

From: [Andy Doves](#)
To: ["Darren Mclean"](#)
Subject: QUAYS EGM
Date: Friday, 17 September 2021 12:00:00
Attachments: [EGM 210930 Letter to DMcLean FINAL.pdf](#)

Hi Darren
Please see attached letter.
Best regards
Andy Doves
+61 419 203 110

From: [Darren Mclean](#)
To: [Andy Doves](#)
Cc: [Margaret Comber](#); jock.alexander@gmail.com; [Fiona Day](#); norrisgv@gmail.com; [Kaye Glover](#); [Chris mathew](#)
Subject: RE: QUAYS EGM
Date: Sunday, 19 September 2021 20:29:38
Attachments: [Response to EGM 210930 Letter to DMcLean FINAL.docx](#)

Andy,
Please find attached my response to your letter.
Regards,
Darren

From: Andy Doves <dovesadd@bigpond.com>
Sent: Friday, 17 September 2021 12:00 PM
To: Darren Mclean <darren.mclean@pico.com>
Subject: QUAYS EGM

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Best regards
Andy Doves
+61 419 203 110

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From: [Andy Doves](#)
To: ["Darren Mclean"](#)
Cc: ["Margaret Comber"](#); jock.alexander@gmail.com; ["Fiona Day"](#); norrisgv@gmail.com; ["Kaye Glover"](#); ["Chris mathew"](#)
Subject: RE: QUAYS EGM
Date: Monday, 20 September 2021 11:23:00
Attachments: [Reply to Response to EGM 210930 Letter to DMcLean.docx](#)

[Darren](#)
[Please see attached my reply to your response.](#)
[Regards Andy](#)

From: Darren Mclean <darren.mclean@pico.com>
Sent: Sunday, 19 September 2021 20:30
To: Andy Doves <dovesadd@bigpond.com>
Cc: Margaret Comber <margaretcomber@bigpond.com>; jock.alexander@gmail.com; Fiona Day <fionad@financialadvicematters.com.au>; norrisgv@gmail.com; Kaye Glover <kaye.glover@bigpond.com>; Chris mathew <buildspec1@bigpond.com>
Subject: RE: QUAYS EGM

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Sent: Friday, 17 September 2021 12:00 PM
To: Darren Mclean <darren.mclean@pico.com>
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From: [Darren Mclean](#)
To: [Andy Doves](#)
Cc: ["Margaret Comber"](#); jock.alexander@gmail.com; norrisgv@gmail.com; ["Kaye Glover"](#); ["Chris mathew"](#); ["Fiona Day"](#)
Subject: RE: FW: QUAYS EGM
Date: Friday, 24 September 2021 6:31:12

Hi Andy,
I acknowledge your response but have nothing further to add.
You are entitled to your opinion and your vote.
Regards,
Darren

From: Andy Doves <dovesadd@bigpond.com>
Sent: Thursday, 23 September 2021 9:00 AM
To: Darren Mclean <darren.mclean@pico.com>
Cc: 'Margaret Comber' <margaretcomber@bigpond.com>; jock.alexander@gmail.com; norrisgv@gmail.com; 'Kaye Glover' <kaye.glover@bigpond.com>; 'Chris mathew' <buildspec1@bigpond.com>; 'Fiona Day' <fionad@financialadvicematters.com.au>
Subject: RE: FW: QUAYS EGM

Thank you Darren.
Please see my comments below in blue.
Cheers Andy

From: Darren Mclean <darren.mclean@pico.com>
Sent: Wednesday, 22 September 2021 08:57
To: Andy Doves <dovesadd@bigpond.com>
Cc: 'Margaret Comber' <margaretcomber@bigpond.com>; jock.alexander@gmail.com; norrisgv@gmail.com; 'Kaye Glover' <kaye.glover@bigpond.com>; 'Chris mathew' <buildspec1@bigpond.com>; Fiona Day <fionad@financialadvicematters.com.au>
Subject: FW: FW: QUAYS EGM

Dear Andy,

Further to our discussion yesterday evening I provide the following response.

I do not propose to engage in a granular interpretation of each regulation, however I note your concerns are primarily to 'avoid the unnecessary waste of time and money' because of your perception that the EGM may somehow be invalidly held. I therefore attach for your information as requested the minuted VOC that will satisfy an adjudicator the EGM was validly called. There exists no reason why the validly called EGM schedule for 30 September can not be validly held, however, this cannot be determined until the meeting is actually held on 30 September. Also, there exists no authority with the Chair, Secretary or Committee to cancel or postpone a general meeting once properly called.

Sorry, not validly called even with the VOC, can be held, but not validly.

Regarding your concerns of wasting time and money, this is precisely why the Committee has acted swiftly in this manner and I appreciate the opportunity to explain why.

In acting reasonably [s94(2)] in the best interests of owners, the committee noted the lack of endorsement of our BCM at the AGM and sought multiple alternative quotes as should have been provided to owners at the AGM but were not, and breached the requirement for at least the quotes over major spending limit. You raised no concern of this AGM irregularity at that time.

1) The voting result was 25:25 despite the lobbying against Peak - hardly an endorsement either way.

2) And, the ordinary resolution, Appointment of Body Corporate Manager, is well below Major Spending limits as per the remuneration for the agreement proposed. The relevant Limit for Major Spending for The Quays is \$33,900 (\$300 x 113 Lots). .

3) And therefore, there was no requirement for the previous committee to have additional BCM quotes. The committee were within their rights to put one motion on the Agenda. Any owner could have placed a motion on the agenda for a new BCM.

It was further noted that clause 1.2 of the current BCM agreement indicated a default carry over of that agreement if not terminated before its end date. Given an EGM was required in any event, as you have acknowledged, the cost of doing so (110 pages) non electronically via the Peak agreement was prohibitively costly. (.50c/page ~ \$60/pack x 113 lots + time of attendance and minutes) and estimated in excess of \$7,000.

Peak has Electronic Voting capability. Sensibly and logically, a resolution to allow electronic voting can only be proposed and/or passed if the BC has, or has access to, a system for receiving electronic votes, etc.

Should the EGM be postponed as you suggested, the body corporate would unnecessarily waste \$7000 and be left with a BCM the owners did not support at the AGM.

Sorry, I am a little confused as I see a couple of contradictions here.

1) Are you saying that it is possible to postpone the EGM but above you mentioned that there is no authority to postpone?

2) Are you also saying that the EGM will cost \$7,000 with electronic voting via Value SM while above you use that same amount as a reason not to have used Peak BCM? And your \$7,000 cost for Peak was for a paper-based solution on the incorrect assumption that they did not have electronic voting?

Again I note that at the AGM support for Peak was 25:25, despite the lobbying against.

Regarding the number of owners providing an email address to have received electronic voting papers, the relevant number is those who have notified the Secretary (as distinct from the BCM) and provided an email address.

Again I am confused by your comment as:

1) Peak BCM function as Secretary as per their agreement - see Schedule 2 Secretarial; and the address for the Secretary on all correspondence for the last 15 years approximately is c/- Peak's PO Box address.

2) Peak BCM also function as the Treasurer as per the agreement - see Schedule 2 Financial. Please note item 5 "Prepare draft budgets for the AGM".

BTW - you made a comment regarding Clive's motion that it was not brought to the committee's attention by Peak in time to be included. Well, that is not how it works. Matters that can be decided by a committee are brought to the committee's attention. Matters held for general meetings are put on the next general meeting agenda. Unfortunately as Peak BCM, the BCM of record, was not notified or consulted about the EGM there was no opportunity to include Clive's motion.

I do not propose to comment on tenuous claims of purported contraventions of sections (77,80,

83, 150 etc) as I believe it can be shown the committee have acted appropriately in all the circumstances it has inherited.

Instead, if left for an adjudicator to decide should you so proceed, I expect the body corporate would rely on an order under s270 to recover \$2,000 against you for an application that is misconceived or without substance.

My application will not under any circumstances be regarded as frivolous or an insubstantial. In fact, quite the opposite given the particular focus of adjudicators on financials - in this case the lack of correct of financial information provided and the inaccuracy of that provided.

On the other hand, the proposed spend of up to \$5,000 on a re-audit of a financials already audited by a Chartered Accountant and Registered Company Auditor, may well be considered frivolous.

There is a long established history of precedents that address general meeting procedures including:

In order 0751-1999, the adjudicator held:

"in respect to meetings generally, the courts have consistently held that where there have been procedural errors or omissions in the calling of a meeting, or other lesser irregularities, the meeting and decisions made at the meeting should nevertheless be preserved unless it can be shown that there has been some fundamental disadvantage to voters (owners). For example, where all or a significant number of owners have been given no, or insufficient, notice of a meeting."

Furthermore, in his dismissal of a District Court appeal of an adjudicator's order (Chen v Body Corporate for Wishart Village CTS 19482, Appeal 4080/2000, 29 May 2001), Judge Boulton stated:

"The very detailed provisions of the standard module regulation ... make it almost inevitable that from time to time there will be non-compliance. Equally though the provisions of the act make it clear that non-compliance of an insubstantial nature will not be allowed to imperil the actions of bodies corporate or their committees, particularly in the instance of committees where actions are taken bona fide."

Further still, the adjudicator in Citi Edge Apartments [2014] QBCCMCmr 46 stated that:

"The courts have recognised that the detailed regulations make it almost inevitable that there will be failures to comply with the regulations from time to time and courts have accepted it is unlikely that it was a purpose of the legislation that an act done in breach of a statutory provision should be invalid if public inconvenience would be a result of invalidating the act. A meeting called other than in accordance with its rules will not inevitably be invalid, provided it is conducted substantially fairly."

I expect you would agree that avoidance of an adversarial approach is in the best interests of all Lot Owners and I therefore request you consider the merits of the approach you propose.

This is not an adversarial approach on my part, I am not inventing a cause. It is about making sure that the information owners receive from the committee and BC Manager is correct, complete and compliant so that Owners may cast a fully informed valid vote at such an important meeting

I cannot in all conscience turn a blind eye to the numerous irregularities in your notice and papers, and just let you get on with it, as was suggested to me by a person / persons on your committee.

I think it is extremely naïve and disrespectful to the past committee and BCM to falsely call errors on AGM motions in relation to Body Corporate Manager and Electronic Voting Resolutions.

It is also extremely naïve and disrespectful to the past committee and BCM to imply by your actions and comments, both at the AGM and subsequently, that budgets and therefore levies presented at the AGM are not correct. Do you not think that having being able to keep levies steady for 4 years that the committee were also not upset by the \$30pw increase? And that they did not want it to be a lessor amount? Unfortunately the facts and numbers are irrefutable and the Owners must be given a true account of finances at all times.

Ironically, I believe that your rejection of the budgets and levies, and subsequent waste of money on EGMs, Audit, new BCM, etc., will ultimately result in levies being even higher.

Regards,

Darren

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From: [Andy Doves](#)
To: ["Darren Mclean"](#)
Subject: Meeting
Date: Friday, 24 September 2021 9:07:00

Hi Darren

I accepted your invitation to talk and so I would like to offer you the opportunity to talk one on one, at your convenience.

Best regards

Andy Doves

+61 419 203 110

From: [Nick](#)
To: [Andy Doves](#)
Subject: RE: FW: QUAYS EGM
Date: Friday, 24 September 2021 10:45:33
Attachments: [The Quays Aust Post List.pdf](#)

Hi Andy,

1. The VOC was most probably arranged after you brought the requirement to their attention.
2. The Resolution should have been ratified at the committee meeting held on 21 September 2021. They all knew I was arranging the committee meeting agenda but no one provided a copy or advised me of the VOC.
3. Section 49 of the Accommodation Module deals with agendas for committee meetings and states ***“(3) the agenda must include the substance of the following motions – (a) (b) if the committee has passed, after the relevant day, a resolution other than at a meeting of the committee – a motion to confirm the resolution.”*** (my underline)
4. The committee or owners may discuss any motion that is on the EGM agenda.
5. The legislation is silent on cancelling meetings, so I called the Office of the Commissioner. They advise that if the meeting was approved by a VOC, the meeting can be cancelled by a VOC. There are Adjudications to support this.
6. Copy of the 20 owners that require their correspondence by AGM is attached. One owner recently changed.

Happy to respond to any other questions.

Kind Regards
Nick

From: Andy Doves <dovesadd@bigpond.com>
Sent: Friday, 24 September 2021 9:03 AM
To: Nick <n timer@peakbcm.com.au>
Subject: FW: FW: QUAYS EGM

Hi Nick

Sorry to be a bother but I need to tidy up a few things for the Form 15 please.

I think I forgot to send you Darren's attachments. The VOCs, all dated 9/9/21, calling the EGM have suddenly appeared although no proof of email timelines.

Are the VOCs calling an EGM something that you should have seen in your role as BCM before the Notice & Papers went sent out?

Should the resolution have been included in the Notice & Papers?

Any implication that they did not ratify the VOC at the Committee meeting? BTW - still no VOC for budgets!

Can a committee introduce material at the EGM to support and/or explain a motion other than what is already provided in the EGM Notice and Papers?

As highlighted below Darren states that have no authority to postpone the EGM. I would think that if you are advised, or discover for yourself, that an EGM has been called

illegally, then you could postpone or cancel it. Any views?

Can I please have a list of the 21 Owners that requested postal service of notices. I would like to attach it to the Form15.

Also if I sent you a list of all the questions re breaches etc, that I have asked you over the past week or so, could you please confirm your answers for the record so that I can attach that to the Form 15 as well.

Cheers Andy

From: Darren Mclean <darren.mclean@pico.com>

Sent: Wednesday, 22 September 2021 08:57

To: Andy Doves <dovesadd@bigpond.com>

Cc: 'Margaret Comber' <margaretcomber@bigpond.com>; jock.alexander@gmail.com; norrisgv@gmail.com; 'Kaye Glover' <kaye.glover@bigpond.com>; 'Chris mathew' <buildspec1@bigpond.com>; Fiona Day <fionad@financialadvicematters.com.au>

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Regards,

Darren