

**MINUTES OF THE COMMITTEE MEETING OF THE BODY CORPORATE FOR CATHEDRAL PLACE CBC MCP NUMBER HELD IN THE ONSITE MEETING ROOM, CATHEDRAL PLACE, 41 GOTHA STREET, FORTITUDE VALLEY ON WEDNESDAY, 28TH SEPTEMBER 2005 AT 5.30PM.**

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**PRESENT** John Gilliland  
 Pat Brown  
 Tony Rich  
 Andrew Tynan

**IN ATTENDANCE** Michael Johnston - Stewart Silver King & Burns (Brisbane) Pty Ltd  
 Peter Townley – Nicol Robinson Halletts (Departed after agenda item 2)

**APOLOGIES** Peter Lewis – Proxy to Tony Rich  
 Randall Edwards – Proxy to Andrew Tynan

**CHAIRMAN** John Gilliland chaired the meeting.

**QUORUM** Chairman declared a quorum present and declared the meeting open at 5.45pm.

SUBJECT	DISCUSSION / RESOLUTION	ACTION	DUE DATE
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## 2 Advice from NRH re Caretaking and Letting Agreements

2.1	<p>Peter Townley of Nicol Robinson Halletts attended the meeting at the invitation of the Committee, to provide advice on the motions recently put forward for inclusion in the agendas of the AGM's of all subsidiary bodies corporate, and which seek to circumvent the tendering process for renewal of the Caretaking &amp; Letting Agreements by varying the existing agreements.</p> <p>The Secretary of each subsidiary body corporate is obliged by regulations to include these motions on the agendas for the upcoming AGM's. Each subsidiary Chairman may, at their discretion, rule the motion out of order if he considers that the motion attempts to achieve an outcome contrary to the Act, and it was noted that the MUD Act requires at least two quotes before a body corporate can enter into such an agreement. It was noted that in the event the motions were ruled out of order, then it would fall upon CPM to take the matter to mediation, with the onus falling on CPM to plead a case to renew, rather than put the agreement to tender.</p> <p><b>Resolved</b> that the CPBC strongly encourage each subsidiary Chairman to rule the motion out of order at their respective AGM's, and disclose their reasons for doing so.</p> <p><b>Further Resolved</b> that CPBC requests Expressions of Interest from the market for the supply of Caretaking &amp; Letting services for a term of five years, with conditions to be developed by CPBC and its legal advisors as soon as the standard tender documents can be approved by CPBC.</p> <p><b>Further Resolved</b> that the response be reviewed, and that a formal Request for Tender process will then follow with suitable parties, leading to a short listing and settling of contracts, with commencement dates being upon termination of the current contracts in November 2008 and March 2009 (CVBC)".</p> <p><b>Voting: 6 Yes 0 No 0 Abstain</b></p>		
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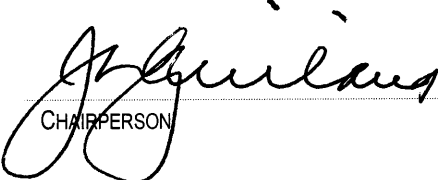
## 23 Watts Energy Dividend Transfer

23.1	Resolved that \$35,000 be paid from the CPCBC Electricity Account and returned to each subsidiary as a dividend calculated on a pro rata basis according to each subsidiaries net profit contribution to overall recovery. <b>Voting: 4 Yes 0 No 0 Abstain</b>	SSKB
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## 24 Other matters

24.1	Nil to record	
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CLOSURE                                  There being no further business the Chairman declared the meeting closed at 7.50pm

CONFIRMATION                                                                    DATE                                  20.12.05

CHAIRPERSON

DISTRIBUTION                                                                    DATE                                  21. Dec. 2005.

BODY CORPORATE MANAGER

### 3 Confirmation of Minutes

3.1	<b>Resolved</b> that the minutes of the previous Committee Meeting dated Thursday 2 <sup>nd</sup> June 2005, be confirmed as a true and correct record of that meeting. <b>Voting: 6 Yes 0 No 0 Abstain</b>		
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### 4 Matters Arising

4.1	Nil to record		
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### 5 Correspondence

5.1	Register of Correspondence inwards and outwards, tabled and adopted.		
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### 6 Financial Statements

6.1	The Treasurer advised that several amendments of a minor nature were required on the financial statements as presented, otherwise tabled and adopted.		
6.2	<b>Resolved</b> that the proposed budgets as attached to the notice of meeting be approved for inclusion on the AGM agenda. <b>Voting: 6 Yes 0 No 0 Abstain</b>	CPM	

### 7 Review of CPM Correspondence to letting Owners

7.1	The correspondence circulated by Cathedral Place Management as a footnote on monthly statements to all letting owners was discussed. <b>Resolved</b> that the Committee authorise the expenditure of \$2,000.00 for a public relations consultant to draft a counter response to be circulated to all owners. <b>Voting: 6 Yes 0 No 0 Abstain</b>		
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### 8 Managers Report

8.1	Deferred to next Committee meeting		
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### 9 Pool Condition report

9.1	<b>Resolved</b> that the Caretaking Contractor be authorised to proceed with any recommendations contained in the report, of a minor nature. Balance of discussion deferred to next Committee meeting. <b>Voting: 6 Yes 0 No 0 Abstain</b>	CPM	
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### 10 ERC Update

10.1	Deferred to next Committee meeting		
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### 11 Oasis Lighting Proposals

11.1	Proposals were received, tabled and discussed from <i>Starbuck Productions</i> and <i>Stagecoach Entertainment</i> for refurbishment of the lighting in the Oasis area. <b>Defeated</b> that either of these quotes be accepted. <b>Voting: 0 Yes 5 No 1 Abstain</b> Recommended that new quotes be sought with a more modest budget in mind.	Peter Lewis	
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## 12 Public Relations Proposals

12.1 Deferred to next Committee meeting

## 13 Code of Conduct

13.1 Deferred to next Committee meeting

## 14 Riley Shelley – Colour Confirmation

14.1 **Noted** that Committee members viewed & discussed the two shades of red proposed as additional contrasting feature colours to be applied to selected balcony facades. **Resolved** that the original colour palette proposed by Riley Shelley be confirmed and that Riley Shelley be instructed to continue works as per their original proposal.  
**Voting: 5 Yes 0 No 1 Abstain**

SSKB

## 15 Use of Cordless Electric Garden Equipment

15.1 **Resolved** that the use of petrol motor powered gardening equipment be discontinued for the purposes of maintaining the gardens and grounds, with the exception of the lawn mower. **Further resolved** that the Caretaking Contractor be instructed that cordless electric equipment be substituted in place of petrol equipment to reduce the incidences of noise disturbances that the petrol equipment currently causes.  
**Voting: 6 Yes 0 No 0 Abstain**

CPM

## 16 Unapproved Kitchen Lot C37

16.1 Noted that this kitchen did not have the approval of either the Community or Subsidiary Body Corporate. **Resolved** that this matter be referred to the Brisbane City Council to investigate and resolve accordingly.  
**Voting: 6 Yes 0 No 0 Abstain**

SSKB

Note: Tony Rich departed the meeting at 7.05pm

## 17 Carpark – NRH Advice on By-Laws 25 & 28

17.1 Correspondence from NRH was tabled supporting the validity of CPCBC By-Laws 25 & 28. **Resolved** that this correspondence be accepted and that it form the basis of the CPCBC position on the current car parking arrangements.  
**Voting: 4 Yes 0 No 0 Abstain**  
Note: A copy of the correspondence is attached to these minutes as annexure 'L'

## 18 Current By-Laws

18.1 A copy of the recently gazetted CPCBC By-Laws was tabled and adopted. **Resolved** that these be accepted and made available as part of the Body Corporate permanent record.  
**Voting: 4 Yes 0 No 0 Abstain**

## 19 Ratification of Insurance

19.1	The Chairman tabled copies of Certificates of Currency for the CBC and all six subsidiaries. <b>Resolved</b> that these policies and coverage be ratified <b>Voting: 4 Yes 0 No 0 Abstain</b>	
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## 20 Policy on Issue of Swipes

20.1	There was discussion on the need for an official CPCBC policy to govern the issue of security swipes to residents and non-resident owners. <b>Resolved</b> that the number of swipes issued per unit is not to exceed the number of tenants listed on the lease agreement for tenanted units, and that one only additional swipe could be issued to the owner of each tenanted unit; and that the numbers of swipes issued to owner occupied units would not exceed 3 for studio and one-bedroom units, and 5 for two and three bedroom units; and that any additional swipes in excess of this policy would require the approval of the CPCBC. <b>Further resolved</b> that a policy document be drafted and made available as part of the Body Corporate permanent record and that this document would also be provided to the Caretaking Contractor to assist in the administering of the security of the complex. <b>Voting: 4 Yes 0 No 0 Abstain</b> Note: A copy of the document is attached to these minutes as annexure 'O'	SSKB
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## 21 Transfer of Bank Accounts to Bendigo Bank

21.1	<b>Resolved</b> that the Committee grant its authorisation for the transfer of Body Corporate funds from the current account held with Macquarie Bank to a new account to be established with the Bendigo Bank, Bundall and that the Body Corporate Manager be authorised to operate this account on behalf of the Body Corporate. <b>Further resolved</b> that recommendation be made to each subsidiary Body Corporate to also transfer their respective funds to Bendigo Bank also. <b>Voting: 4 Yes 0 No 0 Abstain</b>	SSKB
21.2	<b>Resolved</b> that the Body Corporate Manager be instructed to review all CBC and subsidiary bank accounts and recommend an amount to be transferred into respective investment accounts to be established with the Qld Police Credit Union. <b>Voting: 4 Yes 0 No 0 Abstain</b>	SSKB

## 22 Watts Electricity Disconnection Procedure

22.1	Deferred to next Committee meeting	
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Our ref: PT:DDT:AMM:512195  
Your ref:

22 July 2005

Mr John Gilliland and Mr Pat McGlade  
Cathedral Place Community Body Corporate  
BY EMAIL: [john.gilliland@syzygycorp.com.au](mailto:john.gilliland@syzygycorp.com.au); [pmcglade@sskb.com.au](mailto:pmcglade@sskb.com.au)

Dear John and Pat

### Queries regarding the by-laws and development approval for Cathedral Place

You have instructed us to advise the committee of the Cathedral Place Community Body Corporate (the "Body Corporate") regarding matters concerning the Cathedral Village carpark and the development approval ("DA") for Cathedral Place. Specifically, we are instructed to address the following queries raised by the Body Corporate in meeting:

1. Were community by-laws 25 and 28 created properly and, if so, are they binding?
2. Do the community by-laws conflict with the DA?
3. Is the DA in conflict with the town plan under which it was created?

### Factual Background

We understand that the Body Corporate's main objective in seeking the above advices is to ensure that it is using, or permitting the use of the Village carpark in a manner that is at all times consistent with the DA and the by-laws.

We also understand that these instructions have come about as a result of the recent advice the Body Corporate has obtained from Gadens Lawyers in respect of the validity of by-law 28 (and Easements R & S attaching to that by-law) and other ancillary issues associated with the DA.

Although we have not yet been provided a copy of Gadens' advice, we are instructed that the advice generally concluded that:

- Appropriate and sufficient documentation exists to evidence the creation and grant by the proprietors of "Notre Dame" of Easements R & S in favour of the Body Corporate in or about 1999 – which, we note is consistent with our previous advice to CVBC;

{AMM2581:1}

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Mr John Gilliland and Mr Pat McGlade  
Cathedral Place Community Body Corporate

22 July 2005

- By-law 28 (and therefore Easements R & S) is now valid and of full effect (again, also consistent with our previous advice to CVBC), with the formalities of registration of the by-law and the Easements R & S attaching to that by-law now completed; and
- The charging of an entry fee by Cathedral Village Body Corporate ("CVBC") for use of the Village carpark is contrary to Condition 2(v) of the DA, which requires "*unrestricted access for bona fide visitors to any visitor car parking bay*".

You may recall that we had previously advised CVBC on those issues concerning the carpark. A copy of that advice had, as we understand it, also been provided to the Body Corporate at the time.

Although that advice does not specifically address the Body Corporate's queries here, some of the comments and conclusions we made at the time will nonetheless also be relevant in addressing the Body Corporate's present issues. We therefore will refer to some of those comments and conclusions (where relevant or appropriate) in advising the Body Corporate here.

Our comments below are based on the above understanding. Should we be wrong in any regard or if there is anything further we should be aware of, please let us know as it may impact on our advice.

#### **Community By-Laws 25 and 27**

##### **By-law 25:**

- Refers to the allocation of specific carpark spaces to the lot owners and/or occupiers of lots for their exclusive use. The allocation of those "exclusive use" carparking spaces is in accordance with the "Allocation Schedule" and "Carparking Plan" annexed to the By-Laws; and
- Was registered on title on 15 June 2000.

##### **By-law 28:**

- Essentially confers upon CVBC (and any person authorised by it) a right to use and maintain the Village carpark, but only:
  - (a) for purposes ancillary to the Mixed Use Development of the site; and
  - (b) in a manner that complies with the Body Corporate's by-laws from time to time;
- Was passed by comprehensive resolution at general meeting on 29 November 2000;
- Was not, however, registered on title until 1 September 2003.

**Our views**

*Were community by-laws 25 and 28 created properly and, if so, are they binding?*

There is no evidence whatsoever to suggest that by-laws 25 and 28 were improperly created, based on our review and understanding of the background to the matter. In fact, all the evidence indicates the contrary.

In our view, the facts that:

- Both by-laws are registered (which constitutes at least *prima facie* evidence of the by-laws' existence, validity and effect);
- All concerned parties have, for the past 5-6 years, conducted themselves:
  - (a) in a manner consistent with the adoption of the by-laws; and
  - (b) in reliance upon the understanding that the by-laws were in full effect and registered;
- The costs expended by the parties over the years in that regard have been expended on that understanding – particularly with regard to by-law 28, where CVBC has incurred (and continues to incur) considerable costs in maintaining the Village carpark in reliance upon the rights and obligations conferred upon it under that by-law;

clearly support the position that the by-laws were created and/or adopted.

Therefore, in the absence of any evidence to the contrary, we are of the view that both by-laws 25 and 28 were properly created and therefore are binding on all concerned parties. We note that Gadens also formed this view in its recent advice to the Body Corporate - at least insofar as it relates to by-law 28.

However, even if the validity of those by-laws were now challenged on the grounds that they were improperly created (or on any other ground(s) for that matter), then:

- There is, in our view, sufficient documentation and evidence (both at law and in equity) for the Body Corporate to successfully defend any challenge mounted in that regard; and
- The evidentiary onus is on the person (or persons) challenging the by-laws to prove their case, and that burden would be extremely onerous in the circumstances.

They would need to prove (among other things) that registration of the by-laws was invalid – and that, as you can appreciate, would be extremely difficult (and costly) to prove, requiring a detailed forensic review and a complete unravelling of all matters that have transpired over the years from when those by-laws were initially tabled to their eventual registration.



*Do the community by-laws conflict with the DA?*

Again, there is no evidence whatsoever to suggest that the by-laws are in conflict with the DA.

We assume, however, that this particular query has come about as a result of Gadens' conclusion that CVBC's use of the carpark pursuant to the grant of control in its favour under by-law 28 (ie. its charging of an entry fee to users of the carpark) is in conflict with Condition 2(v) of the DA.

Assuming that is the case, we note that this was an issue that we had previously advised CVBC on, and our comments and views in that regard remain unchanged. At the time, we advised CVBC as follows:

- We were never instructed to advise upon, or make any recommendations whatsoever as to the charge of an entry fee to the carpark;
- When the issue was raised, we expressed some concern that the charge of an entry fee might be in breach of the requirement under DA for "unrestricted access" to any visitor carpark;
- The Body Corporate (which was, at the time, effectively the developer) subsequently considered the issue we had raised and, at that time, formed the view that the requirement for "*unrestricted access*" does not necessarily mean "free access";
- The Body Corporate formed the view that, as the by-laws required it to supervise, control and keep the carpark area under constant scrutiny so as to ensure it is used:
  - (a) only for purposes ancillary to the Mixed Use Development of the site; and
  - (b) in a manner that is compliant with the by-laws from time to time of the Body Corporate;

it is therefore not unreasonable to charge for the fair cost of that supervision;

- As far as we were aware, the installation of the boomgates and fee charging progressed on the basis of the Body Corporate's own conclusions, without it obtaining legal opinion on the issues – at least not from us;
- We were of the view (and remain of the view) that the requirement for "*unrestricted access*" *does not* necessarily mean that the Body Corporate is prohibited from imposing conditions of entry – in fact, nothing in the DA prohibits fee charging;
- The better view was (and remains) that access should be subject to the by-laws and any conditions imposed by the Body Corporate as it deems appropriate from time to time.

We remain of the view that if the Body Corporate charges a reasonable fee as a condition of entry to the carpark, and that fee is commensurate to its reasonable costs incurred in supervising

and maintaining the carpark (as distinct from operating a commercial carpark for profit, which is prohibited under the DA) – which we understand it is – then there is a strong arguable case that the fee charging is not in breach of the DA.

There is otherwise no indication (or, to our knowledge, suggestion by anyone) that the by-laws are in conflict with the DA.

*Is the DA in conflict with the town plan under which it was created?*

We are unsure of the intention or rationale behind the Body Corporate's query here.

That said, however, if the query is placed in the context of the Body Corporate's two preceding queries then this third query should, in our view, be a non-issue – because, as long as the by-laws and the actions/conduct of Body Corporate (and its delegates) are *not* inconsistent with the conditions of the DA then, in our view, it is immaterial (at least from the Body Corporate's perspective) whether the DA is in conflict with the town plan or not.

This third query is otherwise extremely broad, and could potentially be interpreted in any number of ways. Therefore, it would be unrealistic to expect, or for us to suggest to you that the query could be addressed at this stage without significant cost to the Body Corporate.

At the very least, we would need the Body Corporate to narrow the scope of its query here, to make it more realistic to answer – otherwise a detailed forensic review of the Town Plan, DA and matters generally (including enquiries with the relevant authorities, where appropriate) would be required before the query can be properly addressed.

The following general comments may be sufficient:

- The DA was issued pursuant to a "site specific" Development Control Plan ("DCP") under the then operational but since repealed *Local Government (Planning and Environment) Act 1990* and the then operational but since superseded Town Plan for the City of Brisbane. The interaction of the Town Plan with the *Mixed Use Development Act 1993* (under which the Body Corporate is constituted) means that the uses in the DA had to be consistent with the Town Plan before the Mixed Use Development could be approved.
- To our recollection, an amendment was made to the DCP as part of the approval process. That amendment required approval of both Brisbane City Council and the Queensland Government. We regard it as extremely unlikely that there is any conflict between the DA and the Town Plan as modified by the DCP, as the entire approval process is designed to avoid such conflict.

Mr John Gilliland and Mr Pat McGlade  
Cathedral Place Community Body Corporate

22 July 2005

Having said that, we will need more detailed instructions and a clear understanding of the Body Corporate's objectives with regard to this query before we can properly address this query in any substantial detail.

Yours faithfully  
NICOL ROBINSON HALLETTS  
per:



**PETER TOWNLEY** <sup>es</sup>



PARTNER  
ACCREDITED SPECIALIST PROPERTY LAW

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