Applicant:	**THE PROPRIETORS CATHEDRAL VILLAGE BUP 106957**
	AND
Respondent:	**CATHEDRAL PLACE COMMUNITY BODY CORPORATE MCP106902**

SUBMISSIONS WITH RESPECT TO AN APPLICATION TO A REFEREE TO APPOINT AN ADMINISTRATOR

1. This is an application pursuant to sections 94(1)(b) and 94(1)(f) of the *Building Units and Group Titles Act 1980* (Qld) to appoint a body corporate manager to exercise the duties required to be carried out under the *Mixed Use Development Act 1993* (Qld) ("**the Act**"), by reason of Cathedral Place's continual breaches of the duties required by the Act.

2.

(a) The respondent ("**Cathedral Place**") is a community body corporate under a community plan pursuant to the Act. There are six members of Cathedral Place (subsidiary bodies corporate). Five of these subsidiary bodies corporate are residential; the applicant ("**Cathedral Village**") is the sixth member and is a commercial body corporate.

(b) Cathedral Place is the holder of Lot 4 of the scheme. Lot 4 comprises a "*podium area*" which includes a swimming pool with a BBQ and lawn area. This area is restricted pursuant to a by-law (by-law 27) to the residential bodies corporate. There is also a gymnasium and sauna immediately adjacent to this area, which is actually contained in "*Duhig*", one of the residential bodies corporate, but which is open to be used by all residential occupants (but not any occupant of Cathedral Village). Lot 4 also comprises a portion of a two-level car park. The rest of the car park is exclusively used by lot owners or occupants of the residential bodies corporate (see by-laws 21 and 25).

3.

(a) From the commencement of the scheme and specifically from the beginning of 1999 up to the present time, there has been a culture within Cathedral Place of maladministration, negligence, corner-cutting and bias against Cathedral Village, resulting in breaches of the Act, which has had continuous deleterious financial effects on Cathedral Village. One of the major problems in the administration of Cathedral Place up to the present time has been that in breach of the Act, it has conflated its responsibilities with respect to its Lot 4 with the responsibilities of the residential bodies corporate and, in particular, the common area of the residential bodies corporate. It has also conflated restricted areas (to which Cathedral Village has no access) with unrestricted areas. The costs incurred by Cathedral Place with respect to all of these have been charged against Cathedral Village at the rate of 22%, as per its voting entitlement.

(b) **The Background**

There has been extensive litigation with respect to these issues, pursuant to which Cathedral Place's breaches of the Act were identified and it was pointed out what Cathedral Place had to do to enable it to comply with the Act. Paragraphs 9 and 10 of the judgment of His Honour Judge McGill DCJ ("**Judge McGill**") dated the 29th

November 2019 annexed hereto and marked annexure "**A**", encapsulates the "*real difficulty*". His Honour says 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 the plaintiff is in fact functioning. Broadly speaking, what the Act contemplates is that, within a particular development, each body corporate will be essentially autonomous, looking after its own common property and its own lot owners, with the community body corporate responsible only for that part of the land covered by the development which is not part of the individual bodies corporate within it. It has limited, specific powers, but that is it, and the performance of the ordinary body corporate functions within each particular body corporate is a matter for that individual body corporate.*"

(c) His Honour went on in paragraph 10 to say that "*Instead of that, the way the system appears to work in practice is that the individual bodies corporate have virtually nothing to do, whereas* [Cathedral Place] *functions as a* 'super body corporate' *which performs all of the body corporate functions for the whole development, except perhaps for* [Cathedral Village]. *The evidence, so far as it goes, suggests that* [Cathedral Place] *does not do anything very much for* [Cathedral Village], *or the owners or occupiers of the lots within it.*"

(d) His Honour went on to say in paragraph 10 that "*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]." Cathedral Village has a 22% voting entitlement, whereas more than 75% of the total votes is required to reject a common resolution. There are many instances of resolutions adversely affecting Cathedral Village that have been voted for/against by six-to-one.

4. In an earlier judgment dated the 21st December 2018 Judge McGill, annexed hereto and marked "**B**", made various observations about the way in which Cathedral Place was performing (or not performing) its duties under the Act. In this judgment, His Honour was dealing with the period from 1999 to 2010.

(a) His Honour referred to caretaking agreements entered into (pursuant to section 176(c) of the Act) by Cathedral Place. In paragraph 23 of the judgment, he referred to the caretaker's duties in carrying out the obligations of Cathedral Place under any management agreement entered into (pursuant to section 176(c) of the Act) between Cathedral Place and any of the residential bodies corporate, and observed that these duties only made sense if they were not restricted to the community property of Cathedral Place, but only if they referred to all of the lots in any of the bodies corporate within the overall site.

(b) He repeated this in paragraph 26 where he observed that the drafting of the agreement had not been done with careful attention to the definition of the term "*common property*" in the caretaking agreement; and gave the example of the requirement for the caretaker to clean all glass and windows in the common property, and reference in the agreement seemed to be inconsistent with the notion that window cleaning was to be confined to common property (i.e. the common property of Cathedral Place).

(c) A portion of this judgement referred to management agreements that Cathedral Place had entered into (pursuant to section 176(c) of the Act) with four (and a year later, five) residential bodies corporate, but not Cathedral Village. In paragraph 33, His Honour observed that the formula given for the sharing of costs incurred by the plaintiff applied to all parcels, and that the formula "*on its face applied only where the cost applied to all six of the bodies corporate on the site, including* [Cathedral Village]."

(d) In paragraph 35, His Honour observed that all the management agreements operated on a "*user pays*" basis (i.e. they were payable by the relevant residential body corporate); he observed that "*obviously many of the duties required of the caretaker could be identified as things done by the caretaker by which it performed the obligations of* [Cathedral Place]" under one of the management agreements (i.e. there was a doubling-up of the charges). He went on in paragraph 6 to say that it was not appropriate for him to attempt any detailed analysis of the extent to which the particular functions to be performed by the caretaker under the caretaking agreement in relation to particular residential bodies corporate could be characterised as the performance by Cathedral Place acting through the caretaker of Cathedral Place's obligations under a management agreement with that body corporate.

(e) In paragraph 38, His Honour commented that he could not "*identify in the accounts of* [Cathedral Place] *which are in evidence what payments have been made by the various residential bodies corporate pursuant to these various management agreements. Indeed, in the accounting periods ending August 2009 and August 2010, the amounts shown in* [Cathedral Place's] *accounts as expenditure for caretaker's fees seems to be much less than the amount payable under the then applicable version of the caretaker agreement.*" See sections 177(1)(e) and 177(1)(f) of the Act with respect to the keeping of proper books of account

(f) In paragraphs 43 to 46 of the judgment, His Honour referred to Cathedral Place's by-law 25 (see section 206A of the Act) which provided for exclusive use of car parking spaces within the community property or the common property of a residential body corporate by the owners of lots within the residential bodies corporate. His Honour then noted that by-law 21 provided that the proprietors to whom the grant of exclusive use over the common property has been made shall be responsible at their own expense for the carrying out of the maintenance and upkeep responsibilities imposed on Cathedral Place, save and except cleaning. He noted that one of Cathedral Village's complaints was that during the relevant period, Cathedral Place was levying contributions to, and receiving payment from, Cathedral Village in respect of costs relating to the maintenance and upkeep of the exclusive-use car parks. His Honour referred to a particular dispute with respect to the application of a surface coating throughout the car park, which Cathedral Place claimed was an "*improvement*" rather than maintenance and upkeep. Nevertheless in paragraph 46, His Honour observed "*it is not obvious to me that there is any basis upon which* [Cathedral Place] *is responsible for paying for an improvement in the nature of a surface coating to that part of the car park which is within the common property of one of the residential bodies corporate.*" The cost of the surface coating of the car park was $286,303.00 in August 2002, and Cathedral Village was levied 22% of that amount instead of being levied 22% of Cathedral Place's portion of the car park.

(g) His Honour then proceeded to refer to by-law 27 (again, see section 206A of the Act), which related to the podium, and that Cathedral Place was responsible for maintenance of this area, but that by-law 27 provided a mechanism to strike levies charged on the five residential bodies corporate (not Cathedral Village). In paragraph 48, His Honour contrasted the by-law with the management agreements between Cathedral Place and each of the residential bodies corporate, whereby one of the functions that Cathedral Place was to perform for them was to ensure that the swimming pool was kept clean and appropriately treated so that it was fit for use; and also to ensure that lawns were mowed and gardens maintained. Again in paragraph 49, His Honour referred to the potential that the residential bodies corporate had to pay twice, both through the by-law levy system and pursuant to the management agreements, but that no one had given much thought to the question of how these apparently overlapping obligations to pay costs were supposed to work together (Cathedral Village was levied for 22% of the management agreements) (see section 206A(b)(iv) of the Act). See paragraph 83 of the judgment, where His Honour stated "*there can be no dispute that all of the costs (associated with the maintenance of the podium level) must be met by levies only on the residential body corporates.*" That included "*not just the direct cost of doing the work or having it done but, if contractors are arranged by and supervised by the caretaker, the cost of the caretaker doing that, since that is the cost of maintaining the area.*" His Honour went on to say in paragraph 84 "*to the extent that such costs have during the relevant period been included in the amount the subject of levies on proprietors generally under section 177(h), they have in my opinion not been properly included.*" He referred to a submission from Cathedral Place that there was no obligation on it to provide in its accounts separately for the costs associated with restricted community property and other expenses. His Honour said this was a "*startling proposition*" and referred to the Act requiring Cathedral Place to keep proper books of account (see sections 177(1)(e) and 177(1)(f) of the Act), showing the items for which the amounts were received or paid. He went on to say, "*where particular expenditure is, under a by-law, to be dealt with separately from other expenses in terms of levies on members, proper books of account must distinguish such expenditure in such a way as to enable the obligation of* [Cathedral Place] *under this by-law properly to be carried out. It is not to the point that the existing accounts were the subject of debate and decisions taken by* [Cathedral Place]. *Muddling through is no substitute for doing things properly. In my opinion,* [Cathedral Place] *has a duty to allocate these costs properly, to perform its function under the by-law and therefore has a duty to keep accounts in such a way as to enable that to be done.*"

(h) In paragraph 85, His Honour referred to the cost of maintaining exclusive-use car parks and noted that there was no basis upon which Cathedral Place can properly incur costs in relation to the maintenance of those parts of the car park that fall within the common property of Cathedral Village. His Honour then referred to by-law 21. He stated "*Insofar as those costs were incurred pursuant to obligations under the management agreements with the various residential body corporate, pursuant to those agreements those costs are to be reimbursed by those residential body corporates. The obligation to keep proper accounts requires* [Cathedral Place] *to account for such costs in a way that permits this to be done properly.*"

(i) In paragraph 89, His Honour referred to the gymnasium and sauna within one of the residential bodies corporate (Duhig). In paragraph 90, he noted that the duties of the caretaker included checking and cleaning the gym area and equipment daily, checking, inspecting and regulating the use of the sauna, and disinfecting sauna

benches. His Honour noted that the gymnasium and sauna had been set up at the expense of Cathedral Place and that the equipment in them was the property of Cathedral Place; but that Cathedral Place had no authorisation from the Act or by-laws enabling it to expend money on gym or sauna equipment not within the community property of Cathedral Place; and in paragraph 92, His Honour made the same observation about pot plants (which were provided on a hire out basis to the foyer of Block A - a common area of the residential body corporate, Notre Dame).

(j) In paragraph 93, His Honour referred to the cost of painting, noting that virtually all of the exterior of the buildings on the site were within the common property of the residential bodies corporate and there would be a small part within the common property of Cathedral Village and that there may well be some, though very little, within the community property of Cathedral Place. As there was no obligation or power in Cathedral Place to maintain the common property of the individual bodies corporate, except pursuant to the management agreements with them, it followed that there was no reason why these costs should be forming part of the amount determined under section 177(h).

(k) In paragraphs 94 and 95, His Honour referred to the allocation of insurance costs, noting that Cathedral Place had taken out insurance policies for the buildings of the residential bodies corporate. He referred to section 182 of the Act, noting that it was difficult to see that it included insurance on those parts of the site in a community development lot. He also referred to apportioning insurance costs between the podium and the car park levels and with respect to, say, a public liability policy, His Honour expected that the cost of obtaining such cover for a swimming pool and spa to be much higher than the cost of such cover for a car park. The cost of such cover should be apportioned differently; however, this needed to be determined on a case-by-case basis.

(l) In paragraph 124 His Honour observed that "*From what I have seen of them, the accounts of* [Cathedral Place] *have not been kept in a consistent manner and not kept in a way which is really adequate for its proper administration.*"

(m) In a further judgment dated the 29th October 2019, annexed hereto and marked "**C**", in paragraph 3, Judge McGill concluded that "*in a number of respects* [Cathedral Village's] *complaints were justified, in that* [Cathedral Place] *had been paying for various things which ought to have been at the cost of the separate bodies corporate other than* [Cathedral Village]." In yet a further judgment dated the 29th November 2019, His Honour ordered that Cathedral Place, in performance of its obligation to keep proper accounts, account separately for all costs incurred for the maintenance of the restricted community property covered by by-law 27, including normal operating costs and periodic capital costs; he further made an order with respect to the gymnasium and sauna, effectively requiring that the body corporate within which the gymnasium or sauna is located pay all the costs involved, and providing the supplies and equipment or cleaning, supervision or maintenance.

5. Conduct of Cathedral Place Subsequent to the Judgments of Judge McGill

After the judgment of the 21st December 2018 (see annexure **B**), Nicole Anwoir (Principal and Managing Director of Strata Strategies Pty Ltd) was appointed by Cathedral Place on the 10th January 2019 to provide administration services. She prepared an affidavit dated the 28th October 2019, annexed hereto and marked "**D**", which was provided to Judge

McGill in respect of his judgment of the 29th November 2019 (annexure A). In that affidavit, Ms Anwoir referred to the following:-

(a) Preparing a 2018/2019 draft budget for Cathedral Place (page 21 of Exhibit NA-1 to annexure D) following the judgment of the 21st December 2018, she said that that budget was based on expenses incurred by Cathedral Place in the previous financial year and expenses already incurred in the 2018/2019 financial year. Specifically, she said the budget was prepared on advice by John Rae, "*an independent assessor appointed by* [Cathedral Place] *to advise on apportionment of expenses between Restricted and Unrestricted areas.*" The budget relied on this to assert a "*50/50 split for caretaking and security costs, as between Restricted and Unrestricted Areas.*"

(b) Mr Rae was not, in fact, an independent assessor - he was an employee of an administrator, Body Corporate Services, which administered Cathedral Place between the 24th August 2009 and the 28th July 2014. Mr Rae was Body Corporate Services' representative to Cathedral Place and in that capacity, attended Cathedral Place meetings and supplied financial reports to Cathedral Place, amongst other things. His report was prepared on the 14th December 2016 (i.e. two years prior to the judgment). He was asked to look at income and expenditure statements of Cathedral Place's restricted administration and sinking funds for the year ending the 31st August 2014. He noted that "*in examining the abovenamed accounts and the amounts therein, I have found that the makeup of invoices and journal entries are extremely confusing and it appears that the final amounts involved have been determined by the Chairman of* [Cathedral Place] *(Randall Edwards) instructions in person to the accounting team at Body Corporate Services, as they were the previous year on Peter Zunker's in person instructions* [Mr Zunker was the treasurer of the residential body Corporate, Notre Dame at the time], *also at the offices of Body Corporate Services*" (by whom Mr Rae was employed, although that was not mentioned). He went on to say that *the relative invoices did not display an appropriate breakup of expenses so the only remaining method to determine a 'fair amount' to be allocated to the Administration Restricted Fund is by calculation of expenses fairly attributable to the 'Restricted Fund' by determination of time and motion costs as a percentage of total costs in relation to* [Cathedral Place]."

(c) In respect of restricted expenses in regard to caretaker/security and caretaker/ gardening as per by-law 27, he stated that "*After checking log books and interviewing the respective 'players' I have decided that 50% is a fair breakup for 'Restricted' expenses.*" Mr Rae made comments as to a "*user pays*" system but dismissed the concept of "*user pays*", which has since been accepted by Judge McGill in his judgment of the 21st December 2018 and confirmed by the Court of Appeal in November 2020. Cathedral Village has requested Cathedral Place to supply the logbooks, but there has not been any response to that request. It is assumed that the "*players*" would in fact be persons such as Mr Raumer (who was the caretaker and a member of Cathedral Place's committee at the time) and Mr Zunker, both of whom would have had a vested interest in maximising the contributions from Cathedral Village and minimising the contributions by the residential bodies corporate. Even though Cathedral Place had been provided with a time and motion report from Building Management Consultancy & Services dated the 14th April 2004, which carefully analysed the hours involved in various caretaking duties, Mr Rae was either not referred to it or, if referred to it, ignored

it. Neither did Mr Rae or anyone else see fit to do any proper analysis. The Building Management Consultancy & Services report will be referred to later.

(d) By way of submission, it can be noted that it ought to have been perfectly obvious to those tasked with preparing their budget that Mr Rae's observations were entirely inconsistent with Judge McGill's observations, whereby a proper analysis was required of the duties required by caretaking agreements and management agreements (which doubled-up) as to what the proper allocation of restricted expenses with respect to the podium area should be. Further, his report made no reference to the exclusive car parks (by-laws 21 and 25). Further in his report, Mr Rae made no mention of the costs of the actual swimming pool or gymnasium and sauna (see by-law 27). Accordingly, Cathedral Place has continued to act in breach of sections 177(1)(e) and 177(1)(f) of the Act and in breach of the by-laws pursuant to section 206A of the Act. Reference is made to paragraph 4(l) hereof, demonstrating that there should be separate accounting for the costs incurred and the maintenance of restricted community property (not an arbitrary percentage).

(e) Further by way of submission, in breach of sections 177(1)(e) and 177(1)(f) of the Act, this 2018/2019 budget has never yet been ratified and there have been no budgets prepared since.

(f) It is further noted that the 2018/2019 budget was claimed to have been prepared on the basis of the experience of a qualified accountant, Stephanie Meziani. Ms Meziani's experience in allocating body corporate expenses was preferred to what Judge McGill had stated in his judgment as to how to properly comply with the Act. It would also seem that (disregarding the flaws in Mr Rae's report) Cathedral Place did not see fit to use it to prepare the 2017/2018 budget.

(g) At a committee meeting of Cathedral Place in January 2019, there was a resolution that prior budgets would need revision in light of the trial judge's findings, but this was never done.

6. **Caretaking**

(a) According to paragraph 15 of Ms Anwoir's affidavit (annexure **D**), caretaker costs in the proposed 2018/2019 budget were allocated 50/50 between restricted and unrestricted areas on the basis of the split in Mr Rae's report. Accordingly, Cathedral Village has been charged 22% of $83,636.36, being half of the total caretaking agreement expenditures.

(b) Again, the arbitrary 50/50 split is plainly not consistent with sections 177(1)(e) and 177(1)(f) of the Act - see paragraph 4(g) hereof, as well as the "*user pays*" principle derived from the provisions of the Act, can be demonstrated. That a 50/50 split is plainly not consistent with "*user pays*" can be demonstrated by reports obtained from Building Management Consultancy and Services in 2004 annexed hereto and marked "**E**". These reports were commissioned by Edward and Lorraine Zunker, who were then the caretakers for Cathedral Place. They were tendering for a further contract as caretakers, as their existing contract was due to expire. The report carefully analysed the hours spent on each of the caretaker's duties as set out in the then existing caretaking agreement. Separate analyses were done for Cathedral Place and for Cathedral Village (Cathedral Village at all times had its own caretaker). The report relating to the Cathedral Place buildings (excluding Cathedral Village buildings) include the time spent on the caretaking of the five

residential bodies corporate and the time spent on caretaking of Lot 4 (i.e. Cathedral Place's responsibility). The reports indicate that 71.7% of the hours relate to by-law 27 caretaking duties, being the pool/recreation area; and 26.2% to the exclusive use car parks, the costs of both of which under the by-laws have to be met by the residential bodies corporate. Accordingly, only 2.1% of the caretaker's hours were attributable to other aspects of the caretaking of Lot 4 and accordingly, Cathedral Village should be charged 22% of 2.1% of the caretaking cost, which is vastly different to 22% of $83,636.36.

7. **Electricity**

(a) In paragraphs 16 to 18 of Ms Anwoir's affidavit (annexure **D**), electricity costs in the budget were allocated 50/50 between unrestricted and restricted.

(b) A Cathedral Place committee meeting on the 24th July 2008 resolved that electricity be split up as per electrician, Geoff Magoffin's report of 2008. It appears that Mr Rae was given this report for the purpose of his report. Mr Magoffin's report indicated that the electricity use of Cathedral Village and the Oxford & Cambridge residential body corporate was 6.3%; but after further dividing that, Cathedral Village's share of the total electricity cost was 5%. The lift shared with Oxford & Cambridge also constituted another 1%. This was obviously contrary to Mr Rae's opinion, which is claimed to have been based on unspecified "*log books*" and interviewing (anonymous) respective "*players*"

(c) Again, although Cathedral Place knew of Judge McGill's judgment dated the 21st December 2018 with respect to keeping proper accounts in accord with the by-laws and the Act generally, and his reference to the "*user pays*" principle, Cathedral Place adopted Mr Rae's report of two years previously, whereby Mr Rae had been simply asked to allocate costs between the restricted and unrestricted budgets; and wherein Mr Rae had rejected entirely the "*user pays*" principle. Cathedral Place failed to refer to the 2008 Magoffin report, annexed hereto and marked "**F**", which did adopt the "*user pays*" principle or at least, from which the "*user pays*" principle could be ascertained. Cathedral Place did not adopt that report when it was provided.

(d) Again, Cathedral Place did not adopt Mr Rae's report at the time it was made; and had never prepared its budgets and consequent levies on the basis of its own resolution of the 24th July 2008. In its proposed budget for 2018/2019, the effect was that Cathedral Village was still charged 22% of half of the electricity bill for the whole development (i.e. 22% of $56,518.00). Thus, the proposal is that Cathedral Village be levied $12,433.96 for electricity, whereas on the basis of proper accounting and the "*user pays*" principle of 6% of the total amount, Cathedral should properly be levied for $6,782.16. A further report is being obtained from electrician, Mr John Cipollone, which would show that the proper percentage is 2.21%, rather than 6%.

(e) Mr Rae blithely referred to the expert opinion of Mr Magoffin, who stated that the restricted apportionment was between 35% and 37% (say $36%) and Mr Rae raised that to 50%, claiming that that would only make a $2,371.00 difference to Cathedral Village and therefore that was ok. He failed to refer to instances where Cathedral Village might be prejudiced to a far greater extent by his rejection of the "*user pays*" principle, examples of which follow. Again, this demonstrates a failure to adopt proper accounting pursuant to the Act.

(f) The budget that Mr Rae referred to in his report (the 2014 budget, when Mr Rae was with BCS) had $107,768.00 as the total cost of electricity to the development. Cathedral Village was levied 22% of that (i.e. $23,708.96); whereas if that amount of $107,768.00 was calculated on the basis of Cathedral Village paying 22% of Cathedral Place's 36% share, plus Cathedral Village's separate bill of 6%, it should have paid $15,001.00, resulting in Cathedral Village subsidising the residential bodies corporate to the extent of $8,708.00 in one year with similar subsidies recurring in each year.

8. **Insurance**

(a) As to insurance premiums (being paragraphs 19 to 24 of Ms Anwoir's affidavit (annexure **D**), and pages 55 to 65 of Exhibit NA-1, being a draft insurance valuation report by Solutions in Engineering), despite Judge McGill's findings (see paragraph 4(k) hereof) as to the requirement for the residential bodies corporate to meet all of the costs of the restricted podium area and the restricted car park, including the insurance of those areas, Cathedral Place has failed to seek any evidence from the broker and/or the insurer as to the specific cost of insuring those restricted areas for liability for injuries, both to the public and to owners and tenants of the residential lots). The Solutions in Engineering report merely values Lot 4 as being 15.27% of the total value of the development. Cathedral Place should obtain from Solutions in Engineering, or anywhere else, what the podium level, including the recreation area, bears as a percentage of that total, and what percentage the unrestricted car park area, being part of Lot 4, is. Solutions in Engineering was not asked to, and did not, assess the cost of insuring the podium area and the gym and sauna, together with an assessment of the cost of insuring the carpark, except for the visitors' car park. Indeed, this was probably not even within the expertise of Solutions in Engineering, and an appropriate assessment should have been sought from an insurer. The result is that there is still no proper accounting pursuant to Judge McGill's guidelines, again to the detriment of Cathedral Village. In fact, at all material times, Cathedral Place had available to it a report from Napier and Blakeley dated the 10th June 2008, which demonstrated that 1.68% of the insurance related to the unrestricted areas and 98.32% related to the restricted areas, with the result that Cathedral Village should be levied for 22% of 1.68% of the insurance.

(b) Despite the reasons given in the judgment of the 21st December 2018, ten months after that Cathedral Place still claimed to be seeking advice as to a method to split the cost between restricted and unrestricted areas of Lot 4. As far as Cathedral Village is aware, in fact nothing has been done up to the present time.

9. **Legal Fees**

(a)

(i) The proposed budget includes $272,727.00 legal fees, with the intention that Cathedral Village pay 22% of that figure (i.e. $60,000.00). While it is stated (paragraph 25 of Ms Anwoir's affidavit – annexure **A**) that this figure is predominantly for court proceedings in the District Court and the Supreme Court instituted by Cathedral Place against Cathedral Village, no mention is made of what (if any) other legal fees are included. Over the years, Cathedral Place has been involved in litigation that has not concerned Cathedral Village. For example, Notre Dame instituted referee proceedings against Cathedral Place with respect to levies, as to which Cathedral Village

had no interest whatsoever; and there was litigation with respect to "*ERC*", whereby a report from expert Mr Warren Fischer (annexed hereto and marked "**G**") indicated that because Cathedral Village did not authorise the litigation, it should be levied 5.13% of that litigation cost, and not 22%, being its voting entitlement. Yet again, this indicates a complete lack of proper accounting.

(ii) Both the District Court and Supreme Court proceedings have been commenced and pursued by Cathedral Place on behalf of the residential bodies corporate. Proper accounting (the "*user pays*" principle) indicates that this expense should be levied entirely against the residential bodies corporate. If Cathedral Place succeeded in the litigation, and had a costs award against Cathedral Village in its favour, this would mean that Cathedral Village would pay twice. It is noted that the District Court proceedings commenced in 2010 and the Supreme Court proceedings (which, in fact would be a relatively minor cost) commenced on the 19th November 2016 by Cathedral Place and were amended in May 2017. There has been a total of $2,091,382.00 in legal fees associated with this litigation since those dates, as to which Cathedral Village has been levied 22% ($460,104.00). It is noted that the Supreme Court proceedings were predicated on exactly the same basis as the District Court proceedings, but covered the years from September 2010 to the 31st August 2016. Those proceedings have now been demoted to the District Court and have been in abeyance by reason of the District Court proceedings and are, of course, subject to the findings made by Judge McGill and the determinations made by the Court of Appeal.

(b) The Court of Appeal made orders on the 9th April 2021 consistent with the "*user pays*" principle (and therefore the way that Cathedral Place should properly keep accounts). Annexed hereto and marked as "**H**" is a copy of those costs orders. Cathedral Place was ordered to pay Cathedral Village's costs of Cathedral Village's appeal, and it was further ordered that those costs had to be paid from contributions levied against the members of Cathedral Place, apart from Cathedral Village. Further, Cathedral Place was also ordered to pay one-half of Cathedral Village's costs of Cathedral Place's appeal, again on the condition that the costs payable by Cathedral Place be paid from contributions levied against the members of Cathedral Place, apart from Cathedral Village.

(c) In his judgment of the 29th November 2019, Judge McGill ordered that Cathedral Place pay Cathedral Village Cathedral Village's costs of Cathedral Village's claim and counterclaim incurred in 2019, but otherwise there was no order as to costs (see annexure **A**). It is clear from the Court of Appeal's decisions that Cathedral Village must not be levied for 22% of those costs.

10. **Security**

(a) Ms Anwoir's affidavit deals with security in paragraphs 26 to 29. The proposed budget claims a total of $204,218.00 for security. Cathedral Place allocated 50% of this to restricted areas and 50% to unrestricted areas, so that Cathedral Village was required to pay 22% of $102,272.00, according to the proposed budget.

(b) The 50% allocation is on the basis of Mr Rae's report. Again, Cathedral Place has relied upon a report almost three years out of date, and before the court judgments.

Mr Rae's report again gives absolutely no valid justification for a 50% split - he has decided 50% is a fair breakup "*after checking logbooks and interviewing respective players*". What were the log books? What did they contain? Who were the "*players*" interviewed and what did they say? Again, this is clearly not proper accounting.

(c) Cathedral Village has not agreed to any security arrangements for Cathedral Village's premises, nor has Cathedral Village agreed to the costs (a breach of section 176(c) of the Act). Be that as it may, no independent analysis of the security has been attempted, nor does Cathedral Place propose to attempt this. Thus there has been no proper accounting, in particular with respect to the proportion of security required for the recreation area and exclusive use car parks. However, it is noted that, for example, the Solutions in Engineering report as to valuation assesses Cathedral Village as having 4.6% of the total valuation of the development.

(d)

(i) An analysis of the Queensland Security Protection Events Report (pages 68 to 80 of Exhibit NA-1 to Ms Anwoir's affidavit (annexure **D**)) relating to the 28th September 2019 shows that there was a total of 137 events on that day; seventeen of those events apparently related to Cathedral Village (12.5% of the total). Five events were related to the "*B2 CVSC elevator*". That elevator is not restricted to Cathedral Village but is used by anyone; few (if any) users of the elevator would be attributable to Cathedral Village - most users would be residents going to the pool/recreation area or to units in Oxford & Cambridge - there are no car parks on Level B2 attributable to Cathedral Village - any car parks that might be used by Cathedral Village personnel or visitors are on Level B1. There are also four events related to "*CPVCPB1/PAY MACHINE*". It is uncertain as to whether this, in fact, is intended to relate to Cathedral Village, but the pay machine is related to the car park on Level B1. Although the car park is open to visitors, since 2010 Cathedral Place has controlled it and leases the pay machine. Cathedral Place earns income from the car park (the proposed budget claims $136,363.00 as income) and accordingly, any expense associated with security relating to the pay machine is Cathedral Place's responsibility. Further, the Events Report only relates to 6:00am to 6:00pm - nothing is given with respect to night security, when almost all of the 27 lots in Cathedral Village are closed (except for 3 lots, being a restaurant, a laundromat and a vape shop). Further still, the events purportedly relating to Cathedral Village are all "*checks*", which presumably take minimal time compared to say, dealing with fixing the boom gate, dealing with eleven people in a unit and loud music, dealing with kicking out nine people from the swimming pool area etc.

(ii) Analysis of the further records annexed to Ms Anwoir's affidavit (annexure **D**) relating to the day starting on the 4th September 2019 to the 26th September 2019 shows that incidents attributable to Cathedral Village amount to 9%; and incidents referable to the visitors' car park amount to 6.3%, as to which Cathedral Village should pay 22% (i.e. 1.4%). Again, to simply make an assumption of a 50/50 split is not proper accounting, particularly with respect to the requirements of by-laws 25 and 27, requiring specifically that the residential bodies corporate pay for this and no one else.

(e) Cathedral Place claimed to be investigating a shared services agreement between all the members, including security services. See paragraphs 29 and 36 to 41 of Ms Anwoir's affidavit. Despite these statements, Cathedral Village has not been informed of anything further about such matters up to the present date. In paragraphs 11 and 12 of his judgment of the 29th November 2019, Judge McGill made adverse comments about paragraphs 36 to 41 of Ms Anwoir's affidavit. His criticism relate to the difficulties he set out in paragraph 10 of that judgment.

11. Repairs and Maintenance

Repairs and maintenance are dealt with in paragraph 30 of Ms Anwoir's affidavit, and her comments are based upon oral information given to her by Todd Raumer (see annexure **D**). This is submitted to be not proper accounting. Where is the documentation, such as invoices that would accurately prove these matters? Apparently, Mr Raumer has given information about a certain selection of items mentioned in the proposed administrative fund budget (it is noted that no car parking expenses are included in the restricted budget).

(a) The item "*Carpark R&M Infrastructure*" is for an amount of $9,090.91. Apparently, Mr Raumer says that this relates to the "*leasing and maintenance of public carparking machinery, including the boom gate and the ticket machine.*" Whether Mr Raumer's oral comments are correct or not, it is considered to be quite unsatisfactory that the budget relies upon his verbal assertions and not on the documentation.

(b) There are two items with respect to the car park also in the administrative fund budget, about which no comment is made, namely "*Carpark - cleaning and supplies*" for $5,909.09; and "*Carpark - equipment (leasing fees)*" for $30,749.35. Since $9,090.91 purports to be for the public car park, presumably, these figures relate completely, or mostly, to residential car parking areas. If so, then Cathedral Village should not be contributing anything to those costs (Cathedral Village is required to contribute to cleaning for the whole carpark area, but what are the "*supplies*" claimed? Again it is entirely unsatisfactory for the budget to be prepared upon oral conversations and not on the actual documents. While the proposed budget is supposed to be an estimate, it should be based upon the costs that have been established in the previous budget/s - leasing costs would remain the same from year to year. Where is the reference to the actual costs for 2017/2018? The amounts claimed by Mr Raumer do not appear to be estimates, but rather would appear to be specific amounts.

(c) Mr Raumer has given information about "*Carpark R&M Electrical*" for $2,272.73, which is said to relate to "*electrical services in the carpark, including lighting*". Again, is this the public car park or the restricted car park, or both? Cathedral Village should only be levied 22% for the proportion of the unrestricted area of the car park and not for the exclusive use areas. Why is there no mention of other car park items - "*Carpark R&M Electrical*" for $682.00; "*Carpark IT Updates*" for $681.00 and "*Carpark Pay Station Internet CC*" for $872.85? Although these are minor amounts, again there is nothing to say whether these relate to the public car park or the restricted car park, or both, although reference to the pay station would indicate the public car park. Again, why is Cathedral Village being levied for these amounts, with nothing being allocated to the restricted budget?

(d) The next item picked from the budget to be explained is "*R&M Building*" for $9,090.91, which is said to relate to "*general cleaning and minor repairs*". It may

be noted that this amount is exactly the same as the amount attributed to "*Carpark R&M Infrastructure*". Again, apparently Cathedral Village is to be levied 22% of that amount without any information as to whether the "*building*" relates to unrestricted areas of Lot 4 or whether it relates to the whole development. Again, no reference to the actual documentation is given by way of explanation - just Mr Raumer's assertions - there is no explanation as to why the amounts are exactly the same or why Cathedral Village should be levied for this amount in the proportion of 22%.

(e) The next item referred to is "*R&M Electrical*" for $2,272.73 - the explanation given for this is that it relates "*predominantly to light bulb expenditure*". Yet again, the amount in the budget is exactly the same as the amount in the "*Carpark R&M Electrical*". The only conclusion can be that Cathedral Village and the other residential bodies corporate are being charged twice for the same thing.

(f) Of the things commented upon by Mr Raumer, "*R&M Fire Control*" is the only one that is claimed to have some relationship to Lot 4, which could lead to the inference that the others do not relate to Cathedral Village at all.

(g) Mr Fischer's report of the 13th November 2007 obtained by Cathedral Place recommended that Cathedral Place keep a specific budget for costs relating to the maintenance of the recreation area; further, legal advice obtained by Cathedral Place dated the 28th October 2019 recommended the same thing - but this has never been done by Cathedral Place.

12. **Rates and Land Tax**

Paragraphs 32 to 35 of Ms Anwoir's affidavit relate to land tax and Brisbane City Council rates. It appears from the budget that the amounts for these are $120,000.00 and $68,182.00 respectively (see annexure **D**). Both the rates and the land taxes indisputably relate to the whole area of the development on the assumption that it is undeveloped or unimproved. Cathedral Village is being levied 22% of this amount (i.e. $41,400.00) instead of being levied for its share of the Valuer General's valuation, which is 4.6% of the total; plus 22% of Lot 4's percentage of the Valuer General's valuation, which is 2.9%, which adds an extra 0.64% to Cathedral Village's share. Therefore, Cathedral Village should be levied 5.24% of $9,860.00 instead of $41,400.00. Again, it could be noted that Cathedral Place's 2.9% share should be significantly less because that 2.9% includes the allocated car park areas and the podium-level pool and recreation area. Yet again, there is no proper accounting done by Cathedral Place. Reference is made to the correspondence referred to in paragraphs 33 and 34 of the affidavit, which rejects the claim that Cathedral Village should pay 22%.

13. Paragraphs 42 to 45 of Ms Anwoir's affidavit deal with what are claimed to be the caretaking arrangements as at October 2019 and the plans for the future.

(a) The "*month to month agreement with Plan B*" started on the 3rd May 2016 as a written three month temporary contract. That contract actually expired on the 19th July 2016. Since then however, caretaking has continued for nearly five years without any contractual basis for whatever duties the caretaker does or whatever the caretaker charges. Ms Anwoir asserts a month-to-month agreement, but it is not stated upon what basis it is month-to-month - is there a renegotiation every month of the charges and duties? Or does Mr Raumer simply continue doing what he wishes to do and charging what he wishes to charge, without being queried by

anyone? Where is the list of duties referred to in paragraph 43 of the affidavit? Some six months or so subsequent to the date of the affidavit, Cathedral Village has not been informed of anything being done in respect of the claims in paragraph 44 of the affidavit. Ms Anwoir does not mention that there is, in fact, no written agreement. The Act does not specify that caretaking agreements have to be written, but up until the 3rd May 2016, every agreement with Cathedral Place and caretakers and managers etc. was written; and even though those agreements were flawed in various respects, at least they specified the duties etc. that were carried out (see paragraphs 23, 24 and 25 of the judgment of the 21st December 2018) and they enabled some sort of analysis to be done and some sort of comparison with management agreements etc. to ensure that Cathedral Place was not charging double for various services - compare Judge McGill's comments in paragraphs 36 and 37 of his judgment of the 21st December 2018. This simply does not allow even the opportunity to account properly. Cathedral Place's own legal advice specifies that there should be two separate agreements (or one agreement split into two parts) to keep the caretaking costs separate for restricted and unrestricted areas, and that the caretaking works to be performed in the restricted and unrestricted areas be documented.

(b) Whether deliberately or otherwise, the effect of there being no written agreement is that Cathedral Village is deprived of the opportunity to ascertain the basis of the amounts that it is levied for - whether they are for 22% of unrestricted Lot 4 only, or otherwise; and to what extent the caretaking duties involve the residential bodies corporate and the restricted areas (in particular, the swimming pool area and the gymnasium and sauna area). Reference is made to Judge McGill's judgments as indicated in paragraphs 4(a), 4(b), 4(f), 4(g), 4(h) and 4(i) hereof.

(c) It is noted that Mr Raumer is the sole director of Plan B; he is the representative for the residential bodies corporate, Kensington and Sandringham; at all material times, he has been and is the secretary and treasurer of the Cathedral Place committee. As such, he clearly has a conflicting interest in providing lists of duties, having his charges properly assessed, and being able to continue without any contractual constraints. Further, obviously the residential bodies corporate have an interest in Cathedral Village contributing as much as possible to the caretaking costs and alleviating the residential bodies corporate's responsibilities. As has been mentioned previously, there already has been a study of the times involved in the various duties done in 2004, but which has been ignored. There would seem to be no particular reason why the times involved in the various duties, or the duties themselves, should change over the years, but obviously costs will have increased.

(d) While Cathedral Village would not object to Napier and Blakely preparing a report, it would seem highly dubious as to whether any agreement, fair in all respects to Cathedral Village, could be made with respect to "*the concept of a shared facilities agreement between* [Cathedral Place] *and its members*". The residential bodies corporate can always outvote Cathedral Village, and accordingly, it needs an independent administrator to ensure that any report is done on a true basis of any shared facilities and services, conforming to the Act and conforming to the decisions of Judge McGill and of the Court of Appeal. Cathedral Place and its residential members have not, right up to the present, shown any desire to properly conform to the "*user pays*" principle.

(e) Ms Anwoir's affidavit (and the proposed budget) totally ignore the fact that Cathedral Village has its own caretaker and has had its own caretaker since January

1999. It can be repeated that caretaking has been split 50/50 between restricted and unrestricted on no rational basis, and the proposed annual budget provides for $83,636.00, of which Cathedral Village is expected to be levied 22%, regardless of what duties are performed by Cathedral Village's caretaker and regardless of whether or not Plan B actually carries out any caretaking duties at all for Cathedral Village. Once again, there is no proper accounting by Cathedral Place. Cathedral Place appealed against Judge McGill's decision of the 29th November 2019, but did not appeal against the order that Cathedral Place, in performance of its obligation to keep proper accounts, account separately for all costs incurred for the maintenance of the restricted community property covered by by-law 27 including normal operating costs and periodic capital costs.

14. **Lifts**

In paragraph 18 of Ms Anwoir's affidavit of the 28th October 2019, she states that she intends to take steps "*to have all elevators within the Cathedral Place scheme separately metered, and that accounts for that electricity are established in the name of the individual CBC members where those elevators are located*" - however, none of this has happened.

15. **Rubbish Disposal**

Most if not all of the rubbish removal costs relate to the maintenance of rubbish chutes contained only within the residential bodies corporate. On the "*user pays*" principle, Cathedral Village should not be levied for the maintenance of rubbish chutes.

16. As has been adverted to previously, it appears that nothing has been done by Cathedral Place to comply with this order by Judge McGill in respect of caretaking, security and insurance.

17. In fact, in her affidavit dated the 20th December 2019 accompanying the appeal, Ms Anwoir claimed that separate budgets and accounts would have to be created and separate funds to deal with (as an example) the allocation of security services (see annexure **D**). This was in the context of a claim by Cathedral Place that the keeping of separate budgets and accounts would be overly expensive - see Judge McGill's comment with respect to a "*startling proposition*", as referred to in paragraph 4(g) hereof.

18. **The Appeals**

Cathedral Place's appeal appealed against the declaration requiring that Cathedral Village not contribute to costs of agreements between Cathedral Place and the residential bodies corporate. However, the Court of Appeal in a judgment dated the 3rd November 2020 (annexed hereto and marked as "**I**") adopted the "*user pays*" principle espoused by Judge McGill (the Court of Appeal largely agreed with Judge McGill's reasons) but qualified the declaration by reason that "*inevitably there will be services which, for reasons for practicality and economy must be procured by Cathedral Place and provided across the entire site.*" For this reason, the appeal against the declaration was allowed, but the Court of Appeal's observations about Cathedral Place's powers would appear from its reasons (paragraph 76). In its judgment, the Court of Appeal used certain examples without dealing with everything - those examples including cleaning car park spaces, some of which were exclusive (paragraph 35); painting (paragraph 36); and caretaking and management (paragraphs 42 to 45). As mentioned, Judge McGill's observations about these matters were accepted by the Court of Appeal, but with the caveat that questions had to be asked whether services and amenities might have to be provided across the entire site at the cost

of each body corporate according to their voting entitlements where those services could only be done across the entire site without causing difficulties with practicality or economy.

19. Cathedral Village appealed with respect to the judgment against it. In a judgment dated the 4th November 2020 (annexed hereto and marked "**J**", the Court of Appeal upheld Cathedral Village's appeal and set aside the judgment against Cathedral Village. However in paragraph 41 of that judgment, the Court of Appeal observed that if expenditure was wrongly made by Cathedral Place and there was no other means of funding that expenditure, Cathedral Place was obliged to levy contributions to fund it. In other words, with respect to any expenditures made by Cathedral Place that were wrong and as to which there were no other means of funding the expenditure, Cathedral Place was entitled to include that expenditure in its budget and levy Cathedral Village 22%. Accordingly, it is submitted that Cathedral Place would have to show that it had incurred expenditure wrongly and could not recover that expenditure from some other entity, including the residential bodies corporate before it could charge Cathedral Village for it.

Further Conduct of Cathedral Place Breaching the Act

20.

(a) In breach of sections 177(1)(e) and 177(1)(f), Cathedral Place has not carried out an audit of its accounts since the 31st August 2016. An attempt to retain Kelly & Partners Chartered Accountants to carry out an audit in or about January 2019 was met with the objection by Kelly & Partners that they had "*been advised by our risk panel that we are not to enter into an engagement with Cathedral Place to conduct the audit based on their professional risk assessment... unfortunately this assessment would also include not entering into an engagement to perform the preceding 2017 financial year audit.*"

(b) Subsequent to this rejection by Kelly & Partners, an executive committee meeting of Cathedral Place took place on the 20th February 2019 where a quotation from HLB Mann Judd for the two years of audits required was discussed and a resolution was made that further quotations be obtained. However, this did not occur. Ms Anwoir has recently stated that another auditor has agreed to carry out audits, but there is nothing in writing to confirm this.

21. In breach of section 177(1)(g) of the Act, Cathedral Place has failed to convene an Annual General Meeting since its last AGM on the 4th March 2019. The very first AGM was on the 6th November 1998 and therefore, an AGM was due in January 2020 and in January 2021. The AGM of the 4th March 2019 purported to approve the 2018/2019 budget despite the issues raised in the court judgment of the 21st December 2018. This "*approval*" has not been modified since, despite the Court of Appeal's judgments in November 2020.

22.

a. In breach of sections 177(1)(e) and 177(1)(f), Cathedral Place has failed to prepare budgets subsequent to the 2018/2019 budget; neither have any financial statements been prepared since the 5th February 2019, including statements of income and expenditure, balance sheets etc. Despite this failure, Cathedral Place has issued notices of contribution to Cathedral Village on the 30th August 2019, requiring payment for the period from the 1st September 2019 to the 30th November 2019; and issued a further levy on the 23rd April 2020 for the period from the 1st March 2020 to the 31st May 2020. The consequence of this has been that Cathedral Village

is deprived of the ability to check whether notices of contribution have been properly prepared in accordance with the judgment of the 21st December 2018 or indeed, the subsequent Court of Appeal decision, which confirmed the decision of the 21st December 2018, with the proviso that issues of practicality and economy be taken into account.

b. A motion on the 20th of April 2020 for contributions to be levied for the unrestricted administrative fund had an explanatory note:

> "*The CBC's financial year ends on 31 August. The funds raised at the last Annual General Meeting have been used to meet the last financial year's liabilities. The CBC is now in a new financial year and is working towards calling an AGM as soon as possible. However, the CBC has run out of the funds it raised for the previous financial year and it is still taking advice on how to recraft the budgets to comply with the orders of His Honour Judge McGill in Cathedral Place Community Body Corporate v The Proprietors Cathedral Village BUP 106957 [2018] QDC 275 and his Honour's subsequent decisions. Consequently, it is not in a position to call an Annual General Meeting to put up budgets for approval. The amount raised is the amount the Executive Committee consider necessary to meet existing liabilities and liabilities that will arise in the very nears future until the AGM is called*"

Over a year later this has still not been done. With no budgets there can be no proper determination for arriving at the contributions claimed. Worse still, the respondent has, on 15 April 2021, issued 'pre-payment invoices for levies' with the explanation that "*the payment is being requested to allow the respondent to address the current liabilities, while the financial statements, budgets and annual general meeting documentation is being prepared*"

23. As has been previously referred to, Cathedral Place operates the visitors' car park for profit. Those entering the car park obtain a ticket from a ticket machine; when leaving the car park, that ticket has to be inserted into another machine, which calculates and records the cost of the parking. That cost has to be paid, either by cash or card before the vehicles is allowed to exit. Accordingly, there are full records of the parking charges obtained in the machine. However, no audit has been carried out of the car park income, in particular by reconciling the machine records of money paid by cash and by card with bank deposits. This indicates a failure to keep proper accounts.

24. Cathedral Place has withdrawn in excess of $100,000.00 from its sinking funds to meet litigation costs, without replacing the money withdrawn; and has further not retained a minimum of $55,000.00 in its sinking funds, as is required - to the contrary, the sinking funds are overdrawn in significant amounts, again demonstrating a failure to keep proper accounts.

25. In breach of section 190(1) of the Act, Cathedral Place has expended approximately $2,091,000.00 in legal fees and expert expenses (since about 2007) without authorisation by a comprehensive resolution or any determination at any EGM of Cathedral Place.

26. Prior to the 10th January 2019, Cathedral Place's manager, Ernst Body Corporate was terminated and on the 10th January 2019, contrary to 20 years of Cathedral Place's procedures, Cathedral Place apparently engaged Strata Strategies as its administrator without any written agreement, and therefore failing to specify the duties that Strata

Strategies was to carry out or what its charges were, thus denying Cathedral Village of the ability to determine what duties apply to Cathedral Village and in what amounts, what duties and charges are attributed to the residential bodies corporate, and what duties and charges are attributable to Cathedral Place itself, and what duties and charges are attributable to restricted areas and exclusive areas (see paragraph 4(h) hereof), and thereby enable Cathedral Village to determine a proper contribution on a proper accounting basis.

27. In the same manner, Cathedral Place appointed BC Systems to do its bookkeeping without any resolution; without any motion; without any minutes; and without any written agreement, again stymieing any ability to properly apportion costs on a proper accounting basis.

28. Cathedral Place has employed an accounting system known as StrataMax. This accounting system sets out invoices received by Cathedral Place, invoices paid by Cathedral Place, profit and loss statements, balance sheets etc. This was always available to members, but Cathedral Place has prevented Cathedral Village from having access to this system since November 2020 (when the Court of Appeal judgments were issued) despite request, thereby disabling Cathedral Village from determining its proper contributions as per the court judgments.

29. Not only has Cathedral Village been denied access to the StrataMax system, Cathedral Place refuses specific requests by Cathedral Village for Cathedral Place to supply any documents relevant to charges that Cathedral Village should properly pay. At the EGM of the 15th November 2019, Cathedral Place even resolved that the most recent bank statements be provided to Cathedral Village, yet despite that resolution, those bank statements have never been provided to Cathedral Village and have not even been tabled at any meetings.

Conclusion

30. It is submitted that Cathedral Place has repeatedly displayed an unwillingness to carry out the duties required of it by the Act, even when its failure to carry out those duties has been clearly identified in court decisions, and guidelines have been given to Cathedral Place as to how to properly carry out its accounting. It is submitted that appropriate agreements and templates for the future conduct of Cathedral Place need to be put in place by a fresh body corporate manager so that in the future, there will be no expensive disputes between Cathedral Village and Cathedral Place. Further, it is submitted that there needs to be amendments of notices of contributions to the applicant from the 31st August 2010 onwards. It is therefore necessary that an independent administrator be appointed.

Attempts at Dispute Resolution

31. Relations between Cathedral Village and Cathedral Place with respect to the issues addressed in these submissions have completely broken down since early 2020. It was found to be impossible to agree as to the proper principles to be applied as derived from the judgments of Judge McGill with respect to accounts and other issues. Particular issues other than accounting issues were with respect to coming to an arrangement with respect to proper management agreements, the process of preparing budgets and the consequent raising of levies without any resolution and nothing has happened since then.

32. Specific complaints were made by Cathedral Village in February 2020 with respect to:-

    (a) There being no audit of the money collected from the car park;

(b) An employee and/or contractor of Plan B was overpaid approximately $25,000.00 and requests were made to rectify this;

(c) Complaints were made about Cathedral Place using the sinking fund to fund litigation; and

(d) The accounting records did not enable verification of the audits for 2014/2015 and 2015/2016.

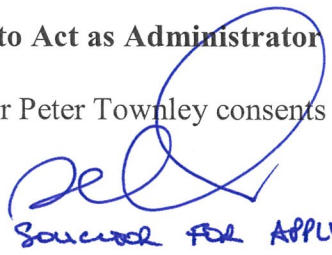
These complaints were ignored and no response has ever been received.

33. Assertions were made on behalf of Cathedral Place to Cathedral Village that three caretaking contracts would be in place, but it never happened, even though the committee members stated that it was their intention to implement these contracts;

34. Similarly, a shared facilities report was proposed by Cathedral Place but has never been proceeded with.

Consent to Act as Administrator

35. Mr Peter Townley consents to the appointment as administrator.

Signed: 
SOLICITOR FOR APPLICANT

Date: 01/07/2021.