DEED OF VARIATION – EXTENSION OF THE CARETAKER'S AGREEMENT FOR A FURTHER 5 YEARS FROM 2030 to 2035.

MOTION 19 - Variation of Caretaking and Letting Agreement (Ordinary Resolution) Submitted by: Committee **SECRET BALLOT.**
The committee's support is, and I quote from the Explanatory Note: -
"The managers wish to ensure a satisfactory tenure – that also benefits the body corporate by ensuring management stability."

THERE ARE 3 ERRORS WITH THE ABOVE MOTION

1. **The committee has ignored an Owners' General Meeting resolution; viz:**
   "Motion 19, Variation of Caretaking and Letting Agreement."

   It appears that the committee has, not for the first time, ignored a decision made at a general meeting by Owners and submitted motion 19 above without proper care or respect for Motion 10 of the AGM held on 24 August 2021. The minutes of that AGM read as follows.

   > ***"AGM 24 Aug 2021***
   > ***10. LEGAL ADVICE ON CARETAKING AND LETTING AGREEMENTS ORDINARY RESOLUTION***
   > *That in the event of any request that a motion be put to the body corporate seeking approval to vary the Caretaking and Letting Agreement, the body corporate committee will as soon as possible:*
   > *• obtain professional legal advice, for a fee not exceeding $2,000, concerning the issues and merits of the variation and/or options for reducing the caretaker's fees in return for the variation;*
   > *• distribute copies of this legal advice to the body corporate; and*
   > *• make a recommendation, with reasons, to the body corporate.*
   > **Motion Carried Yes 26 No 6 Abstain 31"**

   Motion 10 was specifically put in place so that the committee could deal expeditiously with secret ballot motions by caretakers to be proposed at a general meeting. However, despite receiving the Deed of Variation request in February the committee has ignored the above Motion 10 and is supporting a term extension.

2. **Lack of legal advice**
   Irrespective of 1 above the committee has not requested or received any legal advice on our behalf on this very important and material issue – a contract with a value of close to $1m. The motion does not even mention "subject to legal advice".

   The committee motion proposes that we just approve the deed blindly and that they would execute the deed blindly - without any legal or commercial advice. I don't believe any individual owner would act so irresponsibly in their own right.

   FYI – previous legal advice from Mathews Hunt Legal in May 2021 on this very issue relates in part to the commercial issues at stake - as follows:

   "An option to extend the term of the Agreement adds certainty to the Manager and its financier. As a general rule, most financiers prefer terms to be extended to the maximum possible length of time so as to afford them maximum security over the management rights loan, but that is no reason for the Body Corporate to consent to the extension. Additionally, an option to extend the management rights term is more attractive to any potential purchaser and may also be the Manager's motive for requesting the variation.

   While it is not a legal issue, we query the benefit to the Body Corporate of granting a 5-year option, as once the variation is approved the Body Corporate is left with very little leverage if there is a subsequent issue with the Manager (whether the current one or a future one)."

   Which brings us to point 3 below.

3. **The motion is not in the best interests of Owners.**
The committee state: *"The managers wish to ensure a satisfactory tenure – that also benefits the body corporate by ensuring management stability.*"
Not exactly a ringing endorsement for a contract extension worth close to $1 million?
No - because there is not one single benefit to Owners in granting this Deed of Variation and it is not in any way in the Owners' best interests to do so.

By contrast there are many valid reasons why Owners should say "No" to this motion and those reasons, as sent out to Owners in 2021, when a similar motion was defeated by 51 votes to 5, hold true to this day. (See Doc-Ref 100W on the keys2thequays.net website),
And today there are even more reasons to say "No".

Essentially the Quays Committee's "No" argument in 2021 was:

The current 25-year Agreement commenced on 6 May 2005 and expires on 5 May 2030.
ELR are requesting a 5-year extension of the Agreement Term to 5 May 2035.

Unfortunately, the granting of this extension request **does not** include the opportunity for The Quays Committee to renegotiate the terms of the current Agreement and so, we will continue to be burdened with the terms of this outdated Agreement, issued by Nifsan, for Nifsan in 2005.

Furthermore, please consider the following implications for The Quays if the extension motion was to succeed:

- ELR will receive a 5-year saleable asset while The Quays will receive no beneficial variations in return.
- There will be no other benefits to The Quays or its Owners regarding costs, work quality or work quantity.
- We will continue to pay the predetermined fees without the benefit of an Agreement that details specific requirements for duties, tasks & responsibilities, or measures performance.
- We will not be able to renegotiate the Agreement for another 12 years.
- We will have a much weaker negotiating position going forward. The longer the contract, the weaker is our negotiating position.

A further 12 years is seen as too long as it has been the existing long-term contracts (25 years for Caretakers & Security) that have caused most anxiety and expense for our bodies corporate and owners.
The QLD Government & the Unit Owners Association of QLD are currently in discussion regarding the appropriateness of long-term agreements and are working hard to change the legislation**.**

Some previously documented industry arguments against extensions are:

- Limit all building services contracts to a 3-year term, with no extension provisions, and require multiple quotes from a triennial, open competitive market tender.
- All existing contracts to be retendered on the open competitive market over a 5-year transition period. The review timing is to be decided by the owners.

The UOAQ has always sought reform of management rights in Queensland and has been calling for major reform to Queensland's management rights (**MR**) regime for decades. The UOAQ has actively campaigned against ability of developers to sell long-term 25- & 10-year contracts, AND we have opposed premature extensions, or 'top-ups', of these contracts. Victoria, for example, has 3-year contracts and competitive price review. Queensland owners do not.

This current legislated regime is designed to favour the financial interests of developers and management rights holders. The effort to keep that favoured situation, does significantly contribute to the deterioration of relationships between owners and their major service providers, including caretakers and letting agents for the scheme.

More recent industry arguments against long term contracts and extensions

The UOAQ is no longer alone.
Recently, a fellow stakeholder joined the UOAQ's leading voice for reform. The body corporate managers' representative group, Strata Community Australia's Queensland (**SCA (Qld)**), added their support by recognising that the current regime of management rights is not working.
After many years of uncertainty, we are delighted to see their active effort advocating for the same substantial reform to long-term contracts.

With SCA (Qld) calling for reform, they validate the position of the UOAQ that:
"…shortening the total permissible term for management rights contracts is the most crucial area for any reform."

The UOAQ recognises the value caretakers contribute and the service they can provide to owners and believe that their adaptation to the UOAQ and SCA (Qld) stance is part of the solution. Accordingly, the UOAQ is calling for discussion, cooperation, and a joint stakeholder effort to bring the reform to life that is beneficial to all participants of Queensland's body corporate industry.

CONCLUSION
While we too value our caretakers, extending a contract from 7 years to run to 12 years to run is not good commercial practice for us. This is a business decision not an emotional one based on personal feelings. Our negotiating position strengthens as the remaining contract term reduces year-by-year; and extending the contract end-date only weakens that position.

I will be voting "NO" in order to maintain our negotiating position on this valuable asset.

Andy Doves
10 June 2023