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YSP Podcast Transcript: Episode 211. Stray animals, storage space rental, strata bullies and more - my live answers to your questions

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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.

Amanda Farmer: Hello and welcome to this week's podcast episode. I am your host Amanda Farmer and I'm here each week helping you to demystify the legal complexities of apartment living. This week I am bringing you one of my live Q&A's. This is the audio from a presentation I conducted for City of Canterbury Bankstown council a couple of months ago, back in February, 2020, a time when we were all still allowed to get together in person. I spent about an hour sharing with attendees the way in which they could use by-laws to improve their communities. And then we spent about half an hour as I like to do, taking questions from the floor about all things strata from stray cats to proxy limits, to illegal storage, rental to parking, to renovation works. And today I am bringing you an edited version of my answers to those important questions. I do this every now and then bring you the recording from my live events.

If you like listening to this kind of format, you'll probably like Episode 180. Head back and have a listen to that. That is the live Q&A from my evenings spent with City of Sydney council residents about 6 months ago and also Episode 158, my evening at Waverley council. Now as I am recording this intro, you're hearing in the background perhaps some of the sounds of strata, there's some work going on in my building. It seems to be just above me at the moment and that might be coming through on the mic, so sorry about that guys, but I don't have to tell you. I'm sure that is just how it goes sometimes, especially at a time when we're all at home. I think some of my neighbours have decided now is the time to get those shelves up, get the pictures on the wall, take some things off the list.

Now, depending on when you are listening to this episode, I am actually hosting an event for another local council very, very soon. On Wednesday the 29th of April, which is when this episode goes to air, I will be online running a webinar for paramedic counsel. The content will be very similar to what I had delivered for Canterbury Bankstown at the evening that you're about to get an insight into. So if you're interested in learning how to use by-laws to combat bad behaviour in your strata buildings and restore peace to your community, then if you're listening to this in time, please do join my free webinar for paramedic counsel. I'm going to put the registration link for that in the show notes to this episode.

So if you haven't clicked on this episode in your inbox and you're not already on my website, you want to go over to yourstrataproperty.com.au/podcasts. You'll see this [Episode Number 211](#), at the top of the list there and you will find the link to register for the paramedic council webinar. It is happening at midday on Wednesday the 29th of April. I'd love to see you there.

Now the best way for me to deliver the rest of this episode to you is to just introduce each short topic that you're about to hear me speak about live. I had lots of questions on the night and I've picked out, I think about 14 of them for you now. I'm going to introduce each one, let you know what it's about, and then we'll cut across to the answer that I gave the audience on the night.

So first up I was asked, "What can we do about stray cats on the common property? Can we have a by-law that solves that problem?" Here's my answer.

Yes. If you wanted to stop it, if you wanted to engage in that activity.

Okay, so this is a by-law that the owners corporation wants to implement to say you must not feed stray cats or stray animals or birds is a really good one, particularly in inner city areas, we have this problem with birds, we have it in my building and people have bird feeders and want to feed the birds. So I imagine it would be the committee, the strata committee who comes up with this idea of, "Hey, first of all, we need to solve this problem because there's bird crap everywhere and there's cats everywhere and somebody, we don't know who, but somebody is feeding these creatures."

"We went to a presentation, we heard Amanda speak and we listened to all the podcast. She's crazy about by-laws and she said we can have a by-law." The committee then, my recommendation would be to approach a strata lawyer who understands how to draft these things and say, "We want to by-law in place that says lot owners must not feed stray cats, animals, birds," however you want to word it, and the owners corporation would pay for that to be drafted and pay for that to be registered because there's a cost

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involved in registering it on the title as well.

Next up, I was asked to explain what the proxy limit is and how it works in practice.

Yes, there is a proxy limit in New South Wales. A building with 20 lots or less, one person can hold one proxy. A building with more than 20 lots. One person can hold the equivalent in proxies that is 5% of the number of lots. So you got to do a bit of Maths. So once we start getting over 40 lots, we're holding more than one proxy. And there's no such thing as one and a half proxy, so you have to get up until you get to 5% of the number of lots being 2. That's new, came in in 2016.

Bear in mind that a person, any person can be a proxy holder. It doesn't have to be an owner, doesn't have to be a committee member. Your strata manager can be a proxy holder. Your lawyer can be a proxy holder, something that I do just for kicks. It's a very important rule and I hope that everybody's building is aware of it. I do come across particularly in the forum self-managed buildings who just do not know that this rule exists and that's a bit sad.

An audience member then asked a question about how to handle an owner who had divided up their basement storage space and was renting those separate spaces out to members of the public, not otherwise owners or tenants in the building, but was getting a little bit creative and making some money from renting out different compartments if you like, that they had created within their storage space. This audience member was looking for some ideas for how best to deal with that and this is what I had to offer.

I think you can deal with this from an access perspective. We do have cases where fobs have been turned off and access has been restricted only for certain owners to certain areas. What I'd be saying to this particular owner is, the owner is entitled to have a fob, they're entitled to access the property. Then only a tenant who is notified to the strata manager and recorded on the strata roll should have access to a fob. And buildings audit their keys all the time and the way to do it, if you have the benefit of an electronic system, which you do, is to just turn it off and see who comes calling, or reprogram them if you like and see who comes calling and then check leases against ID. It's a process that you're going to need help with, but definitely I'd be tackling it on the basis of an access issue.

In terms of dividing the area, I'd be worried about fire safety. You could also deal with... You got to be careful not preventing people from leasing because that's one of our... We can't have a by-law that does that, but we can deal with usage. We can deal with the way a property is used and the way a storage space is used. Using a storage space to cut it up into 6 different compartments for the fire safety issue alone, I think would be enough to have a by-law around that saying, "This is the way we use our storage spaces," and then enforce the by-laws against this person who is not using the storage space in that way.

Next up, this particular owner was querying whether a renovation works by-law that had some fairly onerous requirements, may be harsh, unconscionable or oppressive. Now this was a by-law that included clauses requiring a \$10,000 bond, an inspection before and after by an engineer, reports from acoustic consultants, all at the cost to the owner carrying out the renovation, and didn't differentiate between minor works and major works and simply applied these onerous provisions across the board. Did I think such a by-law would be harsh, unconscionable, or oppressive? Have a listen.

Yes, sounds like that was drafted by a lawyer. I imagine that would be, or at least should be, for major work, somebody is gutting their unit and replacing it. Doing a new bathroom, doing new flooring, major work. I'd be concerned if that is designed to cover all types of work. Think about what we talked about with blanket prohibitions, blanket standards, no discretion, no consideration for specific circumstances. For all of those reasons, I think there's good arguments that that's harsh, unconscionable, oppressive. If you are installing an air conditioning unit, are you going to pay a \$10,000 bond? If that's the effect of that by-law, then yes, that's harsh. So, not legal advice just thoughts on the run.

Next up a question about how to handle consistent noise complaints from perhaps an overly sensitive resident.

Assuming that he's doing that on the common property because he's not inside their lots and he's probably not inside his own lot, then he is in breach of model by-laws 6. So that little short one that I put up there and said, "Don't forget this one. This one's really powerful and I'm sure you've all got it." That kind of behaviour and I advise a client on this just last week, very similar situation. They're an

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investor and somebody above is harassing their tenants with an unreasonable noise complaint.

And they said, "Look, we understand that the owners corporation is not going to do anything about it because this owner who is complaining is completely unreasonable, but this lady is driving us insane. Do we just have to take it? Do we just have to receive the complaints and ignore it?" And I said, "Hang on a sec. Is she behaving in a manner likely to cause offense or embarrassment while on the common property?" "Yes, probably because she's screaming and she's yelling and we've got guests over and we're all very embarrassed," which is in breach of model by-law 6. "Why don't you start giving her a bit of a taste of it and saying, 'The by-laws aren't just there to serve you sir, they're there to serve the community and you too. There is a standard for how you behave also.'"

And again another classic example of it will probably then get worse before it gets better, but to stand firm issue notices to comply, take those steps to say, "We are going to use these by-laws to protect ourselves and our tenants and that's not the way that we behave in our community."

Next question, "How do we deal with problem parking particularly when the recalcitrant is not a resident in the building?" Here's what I had to say and yes, I confess I was being a little bit cheeky with this one.

You can, if a vehicle is obstructing an entrance or exit or otherwise illegally parked on the common property, you can put a notice on the vehicle. It must say specific things and the wording is set out in our legislation. It has to be an A4 size, it has to have the date, it has to have the license number, it has to have a contact for the committee and it has to say, "If your vehicle is not moved within 5 days, we will tow it." You cannot take it away any earlier than that 5 days. So for most places that process is rather ineffective-

Speaker 3: Yes.

But if you have a situation with someone's essentially dumped a vehicle, then you put that notice on, you wait your 5 days, you can tow it. And if you followed that process very closely, you are taken to be the owner of the vehicle for that purpose and you can move it without fear of being sued for trespass or anything like that. A situation where somebody is just constantly blocking, you don't know who they are, have you put notices on scary sounding fluorescent notices on saying, "You will be wheel clamped, you will be towed."

Speaker 3: Well, can they be?

Amanda Farmer: No, they cannot be. But it's a very effective notice.

Speaker 3: Got you.

Amanda Farmer: Not giving legal advice tonight folks, by the way, but we do that in my building.

Speaker 3: Ok.

Amanda Farmer: Very large person signs that say, "This is property of... You're in breach of... At risk of... You may, maybe, could be... Very scary... Might happen." CCTV is great for this. A building manager who's present is great. So you can actually eventually talk to the person, see the person, point out the CCTV, few different avenues there. Yes.

Speaker 3: Yes.

Amanda Farmer: This next question was asked off the back of that earlier discussion about parking, but at its core it is a question about who is entitled to enforce the by-laws. Can lot owners pursue bylaw breaches if their owners corporation refuses to act? This was my answer.

Good question. From the litigation side, something to be clear on is that any lot owner can bring these applications in the Tribunal. You don't need to enforce by-laws. You don't need to be in the owners corporation or the committee or the secretary. So if you do want to

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Next up, I am spilling the beans. I share with the audience the number one thing that dramatically improves apartment living. And now you'll know it too. Here it is.

One of my webinars that I ran last year was about what is the number one thing that dramatically improves apartment living. And I have a whole webinar about it. I have an eBook about it. I keep everybody in suspense, but because you're here tonight, I'm going to tell you. It is a properly functioning strata committee. If you have a good committee, you have a good building.

If you do not have a good committee, there are a number of ways you can go about trying to get yourself a good committee. The first of which and most important of which is to gather up your group of supportive owners who think like you, act like you, want the same things that you do, and start gathering support in the building leading up to the next AGM where you are saying, "These are the problems." And you can have access to the strata roll so you can get email addresses. You can do, I call it doing a Hillary, go and campaign, just do a better job than she did. And gather support. If your AGM is in 6 months' time and you want change, start planning for that now so you rock up to that AGM.

You have proxies to the limits that you're allowed to have or you've engaged other people. You've got your neighbour and your employee and your teacher from down the road and they're all turning up. Have nothing to do with the building, but they're all holding proxies and they're all going to vote for you and your group. And that's how you effect change. It's bloody exhausting, but if that's what you want to do, it is possible. It is so possible.

Speaker 2: Just to say, I've done that.

Amanda Farmer: Successfully?

Speaker 2: Yes.

Amanda Farmer: Yes, whoo-hoo, love it.

Speaker 2: It does work.

Amanda Farmer: Next up, how do we lease an area of the common property? In particular, we want to allow occupiers to use particular visitor parking spaces. This was my guidance on that one.

You definitely need a special resolution to be leasing common property. I don't know if you're a resident of this local area and I don't want to put you in it, but check with the council that you don't have to have certain spots designated visitor parking. So check you're not in breach of your development consent by doing that. If you are going to be leasing areas of the common property, I do suggest getting legal advice, or getting somebody to draw up a proper lease for you if not a license agreement. You should get the area valued so you know what the figure is and that it is a figure that's been set by an expert and not picked out of somebody's brain and open for dispute later.

So a valuer, a lawyer. You're leasing, you're not subdividing so you don't have to worry too much about plans just make sure that the areas are clear what they are and that they're clearly marked out. But if everyone goes for that and you have a special resolution, you might want to have a by-law just recording for the record or for the register that, "This is what we do." You don't have to have one, but definitely written agreements between the owners corporation and the owners of the lots. And issues about subleasing and tenants and subtenants need to be addressed in those documents.

Here's a question I really loved. "Why can't our by-laws be written in simple English? Do they have to be so complicated?" Here's what I had to say.

Look the most simple and understandable in my view, the better. And that's my approach to lawyering is if you can't understand what I'm doing or saying that I'm no good to you. So a simple document, fabulous. There are some things that are more complex and do need to be dealt with in more detail. Major works renovations are a big deal because I've seen what happens when they go wrong and

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there isn't the document there to fall back on.

There is a legal issue about certain work that must be specifically approved by way of special resolution and by-law. So there is certain work that must have a by-law because you're shifting responsibility for the common property from the owners corporation to the lot owner and you must have a by-law and you must have written consent to do that. And I'm talking about Section 108 of the Act. So be careful about being too simple. You're right, the minute lawyers get involved, things get more complex, but if you have a properly functioning community and you know what your community is like, what your problems are, then you guys are absolutely the ones best placed to decide what works for you.

Amanda Farmer: Next up, a strata manager who was present in the audience shared with me the very difficult situation residents in one of his buildings are facing when it comes to a strata committee member bullying other residents, engaging in behaviour that is threatening, harassing, intimidating, even damaging common property, including the security cameras recently installed. Some pretty serious stuff. How does one deal with that kind of difficult situation?

Well, that's number one is I do recommend that you replace it. I've definitely been in that situation with buildings where cameras have been smashed or removed and number one is that they just go straight back up. It is a war of attrition and it is sending the message that, "You will not bully us, you can try but we will stand together and we will respond to your every move."

It's also a good example of it gets worse before it gets better. You've essentially kicked him off or not allowed him the freedoms that he was having and he's pushing back. But he won't push back forever, especially if you are there. To the extent you can and I appreciate it's hard to get the evidence, but wherever you can point to breaches of by-laws issuing notices to comply sometimes in very difficult situations and we often see this where mental illness is involved, trying to find somebody else, a family member or a friend who is connected with that person and talking to them and seeing if there can be some support that comes from them or some other service provider that might be attending the property. Involving them in those discussions is often a way to effect some change.

So that is a very good example of a really difficult situation. But it sounds like the way that you've been dealing with it is the right way. And all I would say is keep it up until the residents there is strength and safety in numbers. So if they can all stand together against this person, they're going to feel stronger.

And calling the police. Every single incident, calling the police, especially direct threats like that.

Audience: Yes.

Amanda Farmer: AVOs, and that has to be requested by a person. It can't be a building. I've heard that question many times. Somebody has to request the AVO, somebody has to give the evidence to the police, but the minute that's in place, each time there is a breach then that's a criminal offense. So he's record just keeps getting longer and longer in the eyes of the police and he gets sick of what then becomes the harassment from the police. And you find that all of a sudden he's selling. So yes, it's a long war that will take some effort but try and keep it up.

This next audience member asked me whether they would be well-placed to engage a lawyer to represent the owners corporation in upcoming in-care proceedings, tribunal proceedings. And this was an application that related to the installation of a fence that impacted the external appearance of the building. So here's what I had to say about whether or not lawyers should be involved in that kind of application.

Hard to know without knowing the facts of that case. I imagine you're dealing with some external appearance basis. Depending on how your property is, you might need to be better placed spending money on an architectural expert who can give you evidence about the impact on the external appearance because that is not a legal question. That is a factual question for an expert to answer. Does this impact the external appearance or not?

And if you go to a lawyer that's what they'll be telling you. There'll be saying, "Go and get expert evidence from an architect to be very

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clear that this impacts the external appearance of the building and therefore they're in breach of by-law 17 or whatever it is and that is why it needs to come down." You'll always... I shouldn't say that, that's a very lawyerly thing to say. I'd say, you'll always get benefit from seeing a lawyer, not necessarily. It really depends on the case.

This next and final question that I am bringing you today, an excellent follow-on from the earlier question about representation in Tribunal proceedings. "Are lawyers allowed to appear before our Tribunal in New South Wales?" And what has my recent experience been seeking leave to appear before the Tribunal? Here's what I had to say.

Excellent point. Thank you for raising that. Our Tribunal doesn't like lawyers appearing for buildings or for owners. They like to be consumer-friendly and oh, I'm just going to answer up this question and then we'll be good to go. Consumer friendly and by that they mean everybody should be here without lawyers and be able to plead their own case and we'll help them and we'll be really nice to them and hold their hands.

I've experienced it both ways recently. It depends on who you get. Some Tribunal members will just say, "Yes, Mr. So and so and Ms. So and so are getting a problem. Leave is granted for legal representation." So they must formally grant leave. Sometimes that happens and you don't even have to open your eyes. Sometimes they say, "Absolutely not. What are you doing here? Get out. These people can handle this themselves. They don't need lawyers."

You sort of go, "Oh, okay." And you have to make a more detailed formal application explaining all the reasons why the Tribunal would be assisted by having lawyers present, not just the parties. So very good to point out, don't just assume if you do get a lawyer that they're going to be able to appear for you at a hearing. I do a lot of work behind the scenes with no intention of ever appearing. Simply drafting the documents, giving the advice, pointing people in the right areas "Get an expert on this, do that, here's a set of submissions, there you go, have fun." And then the committee member or whoever it is runs it.

And there's even been situations where I have sat behind them in the Tribunal and sort of passed them notes and whispered. And a colleague of mine had that experience once and the member said, "Oh look, so just get up and sit here. Stop disturbing, right? Sit here. I know what you're doing." So there's different ways to do things, but yes you don't have leave for legal representation as of right. You do have to apply for it.

And that wraps up the live Q&A that I wanted to bring to you this week. I do speak at these events every now and then usually with the support of local councils. If you haven't seen me or heard about me running an event in your local area, do reach out to me. Let me know where you are and I can fill you in on whether I have something coming up in your local area. Or even better, let your local council know that you'd love one of these education sessions. I have of course in recent months shifted these sessions to the online format. We are running them as webinars. As I said at the top of this episode, next one is actually very soon, Wednesday 29 April at midday for paramedic counsel. Check out the show notes to this episode for your registration link.

If you don't receive this podcast direct to your inbox each week and you'd like to, as well as being the first to know about my next live event, whether that be online or in person, you want to head over to yourstrataproperty.com.au and sign up to receive those emails. You can also just drop me a line at amanda@yourstrataproperty.com.au. Let me know you'd like to hear from me in your inbox and I will make sure we've got you covered. That's it for me this week. Catch you next time.

Outro: Thank you for listening to Your Strata Property, the podcast, which consistently delivers to property owners reliable and information about their strata property. You can access all the information below this episode via the show notes at 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?