

ROS JANES LAWYER

ABN 93946042972

15 December 2003

Our Ref: RAJ:JB:233-03

The Committee
Notre Dame BUP 106912
Cathedral Place
41 Gotha Street
FORTITDUE VALLEY QLD 4000

Dear Committee

RE: ADVICE - EASEMENTS

I refer to my meeting with concerned members of the Body Corporate. I confirm you require my advice in relation to the easements in place concerning the car park, I note from my inspection that it is necessary to drive through a boom gate to access the visitor's car park and that payment is required to exit the visitor's car park.

Following our meeting, I attended at the offices on Stewart Silver King & Burns to search the Body Corporate records and also obtained various Searches from the Department of Natural Resources.

BACKGROUND

Notre Dame is a building units plan registered on 9 November 1998. I enclose a copy of the search statement for your information.

Notre Dame is part of a mixed use development known as Cathedral Place Community Body Corporate and it is governed by the Mixed Use Development Act and the Building Units and Group Titles Act.

Cathedral Place Developments Pty Ltd (the original developer) granted an easement to Cathedral Place Community Body Corporate.

Accordingly, on registration of the building units plan for Notre Dame, the Body Corporate for Notre Dame granted an easement to Cathedral Place Community Body Corporate over easement A on SP 111910 and easement G on SP 111909.

DEVELOPMENT APPROVAL GIVEN BY BRISBANE CITY COUNCIL

The development approval given by the Brisbane City Council provides as follows:

- There is to be parking for a maximum of 485 cars of which 15 are for disabled use and there must also be provision for loading and unloading of vehicles.
- There is to be unrestricted access for bona fide visitors to any visitor car parking bay.

Suite 27, Level 5
320 Adelaide Street
Brisbane Qld 4000
GPO Box 111
Brisbane Qld 4001

Telephone: (07) 3010 9450
(07) 3010 9451
Facsimile: (07) 3010 9839
Mobile: 0417 622 698
E-mail: rosjanes@inpower.com.au

The above conditions of development approval are to be maintained i.e. there must be compliance with these conditions whilst the use continues on the site.

This development approval relates to the whole of the site and accordingly the Body Corporate for Notre Dame must comply with it.

EASEMENT

Easement number 702964971 was registered on 21 October 1998 (copy attached). It was granted by Cathedral Place Developments Pty Ltd in favour of Cathedral Place Community Body Corporate and is for the purpose of access. Owners and occupiers of lots in the mixed use development known as "Cathedral Place" are entitled to pass up, over and along the benefited area, which is described as easements A, B, C, D, E, F, G and H at all times with or without vehicles, plant, chattels, goods and equipment. Cathedral Place Community Body Corporate is to maintain, clean and repair the easement area.

Only the easement areas A and G affect the Body Corporate for Notre Dame.

MINUTES OF BODY CORPORATE FOR NOTRE DAME

I attach a summary of the minutes which I have obtained from the Body Corporate records, as well as the minutes of the meeting held on 14 April 1999. If you would like copies of the other minutes referred to in the summary, please let me know.

Motion 17 of the first annual general meeting of the Body Corporate held on 18 November 1998 provides that the Body Corporate grant the benefit of easement P on proposed survey plan 113801 in favour of the Cathedral Place Community Body Corporate for car parking, access and storage purposes and that the easement and survey plan be executed by the Body Corporate. However, this easement has not been registered over the common property of Notre Dame BUP 106912.

Motion 7 of the extraordinary general meeting of the Body Corporate held on 14 April 1999 provides that the Body Corporate grant the benefit of an easement for the car parks identified on the attached plan to Cathedral Place Community Body Corporate for car parking, access and storage purposes and that all costs of the easement will be paid by the original proprietor. A plan was attached to the minutes showing easement R and easement S (copy attached), however this easement has not been registered over the common property for Notre Dame BUP 106912.

CATHEDRAL PLACE COMMUNITY BODY CORPORATE MCP 106902

I **enclose** a summary of the minutes of the Community Body Corporate on which I have highlighted the issues concerning the car park. Attached to the summary is the minutes of meeting held on 25 November 2000 and the plan attached to the minutes. If you would like copies of the other minutes referred to in the summary, please let me know.

You will see from the extraordinary general meeting on 18 November 1998 the Community Body Corporate accepted an easement P on proposed survey plan 113801 from Notre Dame for car parking, access and storage purposes, however this easement has not been registered over the common property for Notre Dame BUP 106912.

At an extraordinary general on 11 May 1999 Notre Dame (as well as other bodies corporate) accepted the benefit of easement Q on SP 118983 for the purpose of car parking, access and storage purposes. Again, the search from the Department of

Natural Resources does not indicate that this easement has been registered over the common property for the Body Corporate for Notre Dame BUP 106912.

At an extraordinary general meeting of the Community Body Corporate on 29 November 2000 a new by-law 28 was adopted, which relates to the visitor car parks for the community common property and the visitor car parks for the subsidiary body corporate known as Notre Dame.

The by-law provides that it is intended to apply to that portion of the visitor car park that is common property for Notre Dame on registration of an easement from Notre Dame granting the benefit of that area to the Community Body Corporate for car parking purposes. A handwritten note on the minutes indicates that it relates to easements R and S. As previously mentioned, easements R and S are not registered over the common property for the Body Corporate for Notre Dame BUP 106912.

In addition, the minutes of meeting state that Bill Ritchie was present and Don Caslick from Stewart Silver King & Burns was in attendance. All of the other minutes of the Community Body Corporate have confirmed that there was a quorum and whether lot owners voted by voting paper or proxy. These minutes do not state anything about a quorum or who voted. There would have to be some serious doubts about the validity of this meeting.

The plan attached to these minutes includes the area to which access is available only through the boom gates.

CONCLUSION

Whilst the Body Corporate for Notre Dame has granted by way of easement access to the Cathedral Place Community Body Corporate, the only registered and valid easements are easements A and G.

The purported granted by the Body Corporate for Notre Dame of the easement on 14 April 1999 and the acceptance of the easement by Cathedral Place Community Body Corporate on 29 November 2000 has not been registered in the Department of Natural Resources.

The acceptance of the grant of the easement by Cathedral Place Community Body Corporate would appear to be invalid.

In addition, the conditions of the development approval have not been complied with as the visitor car parking bays are only accessible through the boom gate and visitors have to pay when exiting.

The Cathedral Village Body Corporate should be put on notice that it is not complying with the development approval and that it should remove the boom gate.

If Cathedral Village Body Corporate does not comply, then a complaint should be made to the Brisbane City Council about the actions of Cathedral Village Body Corporate.

If you require further clarification or copies of any further documents, please do not hesitate to contact me.

Yours faithfully


Ros Janes