

Emerald Lakes - The Quays CTS 33891 (ABN 23 265 232 187)

BCCM Form 15 Reference Number: 1275-2021

Chronology of Events – Meetings, Activity, Correspondence, Disclosures and/or Discovery

Background Information

The Quays CTS 33891 (**Quays**) was registered in 2005 has 113 owners and is a mixed residential BC with mostly duplex & semi-detached houses with the odd freestanding house and 20 apartments in two low-rise buildings. It is one of 15 subsidiary BCs in a layered scheme under a Principal Body Corporate (**PBC**).

The committee for the FY 20/21 had approved Administration & Sinking Fund budgets prepared by Peak Body Corporate Management (**Peak**) for the year ending 31 March 2022. The Sinking Fund budget was based on a new SF Forecast prepared in December 2020 which recommended increased annual expenditure, (specifically to cater for an increasing number of leaking roofs and other water ingress issues), and as a result levies would need to increase by about \$30 per week, from \$100 to \$130.

This increase concerned some owners who without any further consultation with the committee campaigned against the increase, meeting with and corresponding with owners selectively and sometimes anonymously.

The Quays has a financial YE of 31 March and the 2020/21 AGM was held on 24 August 2021, after two approved postponements due to Covid-19 restrictions.

At the AGM a "campaign" by some residents resulted in block voting against almost all motions at the AGM. 67 of the 113 owners voted and 50 block voters abstained to approve the previous AGM Minutes; 44 voted against the adoption of the Financial Statements, 44 voted against the appointment of the Auditor, 48 voted against the Administration budget, and 48 voted against and the Sinking Fund budget.

The new committee (5 new members including the entire executive & 2 continuing ordinary members) was elected unopposed and since then there has been an unprecedented and consistent pattern of irregularities in both communications and actions by the committee.

Peak had been appointed BCM from 4/10/20 to 3/10/21 at the 2020 AGM but at the 2021 AGM the vote to reappoint them was 25:25:3 (Yes: No: Abstain: respectively). However, even though Peak was contracted till 3 October 2021, the new committee chose to exclude Peak from that day forward. In my opinion this immediate exclusion of Peak was an overreaction and an error on the part of the new and inexperienced committee and resulted in most of the errors in regard to the calling and conducting of the EGM on 30 September 2021. For example - Peak were not consulted or included in the VOCM calling the EGM, or in the preparation, noticing, budgets and requirements for the EGM. The new committee used a "consultant", Value Strata Management (**Value**), to prepare the notice and papers for the EGM. The Chairperson indicated directly to Nick Jones, the principal of Peak, that he was not permitted to attend the EGM. As a result, I believe that 15 regulations have not been complied with and possibly another 5 also ignored.

The Quays Body Corporate has been operating since 2005 and I am in disbelief as to the actions of the new committee in ignoring regulations before, during and after the EGM; especially when these regulatory breaches were brought to their attention, before and during the EGM, as well as after.

My submission relates to the period from the AGM held on 24 Aug. 2021 to the EGM held on 30 Sept. 2021.

EVENTS

1. 24/08/2021 - AGM held and 7 members elected unopposed.
2. 1/09/2021 - Minutes of the above AGM are distributed to Owners by Peak, the current BC Manager.
Please see Attachment A (4p).
3. 8/09/2021- Notice & Agenda for a Committee Meeting on 21/09/21 are distributed by Peak.
Please see Attachment B (1p).
4. 9/09/2021- An email introducing the Quays Committee is sent by the Chairperson.
Please see Attachment C (2p).
5. 9/09/2021- Notice, agenda & papers for an EGM on 30/09/21 are distributed by Value.
Please see Attachments D + (D1-D3) (4p), D4 - SFF (33p), D5 - D13 (64p)#, D14-D17 (11p).
the 64 pages in D5 - D13 relate to presentations and proposals from prospective BCMs.

NB: In items 3, 4 & 5 there is no mention of a VOCM Motion to hold the EGM on 30/9/21.

6. 21/09/2021- Committee Meeting Held.
7. 28/09/2021- Minutes of the above Committee Meeting distributed to Owners by Peak.
Please see Attachment E (6p) and NB: there is no Ratification of the VOCM motion re the EGM.
8. 30/09/2021- EGM held.
9. 13/10/2021- Minutes of the above EGM distributed to Owners by Value.
Please see Attachment F (9p).

10. ERRORS IN RELATION TO THE EGM NOTICES AND PAPERS

- 10a VOCM Resolution to hold EGM not sent or otherwise advised to Owners and was not included in the EGM Papers. **Please refer to Accommodation Module Regulation (AMR) 60(3).**
- 10b. VOCM Resolution to hold EGM - no record of VOCM motion given to Owners as at 26/11/21 (77 days after voting at the EGM on 9/9/21).
FYI - I requested a copy of the VOCM on 20/9/21 from the Chairperson and received same on 22/9/21. The Motion wording is generalised and vague. I believe I am to this date the only Owner to have seen the VOCM and timeline evidence of the vote has not been provided, despite two requests - the latest on 14/10/21.
Please see Attachments G (12p), G1 (2p) and to AMR 63 (4) (b)
- 10c. VOCM Resolution to hold EGM was not confirmed at the Committee Meeting held on 21/9/21, the minutes of which were issued on 28/9/21.
Please refer to Item 7 above, to Attachment E and to AMRs 49(3)(b), 60(5), 63(6), ref 63(6)(i)(a)(i).
- 10d. An Owner's motion pending the next General Meeting was not included in the EGM. 1 Owner affected.
Please refer to Attachment H (3p) and to AMRs 80 and 83.
- 10e. Owners who requested postal notifications were ignored and did not receive the appropriate notice of at least 21 days before the scheduled EGM. 20 Owners affected.
Please refer to Attachment I (4p) and to AMRs 77, 81, & (235?).
- 10f. There is no Explanatory Note for Item 3 Audit. All Owners affected.
(This motion to spend up to \$5,000 on a re-audit of the 20/21 financials, which had already been audited by a Chartered Accountant and Registered Company Auditor, is without any explanation or reasoning and may be considered frivolous.)
Please refer to AMRs 77(3) (e), 80 (1) (a) & (c).
- 10g. There is no schedule of Explanatory Notes. All Owners affected
Please refer to AMR 78 (5).

11. ERRORS IN RELATION TO BUDGETS IN THE EGM PAPERS

11a. Administration Fund (AF)

- 11a(i). There is no committee resolution to approve an AF Budget.
- 11a(ii). There is no detailed, line item AF budget.
- 11a(iii). As a consequence, line items for the PBC AF & SF Levies cannot be seen, as required.
Please refer to AMR 150 (4).
- 11a(iv). AF Levies are stated to equal the AF budget and therefore there is no detailed and/or correct calculation of levies which should include an opening surplus or deficit; and a planned closing balance.
- 11a(v). AMR 150 (6) states that "Copies of proposed budgets must accompany the notice of an annual general meeting."
Does a motion to approve an AF Budget proposed at an EGM have to meet the same standards as for an AGM? **If so, is there a breach of AMR 150 (6)?**

11b. Sinking Fund (SF)

- 11b(i). There is no committee resolution to approve an SF Budget.
- 11b(ii). There is no detailed, line item SF budget.
- 11b(iii). There is no detail of how levies are calculated
- 11b(iv). SF Levies are stated to equal the SF budget and therefore there is no detailed or correct calculation of levies. The simple calculation of SF Levies in this manner does not consider: 1) 20/21 year-end shortfall of \$85,646 (SFF* \$700,000 less \$614,354); 2) the estimated SFF* expenditure for the 21/22 FY of \$178,895; 3) the SFF* estimated closing balance for the SF as at 31/3/22 of \$706,715.
Furthermore the SF Levies do not take into account the quote for Stage 3 Cladding Safety work at \$69,203, dated 2/9/21 - **please see Attachment J.** I can only conclude that the SF Budget has been calculated based on a popular & acceptable levy amount rather than a correctly calculated levy amount.
Please see Attachments K and, D4, the SFF as included in the EGM papers.
Please refer to AMR 150(3)(a).
- 11b(v). AMR 150 (6) states that "Copies of proposed budgets must accompany the notice of an annual general meeting."
Does a motion to approve an SF Budget proposed at an EGM have to meet the same standards as for an AGM? **If so, is there a breach of AMR 150 (6)?**

12. ERRORS IN RELATION TO THE EGM HELD ON 30/9/21

- 12a. No Owners' Roll was requested from Peak as at 5:13 pm on the day of the EGM and no Owners' Roll was present at the start of the meeting at 6pm.
Please refer to AMR 103 (a).
- 12b. No list of Owners owing a body corporate debt was requested from Peak as at 5:13 pm on the day of the EGM and no List of Debtors was present at the start of the meeting at 6pm.
Please refer to AMR 103 (b).
- 12c. I pointed out these omissions to the Chairperson and emailed the Owners' Roll and the Aged Debtors reports to the Chairperson from the meeting floor at 6:13pm. The meeting was halted to ascertain the number of ineligible voters.
Despite the Aged Debtors reports indicating that 17 owners were ineligible to vote the Chairperson insisted that only one owner was ineligible to vote.
My appeals and explanation that any body corporate debt relating to a lot, not only levies, was defined as a body corporate debt was ignored and 6 owners with such a debt were allowed to vote, including one owner on the committee.
Please refer to Attachment L (3p).
Please refer to the AMRs 92(2), and to Schedule 1 - Definition of a body corporate debt.
- 12d. On 1/10/21 I emailed the Chairperson and reiterated my claim that more than one owner was ineligible to vote and I quoted verbatim S92 (2) and the Schedule 1 Dictionary definition of body corporate debt.
Please see Attachment M (2p).
- 12e. I received a reply from the Chairperson on 14/10/21 confirming his view that only one Owner owed levies and was therefore the only Owner ineligible to vote.
Please see Attachment N (3p).

13. CORRESPONDENCE AND DETAILS OF ATTEMPTS TO RESOLVE THE DISPUTE INTERNALLY

- 13a. 17/09/2021- Email from me to the Chairperson. **Please refer to Attachment O (2p).**
- 13b. 19/09/2021- Email response from the Chairperson to me; cc'd to the Committee. **Attachment P (4p).**
- 13c. 20/09/2021- Email reply from me to the Chairperson; cc'd to the Committee. **Attachment Q (4p).**
- 13d. NB: **Attachment Q** is also the thread of all 3 above emails, each segregated in BLACK, BLUE, RED font respectively).
- 13e. 21/09/2021- I attended this Committee Meeting and prior to its conclusion I was invited to stay and speak to the committee after the formal meeting ended. 5 of the 7 committee members did stay and I reiterated my major concerns regarding the irregularities of the EGM Notice and Papers. Specifically:
- 1) the VOCM had not been circulated or quoted as an authority to hold the EGM;
 - 2) the VOCM had not been ratified at the committee meeting just concluded;
 - 3) no detailed budgets were included in the papers;
 - 4) the calculations of levies, especially the SF levy, were flawed;
 - 5) a schedule of explanatory notes and some required explanatory notes were not included in the papers;
 - 6) an Owner's motion was not included although held by Peak;
 - 7) the 20 Owners who requested formally to be notified by Australia Post were not given adequate notice, although the requests were held by Peak.
- I stated that while I agreed that an EGM was now necessary, I asked if they could please postpone it and convene it in accordance with the regulatory requirements. I was requested to "just let us get on with it" and my concerns with the irregularities were dismissed.
- 13f. 22/09/2021- Email from Darren McLean, Chairperson (DM) to Andy Doves (ADD), cc'd to the Committee. **Please refer to Attachment R (3p).**
- 13g. 23/09/2021- Email from ADD to DM, cc'd to the Committee.
Please note that Attachment R (3p) covers the email thread for 22/9, 23/9 and 24/9/21.
- 13h. 24/09/2021- Email from ADD to DM, inviting him to a one-on-one meeting.
Please refer to Attachment R1 (1p).
30/09/2021- ADD and DM meet at 8am. I again mentioned the irregularities described to the Committee on 21/9/21 and again they were dismissed as unimportant. Essentially DM could not see that he and/or the committee and/or the Consultant - Value, had done anything in error concerning the regulations.
- 13i. In my email of 17/9/21 (see 13a) and again in my email of 20/9/21 (see 13c) I suggested postponing the EGM so that it could be properly convened.
Please refer to Attachment Q (4p).
- 13j. In his email of 22/9/21, cc'd to the Committee, the Chairperson's response was that: "...there exists no authority with the Chair, Secretary or Committee to cancel or postpone a general meeting once properly called."
Please refer to Attachment R (3p).

- 13k. An email from Peak on 24/9/21 finds as follows: "...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."
Please refer to Attachment S (3p).
- 13l. a) In his email of 22/9/21, cc'd to the Committee, the Chairperson enclosed copies of the committee's VOCM vote to call an EGM. As noted in 10b above, no record of this motion has been given to Owners, nor has it ever been confirmed at a committee meeting. I have requested timeline evidence of this VOCM but it has not been produced to date.
b) The wording of the motion is vague and the respective Committee Members have voted for a General Meeting saying only that the Notice will contain Motions for the lawful operation of the Scheme. It could hardly be said that the Committee Members knew what they were voting about.
Refer to the above Attachments - R & G1; and G for VOCM attachments.
In regard to AMRs I am unsure if any applicable regulations apply and/or have been breached.

CONCLUSION

In the above I have detailed the instances where the Quays BC/Committee has not acted in the best interests of both, particular groups of Owners in two instances; and, in all other instances of all Owners. Where this has occurred I have noted the probable relevant Accommodation Module regulatory breaches.

As a result I believe that the manner in which the EGM was called and the way that information was provided (or not provided in most instances) means that Owners could not vote validly at the EGM as they had not been properly informed. And, as also noted, I have concerns as to how the EGM was conducted in regard to voting eligibility.

I respectfully seek an order declaring that the Quays EGM held on 30 September 2021 is void for irregularity.



Andy Doves
26 November 2021

Attached: Schedule of Attachments

ATTACHMENT 2

SCHEDULE OF ATTACHMENTS

1.	Summary - The Quays Form 15 - Amended Final.pdf
A.	AGM Minutes 210824.pdf
B.	Committee Meeting Notice 210921.pdf
C.	Introducing The Quays CTS Committee.msg
D.	EGM Invitation 210921.msg
D1.	StrataVote _ Welcome.._.pdf
D2.	StrataVote _ Agenda.._.pdf
D3.	Committee Intro.pdf
D4.	SFF Dec 2020.pdf
D5 to D13	BCM Proposals Attachments Reduced Binder.pdf
D14.	Proxy Form.pdf
D15.	Corp Nominee Form.pdf
D16.	EGM Attachments List.pdf
D17.	Voting Paper.pdf
E.	Quays Committee Minutes 21 Sep 2021.pdf
F.	EGM The Quays 30 Sep 2021 - MINUTES.pdf
G.	VOCM Attachments Reduced Binder.pdf
G1.	Email to DM re VOCM 14 Oct 2021.msg
H.	RE Application for approval Leeson Lot 3024 .msg
I.	The Quays Aust Post List.pdf
J.	Safer Buildings Group Proposal_PBCM-EmeraldLakes-TheQuays_200271-9-1 (002).pdf
K.	CORRECT LEVY CALC & BUDGETS for EGM v1.1.pdf
L.	ADD to DM QUAYS EGM 30 Sep 2021.msg
M.	ADD to DM Ineligible Voters 1 Oct 2021.msg
N.	DM to ADD RE EGM Ineligible Voters 14 Oct 2021.msg
O.	ADD to DM 17-9-21 QUAYS EGM.msg
P.	DM to ADD 19-9-21 RE QUAYS EGM.msg
Q.	ADD to DM 20-9-21RE QUAYS EGM.msg
R.	ADD & DM 22, 23 & 24-9-21 RE QUAYS EGM.msg
R1.	ADD to DM 24-9-21 0907 RE MEETING.msg
S.	Peak to ADD Post List & Cancel VOCM QUAYS EGM 24 Sep 2021.msg