

**MINUTES OF A COMMITTEE MEETING OF CATHEDRAL PLACE COMMUNITY BODY CORPORATE MCP 106902 HELD AT THE MEETING ROOM, CATHEDRAL PLACE ON MONDAY 3 MARCH 2008 AT 6.00 PM**

**Representation:**

Peter Zunker	Cathedral Place 'A' – Notre Dame
Pat Brown	Cathedral Place 'B/C' – Oxford & Cambridge
Tony Rich	Cathedral Place 'D/E' – Canterbury & Westminster
Randall Edwards	Cathedral Place 'F' – Duhig
John Gilliland	Cathedral Village
Conrad Beal	Body Corporate Manager, Representing Archers Body Corporate Management Pty Ltd

**Present By Proxy:** Ken Morrisby: Cathedral Place 'G/H' – Kensington & Sandringham  
– Proxy to Randall Edwards

**Present:** John Delaat      Committee Member and Owner, Oxford & Cambridge and  
Canterbury & Westminster

**Apologies:** Ken Morrisby: Cathedral Place 'G/H' – Kensington & Sandringham

**Quorum:** It was noted that a quorum was declared constituted there was more than half (50%) of all members of the committee being present.

**Chairman:** Tony Rich, the Body Corporate Chairman, chaired the meeting.

**General Business (1):** Randall Edwards advised that he had slipped on some tiles outside Duhig. He proposed that all non-slip surfaces throughout the complex be done inspected and action taken to remedy this as a matter of priority. RESOLVED that all non-slip surfaces throughout the complex be inspected and action taken to remedy any surfaces that are not non-slip as a matter of priority. **Carried** 6 For, 0 Against, 0 Abstain

**Building Manager's Report:** A written Building Managers Report was provided by Lorraine Zunker for Cathedral Place Management at the last meeting. Items in the report were considered and any action resulting or other information is recorded. A copy of the report is attached to these minutes.

**Towing**

Authority To Tow form produced for approval, which allows owner to give written approval for the towing of a vehicle from their car space.

RESOLVED that the form as presented is approved for use, and Body Corporate Manager to provide written approval for its use to Building Manager.

**Carried** 6 For, 0 Against, 0 Abstain

**Crack Injection Work** – awaiting second quote

**Fire Safety Works** - awaiting second quote

**Water Collection** – Tony Rich and Eddie Zunker met, awaiting outcome

**Cathedral Village : Security**

Stones till being used to prop open doors in toilets. John Gilliland advised that they are looking into resolving the problem

**Pool Repairs**

Aggregate coating on pool is lifting, requiring repair. Building Manager to provide a costing and how.

**Pool Area – Tiles Surface**

Pool area requires resurfacing; temporary fix done twice, previously 2 years ago. RESOLVED to continue making temporary fixes for the time being

**Carried** 6 For, 0 Against, 0 Abstain

**Fire Flow Tests**

Outstanding pressure test not done as no suitable drains are available in the complex.

Building Manager to request a second quote and check to see if they have a viable option, including an adaptor to the hose system. Need to find out how to do the test and the reason why couldn't do it.

#### Ergon Transformer Work

Work required on transformer. Need to bring in back-up transformer during work. Building Manager to establish who pays for the transformer.

#### Mulch and Sand

Gardens require mulching and beaches are short of sand. Building Manager to obtain two quotes

#### Foyer Lounge Suites

One couch in foyer has wear and tear. Chairman to investigate.

### General Business:

#### Electricity Supply Agreement

John Gilliland advised that he has advice that now is a good time to enter into a new bulk electricity supply contract, with 2 and 3 years being the preferred terms.

RESOLVED that Watts Energy be given approval to call for tenders

**Carried 6 For, 0 Against, 0 Abstain**

#### Duhig Gym Expenses

Randall Edwards advised the CBC needs to resolve how gymnasium expenses are going to be shared.

### Confirm Minutes:

#### 26 November 2007

RESOLVED that the Minutes of the meeting held on 26 November 2007 with agreed amendments be accepted as a true and correct record of proceedings

**Carried 6 For, 0 Against.**

#### 18 February 2008

Peter Zunker and John Gilliland both requested recording of advice from Warren Fischer about what Restricted is represented by.

In a reply to the question to Peter Zunker in between the meetings he replied "

In an email on 2<sup>nd</sup> March 2008

"Remember: Body Corporate (BC) -> COMMON property and LOT entitlements  
Community Body Corporate (CBC) -> COMMUNITY property and VOTING entitlements. The scheme, in total, should have eight (8) sinking funds and eight (8) admin funds:

There should be 2 sinking funds for the CBC areas:

- A 'restricted' sinking fund to cover capital costs for the repair and replacement of the CBC COMMUNITY (not BC COMMON) property, plant and assets etc to the 'restricted' podium area only (to the centre of the slab as Peter noted).

- An 'unrestricted' sinking fund is for the unrestricted balance of the CBC COMMUNITY (not BC COMMON) property – when determining this fund budget note that those with exclusive use of CBC property are responsible for "maintenance and upkeep .. save and except cleaning", this does not include upgrade or replacement and is therefore likely to be of more impact (though I anticipate little) to the unrestricted admin fund.

There would similarly be 2 admin funds – the 'restricted' admin fund would include, for example, the electricity and cleaning costs for the restricted podium area and the 'unrestricted' admin fund would include, for example, the electricity and cleaning (including exclusive use) costs for the balance of the COMMUNITY area (as noted above there would theoretically be some minor allowances (not cleaning) to 'take out' of this fund for the exclusive use lot owners responsibilities)

There should be 1 sinking fund for each of the 6 bodies corporate (ie 6 in total):

these funds will cover the capital costs for the repair and replacement of the BC COMMON property, plant and assets etc [eg. lift upgrade / refurbishment costs for each BC should show in the BC sinking fund forecasts not the CBC (unless a lift that is on CBC COMMUNITY as opposed to BC COMMON property)]

{NB there will also be 6 admin funds to recover admin fees (eg each BC admin fund should include a budget for the BC manager (Conrad), BC COMMON (not CBC COMMUNITY) power etc)}.

The BC budgets should include line items in each of the admin and sinking funds for CBC contributions (restricted and unrestricted) [the CVBC would only have unrestricted].

- The restricted line items will be determined as per the distribution of the restricted CBC budget levies set out in by-law 27.

- The unrestricted line items will be determined as per the VOTING ENTITLEMENTS distribution of the unrestricted CBC budget levies.

The lot owners are then levied based on their LOT ENTITLEMENTS.

If an improvement is made upon common or community property by a lot holder, the responsibility for the upkeep and maintenance of that improvement rests with the lot that made it (unless specifically agreed otherwise when the approval was given to make the improvement) – it is not a BC / CBC expense [save and except where a BC makes an improvement on CBC property in which case it would be a BC expense]."

AND

s177(1) of the MUD Act makes it the duty of the CBC to "control, manage and administer for the benefit of its members the community property ..." and "properly maintain and keep in a state of good and serviceable repair the community property ... including any improvements on the community property "

AND

In an email on 2<sup>nd</sup> March 2008

"s37(1) of the BUGT Act makes it the duty of the body corporate to "control, manage and administer the common property for the benefit of the proprietors..." and "... properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) the common property ...."

That is, under the MUD Act the CBC's duties are ONLY in respect of community (as opposed to common) property [including any improvements thereto and the management thereof], under the BUGT Act the Bodies Corporate duties are in respect of common (not community) property.

If the CBC is to undertake work to a BC it must do so by agreement, to do otherwise is unlawful. The provision to allow the CBC to enter into such agreements is s176 of the MUD Act.

The reference in s177(h)(ii) to which you refer is a reference to liabilities which are not captured by s177(h)(i) [ie. the costs to properly maintain and keep in a state of good and serviceable repair the community property (typically sinking fund costs)] and those costs would normally be included in the administration fund budget [ie. not capital/maintenance expenditure but rather service and administration costs (eg insurance and rates as expressly mentioned but also community property: power / cleaning(?) / management / CBC bank fees etc)], which are lawfully a CBC liability.

Costs incurred by the CBC in respect of BC's for which there is no agreement in place might not be lawfully incurred. While it might be argued that those costs might be recovered under s177(h)(ii), if the cost is unlawfully incurred those that 'authorised' the incursion of the cost might find that the effected BC's could bring an action against them personally (office bearers liability insurance, which is fairly standard with most body corporate insurance policies, may be useful in such circumstances).

As to which BC fund pays the contributions to the CBC sinking fund – there appears a little flexibility, I am not aware of any legal precedent to confirm the answer. As they are costs that do not relate to COMMON property, the BC's may determine that pursuant to s38A(1)(c), it is to be paid from the administration fund. It also seems open to the BC's to determine that, pursuant to s38A(2)(d) or (e) it is to be paid from the sinking fund. s38A(2)(d) might be the most appropriate – certainly if the legal position is that the community property is "other property held

on behalf of the body corporate" that would be the case, however as all of the bodies corporate have proportional entitlements it might be that it is not properly construed as property held on behalf of the body corporate. From sinking fund to sinking fund has some appeal, even though it is not for common property, as there is no need to nominate the legislative basis of the contribution and given that there are potentially two alternative sections in the sinking fund provisions, it makes some sense to me that the contribution is accounted there. [NB: my previous email made a comment to that effect in respect of CBC line items in the BC fund budgets].

P.S. Your proposal for recovering the cost would not have the effect you are wanting in any event. If an agreement was in place with 5 of 6 BC's and there was an outstanding cost in respect of the BC for which there was no agreement for recovery. A levy struck pursuant to s177(h)(ii) would only be for that unpaid portion for which no agreement was in place and by s174 it is then recovered by voting entitlement (ie all 6 BC's would have to contribute to the unpaid portion)

P.S.S. I have not yet received any further information in regard to the electricity legal expenses – but I confirm my preliminary view is that equity would suggest this is a cost that should be attributed equally between lots. It seems to me that the action was equally beneficial to all lots – in that (as I understand) each lot was subsequently able to purchase electricity at a lower tariff per kW. I do not consider it correct to try to then apportion the cost on actual useage as each lot has the same useage capacity (again as I understand) and actual useage of any lot will continue to fluctuate into the future. I do still have some reservations on this. How was the action approved, did each of the BC's pass a resolution and enter into an agreement with the CBC to mount (or defend) the action – if so, what were the terms of the agreement? I anticipate that to, lawfully, equally apportion between lots then an agreement would need to be in place with each lot owner – I anticipate that is not the case. An agreement with the BC's might be that each BC contributes in proportion to the number of lots – but that would still be recovered from individual lots on lot entitlements (as opposed to equally). It might be that the legislation prevents a truly equitable recovery in this instance?

N.B. Whilst my considered view, none of above comments should be considered 'legal advice'. If the CBC is unable to readily recover funds in respect of BC liabilities for which there are no agreements in place then proper legal advice should be obtained."

Peter Zunker reiterated this advice, that the Restricted' podium area is only (to the centre of the slab) as shown on the map attached to the By-laws.

John Gilliland advised he had received verbal advice that differs from this, and provided a copy of the following

- a. Written advice previously presented to Committee meeting of \_\_\_\_\_ with highlighted "The statutory right of the CBC to recover funds pursuant to S15(4) & S174 of the Mixed Use Development Act 1993 is only in respect of community property lots."
- b. Report (compiled by Body Corporate Manager) from advice given in the initial report and at a Committee meeting with highlighted "Under the Mixed Use Development Act 1993 the CBC responsibility is limited to the Community Property, Lot 4
- c. Survey Plan SP 111910 with Lot 4 highlighted
- d. Plans of Basement Levels 1 and 2 with areas highlighted

John Gilliland requested they be included with the minutes of this meeting, and this was agreed to. He advised that Warren Fischer had advised that he would provide written confirmation of this advice.

RESOLVED that the Minutes of the meeting held on 18 February 2008 with agreed amendments be accepted as a true and correct record of proceedings  
**Carried 6 For, 0 Against.**

#### General Business:

#### Slab By-laws

Randall Edwards raised his concern about the CBC and Subsidiary By-laws that give owners the responsibility for the slab underneath an owner's car space, that

they need to be changed to provide for responsibility from owners to the Body Corporate involved for each space.

Body Corporate Manager advised that each Subsidiary Body Corporate may need to change their By-laws. Each Body Corporate should be aware of this. Randall Edwards suggested that a letter be sent from the CBC to each BUP outlining the issue.

RESOLVED that it needs to be defined what a major structural event is, and that a solicitor would need to be engaged to advise on this

***Carried 6 For, 0 Against.***

**Tender Process:**

Tony Rich tabled a letter from Colin Archer dated 25 February 2008 providing general advice on the tender process, and this was read by each member present. Previous members have received indicative prices from the Expressions Of Interest received.

Randall Edwards questioned whether the Caretaking Agreement is adequate for Body Corporate needs and accurate, and whether legal advice should be obtained (as recommended by Colin Archer) should be obtained on the agreement. It was agreed that legal advice should be obtained on the Caretaking Agreement. Members then discussed the major issues regarding the tender process

**Cathedral Village**

It was discussed whether Cathedral Village would be in the agreement, or whether there would be two separate agreements, as is the situation now.

John Gilliland advised that Cathedral Village wanted to ability to be in the one agreement, but have the option to opt out. It was agreed this is unacceptable.

Randall Edwards requested John Gilliland that Cathedral Village sign the Administration Agreement that all Residential Bodies Corporate have signed. He advised that Cathedral Village would not sign the Administration Agreement. It was agreed that there would be two separate agreements in the tender process, with Cathedral Village having similar wording.

Randall Edwards proposed that Cathedral Village not participate in determining CBC tender issues, that he abstain from voting on these issues, and that CBC would do the same for the Cathedral Village agreement. No agreement was reached.

John Gilliland advised that Cathedral Village do not want an agreement with the Zunkers at this time

**Duhig's preferences**

Randall Edwards advised Duhig's preferences, in that Duhig Body Corporate requires that it be a requirement of the tender process that the Caretaker live on site and that in the evaluation criteria to be used in considering the tenders that the Caretaker living on site be a requirement and be heavily weighted

It was agreed that it would be preferred, for the benefit of the whole complex, that there be one contractor for the whole complex.

**Agreement**

Peter Zunker raised Gadens advice of the two agreements.

Members considered Gadens advice and a memo from Body Corporate Manager on the two agreements (including differences) and proposed amendments to the agreement.

It was agreed that the option would require the consent of the Body Corporate and Body Corporate Manager to request Gadens to make this correction.

Peter Zunker advised that the meeting room and toilet are on common property, not Lot 4 (Notre Dame), the Caretaker's Unit.

The second version has Lot 4 and it was agreed that only version two would be used in the tender documents.

Peter Zunker suggested a performance bond, a financial commitment, be included in the agreement as proposed by the Notre Dame Committee. The need for a bond was discussed. Peter Zunker suggested it be 3 months salary. John Gilliland

advised that it could be a bank guarantee  
John Gilliland advised that there should be breakup of cost allocation for the agreement, with two costed scope of works

Peter Zunker raised the requirement for an annual review. It was agreed to leave this in the agreement.

Tony Rich raised his thought that the CBC ensure the agreement provides protection.

The members discussed whether the ability of the Caretaker to transfer the agreement should be in the agreement. John Gilliland advised John Gilliland advised that legal advice had previously advised that it should not be in the agreement. It would require legal action to stop a transfer that is not acceptable.

#### Weighting for Tenders

The most important factors were then discussed including weighting for tenders, and the results were compiled by Randall Edwards.

Peter Zunker raised that the assessment system needs to use quantifiable criteria and not subjective opinion such as bad, good and very good.

RESOLVED that the following Weighting be implemented and that it be referred to Subsidiary Committees for discussion.

**Carried 6 For, 0 Against.**

#### Weighting for Tenders (for discussion by BUP committees) Total Weighting out of 155

1	Legal and financial capacity of the respondent	10
2	Demonstrated relevant background and experience to undertake the role	30
3	Concept and development approach included response to the Bodies Corporate guiding principles	5
4	The commercial approach proposed	10
5	Live in presence – who, how, how much presence	20
6	Cost effective price	20
7	Ability to provide adequate security ( <i>not financial</i> )	10
8	Demonstrate ability to do the job	30
9	Willingness to put forward a performance bond	10
	Total	145

Any changes to the above need to retain the final total at 145.

It was agreed to send all the information including the weighting factors to all Committees for them to meet, discuss and respond. Body Corporate Manager to send to all Residential Committees and provide copy to John Gilliland for Cathedral Village.

Each Committee member would receive:

- a. Covering letter from Body Corporate Manager
- b. Draft Tender Document (minus attachments)
- c. Caretaking Agreement - Residential
- d. Letter to CBC from Body Corporate Manager re agreement
- e. Weighting Factors from CBC

#### General Business:

##### Car Spaces

During a search for a lot in Kensington & Sandringham it was noticed that - for this lot (G41) - a car space has been allocated in the Allocation Schedule for Cathedral Place Community Body Corporate By-laws, but the space is not shown on the exclusive use plan

The same has occurred with other lots -

- Car Space 26 to Lot H36, Car Space 27 to Lot H37, Car Space 34 to Lot G44, Car Space 35 to Lot G45, Car Space 81 to Lot G41, Car Space 82 to Lot G94, Car Space 89 to Lot G31, Car Space 90 to Lot G32, Car Space 142 to Lot G60, Car Space 143 to Lot G73

A check shows the plans for Kensington & Sandringham do not have those spaces recorded. The solicitor appears to be OK with the fact that the allocation is legally recorded, and that the Community can rectify this. When By-laws were changed in 2003, including some car space allocations, that new plans were drawn up, with those spaces not included.

RESOLVED that:

- a. Have correct plans prepared by Pike Miris McKnoulty (who did the plans) that meet current Titles Office requirements for plans
- b. Place on agenda of Annual General Meeting a motion to have the correct plans approved by the Minister and request they be sent to Titles Office by the Department

**Carried 6 For, 0 Against.**

It was agreed that Randall Edwards, John Gilliland and Peter Zunker meet next Friday to attempt to resolve the budget issues and if not to at least identify the items in dispute. Randall was authorised to contact Warren Fisher for guidance on any complex matters

The meeting was closed at 8.45 pm

Confirmed.

.....  
Chairman