

18 February 2009

Mr Tony Rich  
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Dear Tony

**Cathedral Place – Conversion to Body Corporate and Community Management Act**

Thank you for your email of 16 February 2009.

Let me say from the outset that you are proposing to embark on what could be a drawn out and expensive process.

As you are no doubt aware, Cathedral Place is constituted under the Mixed Use Development Act 1992 ("MUD Act").

The Body Corporate and Community Management Act 1997 ("BCCM Act") does not provide for conversion of developments constituted under the MUD Act so that they can be governed by the BCCM Act.

My view is that, put simply, this was an oversight by the Government at the time of enacting the BCCM Act.

I think the first step for you is to obtain from the Cathedral Place Body Corporates or at least the Principal Body Corporate some sort of approval "in principal", perhaps by an ordinary resolution of the Body Corporates that the matter should be investigated further. Such a resolution should provide for a budget going forward (see my note below in regard to possible costs).

The next step would be to obtain an amendment to either the MUD Act or the BCCM Act to enable conversion of Cathedral Place to the jurisdiction of the BCCM Act.

If that legislative change was available, the central issue would be what level of vote would be required by the members of the various Body Corporates at Cathedral Place in order to convert to the MUD Act. Given that there are some 514 apartments at Cathedral Place you will never get a resolution without dissent. You may get what is known as a "special resolution" which is a 75% vote. Ideally, if the legislation permitted conversion to the BCCM Act with an ordinary resolution being a 50% vote, then in my view, in all likelihood, you would be able to procure such a resolution and convert across.

Assuming that you have got the legislative support required, and you have got the necessary Body Corporate resolutions passed, you would need to draft and adopt Community Management Statements for each of the Body Corporates. This would involve, amongst other things, calculating contribution and interest entitlements for each of the Lots based on current principals set out in the BCCM Act. This will probably mean that everyone's Body Corporate levies would change, at least to some degree. Under the BCCM Act the levies are likely to be more fairly allocated than the ones you have at present.

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Additionally, you may need to re-survey carparking areas for allocation of exclusive use areas. New Exclusive Use Plans may be required for the new Community Management Statements.

Also, you would probably need to adopt a new set By-Laws which are updated (given the ones at Cathedral Place are at least 10 years old).

It is anyone's guess as to what sort of resolutions would be required for all of this and that may be a matter for which legislative support would be required.

Cathedral Place would, under the BCCM Act, be known as a "layered arrangement" community title scheme. You would have a Principal Body Corporate and a number of Subsidiary Body Corporate. We could consider amalgamating all the residential Body Corporate into 1 Body Corporate. The retail/commercial areas could continue to be its own Body Corporate (I can't remember whether there is a separate Body Corporate for the retail component and a separate Body Corporate for the commercial component). The relationship between the amalgamated residential Body Corporate and the retail/commercial Body Corporate can then be regulated by a Building Management Statement.

Tony, these are just some of the "off the hand" issues and concepts that I have thought of on a 5 minute consideration.

Realistically, the cost to convert under the BCCM Act could be \$50,000.00 to \$100,000.00 or even more.

However, spread across so many units and the retail/commercial Lots, it may well be a worthwhile exercise and on a per Lot basis comparatively cheap.

If you are able to convert to the BCCM Act jurisdiction and merge all the residential components of the Development into 1 Body Corporate, it would certainly make the administration of the whole Development straight forward.

Unfortunately, when Devine Limited first launched the Cathedral Place Development, the BCCM Act had not been enacted. There was no way to convert to the jurisdiction of the BCCM Act halfway through carrying out the Development. As the Developers Solicitor at the time, I explored that possibility and even had some preliminary discussions with the Director General of the relevant Government department, but to no avail.

Please let me know what you think.

Regards,  
**HWL Ebsworth**

  
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Partner

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