

YSP Podcast Transcript: 476 - Standing Up for Residents in a Large Mixed-Use Scheme

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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.

Amanda Farmer: Hello, and welcome to this week's podcast episode. I'm Amanda Farmer, your podcast host. And a little while ago, I announced that I was giving members of our online community the opportunity to join me for a podcast episode to share a win or a challenge with our audience. I opened up some limited recording slots and our members, to their credit, jumped in, put their hand up, said, "Yes. I would love to be a guest on the podcast, Amanda."

My guest today is Danielle, and Danielle is the first member I've interviewed in this new format. I'm really excited to bring you the recording of this chat. Danielle is going to be sharing with us the world of mixed-use schemes, which she has been living and breathing for nearly six years now. Before I take you over to the chat, I just want to share a little bit of background on mixed-use schemes for those who may be unfamiliar with how those work in New South Wales.

So where we might have a single building or a single parcel of land to be developed, it is possible for that parcel to be developed into more than one strata plan. A common example being a residential strata plan and a commercial or retail strata plan, and that might mean commercial on the bottom, shops on the bottom and a tower above with residential.

These days, it's often the case that there are two strata plans there. Not so much the case with our much older buildings, but if you're talking within the last oh, 20 to 30 years, you'll probably find that there are two separate strata plans, and there may also be areas outside of the strata plans, but still within or connected to the same building or parcel of land that are separately owned.

They're not actually within the commercial or residential strata plan. They're separate development lots we call them, but they still share some common services, some facilities with the strata plans. For example, there might be a car park that's shared with a separate retail development lot, like a supermarket.

There may be lifts that are shared. There may be ventilation, plant and equipment. So in these types of mixed-use developments, the relationship between the strata plans and the other owners is guided by a building management committee or BMC, and that committee is made up of representatives from each separate part of the building.

The BMC is the decision-making body for the shared components of the development. So the idea is that everyone gets a say in how the building or the site as a whole is run. And where there are shared facilities like that ventilation plant, those lifts, that car park, decisions are being made jointly. So the committee oversees that day-to-day management of certain defined parts of the building.

And there is a document called a Strata Management Statement, or an SMS that acts as a bit of a rule book for the BMC, different from your individual strata plans by-laws. The Strata Management Statement has rules about how the BMC functions, what its powers are, what the rights and obligations of each BMC member are. And must contain a list of all of those shared facilities, allocating proportionate responsibility for each facility to each BMC member. So it might be the case that there is a commercial strata plan that's one BMC member and a residential strata plan. The other BMC member. There is a single bank of lifts serving the building, serving both the commercial and the residential lots.

And the Strata Management Statement lists that lift bank as a shared facility and confirms that the residential owners corporation is responsible for 70% of the costs of the repair and maintenance of the lift bank and the commercial owners corporation is responsible for 30% of the costs of the repair and maintenance of the lift bank. That's a really simple example of what you might find in a Strata Management Statement. It's intended to be there to make sure that everyone knows their rights and responsibilities and to help prevent disputes.

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But as Danielle is gonna share with you, and as some of you may know from bitter experience, these documents are often the source, the catalyst, the reason why there are disputes in mixed use schemes, and they are disputes that are notoriously difficult to resolve for some of the reasons Danielle and I are going to talk about. So Danielle shares in this chat her experience of buying into a building that's part of a BMC that includes a supermarket underneath the residential apartment block, the supermarket being part of a separate commercial strata plan.

She shares how she didn't know what she didn't know when she brought in, and why she needed to embark on a pretty steep learning curve devoting a lot of her personal time together with another committee member to solving some pretty serious challenges with the other BMC member and to her absolute credit, achieving some big wins, benefiting all of the owners in the residential scheme. So I'll take you over to this chat with Danielle. I hope you enjoy it. All about her experience owning in a mixed use scheme.

Danielle, welcome to the show.

Danielle: Hi, Amanda.

Amanda Farmer: Pleasure to have you here with me today. Can you start by giving our listeners a little snapshot, perhaps of your building? What kind of strata scheme it is? How big it is.? And maybe a bit about your role in the building.

Danielle: Okay. I can, we've got 111 lots in our scheme, so we're a large scheme. I moved in here about five and a half years ago. The building was finished in 2014. Well, that's when the residents first started to move in. And I got on the committee fairly quickly because I just sort of thought, well, if I want to know what's going on, I went to the first AGM. They needed people put my hand up.

So I had grown up in a house, this was my first experience of living in apartment-living, and, heard about by-laws, and I had a look at them. Yes, that all seems to make common sense, but what I didn't realize that buying into a mixed use development, there was the Strata Management Statement. And I still find till today residents that live here and have lived here from 2014 don't understand or have even heard of a BMC.

Amanda Farmer: A B-M-C, a Building Management Committee. Yes.

Danielle: So, fortunately, when I first got on the committee, there was a couple of really experienced people. But they had been dealing with defects and they had come to the end of being involved. They were over it. So I sort of got thrown into the treasurer's position, which having a little bit of financial experience, I was able to work that out. That was okay. And then the following year, the secretary left. So then I got thrown into the secretary's position or got thrown in, put my hand up.

And someone else took over the treasurer role. So. But we still get the reports. Everyone gets reports you read through, and our strata manager is great. He's really good. So I trust him to guide us in the right direction. And then, personally, in my unit started having some problems because I'm directly above retail.

So we went into lockdown. And wasn't working as much. So started to get plans off the council and realised that there were things in these certifications, the construction certificate, the development plans that had said had been done but hadn't, we could clearly see with our eyes things hadn't been done. So that sort of started opening up a whole can of worms. And then they needed, I think, the following year, they needed a BMC rep. I'd had someone board into the unit and she took on the secretary position.

I took back the treasurer position and I also took on the BMC rep. And that was a learning curve, and I can't believe that it isn't spoken about more, considering the building for New South Wales is we're going up, mixed use development is becoming more common, not less. I don't think there's an industry body that we can go to. To get help, I find.

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Amanda Farmer: Specific to mixed-use developments, you mean?

Danielle: Correct. Yes.

Amanda Farmer: Yes, you're right about that.

Danielle: Yes. So I listen to your podcasts, and I'm a member, and all the information is great. I get on the internet, and I'm on a couple of sites there, but I really had to do the research myself. And I've been to the council who are working with us at the moment with some issues that we have, but this has been going on for like four years.

Amanda Farmer: Yes. Well, let's get into that. If you are willing and able to share, what are some of the specific challenges that you've faced in this time, you've mentioned briefly there, you are living above retail. The impression I'm getting is you, you are suffering some noise and disturbances there because the building wasn't constructed properly and you've been able to dig out through council records that there have been breaches there. The council had certain requirements, and the builder didn't comply with them. Can you say more about that? What you've uncovered?

Danielle: Yes. Well, not only did the builder not comply with it. The certifier didn't comply with it. The company who'd done the acoustic report didn't comply with it. So in our BMC, there's two lots. Residential is one lot. And the retail is the second lot.

Amanda Farmer: Got it.

Danielle: So I know there's some BMCs that have got multiple lots. So when I was going back to retail, saying, this hasn't been done. They're like, all these people can't be wrong. The certifiers wouldn't have made a mistake. The acoustic report, the testing, they wouldn't have made the mistake. But there, there isn't a report that says counsel needed that report. That report doesn't exist.

Council can't find it. The acoustic company said they don't have it. The private certifier said, "Oh no, we, it's over more than 10 years or seven years, I don't have that stuff anymore." So had I known what I know now, when I moved in, it would've been a completely different story because we would've been within seven years. Or even 10 years.

Amanda Farmer: Right. Okay. I understand. You mentioned there that council is still involved in some issues now, so what are you still battling with today?

Danielle: The acoustics, I would say is probably 85% resolved.

Amanda Farmer: Great.

Danielle: The retail advised us that they've done half a million dollars worth of soundproofing.

Amanda Farmer: How did you get them to do that?

Danielle: Council in the end come to the party.

Amanda Farmer: Great.

Danielle: Council were pushing back on us, saying, "No, it's a strata thing. You've got to sort that out." But when I was able to prove that, hang on, you've given the construction certificate, which you shouldn't have given because you don't have A, B, and C.

Amanda Farmer: Yes.

Danielle: You might have DEF. But you are missing stuff here. So I think they, everyone's going back to their lawyers, saying, well, okay, they're saying this. So I have been told that council got involved because they spoke to their lawyers.

Amanda Farmer: Okay. And did the owners corporation, your residential owners corporation, engage lawyers?

Danielle: We have, eventually, we had a bit of a rough start with lawyers, but we finally found someone that helped us. But it wasn't about the acoustics. This was something else that we've discovered. So anyway, the acoustics is 85% resolved and we are working with the supermarket chain to lessen their noise after 10 PM and, and certain things. So we're working through that, and they're going to do a major redevelopment next year.

Amanda Farmer: Who is going to, sorry?

Danielle: The supermarket.

Amanda Farmer: Is doing a major redevelopment, right?

Danielle: Yes. And, they've indicated to us that that will help. Residential as well. I'm yet to find out how, but yes, there's plans coming through apparently.

Amanda Farmer: And you still sit on the BMC, the Building Management Committee, as the resident rep?

Danielle: Yes. So then we needed to do some waterproofing. We had a leak on our roof. So this is when we engage the lawyers because the supermarket refrigeration equipment sits on our roof. And the leak was coming through from that area. So, for probably three years we had this leak and we were back and forwards with the other lot, the retail lot about getting it fixed and whose responsibility, and they seemed to be going along with us going, "Oh, okay, well it's a plant area. And, we'll do the percentages," but then, we talked about getting engineers out and, and doing everything right.

There was just constant pushback, constant stalling. And in the end, they said, "It's not in the Strata Management Statement, that area, which it's not, it's your property. You've got to fix it. You are a hundred percent."

Amanda Farmer: It's your common property. It's not a shared facility. Under the Strata Management Statement, we have no obligation to contribute to this, even though it's our equipment.

Danielle: Correct.

Amanda Farmer: Wow.

Danielle: So then the supermarket, because I've been dealing with them directly when I wasn't getting anywhere with the retail owner.

Amanda Farmer: Who are two different entities. So the supermarket chain is the tenant in the retail lot?

Danielle: Yes.

Amanda Farmer: Got it?

Danielle: Yes. So we engaged a lawyer. And went through all the Strata Management Statement. The easement document was another thing that they were running up because it's got plant and equipment. And so then we went to this, the supermarket and said not necessarily that your equipment has caused the damage. There was a leak up there that I think didn't help an area, but it's all your equipment. We've got a waterproof around your equipment.

We can't do it properly because of where it sits and whatever. And they were just like, "No, sorry. We rent this space. Go back to the retailer." So this is where we are have to bring council back in again for this issue because they can't find on the plans where this was approved, where the supermarket's equipment was approved to go there.

Amanda Farmer: Approved by the BMC or approved originally?

Danielle: It's what approved by council initially with the development application. There's nothing from the certifier approving it. It's not, obviously not in the Strata Management Statement.

Amanda Farmer: Interesting.

Danielle: So, somehow that completely got overlooked, talking about six tons of equipment.

Amanda Farmer: So is it possible that this equipment went in after registration of the plans and was installed by either the retail owner or maybe the tenant and technically needed BMC approval? Because where you have a BMC member that's gonna be doing work or wants to do work on the property of another BMC member, that needs to be approved at BMC level. And I'd be hopeful, your Strata Management Statement would say that, and this all just happened without approval.

Danielle: No one was living here then. The BMC wasn't formed because it was the developer. It's come back that the developer has done all this. So the developer has leased our common property.

Amanda Farmer: Oh, is there a lease?

Danielle: There is a lease.

Amanda Farmer: Right.

Danielle: And on the lease drawn in, that the supermarket can put their equipment there.

Amanda Farmer: Is the lease registered?

Danielle: The lease is registered.

Amanda Farmer: Okay.

Danielle: The lease is not with us. We are not party to the lease.

Amanda Farmer: What? How is that possible when it's on your property? Wow.

Danielle: So this is all the..

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Amanda Farmer: This is all being uncovered.

Danielle: Yes.

Amanda Farmer: And this is a bit of a live issue at the moment that you're getting some legal advice on?

Danielle: Yes. We got advice from them and then they said, "Okay." They agreed with what myself and the secretary, and the strata manager had come up with. And we've been doing a lot of the background work. Like people's like, well, why isn't strata manager doing this? It's time consuming.

Amanda Farmer: Yes.

Danielle: And we need him to run the building.

Amanda Farmer: Yes.

Danielle: And we keep him involved, and he's dialed into meetings that I've had with the supermarket or whatever. So, he's there for us, but then they wanted us to go to a barrister, and we were like, "Okay. Well, we've just had to pay a hundred thousand dollars for waterproofing." For a small area that we don't think we've got four little hot water units up there. The rest of it is the supermarkets. We don't want to be spending money on barristers yet when we've got all this other work that needs doing.

We need painting. The exterior of the building needs painting. The building's over 10 years old now that there's wear and tear. And to the point that some people have got water in because we haven't been, we haven't repaired it. So, so we've got to weigh up how far we go with this if going to a barrister, and going to court, and we knew that we would get a favorable outcome. Then we would do that, but we don't know. I mean, we're dealing with a major chain.

Amanda Farmer: Yes, I hear you with deep pockets. And the complexities of a BMC structure governed by a Strata Management Statement, disputes about, which can only be heard in the Supreme Court, I imagine, is what you're being told. And there are some complex legal issues here, which is why you're being told, let's get some.

Specialist advice here from a barrister. What toll is this taking on you, your life, your family? You've said we don't want to put too much of a burden on the strata manager, which I completely understand. This is a large scheme. He's got a lot of other things to do. So we've taken this on as committee members. What does that look like for you?

Danielle: I'm lucky the secretary come along when she did. I don't know if I could have kept on going with it. I didn't want to sell. I thought about it and then gave a good talking to myself. And I love my unit. I love where I am. I've faced east, I get the morning sun. I've got my cat here, I've got a great unit, and I grew up in the area. And our neighbors are great. It's a great little community. Of course we have the occasional gap. But it's a really good place to live, and I'm lucky I'm older.

I work from home. Full-time. My children are grown up, they're around, but they're not with me all the time. My son comes and goes. My daughter's older. She's got her life. So it's sort of been, become my hobby really.

Amanda Farmer: Right. That's why I'm way to look at it. Yes.

Danielle: And that's what the secretary, her husband, said to her, "You need to get a hobby."

Amanda Farmer: Yes. Not this one.

Danielle: I have a hobby. It's called strata. And I think we've got that curiosity that when we've been investigating and we've found out that, hang on, this isn't right, and we take it a little step further, and it was like the rooftop. I mean, we just went to fix something that we had to fix. And we know other areas of the roof will need to have waterproofing done in the coming years. So we thought, okay, well, we'll do this properly. This first section. And used a company, and the Design and Building Practitioners Act. We done everything right.

And all we asked from retail, there's this one little shaft, and the waterproofer said, what goes down that shaft? And I said, "Oh, I don't know. I'll look for it on the plans." Couldn't find it. Paid council to get the CDC plans. Couldn't find it on there. Asked retail. No, we don't have it. It all begun from that. Had they would've said, here's some plans. And yes, you are right. It's not fair to residential to have to pay for all this waterproofing when the retail equipment is here.

I said, "Let's go 50 50," in the beginning, like we were being really fair, so all they had to do was come up with 50,000 and give us some plans and we would never have known anything different. We would've just gone along.

Amanda Farmer: And this is all so gray, because the legislation isn't there to back you up. And you're working off a developer-produced document called a Strata Management Statement that you never knew existed when you bought in. Now I'm sure you're intimately familiar with it, and even that is lacking and doesn't provide the answers.

So you're then having to spend tens of, if not hundreds of thousands of dollars on lawyers trying to work it out. And I suspect, because I've been in these shoes before, the lawyers are saying, "We don't really know." It's great.

Danielle: Yes. It's great.

Amanda Farmer: Awful situation.

Danielle: Yes. But we're working through it. And because it took me a long time to get my head around it. I think when we last spoke, when you helped us, it was sort of at the fairly beginning of our journey to resolve that, and it's just kept reading it and reading it and asking questions, and I tracked down the original surveyor. And he's been a really good help. He's over on the Northern Beaches and I've had some discussions and he said, "I'll come over anytime." Haven't needed him to.

He was a good help. And I've been to Fair Trading. I've been to every government agency that I thought could possibly help. And no one really could. I met with my local member. And he had never heard about an SMS or A BMC. And he's got a legal profession.

Amanda Farmer: Yes. There is a bill before New South Wales Parliament at the moment that proposes some amendments to the Strata Schemes Development Act to more closely address the operation of BMCs. I'm not sure that it's going to solve a lot of these problems that you are talking about in terms of unclear Strata Management Statements. It goes to things like making it easier to amend a Strata Management Statement that might be unfair.

The meeting procedures for BMCs, election of representatives to BMCs, but we're still in a situation where these Strata Management Statements are prepared by developers with some specific requirements in the legislation, but not enough I think, to prevent these uncertainties. So we will have people listening who are in a similar complex to yours, Danielle, mixed use, commercial, residential, maybe some other development lots there to that might be a car park or other community facilities.

They are recognising these acronyms, you're using BMC, SMS, they may be having difficulties in their building as well. Have you got any general advice for those people or guidance from your experience, what they could be doing?

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Danielle: You need a lot of time, yes. Look, I think just getting through the plans. I'm very focused with our Strata Management Statement because I'm dealing with retail. So if it's retail, a BMC, if it's something similar to what I'm set up with and what you've got to remember is retail. You are dealing with people who are in that industry so they understand the leases and Strata Management Statements and things like that.

Amanda Farmer: Yes. This is, this is not the first mixed-use strata building they're operating in.

Danielle: No. And the company that owns retail. They've got numerous sites. I think just with your committee, if you are on the committee, a BMC member doesn't need to be a committee member.

Amanda Farmer: Correct.

Danielle: But hopefully you've got good committee members and people that you can discuss things with and just go through the Strata Management Statement, and work out. Just dissect it and if something doesn't sound right, investigate further.

Amanda Farmer: I think it's a great tip. Understand the plans. Understand that the Strata Management Statement exists and what it says. I often meet with members when we have our one-on-one calls in the community and they share with me similar challenges to what you are facing. And I pick up that, oh, there's a retail involved here. There's a supermarket, or maybe there's a car park. And I say, "Is there a BMC?" And I just get the a blank look. I don't know.

And that's incredibly important to work out because maybe it is possible that there is a setup where you have commercial residential strata plans, and the supermarket is a completely separate lot. That is not in any way a subdivision of that original development lot, and it's not part of the BMC. That's gonna be a very different relationship. There's no shared facilities. There's probably no SMS, it's just an annoying neighbor. I see this too, where committee members who have been in buildings for a long time just don't realise that that structure exists.

And looking at the title, the common property, certificate of title for your building will tell you if there is a Strata Management Statement registered, it will be mentioned on the title. That's a great start, and definitely having a look at the plans to see where the boundaries of each development lot are is gonna be important and getting help with that if you need it.

Danielle: Yes. No, I agree.

Amanda Farmer: Did you come to the chat with any specific question for me, Danielle, that you want me to attempt to dive into? Or is this more of a community service announcement here about beware BMC?

Danielle: This is my counseling session event.

Amanda Farmer: I love it.

Danielle: No, I think people need to be made aware when they're buying into this sort of setup. And just do your research.

Amanda Farmer: And do you think, I mean, think back to when you bought, there would've been maybe a real estate agent who was selling this place to you. Never mentioned any of this.

Danielle: I think I said to him, "Do you get any noise from below?" When he said, "No."

Amanda Farmer: Yes. Well, he doesn't. He doesn't live there.

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Danielle: Well, the thing was, he was related to the person who was selling.

Amanda Farmer: Really?

Danielle: So he did know. Yes, he did know.

Amanda Farmer: Well, that's a no-no. Sales agents, you have a duty of disclosure. And this is where I'm coming from with sales agents don't understand. What they're selling, they often don't understand strata title, but you throw a mixed use stratum subdivision, BMC, SMS in there, absolutely no hope.

And I try to do as much education as I can for sales agents and property managers, and always raise these more complex schemes to put them on their radar, and even then taking your contract to a conveyancer or a lawyer to advise you on the purchase. It's not every lawyer that picks up these nuances either.

Danielle: My lawyer didn't know about it. Strata Management Statement. I had to see her recently for something else, and I was telling her, because she said, "Oh, she'd done the conveying thing for the unit. How's it going there? Oh, I love it."

But I started telling her about it. She's going, "Oh my God." She said, "I didn't, haven't heard about this." Because you do the strata search, making sure that everything's okay. But if it said, it refers to the by-laws in areas, and it might say a Strata Management Statement, and you probably just think, oh, well that's another document or whatever. Not realising how much it can impact you.

Amanda Farmer: Yes. And then would I be right to say that only a minority of residents are impacted by the retail operations, because you are close to it. You're above it, you're next to it. And if I'm thinking it's over a hundred lots, it might be multi-story. And those who are up the top really don't know what you're talking about.

Danielle: Oh, exactly. Yes.

Amanda Farmer: And is that a difficulty in getting support and getting people to understand what's going on and why we're spending money on this?

Danielle: It was in the beginning, but it's not now.

Amanda Farmer: Good.

Danielle: And because we have other noise, we're near other industries in the area that we live. I think some people were blaming noise coming from those industries.

Amanda Farmer: Okay.

Danielle: And now they've realised, so that equipment on the roof does cause noise. But there's a wall around it. There's an acoustic wall around it. So people couldn't see it. So they were like, "Oh, well, okay. We were blaming a nearby industry that gets noise over our area." Actually, we've realised it's that.

Amanda Farmer: Was there anything that you've done as a committee to keep other owners informed to communicate your progress and to keep them on board and, and supporting you in this crusade?

Danielle: Yes, we've got, um, it's been good over the years that I've been on the committee. In the beginning, there was hardly anyone that would come, and I've really encouraged us to bear all of what's going on. And I put signs up. Actually, last strata meeting was the only, or a couple of times that we didn't put signs up and they just got the email from the strata manager that it's on the strata meeting.

Amanda Farmer: Yes.

Danielle: But we encourage everyone to come, even renters, to be a part of it. They don't. But we asked them to be involved, and we had a good roll-up at the last one.

Amanda Farmer: Yes, I've always said you don't ask because you think people are going to turn up or that you expect them to turn up. You ask and you invite so that when they don't turn up and they complain later, you can say, "You had every opportunity to be here at this meeting and to understand what's going on."

Danielle: Yes. I do. And then when people start complaining about finances, I just send them the budget, send them finances. Just say, "Well, you find the money to, tell us how to fix it."

Amanda Farmer: Yes. What should we take out of the budget? Please help.

Danielle: Don't come to us with a problem unless you have a suggestion of a resolution.

Amanda Farmer: Yes. I like it.

Danielle: Yes. So look, we've got a little bit over the last couple of years people complaining about cleaning and the minor things, and I know they're important to some people, but when they realise what else is going on, they go, "Oh, okay. Right. We get it."

Amanda Farmer: Yes. Well, thank you so much for taking the time to be here today and to share this with everybody tuning in. So much of it will be helpful whether you're in a mixed use scheme or whether you're just trying to lead a reluctant group of owners through the next strata challenge. There'll be lots of takeaways there for everyone. Any final thoughts you want to leave us with, or anything you wanted to add that we haven't covered?

Danielle: Did you find it interesting, the updates?

Amanda Farmer: Yes, I think that you have come a long way, let me say that. I know that we spoke some years ago now when probably you were just starting out on your journey, and probably, I was talking about things like, "Do you know you've got a Strata Management Statement? Have a read of that," and explaining those concepts so good on you for taking that, running with it, diving in and spending the time. It's just so hard. Everybody's busy. You don't get paid.

Danielle: It's time-consuming. And sometimes I go, oh, I don't want to do this anymore. And then I just go. No, I've got to,

Amanda Farmer: If not me, then who? Right?

Danielle: Yes. And after, I think it was 11 years, the BMC rep from retail put someone else in his place, so I think I even walked him down.

Amanda Farmer: Yes, that's how it happens sometimes. You hang in there long enough.

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Danielle: Yes. And saved us money.

Amanda Farmer: Yes. Good on you. Excellent. That's where we'll wrap up today. Thanks so much, Danielle.

Danielle: Okay. Thanks, Amanda. Bye.

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 yourstrataproperty.com.au.