

# M.F. LYONS & ASSOCIATES

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13 January 2005

Attention:- Pat McGlade

Cathedral Place Community Body Corporate  
Level 2, The Precinct  
12 Browning Street  
WEST END QLD 4101

**BY FAX: 3010 5500**

Dear Sir,

Review of Easements etc at Cathedral Place  
Our Ref: MFL: FAK: 241284

1. You have instructed us to consider carparking spaces in easement areas K, L, M, N, P, Q, R and S. We confirm that these areas encompass the following carpark numbers and are, to our knowledge, to be allocated for the exclusive use of the following lot numbers-

Area	Carpark Number	Carpark Location	Lot Number	Lot Location
K	505	Canterbury/Westminster	21	Duhig (F)
K	506	Canterbury/Westminster	21	Duhig (F)
L	525	Canterbury/Westminster	61	Duhig (F)
L	526	Canterbury/Westminster	61	Duhig (F)
L	527	Canterbury/Westminster	59	Duhig (F)
L	528	Canterbury/Westminster	59	Duhig (F)
M	177	Canterbury/Westminster	54	Duhig (F)
M	178	Canterbury/Westminster	54	Duhig (F)
M	179	Canterbury/Westminster	45	Duhig (F)

M	180	Canterbury/Westminster	45	Duhig (F)
M	181	Canterbury/Westminster	46	Duhig (F)
M	182	Canterbury/Westminster	46	Duhig (F)
M	183	Canterbury/Westminster	77	Duhig (F)
M	184	Canterbury/Westminster	77	Duhig (F)
N	192	Canterbury/Westminster	53	Duhig (F)
N	193	Canterbury/Westminster	53	Duhig (F)
N	194	Canterbury/Westminster	84	Duhig (F)
N	195	Canterbury/Westminster	84	Duhig (F)
P	226	Notre Dame	49	Kensington/Sandringham (H)
P	227	Notre Dame	50	Kensington/Sandringham (H)
P	228	Notre Dame	51	Kensington/Sandringham (H)
P	229	Notre Dame	66	Kensington/Sandringham (H)
Q(B1)	146	Kensington/Sandringham	55	Duhig (F)
Q(B2)	466	Kensington/Sandringham	65	Duhig (F)
R	Visitor 15-25	Notre Dame	N/A	Cathedral Village
S	Visitor 1	Notre Dame	N/A	Cathedral Village

2. We note that Areas R and S are already allocated for the exclusive use of the Subsidiary Body Corporate of Cathedral Village under By-Law 28 of the Cathedral Place Community Body Corporate ("CPCBC") currently registered with the Titles Office.
3. The remaining areas will need to be allocated for the exclusive use of the abovementioned lots by way of an "Activities By-Law" of the CPCBC ("the By-Law").
4. We note that the By-Law will not take effect until the Minister approves the by-law and notification of the Minister's approval is published in the Gazette.
5. As the By-Law will require Ministerial approval, as a matter of policy, it must be shown that the Subsidiary Bodies Corporate at Cathedral Place support the CPCBC in adopting the new By-Law.
6. Support of the Subsidiary Bodies Corporate may be evidenced by resolution of the Subsidiary Bodies Corporate.
7. We enclose a draft By-Law and of the required resolutions of the CPCBC and Subsidiary Bodies Corporate approving/adopting the By-Law. We note that plans with reference numbers 4428 - 31G and 4428 - 30G, forwarded to the CPCBC on 2 December 2004

should be presented in conjunction with the enclosed draft resolutions of the CPCBC and Subsidiary Bodies Corporate at the relevant meetings of the CPCBC and Subsidiary Bodies Corporate

**8. Benefit of addressing all carparking spaces in Basement 1 and 2 of Cathedral Place.**

- 8.1 We note that the process by which the enclosed draft By-Law will take effect is the same process by which the current By-Laws 28 and 25 would be repealed and replaced with a By-Law relating to all carparking spaces in Basement 1 and 2 of Cathedral Place.
- 8.2 If the CPCBC only address the areas defined above, the following risks associated with the current By-Law 28 and 25 registered with the titles office will remain:-
- (a) There is currently no requirement that the CPCBC or the Subsidiary Bodies Corporate keep a register of transfers of carparking spaces allocated to lots. Without a formal record of transfers, confusion arises as to which lot is entitled to exclusive use of a carparking space.
  - (b) Allocation of carparking spaces are currently effected by By-Laws of the Subsidiary Bodies Corporate and the By-laws of the CPCBC. It is more efficient to have only one source of allocation in the form of a CPCBC By-Law.
  - (c) The CPCBC By-Law 25 and By-Law 28, currently registered with the titles office are poorly drafted for the following reasons:-
    - (i) There are incorrect references to "Common Property" in the current By-Law 25 of the CBC where reference should be to "Community Property".
    - (ii) The By-Law 25 poorly identifies annexure to By-Law 25. The annexure are referred to as "Allocation Schedule" and "Carparking Plans". However, the annexure to which we assume the By-Law refers, are titled "Carpark Allocation Schedule" and the Plan has no such title, creating ambiguity as to the annexures to By-Law 25.
    - (iii) By-Law 25(a) states that the "*Body Corporate is responsible for the allocation of exclusive use of carparking spaces that are either located on the Common Property or Located on the Common Property of a subsidiary Body Corporate.....*". The phrase "responsible for" in this By-Law is poorly used. The CPCBC is not "responsible" for the allocation of exclusive use of carparking spaces in that it has no such duty. Instead it has the "power" under the Mixed Use Development Act to allocate exclusive use of carparking spaces within the 'site' of Cathedral Place.
    - (iv) Item 2 of the annexure to By-Law 25 titled "Cathedral Place Carpark Allocation Schedule" states "*By-Law 25 of the Cathedral Place Community Body Corporate By-Law refers to the carpark allocations where the location is designated "M"*". In effect, the annexure purports to place a restriction on the operation of By-Law 25. It is arguable whether or not this restriction is valid. Further, the Allocation Schedule includes many carparks outside the location designated "M". Does this

By-Law operate in relation to the additional carparks?

- (v) The plan annexed to By-Law 28 of the CPCBC is not held on record at the Titles Office. This creates confusion as to which carparking spaces By-Law 28 refers.
- (vi) The plan identified by Pat McGlade as the plan annexed to By-Law 28, numbered 4428-27 does not identify carpark 70 as a visitor carpark. A revised version of plan number 4428-27, numbered 4428 - 30G identifies carpark 70 as a visitor carpark.
- (vii) By-Law 28 registered with the Titles Office does not encompass carparking spaces marked "VAN" on plan number 4428-27 and 4428 - 30G. Pat McGlade instructed us that they should be.
- (viii) Carparking spaces marked "Visitor" are located in the community property of the CPCBC, in the Subsidiary Body Corporate of Notre Dame and in the Subsidiary Body Corporate of Cathedral Village. The wording of By-Law 28 creates confusion as to whether or not By-Law 28 encompasses carparking spaces marked "visitor" located in the Subsidiary Body Corporate of Cathedral Village. By virtue of the first sentence of By-Law 28 (a) it may be interpreted that the By-Law 28 does apply to the carparking spaces marked "visitor" located in the body corporate of Cathedral Village. However the remaining sentences of By-Law 28(a) would suggest that the By-Law does not apply to the carparking spaces marked 'visitor located in the Subsidiary Body Corporate of Cathedral Village.
- (d) All these risks and ambiguities will be addressed if the CPCBC chooses to repeal the existing By-Law 25 and 28 registered with the Titles Office and adopt a new CPCBC By-Law addressing all carparking spaces at Cathedral Place.

Should you have any further queries, please do not hesitate to contact the writer.

Yours faithfully

**M.F. LYONS & ASSOCIATES**

per:

  
Mick Lyons