this, Amanda, before, or if any of our listeners or any of our strata managers have actually heard of Fair Trading coming in. It was quite interesting because they said to me, "*Do you have everything that you need from the previous agent?*" And I said, "*Well, in essence, yes,*" but sometimes you don't realise what you don't have until you need something and you're going back like let's say there's an insurance claim, for example, which this was actually the case in this. I was trying to find all the records that pertained to it but only found a few bits and pieces.

**Amanda Farmer:** Yes, I have definitely been involved in situations where disgruntled committees, owners corporations, sometimes lot owners have made complaints to Fair Trading in relation to their strata manager or their former strata manager's conduct. And Fair Trading does then have the power to investigate being the compliance body for strata managing agents under the Properties Document Business Agents Act. So, I have been involved in letter writing and written submissions and things like

**Publication Date: January 9, 2018**  
**YSP Podcast Transcript: Episode 094. In Conversation: what to do about a LAAN  
and how to dedicate a community lot to council**

Trading, but I haven't actually seen representatives of Fair Trading come out to inspect records, and certainly not 3 at the one time. I find that-

**Reena Van Aalst:** I've had Fair Trading come in for other things, Amanda, previously in one particular instance that I'll probably talk about in another podcast. They have come in and looked at records pertaining to meetings and proxies. But I've never had them come in looking at just how you've kept your books and records. The other issue is that they found material from other strata schemes that have been misfiled into that strata scheme. There was quite a bit of it.

**Amanda Farmer:** Wow.

**Reena Van Aalst:** I think the strata managers out there that are still using paper filing as opposed to electronic filing, that you should be quite wary of making sure that the files are kept ... Sometimes a piece of paper goes astray here and there, but I think there was quite a bit there that they had mentioned to me anyway. I hadn't really had a look at the old stuff because I didn't really need to access it at the time.

**Amanda Farmer:** Yes, sure. Can I ask you this, from the time the ... Was it a lot owner that made a complaint about the former managing agent?

**Reena Van Aalst:** Yes.

**Amanda Farmer:** From the time that complaint was made, how long did it take for Fair Trading to actually come and look at the records? Was that pretty quick?

**Reena Van Aalst:** Yes, I don't know when she made the complaint, so I can't really say. I knew that she wasn't happy with what she'd found in terms of records that she was looking for. Yes, so just a bit of a lesson to all strata managers out there, that make sure that ... or even self-managed schemes, make sure that you keep proper records and ensure that you comply with the requirements recordkeeping under the Act.

**Amanda Farmer:** Yes, absolutely. Okay, well the challenge that I want to bring to our listener's attention this week relates to LAAN notices. That's L-A-A-N, and that's the acronym for Land Access and Activity Notices. Now, I'm sure a lot of strata managers listening will know exactly what these things are. They are issued by companies like NBN, TPG, Pipe Networks, which I think TPG and Pipe are one and the same. It's a request for access to common property to install facilities to enable our very fast internet, or our VDSL, or NBN. In order to get into the building and install the equipment that facilitates this very fast internet, these companies need to issue a notice.

Now, there was a big rush of these notices, Reena. You'll probably remember a couple of years ago-

**Reena Van Aalst:** Yes, there was.

**Amanda Farmer:** I was seeing a lot of these, and managers were seeing a lot of these. We were learning about what they were. They are issued under the Telecommunications Act, and they set out the details of when this wholesaler wants to come in and install the equipment when they want to install it, and what your rights are as a landowner, as the owner's corporation, to object to that installation. We then saw everything go a little bit quiet, I think, after that initial rush of first notices. They're coming back around again now. I've had a few managers approach me saying, "*Amanda, I'm seeing the LAAN notices again. Can you have a look at it? Explain to our owner's corporation what they are, what they mean, and what rights we have to stop these wholesalers coming in and installing their equipment if we want to stop them?*"

The thing I wanted to bring to strata manager's attention, and committee members, chair people, is this, there is really nothing that you can do to stop these installations. The Telecommunications Act gives these wholesalers very broad powers to come in and install what they call this low impact equipment. It's generally, and Reena you'll tell me because you've probably seen it directly, a

**Publication Date: January 9, 2018**  
**YSP Podcast Transcript: Episode 094. In Conversation: what to do about a LAAN**  
**and how to dedicate a community lot to council**

box that's installed in your comms room, or your MDF room, whatever you call it.

**Reena Van Aalst:** MDF room, yes.

**Amanda Farmer:** Yes. Quite small. What it does is it then allows the residents in the building to connect to very fast internet if that's what they want to do. Some buildings haven't liked the idea of that understandably, these companies coming in and installing their equipment. They don't know whether it's going to interfere with other technology that they might have in the building. They approach me and strata lawyers to say, "*What can we do to stop this?*" There are very narrow grounds for objection and really, really strict time limits. If, as a strata manager, you're getting this notice, and your committee does want to understand its rights and maybe object to the installation, it's really important that you get some legal advice ASAP because the time limits are strict. If you miss the window for objection, then you're not actually going to be able to lodge an objection.

Having said that, even if you do object, and I do have a series of 17 objections that I regularly raise if those are properly addressed, and they usually are by the wholesaler, then there's really nothing you can do to stop them from coming in and installing that equipment. So, have you had experience with these, Reena?

**Reena Van Aalst:** Yes, I've had quite a few actually, Amanda. I think one of the experiences that happened not to me, but to another one of my colleagues a few years ago, was that the letter had come from one of these providers. Unfortunately, it was in a mail folder and it had inadvertently been paper clipped to another document. There were paper clips in the file, and unfortunately, it was clipped to another document. By the time the manager had actually seen the notice, it was already expired. The notice period had expired for objection, Amanda, so that was a bit of an issue. Not that, as you said, you could've done anything about it. But I think there's been one that you and I have been involved in where the LAAN notice was issued to one of the schemes where the actual room where they wanted to install it wasn't on their property, it was on another entity's property that was adjacent to them. That was probably a unique situation where they got it wrong.

**Amanda Farmer:** Yes, absolutely.

**Reena Van Aalst:** It wasn't the first time that they'd actually tried, Amanda, I think. Remember that they had tried that before a number of years ago, that particular notice. Now they're reissuing them. Is it like a fresh batch is being ignited in terms of coming to their attention and saying, "*Oops, let's try again.*"

**Amanda Farmer:** Yes, absolutely. When I talked to other lawyers and other strata managers, they're feeling the same thing, that there's been this fresh batch coming through. Buildings that we had issued objections for some 2 years ago, and Pipe, for example, had gone away and thought, "*Okay, this is too hard. I'm putting this in the too hard basket and we're going to just shelve this one.*" They've now come back to that same building and reissued a fresh notice. That's something just to be on top of, particularly for buildings that you think, "*No, this one's been dealt with.*" Don't be surprised if it comes back around and is sitting in your in-tray.

**Reena Van Aalst:** Yes, and hopefully not attached to another document, Amanda.

**Amanda Farmer:** Yes, no paper clips. You taught me that, Reena. When I was 18 years old and worked as your PA, my very first job, Reena said, "*No paper clips. No paper clips, Amanda. I hate paper clips.*" Things get lost. That is true. Staples are good. Scanning electronic filing, even better. Put it on your calendar. Put it on your calendar as soon as it comes in.

Reena Van Aalst: Exactly.

Amanda Farmer: Alright, so what's your win for this week, Reena?

**Reena Van Aalst:** It's not really a win, but I just wanted to announce that we held our annual Women in Strata Christmas party this year. That was held on the 14th of December at the Royal Exhibition Hotel near central. It was a great success. We had a great turnout of strata managers and just supporters, and it was just a great evening. I think it was just a testament to the fact that our

**Publication Date: January 9, 2018**  
**YSP Podcast Transcript: Episode 094. In Conversation: what to do about a LAAN  
and how to dedicate a community lot to council**

group has only started just a short time ago and we've got so many people now. I think there were about 80 people that came that night. It was a real success. Thank you to all the committee members, especially Natalie and yourself, Amanda, for arranging such a great successful party.

**Amanda Farmer:** Yes, I think it absolutely is a win. It was a whole lot of fun, that party. We do have, as well as our website [womeninstrata.com.au](http://womeninstrata.com.au), you can head over there and sign up to our email list so you'll get all the details of our future events, but also our Facebook group, which is going strong. Just search Women in Strata on Facebook and you'll find our group. You'll see all the photos from that night as well. Natalie Fitzgerald from Strata Sense definitely put a whole lot of work into planning that event. We had a wonderful flower wall and a photo booth where we got some very glamorous pics.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** I was really impressed at the turnout of strata managers. As you said, Reena, there were a lot of strata managers there. I know in our industry, and women, in particular, women strata managers are so busy, and as well as having their professional roles to fulfil and their night meetings to go to, they also have young families often and are just trying to find the time to do something for themselves. It's often we go to events and we don't see enough strata managers. I was really, really excited by how many managers we had there.

**Reena Van Aalst:** Yes, no. It was a great turnout, and it was good to meet managers from different companies which I hadn't met before. That was quite nice and interesting to see people that normally don't come to events, but were actually at the Women in Strata event. It's a testament, I think, to what we're doing, Amanda.

**Amanda Farmer:** Yes, absolutely. Definitely a big win. Alright, so the win I wanted to share this week relates to a development that I have been involved in. It's actually in regional New South Wales. I won't say exactly where, to protect the identity of my client. But it's been a really interesting case to be involved in because this particular client came to me for my community titles expertise. He was looking for a lawyer who knew what a community title scheme was and how they operated. That's because he'd purchased a block of land next door to a community association, and he wanted to develop that block of land.

As part of the development, he actually needed to purchase one of the lots in the community scheme because he needed that lot to be able to build a road through that lot and get access to his new development where he's going to build a number of townhouses. He had been told by previous potential developers of that site that it was impossible to develop that site because the community association was particularly uncooperative, and they were never going to allow him to build a road through one of their community lots, even if could buy that lot.

He brought me in to have a look at the community titles law, so the Community Land Management Act here in New South Wales, the Community Land Development Act, and also to have a look at that community scheme's CMS, the Community Management Statement. He had said to me, *"Amanda, with your experience as a community titles lawyer, is there anything that this community scheme can do to stop me from building a road through one of the community lots and gaining access to my neighbouring development, because that's what I need to have to be able to make this a viable development."*

I gave him advice at that stage, it was about two years ago now he first got that advice. I said, *"You know what? I've looked at everything and I think you can do this. They might try to come up with some kind of crazy novel arguments, but I think we can defend them. I don't think that you need their consent to be able to build a road through the community development lot."* That's because the access road itself within the community scheme was actually a public council road. It wasn't a community access way. In building the road, he was not impacting any community property. His development of the road was going to be entirely contained within the community lot that he was going to purchase.

*"You're not impacting any community property. You need, of course, council consent because you're going to build a road, and you're going to need access to their public council road. Obviously, you need council consent for your development."* So, he went ahead and purchased the community lot from willing owners there. It's actually a vacant block of land. He then proceeded to lodge

**Publication Date: January 9, 2018**  
**YSP Podcast Transcript: Episode 094. In Conversation: what to do about a LAAN  
and how to dedicate a community lot to council**

his development application with the local council. The local council approved his application for his townhouse development. As part of that approval, the council required him to dedicate his community lot to the council, and the council was then going to take responsibility for building the road.

**Reena Van Aalst:** Wow.

**Amanda Farmer:** The council then effectively owns the community lot. The council can then build the road and make sure that people have access through to my client's new development. Now, where this all got a bit controversial is where the community scheme heard that this was happening, and they said, *"In order to dedicate a community lot to the council, you must have the unanimous consent of the community association."*

**Reena Van Aalst:** How many lots were there in that particular community association, Amanda?

**Amanda Farmer:** There are about 60 lots [crosstalk 00:16:09]

**Reena Van Aalst:** Okay, yes.

**Amanda Farmer:** There was no way he was going to get unanimous consent. So he came back to me, he said, *"Amanda, they're now telling me that I need unanimous consent to be able to dedicate the lot to the council."* I said, *"You know what? That's not how I read the legislation."* The legislation says you need unanimous consent to sever a lot from a community scheme, which means to take that lot out of the community scheme.

**Reena Van Aalst:** Away.

**Amanda Farmer:** Away, correct. It doesn't say you need unanimous consent to dedicate. A dedication is not a severance. This is where the community association is on the wrong track. We, of course, being conservative lawyers, went off and sought the advice of a barrister, a specialist in this area. The barrister agreed with me and said, *"I think you're right. A dedication is not a severance. You don't need unanimous consent."*

**Reena Van Aalst:** But any special resolution or anything? What sort of resolution did they need, or any resolution for that matter?

**Amanda Farmer:** They did not need to be involved in that decision at all.

**Reena Van Aalst:** Oh, okay.

**Amanda Farmer:** The owner of a community lot, a lot in a community scheme, is entitled to dedicate that lot to the council without any approval of the community association. They're not affecting any community property. As long as they're not otherwise somehow breaching the Community Management Statement, maybe there's a by-law that says you can't do that, that might be a separate issue.

**Reena Van Aalst:** They're not building a monument that's not aesthetically in line with what the architectural standards are in the community association.

**Amanda Farmer:** Yes, exactly. So, we actually ended up in the Supreme Court over this issue because the LPI would not register the plan of dedication because they also were of the view that unanimous consent was needed. They wanted that box ticked in their checklist that, *"Oh no, you're dedicating a lot. That's a severance. You need unanimous consent."* We had written to the LPI, the Registrar General that is the one who's the head of the LPI and said, *"No, you are wrong. That's not what the legislation says."* Some tens of thousands of dollars later, when my client has applied to the Supreme Court, put on his submissions, explained to the Registrar General and the community association why it is that the law does not say that, the Registrar General and the community association said, *"You know what? We've looked at what you've had to say and we actually think you're right. We're no*

**Publication Date: January 9, 2018**  
**YSP Podcast Transcript: Episode 094. In Conversation: what to do about a LAAN  
and how to dedicate a community lot to council**

*longer going to object to this. You can withdraw your proceedings and we will register your plan of dedication. You can go ahead with your development."*

**Reena Van Aalst:** Wow, that's a great win, Amanda. Can I ask you this, community association you said is in a rural area, when was the CMS registered? Is it a newly formed development or is it an old one?

**Amanda Farmer:** My memory is that it's probably about 20 years old.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** Of course my client has his surveyor involved and having us involved as lawyers, and he is able to recover some of his costs from the litigation because essentially the other parties walked away from the litigation. But for us, it was a fantastic result for our client. It was a little bit ... and we had a bit of a laugh with our client because it was a little bit disappointing for us as lawyers where we had this really interesting legal point and we were quite confident that we were correct, that unfortunately it never got before a judge to be considered because the other side essentially consented and the matter was settled.

**Reena Van Aalst:** I'm surprised it wasn't a reported case, Amanda. But still, in a sense, it is an admission that they were wrong I would say.

**Amanda Farmer:** Yes, and that would be part of the reason I would say why the parties to the proceeding decided to settle. As anybody does settle in litigation, if you know you're not going to be successful at the end of the day, you don't want a judgment against you and a reasoned decision from the court that says, *"You know what? This position, LPI, that you've been talking about dedication's being severances is actually not correct. You actually don't need unanimous consent to dedicate community lots to the council."* That's something that I wanted to share as an important point.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** Maybe there's some developers out there, some managing agents, some surveyors who are dealing with these issues, and LPI might tell you no, but no may not necessarily mean no.

**Reena Van Aalst:** Yes, well they don't always get it right as we know, Amanda. We've been involved in some cases where they've got things wrong.

**Amanda Farmer:** Yes, absolutely.

**Reena Van Aalst:** That's definitely a fantastic outcome I think, for the developer. I think in a sense, obviously having an adjacent development is not really detrimental to any community association, so apart from bringing more people in and ... but anyway, it's good to know that the law was on your side.

**Amanda Farmer:** Yes, absolutely. It's a good point you make, Reena, that was something that our client had said. *"Look, this is a development that's going to be good for the community. I'm not building multistory high rise here. These are quite aesthetically pleasing townhouses."* The only objection they could really make was on the increased traffic to the community because of that access into the adjoining development. But that's a planning issue. That was an issue that came up before the local council. The local council considered that, and the local council decided to approve the development. It wasn't something for the LPI, the Registrar General, the Supreme Court to get involved in. They weren't going to disturb the decision on that basis.

But it's unfortunate that our law doesn't have the clarity that it probably could have to make that kind of question as black and white as it should be. And we do have to go down those avenues to try and decipher it and interpret it. But, as I always say, that's why we are strata lawyers. We enjoy this area of the law. It's always a challenge.

**Publication Date: January 9, 2018**  
**YSP Podcast Transcript: Episode 094. In Conversation: what to do about a LAAN  
and how to dedicate a community lot to council**

**Reena Van Aalst:** Yes. They're actually going to be reviewing the Community Land Management Act anyway because that's legislation that was issued back in 1989, Amanda. I think after the strata reforms, the next one that they're going to tackle is the Community Land Management Act. Perhaps that might sort of be addressed when the Act is being rewritten at that time.

**Amanda Farmer:** Yes, that would be a very good idea. I'll certainly be keeping my eyes open for the submission periods for that when we start seeing some drafts and make sure that that one comes to the forefront.

**Reena Van Aalst:** Exactly.

**Amanda Farmer:** Excellent. Well, head off and keep enjoying your holidays, Reena.

**Reena Van Aalst:** Yes, you too Amanda. See you when you come back.

**Amanda Farmer:** Catch you next time.

**Outro:** Thank you for listening to Your Strata Property, the podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at [www.yourstrataproperty.com.au](http://www.yourstrataproperty.com.au). You can also ask questions in the comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?

