

16 July 2021

An open letter to the Owners
Cathedral Place Community Body Corporate

From the Chairman Cathedral Village Body Corporate

Dear All,

The Problem of Maladministration in the Cathedral Place Community Body Corporate

Your Cathedral Place Community Body Corporate has spent well in excess of \$2,000,000.00 over a period of more than thirteen years pursuing one of its member bodies corporate (Cathedral Village) for an amount of \$168,000.00 inc GST, which the Cathedral Place executive committee claimed was owed to it. Despite that amount of time and that amount of expenditure, the matter is still not resolved, and very significant future expense will be required. Further still, Cathedral Place has instituted separate legal proceedings which of itself will require very significant expense and legal fees.

The claim by Cathedral Place for \$168,000.00 came about by reason of Cathedral Place's maladministration, whereby Cathedral Place issued levies to Cathedral Village lot owners between 2005 and 2007, which were calculated on the basis of charging the Cathedral Village lot owners 5% of the total levies, when the correct percentage was 22%. If the 22% was charged instead of the 5%, Cathedral Place said that Cathedral Village had been undercharged the sum of \$168,000.00.

Cathedral Village readily admitted that the wrong percentage had been charged to it. However, by further and worse maladministration, Cathedral Village had, in fact, been overcharged by approximately \$440,000.00. This overcharging occurred between 1998 and 2010 (and has continued thereafter). Accordingly, rather than Cathedral Village having to pay \$168,000.00 to Cathedral Place, Cathedral Place needed to refund Cathedral Village the difference between \$440,000.00 (approximately) and \$168,000.00, namely approximately \$270,000.00.

This overcharging occurred because Cathedral Place levied Cathedral Village for large amounts of money, which the Cathedral Village lot owners were not liable for and which Cathedral Place was not entitled to claim. The overcharging included charging 5% between 2005 and 2007 (and thereafter, 22%) of costs relating to the recreation area; and costs relating to exclusive-use car parks. By-laws 25 and 27 respectively of Cathedral Place made it clear beyond doubt that these charges should only be paid by the residential bodies corporate. Cathedral Place also had caretaking agreements and management agreements with individual residential bodies corporate for which again obviously the particular residential bodies corporate concerned should have paid, but Cathedral Place chose to charge Cathedral Village for the costs of management and caretaking, on the 5% and then 22% basis as before.

There are other examples of this happening, which are too detailed to include in this correspondence. Whilst the Cathedral Place executive committee had operated in a blatantly wrong manner in levying these charges against Cathedral Village, instead of acting honourably and sensibly to rectify the situation, the Cathedral Place committee chose to pursue what it thought to be a legal technicality in that it claimed that once it issued a levy (no matter how incorrect it was), the subsidiary body corporate lot owners were obliged to pay, and the court had no jurisdiction to prevent that unconscionable attitude. This claim was ultimately proved to be wrong, as any layperson could have expected.

Despite attempts by Cathedral Village to negotiate the situation created by Cathedral Place's maladministration, the Cathedral Place executive committee commenced legal proceedings in 2010 to claim the \$168,000.00 (plus interest) that was claimed. Cathedral Village was left with no choice but to counterclaim in the amount of \$440,000.00 even though at all times it accepted that for a period, it had been charged 5% instead of 22%.

After the commencement of these proceedings, there were nine (9) years of various court applications, amendments of the court documents, obtaining highly expensive expert reports and other expensive legal steps including an application to the Commissioner for Body Corporates and Community Management.

The District Court issued three sets of reasons, firstly on the 21st December 2018, and then on the 29th October 2019, and finally on the 29th November 2019. In these reasons, the District Court judge found in favour of the defendant, Cathedral Village, in respect of its claim of being overcharged; and made various adverse comments about the conduct and maladministration of Cathedral Place. The judge criticised the accounts kept by Cathedral Place, whereby payments made by various residential bodies pursuant to management agreements could not be reconciled with the accounts; and similarly with respect to caretaking fees (see paragraph 38 of the judgment of the 21st December 2018). Similarly, in paragraph 85 of that same judgment, the judge referred to Cathedral Place's obligation to keep proper accounts, which it had not done. In paragraph 84 of that judgment, Cathedral Place claimed that it had no obligation to provide in its accounts separately for the costs related to restricted community property, which the judge found to be a "*startling proposition*". The judge referred to Cathedral Place "*muddling through*" when it had a duty under the legislation to allocate costs properly; to perform its functions under the by-laws, and to keep accounts in such a way so as to enable that to be done. In paragraph 127, the judge referred to Cathedral Place's levy notices appearing to have been drafted with a view to obscuring, rather than clarifying, the amounts claimed.

In paragraph 3 of the judgment of the 29th October 2019, the judge stated that Cathedral Place had been paying for various things, which should have been at the cost of the separate bodies corporate other than Cathedral Village, but because of the operation of the Act, this did not provide a defence to Cathedral Place's claim, and Cathedral Village was liable to pay the amount claimed.

In paragraph 9 of the judgment of the 29th November 2019, the judge stated "*it seems to me with respect that the real difficulty which arises in relation to the administration of [Cathedral Place] is that there is a disconnect between the way in which a mixed use development is supposed to operate as indicated by the provisions of the Act, and the way in which [Cathedral Place] is in fact functioning.*" In paragraph 10, the judge went on to say, "*it is this disconnect which is inevitably the product of a seriously unsatisfactory situation within the overall development, because of the capacity of the residential bodies corporate to use their voting power within [Cathedral Place] to, in effect, extract a subsidy from the lot owners within [Cathedral Village].*" The judge then stated, "*There is some material which suggests that those administering [Cathedral Place] believe that they can get over this difficulty by extending the services which are provided to the residential bodies corporate, and the proprietors or occupiers of lots within them, to [Cathedral Village] and the proprietors or occupiers of lots within it.*" In paragraph 24, the judge said "*I am sceptical of the existence of any real intention on the part of [Cathedral Place] to change its ways. Nothing very much seems to have been done to attempt to give effect to the conclusions that I expressed in my earlier decision.*" In paragraph 26, the judge referred to a matter that concerned him, namely that when Cathedral Village complained about the way in which the 2019 budget was formulated as not providing any evidence to show that the budget had been prepared in a way consistent with the judge's reasoning, Cathedral Place's response was to seek particulars as to just in what respect and why it was said that the budget did not comply with the judge's analysis. The judge regarded this as a "*meaningless response, in circumstances where the difficulty arose precisely because the budget figures were not presented in a way which made it possible to determine whether that was the way in which the budget had been prepared.*"

On the 4th November 2020, the Queensland Court of Appeal to a large extent accepted the trial judge's findings as to the conduct of Cathedral Place executive committee, but overturned the trial judge's erroneous conclusion that Cathedral Village was not entitled to defend Cathedral Place's claim or make any counterclaim. The Court of Appeal set aside the judge's order and remitted the proceedings to the District Court for

determination of Cathedral Place's claim and that part of Cathedral Village's counterclaim, which was for a money sum.

Cathedral Place, in fact, appealed itself against the trial judge's decision of the 29th November 2019 (except that it did not appeal against Cathedral Place in performance of its obligation to keep proper accounts, account separately for all costs incurred for the maintenance of restricted property, covered by by-law 27, including normal operating costs and periodic capital costs). Cathedral Place's appeal succeeded to one minor extent but otherwise failed with the consequence that the Court of Appeal ordered that Cathedral Place pay half of Cathedral Village's costs of the appeal; and with respect to Cathedral Village's appeal (which ultimately succeeded), Cathedral Place was ordered to pay Cathedral Village's costs. In both instances, the Court of Appeal made it clear that the residential lot owners were to pay these costs and not the Cathedral Village lot owners.

The trial judge himself ordered that Cathedral Place pay Cathedral Village's costs of the trial, which were incurred in 2019.

It is understood that the legal costs payable by the lot owners of the residential bodies corporate as a result of the appeal in all probability will exceed \$800,000.00, on top of the amount of approximately \$2,000,000.00, which Cathedral Village understands to have been expended by Cathedral Place in respect of the trial.

From perusal of Cathedral Place's accounts, it appears that Cathedral Place's executive committee must have raided its sinking funds to assist in paying the costs incurred. As everyone will be aware, the sinking funds are used to provide funds for major asset replacements in the future and not to pay legal fees. Sooner or later, this situation will have to be rectified and the executive committee ought to provide documentation that makes it clear to all those who are liable for costs, what their share of the legal costs will be, and what they have been in the past, rather than being disguised.

The costs awarded by the Court of Appeal against Cathedral Place as referred to above have been assessed by costs assessors to total \$351,464.84. Cathedral Place can object to this assessment (at more cost) but ultimately this amount (or some amount close to it) will have to be paid by the residential owners.

There is also the situation that the executive committee expended about \$135,000 in obtaining a further expert report from Lytras in an attempt to refute Cathedral Village's counter claim. That report was thrown out by the trial judge as a fiction.

As has been mentioned, Cathedral Place's claim for \$168,000.00 and Cathedral Village's counterclaim of \$440,000.00 has to go back to court. This in all likelihood would involve a number of days; further expert reports; and very substantial legal fees. By reason of the findings made by the Court of Appeal, it appears certain that Cathedral Village must succeed - the only question being as to what extent. There is no doubt that Cathedral Place has charged Cathedral Village for the cost of management, caretaking, exclusive car parks and the recreation area when it was not entitled to do so.

Further still, as has been mentioned, Cathedral Place has issued separate legal proceedings covering the period from 2010 (when the initial proceedings finished) up to November 2016. Cathedral Place's claim is for \$366,296.00 for what are claimed to be outstanding levies. This claim is based upon the same premise as before (which has been proven to be false) that Cathedral Place believes itself to be entitled to issue levies that are false with respect to the amounts claimed, and once the levies are issued, there is no option but to pay them. These court proceedings have been stayed until the finalisation of the first proceedings. Again, there is the obvious potential for very significant legal fees to be incurred. Cathedral Village has received no indication whatsoever from Cathedral Place's executive committee that it will resile from its contention that its false levies will have to be paid, both in respect of the first court proceedings and the second court proceedings.

It seems perfectly clear that this extravagant, unjustifiable, and pointless expense must stop as soon as possible: however, it is highly unlikely that the present administration of Cathedral Place will do anything that

might appear to be an admission that it has behaved wrongly and not carried out its duties under the legislation properly or taken account of the effect its actions have on owners who have to pay for its wasteful conduct.

Cathedral Village has commenced an application to the Commissioner, seeking the replacement of Cathedral Place's present administration with an administrator. An independent person will have the ability to stop the wasteful legal expense and ensure that from here on in, the administration of Cathedral Place is carried out in a proper manner in accordance with the legislation.

Cathedral Village believes that its application to the Commissioner will be aided if it is supported by residential owners who should be extremely worried about the past and future expense to it with respect to legal costs. An independent administrator will have no vested interest and will have no motivation to try to protect or hide the ongoing maladministration by the present executive committee.

Accordingly, Cathedral Village asks that if you do support the Commissioner application that you write to Cathedral Village Body Corporate expressing your support and stating what your concerns are; and further that you instruct your own body corporate committee to support the application. Such written expressions of support will be tendered to the Commissioner.

If you wish to investigate yourself what the court proceedings were, the various reasons in the District Court and the Court of Appeal can be accessed online as follows:-

- <https://www.queenslandjudgments.com.au/caselaw/qca/2020/239/pdf-view>
- <https://www.queenslandjudgments.com.au/caselaw/qca/2020/240/pdf-view>
- <https://www.queenslandjudgments.com.au/caselaw/qdc/2019/210/pdf-view>
- <https://www.queenslandjudgments.com.au/caselaw/qdc/2019/238/pdf-view>
- <https://www.queenslandjudgments.com.au/caselaw/qdc/2018/275/pdf-view>

(Note that judgements QDC 275, 238 and 210 were amended to various extents by the two Appeal Court judgements QCA 239 and 240. All ought to be read to gain a complete understanding of the fundamental principles and identified issues).

Chairman – Cathedral Village Body Corporate