



**quay**

property management ltd

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# MINUTES

## ANNUAL GENERAL MEETING

### ATRIUM BODY CORPORATE S90396

HELD 30 AUGUST 2013 AT MOUNT OCEAN SPORTS CLUB, MOUNT MAUNGANUI

- CHAIR** David Shea, Quay Property Management – Body Corporate Administrator
- PRESENT** Lynda Firth, Ian Le Page, Elizabeth Le Page, Bob Lancaster, Mike Boyes, David Barnes, Aileen Barnes, Dave Ramage, Bernice Ramage, Gerald Clements, Janet Clements, Michelle Buchanan, Gerry Hodgson, Ray Anderson, William Robinson, Bevan Higgins, Judy Higgins, Steven Todd, Cherie May, Andre Terpstra, Louise Terpstra and David Shea (Body Corporate Administrator).
- APOLOGIES** Elizabeth Thynne, Stephen Tappin, Beverly Tappin, Graeme Reardon, Margaret Reardon, Mike Clinch, David Higson, Paul Higson, Graham Lincoln, Solita Lincoln, Murray Williams, Joanne Williams, Bruce Davis, Anne Davis, Wayne Buchanan, Gail Weston, Gordon Finlay, Sue Dillon, Bruce Ferguson, Rosemary Ferguson, Cheryl Williamson, Terry Wood, Dirkje de Vries-Wood, John Blakesborough and Bryan Norton.
- PROXIES** Graeme Reardon to the Chairman, Graham & Solita Lincoln to the Chairman, Bryan Norton to David Minifie
- POSTAL** Elizabeth Thynne, Stephen & Beverly Tappin, Mike Clinch, David & Paul Higson, Bruce & Anne Davis, Wayne Buchanan, Gail Weston, Sue Dillon, Bruce & Rosemary Ferguson, Terry Wood & Dirkje de Vries-Wood

**The following matters and motions will be considered:**

1. **Chairperson for the Meeting**

The Committee Chairperson is overseas as at the date for this meeting, and the Committee suggest that the Administrator chair the meeting.

*Proposed resolution*

*That it is confirmed that the chairperson for the meeting shall be David Shea (Quay Property Management Ltd – Body Corporate Administrator)*

*Ordinary resolution*

**PASSED**

2. **Apologies and Proxies**

*Proposed resolution*

*That the apologies, proxies and postal votes received be recorded and accepted.*

*Ordinary resolution*

**PASSED**

Ray Anderson wanted to disclose to the meeting that he had deliberately withheld his Body Corporate levies due to the on-going dispute with the Body Corporate, and accordingly would not be able to vote at this meeting. After discussion, the meeting agreed that Mr Anderson should have some speaking rights, as he would need to put his view to the meeting.

3. **Approval of Minutes**

Minutes of the previous Annual General Meeting had been distributed to all owners after the meeting.

*Proposed resolution*

*That the minutes of the General Meeting held 14<sup>th</sup> September 2012 be accepted as a true and correct record of the meeting.*

*Ordinary resolution*

**PASSED (1 against)**

4. **Matters arising from the minutes**

William Robinson wanted to note that he did attend last year's meeting however had not been recorded on the list of owners present.

There was a query regarding the Body Corporate Committee having Office Bearers Insurance cover. It was confirmed that this is in place.

Gerry Hodgson wanted it noted that in Item 9, sentence in 4<sup>th</sup> paragraph should read: "there was a query from Gerry Hodgson on the lift costs - this will result in a significant cost increase in the annual levy, in my case about a \$1000.00. Suggest lift costs come from maintenance fund".

5. **Delegations**

Under Section 108 of the Act the Body Corporate may, by special resolution, delegate any of its powers and duties to the committee apart from its powers and duties in respect of delegation, reassessing ownership and utility interests, enforcing compliance with the operational rules and applying insurance moneys towards the reinstatement of the development. The Body Corporate may also delegate the chairperson's powers and duties to the committee.

Proposed resolution

*That the powers and duties of the Body Corporate that may be delegated are delegated to the Committee.*

*Special resolution*

**PASSED**

Proposed resolution

*That the powers and duties of the chairperson are delegated to the Committee.*

*Special resolution*

**PASSED**

6. **Nominations and Elections**

The Body Corporate is required to nominate and elect a Chairperson. The following nominations had been put forward:

- Graeme Reardon (Unit 201)

Proposed resolution

*That Graeme Reardon of Unit 201 is elected Chairperson for the Body Corporate until the end of the next annual general meeting.*

*Ordinary resolution*

**PASSED**

The Body Corporate had called for nominations for Committee members. The following owners had been nominated and have accepted the nomination.

- Graeme Reardon Unit 201
- Ian Le Page Unit 102
- Bob Lancaster Unit 111
- William Robinson Unit 309
- Andre Terpstra Unit 404
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It was suggested by Ray Anderson that the Committee members should automatically resign after a term as required under the Body Corporate rules. It was confirmed that there is no such requirement under the new Act, and under the old Act this requirement was over ridden if Committee members were re nominated successively and the Annual General Meeting agreed to this.

Proposed resolution

*That the owners listed above and nominated at this meeting are confirmed as the Committee for the Body Corporate until the next annual general meeting:*

*Ordinary resolution*

**PASSED**

The Committee members were asked to introduce themselves to the meeting and did so.

7. **Accounts/Audit**

There was discussion of the Body Corporate financial accounts and the Unit Titles Act 2010 requirement of verification or review. A copy of the financial accounts for Year End 31<sup>st</sup> March 2013 had been attached to the agenda and distributed to all owners prior to the meeting. While most costs had been reasonably contained, legal/consultancy costs had been significant (in the amount of \$24,541.00) A robust figure provided for under 'contingency' in the last budget anticipated that this may end up being the case however.

It should be noted that there was a net surplus of \$12,988.00 for the Year End 31<sup>st</sup> March 2013, of which \$10,321.00 was interest received.

Gerry Hodgson queried the interim levy amount, and also that it appeared to have gone down rather than increased. It was pointed out however that financial accounts are always prepared on a GST exclusive basis. Levies collected are inclusive of GST.

Gerry also wanted to know why the resolution passing the budget was in a different amount to the figure in the budget. It was confirmed that the total at the bottom of the budget column, on the page he was referring to, does not include the deferred maintenance figure of \$30,000.00 which appears on the next page.

Proposed resolution

*That the Body Corporate has submitted its Financial accounts for Year End 31<sup>st</sup> March 2013 to RHB Chartered Accountants Ltd without the requirement of verification or review pursuant to section 132 (2) of the Act, and the Body Corporate hereby approves the Financial accounts on this basis.*

*Special resolution*

**PASSED**

The Body Corporate must also have its Financial Accounts for Year End 31<sup>st</sup> March 2013 to be audited pursuant to section 132 (2) of the Act, unless it decides by special resolution not to.

Proposed resolution

*That the Body Corporate does not submit its accounts for Year End 31<sup>st</sup> March 2013 for audit.*

*Special resolution*

**PASSED**

8. **Budget for Year End 31<sup>st</sup> March 2014**

There was discussion on the proposed budget for Year End 31<sup>st</sup> March 2014 that had been attached to the agenda and distributed to all owners prior to the meeting.

Given the on-going dispute with the Managers, a further provision had been allowed (\$15,000.00) under legal/consulting in the budget. The Committee has agreed to carry out repairs and upgrading of the lift, with such cost to be paid from the Long Term Maintenance Fund, so this cost is not included in the budget.

There was further discussion on the budget and how it is set. It was explained that Quay Property Management drafts a budget based on previous years figures. This is then tabled at a Committee meeting for the Committee to amend as necessary and recommend that it be put forward to the Annual General Meeting. As always, the budget is only a best guess figure for the year.

There was a query re the surplus and how is this dealt with. It was explained that any surplus sits in the reserve fund. This may be discussed at each Annual General Meeting, and suggestions put forward as to any alternative.

There was a query re the significant SKY TV cost? Is this optional and can owners opt out? It was explained that SKY offer a reduced cost if all units in the building are connected. It was suggested that the cost for only a few channels is quite expensive. After discussion however and considering the monthly per unit cost is only \$34.00, it was agreed this is reasonable. There are a number of other options that SKY have available at a higher cost that may be considered at any time.

Ray Anderson felt that inclusion of \$15,000.00 for legal fees in the budget is not realistic. It was explained that this is a figure for mediation only. Ray wanted to note that the Committee is being devious allowing this amount. It was noted however, there can be no provision made in the budget for any perceived settlement amount assessed by the Manager.

Proposed resolution

*That the budget for the twelve month period to 31<sup>st</sup> March 2014 be approved in the amount of \$310,300.00 plus GST.*

*Ordinary Resolution*

**PASSED (1 against)**

9. **Insurance / Valuation**

The Body Corporate must confirm insurance cover for the current year. Full replacement insurance is in place including natural disaster as per the renewal certificate that was distributed to all owners prior to the meeting.

*Proposed resolution*

*That it is confirmed that insurance be renewed with Vero*

*Ordinary Resolution*

**PASSED**

10. **General Business**

- a) *Committee/Administrator Note: The Administrator had contacted the owner of PU 306 to advise that the budget for the last financial year did not allow \$60,000.00 to repair major defects to the lift as set out below. There can be no way to interpret the budget to include such allowance. The budget had increased by \$34,675.00, and this increase was due to general across the board higher costs (including insurance increase of \$9,305.00). Accordingly, the owner was invited to withdraw the resolution, however declined to do so. Accordingly, the Committee is of the view that this resolution is unable to be voted on.*

**Lift Expenditure – Background:** The levy was increased last AGM by about \$1,000.00 per unit in order to fix major defects in the lift. This amounts to more than \$60,000.00. Very little has been spent on the lift this year.

An Engineers report now indicates that there are no major problems with the lift. Maintenance required on the lift is relatively minor and will cost much less than the extra levy imposed.

When a major refit is required it should occur at the mid-life of the lift, say after 20 years of life. Maintenance now needs only modification to the sheave supports, a new lift controller and new call buttons and displays.

The extra amount levied should be returned to owners and the minor maintenance expenditure above should be drawn from the substantial long term maintenance fund already in hand – PU 306

Gerry wanted it noted that he is generally unhappy about the high levies set for the Atrium Body Corporate. He is aware of other adjacent Body Corporates that are cheaper. It is however up to each Annual General Meeting to approve the budget.

It is Gerry's view that the "Committee/Administrator note" set out prior to the resolution is prejudice to his resolution, and he finds this offensive. It is however important to note that the agenda should provide a balanced background to any proposed resolution.

There was general discussion on the amount levied, and it was suggested that any committee should contain costs as much as possible.

**Moved:** That the new Committee aggressively investigates any possible reduction in the levies.

*William Robinson/Gerry Hodgson  
Carried*

Ray Anderson queried the cost of the report on the lift at \$10,000.00. Ian Le Page confirmed that this is not the case. The cost was in fact a little over \$3,000.00.

Ian Le Page summarised the reason for the lift report. The Manager had been unwilling to undertake any investigation, so the Committee had to progress this. It was noted that items are still being stored in the lift room, which on all compliance levels is not acceptable. The Manager had been instructed to remove these. The status of the lift has been summarised in recent Committee minutes.

Ray disagreed with Ian's summary and gave his view of the lift close down which was in stark contrast to Ian's.

Given the incorrect interpretation of the lift funding budget figure, it was the meetings view that the resolution set out below is unable to be voted on.

Proposed Resolution

*That the next annual levy should be set at a reduced figure.*

Ordinary Resolution

**NOT ABLE TO BE VOTED ON**

- b) **Background:** To form a sub-committee (three people) to work with the letting pool management to improve the relationship and understanding of both the apartment owners and the letting pool management.

The Committee would work to improve the present letting contract to clarify the rent payment formula and the costs charged.

The Management responsibilities and marketing techniques, and the owners responsibilities to have units kept at a defined level of decoration and functionality would be discussed.

I believe there is considerable room for a better relationship, and improved professionalism so that all parties can enjoy their experience of working as a team. – PU 309

Ian Le Page had some reservations about a defined level of decoration. This is up to individual owners.

William Robinson agreed that this can't be controlled by the Body Corporate and that it is up to individual owners. However, the Committee could perhaps assist by developing guidelines.

It was suggested that in the past, the Managers had offered options to upgrade, and advised this to letting pool owners.

William suggested that maybe a Committee member could co-ordinate a group of letting pool owners with a view to progress this.

Ray thought this would not work in terms of upgrading - this is up to individuals.

Bob Lancaster queried the need for the Committee to be involved at all?

Bill suggested that he could act as spokesperson for letting pool owners and asked Ray to assist in terms of providing a list of letting pool owners.

Proposed Resolution

To form a sub-committee of three apartment owners to work with the letting pool management to:

1. Develop an acceptable letting pool contract, defining the rent payment formula and costs charged by the management.
2. Reach agreement on management and marketing responsibilities.
3. Reach agreement on standards of decoration and apartment layout.
4. To report to the Atrium Body Corporate to provide assurance the letting pool contract is being operated in such a way as to not disadvantage other non-rental pool owners.

Ordinary Resolution

**PASSED**

- c) Committee/Administrator Note: With regard to the following proposed resolution, Kate Barry-Piceno is unable to act as mediator as she has already previously been engaged by the Body Corporate, and has been engaged currently to deal with this matter. Mr Anderson has previously been advised of this. Accordingly, the following resolution is unable to be voted on.

**Dispute Mediation - Background:** In our opinion, Kate Barry-Piceno is the best qualified person for the position of Mediator, and we are sure this will meet with the approval of the majority of members of the Body Corporate – Atrium Management PU 200 (see attached letter from Atrium Management)

Proposed Resolution

That Kate Barry-Piceno be engaged by both parties to act as mediator.

Ordinary Resolution

**UNABLE TO BE VOTED ON**

- d) **Committee Background:** As per the above proposed resolution and further to Committee meeting minutes, you will be aware of the dispute between the Managers and the Body Corporate (the dispute).

The Committee has obtained an opinion from Kate Barry-Piceno (barrister). Kate has acted previously for the Body Corporate at the time of the Council issued Notice of Contravention back in 2005. This related to the use of the building.

Given the dispute relates partly to such use, the Committee thought it prudent to engage Kate to act for the Body Corporate. A copy of her opinion to the Body Corporate dated 8 August is attached for your information.

You will note that on pages 8 and 9 under "Mediation Option", the clear legal advice is that the matter be dealt with by way of mediation. Item 45 of page 9 summarises the topics to be included on the agenda. If agreed, the finding of the mediation will clarify both parties obligations under the management agreement.



If you read the opinion in full, you will understand the basis of the dispute, and the reasons for the proposed preferred option to mediate.

The Committee supports the proposal to mediate, however is of the view that this matter should be discussed and resolved at a General Meeting of the Body Corporate.

There was discussion on the proposal to mediate the dispute as per the resolution below.

At numerous times during the meeting, Ray had accused the Committee and the Administrator of various defects in the way the Body Corporate operated and this caused quite acrimonious discussion. A number of owners attending the meeting voiced their concern with the Managers behaviour. The Chairman warned Ray that he would be asked to leave the meeting if he continued to behave in such a manner.

It is the Managers position that he wants the Body Corporate Lawyer, Kate Barry-Piceno to set out a settlement offer for his consideration instead of going to mediation. It is the Body Corporates view however that this is unworkable, and that any settlement needs to be properly determined. No settlement can be agreed in any case without the matter being decided by owners at a general meeting of the Body Corporate.

Gerry Hodgson supported Terry Wynyard as the proposed mediator and urged Ray Anderson to accept that he should agree to this proposal.

Ray was asked to clearly agree that Terry Wynyard would be acceptable as a mediator in the event that mediation is required. After some discussion, Ray confirmed, that he would agree "if it is necessary to go to mediation".

Bill asked if Ray could summarise his grievances. His response was that this had already been recorded in various communications.

The Committee will now instruct the Body Corporate lawyer to progress this matter.

#### Proposed Resolution

*The Body Corporate agree that (two/three) Committee members are delegated powers to attend and mediate with Mr Anderson at a mediation to resolve (the above listed) agenda items. The Committee will determine which of the Committee members will attend.*

*The Body Corporate agrees to instruct the appointment of Mr Wynyard, or a suitable alternative should he not be available, as the role of mediator. The Body Corporate agrees to pay the costs of mediation, and the costs of a legal representative to attend on behalf of the Body Corporate.*

#### *Ordinary Resolution*

**PASSED**

### **OTHER GENERAL BUSINESS:**

There was a query regarding analogue/digital TV reception? It was confirmed that there should be no change required to the existing system.

There was a query re the quality of the gymnasium items, and the general appearance. It was agreed that the gym equipment could do with an upgrade, and that the Committee will look into this and advise owners.

John Blakeborough wanted to raise the following issues:

- There is a leak over his carpark. The Manager to investigate and advise on how to resolve.
- There is some rotten wood in the sauna. The Manager to investigate and advise on how to resolve.
- Heating of pool. There was some discussion on this, and it was agreed the Committee should look in to heating options and report back to owners.

**MEETING CLOSURE:** The meeting closed at approximately 5.05pm