
**IN THE MATTER of the Body Corporate and
Community Management Act 1997**

and

IN THE MATTER of a Specialist Adjudication

BETWEEN:

Ms Deborah Jones and Others

First to Seventh Applicants

and

The Body Corporate for Botanical Park

First Respondent

and

Mr Peter and Mrs Linda Bates and Others

Second to Twenty Third Respondents

ADJUDICATORS ORDER

Pursuant to appointment by the Commissioner for
Body Corporate and Community Management
dated 5 February 2004.

DELIVERED BY:

WARREN D FISCHER

Civil Engineer, Graded Arbitrator and Mediator
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SPRING HILL, QLD, 4000

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IN THE MATTER of a Specialist Adjudication

MS DEBORAH JONES & OTHERS v
BODY CORPORATE FOR BOTANICAL PARK AND
MR PETER & MRS LINDA BATES & OTHERS

ORDER OF WARREN FISCHER
Specialist Adjudicator

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Adjudication regarding:

Adjustment of Contribution Lot Entitlement Schedule

Preliminary Conference Date:

27 February 2004

Place of Preliminary Conference:

Botanical Park Games Room – Currumbin – Queensland

Submission Date:

4 March 2004

View and Hearing Date:

8 April 2004

Place of Hearing:

Botanical Park Games Room – Currumbin – Queensland

Delivered as an adjudicators order:

To the Commissioner for Body Corporate and Community Management on the
Twenty Seventh day of April 2004.

A PARTIES, REPRESENTATIVES AND PROCEDURAL STEPS**A1 Parties and representatives:**

Parties	Representatives
Ms Deborah Jones Registered Owner of Lot 37 ("Jones") First Applicant	Self-represented and assisted by Ms Kaylene Arkcoll BSc QS AAIQS AIMM MAppLaw of Leary & Partners Pty Ltd ("Arkkoll") Expert
Ms Sue Lizacic Registered Co-owner of Lot 33 Second Applicant	Represented by Ms Deborah Jones
Ms Pat Gallagher Registered Owner of Lot 40 Third Applicant	Represented by Ms Deborah Jones
Ms Alice Rozema Registered Co-wner of Lot 41 Fourth Applicant	Represented by Ms Deborah Jones
Ms Kirsten Luker Registered Owner of Lot 44 Fifth Applicant	Represented by Ms Deborah Jones
Ms Julie Sanguitte Registered Owner of Lot 45 Sixth Applicant	Represented by Ms Deborah Jones
Mr John Tyzack Registered Owner of Lot 48 Seventh Applicant	Represented by Ms Deborah Jones
The Body Corporate for Botanical Park Community Titles Scheme 5396 First Respondent	Un-represented

Mr Peter and Mrs Linda Bates ("Bates") Registered Owner of Lot 12 Second Respondent	Self-represented
Ms J M Stapleton Registered Owner of Lot 2 Third Respondent	Represented by Mr Peter Bates
Mr R S & Mrs C T Stagg Registered Owner of Lot 3 Fourth Respondent	Represented by Mr Peter Bates
Mr Henry & Mrs Patricia Houldsworth Registered Owner of Lot 4 Fifth Respondent	Represented by Mr Peter Bates
Mr Greg Ware Registered Owner of Lot 10 Sixth Respondent	Represented by Mr Peter Bates
Mrs J C McCoy Registered Owner of Lot 13 Seventh Respondent	Represented by Mr Peter Bates
T J Kingma Registered Owner of Lot 21 Eighth Respondent	Represented by Mr Peter Bates
Ms H Imrie Registered Owner of Lot 23 Ninth Respondent	Represented by Mr Peter Bates
Mr L & Mrs R Lovell Registered Owner of Lot 24 Tenth Respondent	Represented by Mr Peter Bates
Mr F R & Mrs B J Grigg Registered Owner of Lot 27 Eleventh Respondent	Represented by Mr Peter Bates
Ms L K Morgan Registered Owner of Lot 28 Twelfth Respondent	Represented by Mr Peter Bates
Ms E G Williams Registered Owner of Lot 29 Thirteenth Respondent	Represented by Mr Peter Bates

**Mr B & Mrs C Haslett
Registered Owner of Lot 30
Fourteenth Respondent**

Represented by Mr Peter Bates

**N R Kendal
Registered Owner of Lot 31
Fifteenth Respondent**

Represented by Mr Peter Bates

**Mrs G Foster
Registered Owner of Lot 49
Sixteenth Respondent**

Represented by Mr Peter Bates

**Mr J R Potter & Ms M A Ross
Registered Owner of Lot 53
Seventeenth Respondent**

Represented by Mr Peter Bates

**Mr C J Partridge
Registered Owner of Lot 56
Eighteenth Respondent**

Represented by Mr Peter Bates

**Mr P C & Mrs Phyllis Thomas
Registered Owner of Lot 57
Nineteenth Respondent**

Represented by Mr Peter Bates

**Mrs R L Richards
Registered Owner of Lot 62
Twentieth Respondent**

Represented by Mr Peter Bates

**Ms Mary Harris
Registered Owner of Lot 64
Twenty First Respondent**

Represented by Mr Peter Bates

**Ms Joan Donovan
Registered Owner of Lot 67
Twenty Second Respondent**

Represented by Mr Peter Bates

**D J O'Connell
Registered Co-owner of Lot 68
Twenty Third Respondent**

Represented by Mr Peter Bates

A2 Procedural Steps:

- a. On 22 October 2003, Jones lodged a Dispute Resolution Application with the Commissioner for Body Corporate and Community Management ("The Commissioner").
- b. On 26 November 2003, the Commissioner invited all lot owners in the Botanical Park Community Titles Scheme 5396 ("the Scheme") to make submissions on the Dispute Resolution Application by 17 December 2003.
- c. Eleven (11) submissions were provided to the Commissioner on behalf of thirty three (33) lots in the scheme.
- d. On 5 February 2004, my nomination as specialist adjudicator to resolve the dispute was made by the Commissioner.
- e. On 27 February 2004, a preliminary conference took place at which due inquiry was made and directions given for further submissions.
- f. Instead of formal pleadings, written submissions (attaching copies of documents) were prepared and delivered.
- g. On 4 March 2004, a written submission was made by Jones.
- h. On 9 March 2004, a meeting of the Body Corporate Committee was held (those members present consisting of one passive party, one applicant and four respondents). The Committee unanimously resolved not to take an active role in the application and further that they had no objections to the lot entitlement allocation as prepared by Leary & Partners (the Applicant's expert).
- i. No written submission in reply was made by Respondents, represented by Bates.
- j. In correspondence dated 30 March 2004, Bates agreed to the conduct of an informal hearing in conjunction with the view set down for 8 April 2004.
- k. In correspondence dated 5 April 2004, Jones agreed to the conduct of an informal hearing in conjunction with the view set down for 8 April 2004.
- l. On 8 April 2004, an informal hearing was held at the Scheme which was attended by First, Third, Fourth and Fifth Applicants, the Applicant's expert and the Second, Fifth, Seventh, Twenty First and Twenty Second Respondents. During the course of the hearing a view was made of the Scheme in the presence of the parties and their assistants. During the view frequent discussion took place in the presence of all parties about the various features of the different lots all of which was recorded.

B ORDER

I, Warren Fischer, appointed specialist adjudicator, order as follows:

That the contribution lot entitlement schedule be adjusted to be equal to the extent that is just and equitable in the circumstances, such that the contribution lot entitlement schedule is as follows:

Lot No.	Contribution Lot Entitlement	Lot No.	Contribution Lot Entitlement	Lot No.	Contribution Lot Entitlement	Lot No.	Contribution Lot Entitlement
1	158	18	147	35	147	52	146
2	146	19	147	36	149	53	146
3	146	20	148	37	149	54	146
4	146	21	146	38	147	55	147
5	146	22	146	39	147	56	146
6	146	23	146	40	149	57	146
7	147	24	146	41	149	58	146
8	146	25	146	42	147	59	146
9	146	26	146	43	147	60	147
10	146	27	147	44	150	61	147
11	146	28	146	45	149	62	147
12	147	29	146	46	147	63	147
13	147	30	146	47	147	64	147
14	147	31	146	48	149	65	148
15	147	32	147	49	146	66	147
16	147	33	150	50	146	67	147
17	148	34	147	51	146	68	148
AGGREGATE				10,000			

That in accordance with the provisions of Section 48(9) of the Act the body corporate as quickly as practicable lodge a request to record a new community management statement reflecting the adjustment ordered.

For the avoidance of doubt, pursuant to the provisions of Section 284 of the Act, this Order is to have the effect as a resolution without dissent and this Order must be complied with within twenty-one (21) days from the date of publication of this Order.

That the applicant is responsible for the cost of the adjudication.

Signed

Warren Fischer
Specialist Adjudicator
27 April 2004

Witnessed

ECE Pratt QC

C REFERENCE TO SPECIALIST ADJUDICATION

- C1. Section 48(1)(b) of the Act provides that the owner of a lot in a community titles scheme may apply, under Chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule.
- C2. A Dispute Resolution Application was lodged by Jones with the Commissioner under the provisions of Chapter 6 of the Body Corporate and Community Management Act 1997 ("the Act") on 22 October 2003.
- C3. Section 265(1)(c) of the Act provides that the adjudication of a dispute must be a specialist adjudication if another provision of the Act requires the adjudication to be specialist adjudication.
- C4. Section 239 of the Act provides, inter alia, that for an order about a dispute mentioned in Section 265 the applicant must provide the name and address of one or more persons considered by the applicant as having the appropriate qualifications, experience or standing for acting as a specialist adjudicator for the application.
- C5. My name and address was provided to act as specialist adjudicator by Jones in the Dispute Resolution Application lodged on 22 October 2003.
- C6. Section 265(2) further provides that the specialist adjudicator must be the person chosen by the Commissioner and need not be a person nominated by a party to the application.
- C7. I was nominated as specialist adjudicator by the Commissioner in a letter, copied to the parties, dated 5 February 2004.

D RECITAL OF RELEVANT EVENTS LEADING TO THE DISPUTE

- D1. The Botanical Park Building Units Plan No. 9942 was registered by the Registrar of Titles on 12 April 1990.
- D2. The Scheme is located at 56 Guineas Creek Road, Currumbin.
- D3. The Scheme has very extensive landscaped common areas and includes a pool, tennis court and games room. There are sixty eight (68) lots in the Scheme accommodated in seven (7) buildings; one (1) two bedroom managers lot with titled area of 169 sqm, fifty nine (59) two bedroom residential lots with titled area varying from 133 sqm to 150 sqm and eight (8) three bedroom residential lots with titled area varying from 160 sqm to 174 sqm. 34 lots have exclusive use rights over paved terrace areas abutting their lots.
- D4. The current Community Management Statement was executed on 9 June 1998.
- D5. The contribution and interest lot entitlement schedules contained in the current Community Management Statement are identical and provide variations in lot entitlements between 3 (2 bedroom lot) and 4 (3 bedroom lot) with an aggregate of 212. These entitlements are as set out in the original Building Units Plan registered in 1990. When the Building Units Plan was registered there was legislative provision only for a single lot entitlement schedule and no legislative requirement regarding the consideration to be given in determining that lot entitlement schedule.
- D6. When the Act commenced in 1997 it introduced two schedules, a contribution and an interest lot entitlement schedule. It also provided some guidance as to the consideration to be given in determining the lot entitlement schedules and introduced provisions for the adjustment of lot entitlement schedules by the District Court.
- D7. The Act was further amended on 4 March 2003, this further amendment included further guidance as to the matters to be considered in determining the lot entitlement schedules and also widened the jurisdiction for adjustment of lot entitlement schedules to include specialist adjudicators.
- D8. An extraordinary general meeting of the Body Corporate was held on 15 October 2003. At that meeting a motion for a resolution without dissent was considered to record a new Community Management Statement that altered the contribution lot entitlement schedule. That motion failed.

- D9. Section 48(1)(b) of the Act provides that the owner of a lot in a community titles scheme may apply, under Chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule.
- D10. Jones is the registered owner of lot 37 and lodged a dispute resolution application for adjustment of the contribution lot entitlement schedule with the Commissioner on 22 October 2003.
- D11. Section 48(2)(a) of the Act provides that the respondent for such an application is the body corporate.
- D12. At a meeting of the Body Corporate Committee held on 9 March 2004 (those committee members present consisting of one passive party, one applicant and four respondents), the committee unanimously resolved not to take an active role in the application and further that they had no objections to the lot entitlement allocation as prepared by Leary & Partners (the Applicant's expert).
- D13. Section 48(2)(b) of the Act provides that at the election of another owner in the scheme, the other owner may be joined as a respondent for the application.
- D14. The Second to Twenty Third Respondents are registered owners of lots within the scheme and gave written notice of their election to be joined as respondents to the body corporate on 24 February 2004 in accordance with the provisions of Section 48(3) of the Act.
- D15. This gave rise to the issues which I was required to consider, namely, "to alter the lot entitlements to comply with the attached report from Leary & Partners so that all owners more equally share in the costs of our complex" and "the costs of this arbitration be borne by the Body Corporate (or those owners who oppose the legislation)".

E FINDINGS AND REASONS

In addition to the documents submitted prior to my appointment as specialist adjudicator, the parties also tendered further submissions and copies of documents relied upon by them bearing on the issues. All parties were given an opportunity to provide submissions and submissions in reply. The represented parties attended a hearing to present their submissions and to test the submissions of the other parties. The matter was determined on the hearing, the party's written submissions and documents and a view of the community titles scheme.

To alter the lot entitlements to comply with the attached report from Leary & Partners so that all owners more equally share in the costs of our complex.

Findings:

- i. The existing contribution lot entitlement schedule is not equal.
- ii. The existing contribution lot entitlement schedule is not just and equitable in the circumstances.
- iii. An equal contribution lot entitlement schedule would not be just and equitable in the circumstances.
- iv. The paving of exclusive use areas does not impact on the body corporate expenditure.
- v. The painting of the 'end walls' of each building provides a benefit to all lots within each building and the cost burden thereof on the body corporate should therefore be attributed across all those lots on a building by building basis.
- vi. Some of the window hardware, external facade painting, balustrade, and roof materials for the buildings can be identified as beneficial to specific lots in the Scheme and those lots should therefore bear the cost burden of those elements on the body corporate in such a manner as may be measured and accurately determined.
- vii. Otherwise then in v and vi above all other body corporate expenditure should be allocated equally to each lot.

- viii. That contribution schedule lot entitlements that are equal, except to the extent that it is just and equitable in the circumstances, are as follows:

Lot No.	Contribution Lot Entitlement	Lot No.	Contribution Lot Entitlement	Lot No.	Contribution Lot Entitlement	Lot No.	Contribution Lot Entitlement
1	158	18	147	35	147	52	146
2	146	19	147	36	149	53	146
3	146	20	148	37	149	54	146
4	146	21	146	38	147	55	147
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8	146	25	146	42	147	59	146
9	146	26	146	43	147	60	147
10	146	27	147	44	150	61	147
11	146	28	146	45	149	62	147
12	147	29	146	46	147	63	147
13	147	30	146	47	147	64	147
14	147	31	146	48	149	65	148
15	147	32	147	49	146	66	147
16	147	33	150	50	146	67	147
17	148	34	147	51	146	68	148
AGGREGATE				10,000			

Reasons:

- E1. Section 48 of the Act provides that, for the contribution schedule, the order of a specialist adjudicator must be consistent with the principle that the respective lot entitlements should be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.
- E2. Section 49 of the Act provides criteria for deciding just and equitable circumstances. It provides that a specialist adjudicator may have regard to how the community titles scheme is structured, the nature features and characteristics of the lots included in the scheme and the purposes for which the lots are used. It provides that matters a specialist adjudicator may have regard to are not limited to those matters, however, it also provides that a specialist adjudicator may not have regard to any knowledge or understanding the applicant had when they bought their lot about the lot entitlement schedules or their application.
- E3. The Community Management Statement for the Scheme confirms that the Regulation Module applying to the Scheme is the Body Corporate and Community Management (Standard Module) Regulation 1997.

- E4. The Scheme is a basic scheme, not part of a layered arrangement.
- E5. The Community Management Statement for the Scheme confirms in Schedule C by-law 18 that, with the exception of lot 1, a lot can be used for residential purposes only.
- E6. Section 14B of the *Acts Interpretation Act 1954* provides, inter alia, that in the interpretation of a provision of an Act, consideration may be given to extrinsic material capable of assisting in the interpretation and that such extrinsic material may include an explanatory note or memorandum relating to the Bill that contained the provision, the speech made to the Legislative Assembly by the member in moving a motion that the Bill be read a second time and material in any official record of debates in the Legislative Assembly.
- E7. The explanatory notes for the *Body Corporate and Community Management and other Legislation Amendment Bill 2002* provide at page 4 that “The contribution schedule is used to determine contributions for those matters that relate to the day-to-day operation of the scheme and generally should be shared equally amongst all lots.” And in respect to the amendments to Clause 44 “usually all lot owners are equally responsible for the cost of upkeep of common property and for the running costs of the community titles scheme. However, it is recognised that there are many valid instances where the contribution schedules do not have to be equal. The amendment provides that usually the numbers in this schedule are equal, unless it can be demonstrated that it is just and equitable for there to be inequality.”
- E8. The second reading speech for the introduction of the *Body Corporate and Community Management and other Legislation Amendment Bill 2002* provides “The contribution scheme determines the contributions to the cost related to the day-to-day operation of the scheme that should be shared equally amongst all the lots. For example, a person who owns a penthouse in a high rise would contribute more than their neighbours through the interest schedule to cover things like rates and insurance, factors that are linked to the value of their own property. Those same people might pay the same as their downstairs neighbours under the contribution scheme, which would go towards things like pool maintenance, cleaning the common property or gardening costs - that is to say, matters that all residents share equally. There is a reason that we use this schedule; it is fairer. It means that, if someone owns a unit that is worth twice as much as somebody else's unit, they are not contributing twice as much for the cost of the gardening but they are still paying a fair share for their rates.”

- E9. Jones provided the expert report of Arkcoll in support of her application for adjustment of the contribution lot entitlement schedule. Arkcoll has tertiary qualifications in quantity surveying and law along with significant experience with numerous aspects of Body Corporate planning and expenditure and I accept her report as that of an expert within her area of expertise for this application and therefore admissible. Bates was provided opportunity to make a submission as to why Arkcoll's report should not be accepted as expert evidence however no submission was made by Bates. The Arkcoll report considers the cost burden of the lots within the scheme on the body corporate expenditure and concludes with a recommended contribution lot entitlement schedule which varies from the existing contribution lot entitlement schedule.
- E10. Directions were given during the preliminary conference for the conduct of the matter. The Respondents, represented by Bates, did not provide any submission in accordance with those interlocutory orders and at the hearing Bates stated that the Respondent's wished to rely upon the "explanatory note" that they had provided with their election to be joined.
- E11. During the preliminary conference, and in the minutes of that conference which were distributed to all lot owners, it was highlighted that the Respondent's "explanatory note" appeared to simply contain broad statements with little or no evidence and such statements could only be given the weight accorded by supporting evidence and further that the majority of the points raised in the Respondent's "explanatory note" appeared to have been considered in the compilation of the expert report of Arkcoll.
- E12. At the hearing the Respondent's, represented by Bates, conceded that they accepted the findings in the expert report of Arkcoll.
- E13. I reviewed the following information regarding the scheme; the last three years accounts (years ended 30 April 2001, 30 April 2002 and 30 April 2003) and the current budgets for both, the sinking and administration funds, the sinking fund forecast calculated 12 May 2003, the community management statement including the by-laws, the building units plan and the management deed for the scheme.
- E14. The Respondents, represented by Bates, made no objection to the cost estimates in the administration or sinking funds or the life expectancies and physical measurements for the sinking fund elements as utilised by Arkcoll in the compilation of her report. I accept Arkcoll's assessment of the administration and sinking fund costs and the life expectancies and physical measurements for the various elements included in the sinking fund.

- E15. I agree with Arkcoll's apportionment of the administration fund costs on an equal basis between all lots. The Respondents, represented by Bates, did not raise objection to any of the costs apportionments made by Arkcoll. It is clear that these costs are equally beneficial to all of the lots within the scheme.
- E16. I agree with the equal apportionment of those sinking fund cost as recommended by Arkcoll. The Respondents, represented by Bates, did not raise objection to any of those costs apportionments made by Arkcoll. It is clear that those costs are all items of expenditure relating to common property elements which are equally beneficial to all of the lots within the scheme.
- E17. I did not agree with the apportionment of the paving costs as recommended by Arkcoll as that apportionment takes into account exclusive use areas which are not body corporate responsibility. A number of lot owners have also obtained body corporate consent to pave areas of common property, however in providing their consent the body corporate provided that the lot owner is responsible for "all costs for installation and maintenance", such provision being consistent with the Act. It is clear therefore that the only paving that is a Body Corporate responsibility is that paving in common areas, not subject to any restriction to access on any lot owner, and hence equally beneficial to all of the lots within the scheme. I therefore raised this issue at the hearing and suggested that the paving for which the body corporate was responsible provided equal benefit to all of the lots and that therefore the cost of the paving should be attributed equally to all lots. Neither the Applicants nor the Respondents, represented by Bates, raised any objection to the reapportionment of those costs as proposed.
- E18. I did not agree with the apportionment of the building end wall painting to only the end lots in each building as recommended by Arkcoll. I therefore raised this issue during the view with both parties and suggested that the end walls provided benefit to all of the lots within a building, as an end wall was always required irrespective of the number of lots, and that therefore the cost of the end wall painting should be attributed equally to all lots within a building. Neither the Applicants nor the Respondents, represented by Bates, raised any objection to the reapportionment of those costs as proposed.
- E19. I agree with the remaining apportionments of the sinking fund cost as recommended by Arkcoll. The Respondents, represented by Bates, did not raise objection to any of those costs apportionments made by Arkcoll. It is clear that those costs are all items of expenditure relating to common property elements which can be identified as beneficial to particular lots within the scheme in such a manner as may be measured and the cost burden on the body corporate by each lot accurately determined.

E20. Having given due consideration to the relevant matters pursuant to Section 49 of the Act, I consider that the adjusted contribution lot entitlement schedule provided in my findings above would reflect the fair and equitable contribution of each lot to the ongoing administration and maintenance of the scheme.

The costs of this arbitration be borne by the Body Corporate (or those owners who oppose the legislation)

Findings:

- i. No costs should be ordered against the Body Corporate.
- ii. No costs should be ordered against those owners that voted against the motion, to record a new Community Management Statement that altered the contribution lot entitlement schedule, at the extraordinary general meeting on 15 October 2003.
- iii. No costs should be ordered against the Second to Twenty Third Respondents.
- iv. That the Applicant is responsible for the cost of the adjudication.

Reasons:

- E21. The initial application lodged by the Applicants requested the above outcome, however, in making their submissions the Applicants failed to make any further submission on this point.
- E22. Section 280(2) of the Act provides that for specialist adjudications under Section 265 of the Act (which this is), unless the adjudicator otherwise orders, the applicant is responsible for the cost of the adjudication.
- E23. Such a provision suggests that, as the prima facie position is that the applicant is responsible for the cost of the adjudication, there must exist some reason for the adjudicator to exercise their discretion to otherwise order.
- E24. Section 48(2)(a) of the Act provides that the Body Corporate is the statutory respondent for such an application.

- E25. In this instance the Body Corporate Committee, at a meeting held on 9 March 2004, unanimously resolved not to take an active role in the application and further that they had no objections to the lot entitlement allocation as prepared by Leary & Partners. Therefore no costs should be ordered against the Body Corporate by virtue of that position.
- E26. With respect to those owners who voted against the motion, to record a new Community Management Statement that altered the contribution lot entitlement schedule, at the extraordinary general meeting on 15 October 2003. As the exercise of such a vote is within their discretion and as the vote was taken prior to the lodgement of the application, no costs should be ordered against those owners by virtue of those facts.
- E27. The second reading speech for the introduction of the *Body Corporate and Community Management and other Legislation Amendment Bill 2002* supports that conclusion when it provides, albeit in respect of party costs, “.... This directly avoids situations where an applicant might threaten to seek costs against anyone who might impose an application to adjust a lot entitlement.....”
- E28. Section (48)(2)(b) provides that at the election of an owner they may be joined as a respondent for the application.
- E29. In this matter twenty two further owners elected to be joined as Respondents. Those owners also advised that Bates would represent them all.
- E30. In the event the Respondents, as represented by Bates, did not enter any submission in reply to the Applicants application. Further at the hearing and during the view the Respondents, as represented by Bates, did not make any objection to either the Applicants application or the further issues that I raised and indeed ultimately conceded to them.
- E31. In considering the steps taken in the resolution of this matter there is nothing that the Respondents did that contributed to any material increase in cost in the resolution of the application over that cost that would have been incurred if they had failed to be joined in the matter. Therefore no costs should be ordered against them by virtue of those facts.
- E32. As the conduct of; the body corporate, the owners and the respondents has been such as to not give rise to any additional cost in the application, there exists no reason for the adjudicator to exercise the discretion to depart from the prima facie position that the Applicant be responsible for the cost of the adjudication.