

Our ref: JES:DDT:AMM:42234

8 November 2004

Mr John Gilliland
Chairman
Cathedral Place Body Corporate
BY EMAIL: john.gilliland@syzygycorp.com.au

Dear John

Lot 4 Notre Dame BUP106912, Cathedral Place

We now have authorisation from Devine Limited to discuss with you information regarding the "adjustments" to lot 4 that otherwise would be confidential to that company. We can therefore now address your enquiries concerning the lot and, specifically, the dealings affecting that lot prior to registration of plan number 106912.

Your instructions

As we understand it, your enquiries are as follows:-

1. How did some of the common property of the ground floor of Notre Dame (which is marked on the Plan annexed to By-law 27 as "Recreation Area", and now houses the office area used by the Zunkers) become part of lot 4 as lodged with the "Notre Dame" BUP?
2. Why were the entitlements of lot 4 not increased to take account of the extra 63 square metres of land allotted to it?
3. How can Cathedral Place Community Body Corporate ("CPCBC") ensure ownership of lot 4 (and thus the office area attached to Lot 4) if its caretaking agreement with the Zunkers is terminated or assigned? Ultimately, you want to know how CPCBC (and Cathedral Village Body Corporate ("CVBC")) are to secure ownership of that asset.

We understand you need these issues addressed in order to assess the CPCBC's (and, for that matter, the CVBC's) "bargaining" position prior to finalising negotiations with the Zunkers regarding the renewal of the on-site management agreements.

Please note that, at this stage, this is only a preliminary advice based solely on our (more specifically, Peter Townley's) recollection of the circumstances which resulted in the adjustment

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to lot 4. We are currently retrieving our file of that matter from archives and hope to be in a position to confirm (or revise, as the case may be) this advice shortly.

Circumstances behind the additional allotment to lot 4

On our recollection, the original boundaries of lot 4 were adjusted by the developer prior to registration of the initial plan, at the instigation of Cathedral Place Management Pty Ltd (which, at the time, was operated by the previous caretakers). We should be in a better position to comment further on the circumstances of those events once we have reviewed our previous file.

Under the *Building Units & Group Titles Act 1980* (BUGTA”), the developer had wide discretion to adjust lot entitlements prior to registration of the plan. However, once the plan is registered, the land vests in accordance with the adjusted boundaries and there is, to our knowledge, no mechanism for further adjustment to the lot entitlements.

In contrast, the current *Body Corporate and Community Management Act* (“BCCM Act”) does provide a process for changes to lot entitlements in limited circumstances (see Sections 48-51 of the *BCCM Act*) however, even then, the process is very onerous.

Further, BUGTA only required one schedule to be endorsed on the Plan, specifying the lot entitlement of each lot – and, in turn, that lot entitlement determines voting rights, the contributions levied against each proprietor as well as their share in the common property. Therefore, any adjustment of the lot entitlements to account for the addition to lot 4 at the time would have, inevitably, resulted in increased voting rights to the proprietor of lot 4 and an increase in their share of the common property.

We therefore assume that the developer elected at the time not to make the adjustments, to avoid any possibility of confrontation with the other buyers.

As to why By-law 27 was not amended after the adjustment to lot 4, we can only assume that this was an oversight.

You have also suggested that the CPCBC (or CVBC) should secure ownership of the lot if the caretaking agreements with the Zunkers are terminated or assigned – or, at the very least, the bodies corporate should secure use of that part of lot 4 previously the common property affected by By-law 27.

As previously advised, we are not aware of any powers conferred on the body corporate by the *Mixed Used Development Act* which would allow it to buy and own real estate. Therefore, if the CPCBC or CVBC want use of that part of the lot, then they will need a licence, easement or a grant of use by other arrangements which may be agreed to with the Zunkers. To avoid a revisit of the issue in the future, any agreement in that regard will obviously need to also be binding on all subsequent owners of lot 4.

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Arrangements for the appropriate transfer of lot 4 in the event of a termination or assignment of the on-site management agreements have otherwise been addressed in the new proposed agreements currently being negotiated.

Yours faithfully
NICOL ROBINSON HALLETTS
per:



PETER TOWNLEY ^{ES}



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