
IN THE MATTER of the *Body Corporate and Community Management Act 1997* (“the Act”)

and

IN THE MATTER of a Specialist Adjudication

BETWEEN:

Mr David Lockhart and others

(“The Applicants”)

and

The Body Corporate for Newport on Main and others

(“The Respondents”)

ADJUDICATORS ORDER

Pursuant to appointment by the Commissioner for Body Corporate and Community Management, dated 2 June 2005.

DELIVERED BY:

WARREN D FISCHER

Civil Engineer, Graded Arbitrator, Registered Adjudicator and Accredited Mediator

30/69 Leichhardt Street,
SPRING HILL, QLD, 4000

Phone: (07) 3832 1701

Facsimile: (07) 3832 1471

Email: warren@adrs.com.au

Web: www.adrs.com.au

IN THE MATTER of a Specialist Adjudication

MR DAVID LOCKHART AND OTHERS v
THE BODY CORPORATE FOR NEWPORT ON MAIN AND OTHERS

ORDER OF WARREN FISCHER
Specialist Adjudicator

CONTENTS

Section	Page
Order	3
Parties and representatives	4
Recital of relevant events leading to the dispute	5
Reference to specialist adjudication	8
Procedural steps	9
Findings and reasons	11

Adjudication regarding:

Adjustment of Contribution Lot Entitlement Schedule

View and Hearing Date:

15 July 2005

Delivered as an adjudicators order:

To the Commissioner for Body Corporate and Community Management on the Third day of August 2005.

ORDER

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

That the contribution schedule lot entitlement for each lot in the Newport on Main Community Titles Scheme 32750 be adjusted to be equal except to the extent that is just and equitable in the circumstances, such that the contribution schedule of lot entitlements is as follows:

Lot No.	Contribution Schedule Lot Entitlement
1	36
2	37
3	37
4	37
5	37
6	37
7	37
8	37
9	37
10	41
12	41
14	41
16	41
18	41
20	41
22	41
24	41
26	41
27	41
28	41
29	41
30	41
31	41
32	41
33	41
AGGREGATE	988

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 Section 284 of the Act, this Order is to have effect as a resolution without dissent.

That the Applicant's are responsible for the cost of the adjudication.

Signed

Warren Fischer
Specialist Adjudicator
2 August 2005

Witnessed

ECE Pratt QC

PARTIES AND REPRESENTATIVES**Parties****Representatives**

Mr David Lockhart
Registered Owner of Lot 16
("Lockhart")
First Applicant

Represented by Mr John Helgeson
("Helgeson")
and assisted by Ms Kaylene Arkcoll
BSc QS AAIQS AIMM MAppLaw
of Leary & Partners Pty Ltd
("Arkkoll")
Expert

Mr Alastair and Mrs Carrie Haire
Registered Owner of Lot 18
("Haire")
Second Applicant

Self-Represented

Mrs Vickery Sutton
Registered Owner of Lot 20
Third Applicant

Represented by Mr Edward Sutton
("Sutton")

Mr Graham Tickle and Ms Susan Lambert
Registered Owner of Lot 22
Forth Applicant

Un-represented

The Body Corporate for
Newport on Main
Community Titles Scheme 32750
c/- Ernst Body Corporate Management P/L
Mr Carl Trotter
("Trotter")
First Respondent

Represented by
Mr David Wood
Body Corporate Chairman
("Wood")

Mr Lance Bunting and Ms Susan McAlpine
Registered Owner of Lots 8 & 30
("Bunting")
Second Respondent

Represented by Ms Joan Philip
("Philip")
and Mr Shane Grant
("Grant")

Mr David Upton
Registered Owner of Lot 7
("Upton")
Third Respondent

Un-represented

RECITAL OF RELEVANT EVENTS LEADING TO THE DISPUTE

1. The scheme land consists of the common property of Newport on Main Community Titles Scheme 32750 ("the Scheme") and lots 1 to 10, 12, 14, 16, 18, 20, 22, 24 and 26 to 33 on Survey Plan No. 146477. The Survey Plan was approved by the Gold Coast City Council in accordance with the *Integrated Planning Act 1997* on 22 June 2004.
2. The Scheme is located at 3653-3657 Main Beach Parade, Main Beach, Queensland.
3. The Scheme common property includes driveways, lawns, gardens, entrance and lift lobbies, plant rooms, emergency stairs, a viewing platform, swimming pool, gymnasium, etc. There are twenty five (25) lots in the Scheme, all residential, the lot titled areas vary from 112 sqm (lot 1) to 288 sqm (lot 22). Lots 1, 10, 12, 14, 16, 18, 20, 22, 24, 26, 27, 28, 29, 30, 31, 32 and 33 have some attaching exclusive use rights over common property. There are nine (9) two bedroom and sixteen (16) three bedroom units.
4. The contribution and interest lot entitlement schedules contained in the current Community Management Statement ("CMS") are not identical. The Interest Schedule provides variations in lot entitlements between 526 (lot 1) and 1650 (lots 31 and 33) with an aggregate of 27,256. The Contribution Schedule provides variations in lot entitlements between 939 (lot 1) and 1948 (lot 24) with an aggregate of 35,496.
5. Section 66(1)(d)(i) of the Act provides:

"66 Requirements for community management statement

(1) The community management statement for a community titles scheme, in addition to identifying the scheme land, must—

(d) for a scheme for which development approval is given after the commencement of this paragraph—

(i) if the contribution schedule lot entitlements for each lot included in the scheme are not equal—explain why they are not equal;"
6. The current CMS was executed on 23 June 2004. It includes, at 'Schedule A', reasons why the contribution schedule lot entitlements are not equal. Those reasons include the statement "*Consequently the CSLE for each Lot varies between a minimum of 947 and a maximum of 1450.*" The contribution schedule lot entitlements for each lot actually vary between 939 and 1948.
7. Section 46(7) of the Act provides:

"46 Lot entitlements

(7) For the contribution schedule for a scheme for which development approval is given after the commencement of this subsection, the respective lot entitlements must be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal."
8. The Scheme Developer, Stencraft Pty Ltd, in a submission to the Commissioner for Body Corporate and Community Management ("The Commissioner"), dated 8 April 2005, states:

"We refer to the Dispute regarding Lot Entitlements for Newport on Main. Our association with Newport is as the Developer of the project [my underlining], and as owner of a number of units in the completed development.

Background

To provide a brief background on the calculation of the current Lot Entitlements, the Newport on Main design was originally to comprise 2 x 2Br units per floor on levels 1-12 and 1 x 3Br units per floor on levels 13-20. The Lot Entitlements were prepared, by Ernst Body Corporate, to suit that design. [my underlining]

They clearly allocated the Lot Entitlements based on the level at which the unit is located, as well as the unit area. The higher larger units, paid a larger proportion of the annual budget compared to the lower smaller units.

During the project, the design was changed to provide more 3 Br, one per floor units. As a result, floors 5-12 were converted from 2 x 2Br units per floor to 1 x 3 Br units per floor. [my underlining] We had no practical option but to sell these 3 Br units on floors 5-12 with the lot entitlements equal to the aggregate of the 2 x 2Br units on that floor. [my underlining] This resulted in higher Lot Entitlements for the 3Br units on floors 5-12, compared to the 3 Br units on floors 13-20.

The revised Lot Entitlements, and associated Body Corporate Levies, were disclosed to all purchasers of the units in floors 5-12 as part of the sale process. The Purchasers could clearly see that the lot entitlements for levels 5-12 were higher than levels 13-20.”

9. In light of the above it is apparent that the developer, Stencraft Pty Ltd, has failed to comply with Sections 46(7) and 66(1)(d)(i) of the Act as, following the design change, the contribution schedule lot entitlements registered are not equal except to the extent to which it is just and equitable in the circumstances and the explanation given as to why they are not equal does not relate to the contribution schedule lot entitlements that were registered.
10. On 19 August 2004, the owners of lots 16 (Helgeson), 18 and 20 lodged a Dispute Resolution Application (“the Application”) for the adjustment of the contribution lot entitlement schedule for the Scheme with the Commissioner pursuant to the provisions of Section 48(1) and Chapter 6 of the Act.
11. The first annual general meeting of the Body Corporate for the Scheme was held on 21 September 2004. At that meeting a motion, proposed by lots 16 (Helgeson), 18 and 20, was considered to record a new CMS that altered the contribution schedule lot entitlements such that the contribution schedule lot entitlements were made equal for all lots. That motion failed.
12. Section 227(1)(b) of the Act provides:

“227 *Meaning of dispute*

 - (1) *A dispute is a dispute between—*
 - (b) *the body corporate for a community titles scheme and the owner or occupier of a lot included in the scheme”*
13. The failure of the motion at the annual general meeting of the Body Corporate for the Scheme, held on 21 September 2004, gives rise to a dispute as defined in Section 227(1)(b) of the Act between the owners of lots 16 (Helgeson), 18 and 20 and the body corporate for the Scheme.
14. An extraordinary general meeting of the Body Corporate for the Scheme was held on 25 February 2005. At that meeting a motion, proposed by the body corporate committee, was considered to record a new CMS that altered the contribution schedule lot entitlements such that the contribution schedule lot entitlements were in accordance with the report from Leary and Partners. That motion failed.

15. Section 227(1)(g) of the Act provides:
- “227 Meaning of dispute*
- (1) *A dispute is a dispute between—*
- (g) *the body corporate for a community titles scheme and a member of the committee for the body corporate;”*
16. The failure of the motion at the extraordinary general meeting of the Body Corporate for the Scheme, held on 25 February 2005, gives rise to a dispute as defined in Section 227(1)(g) of the Act between each of the members of the committee for the body corporate and the body corporate for the Scheme.
17. Section 238(1) of the Act provides:
- “238 Who may make an application*
- (1) *A person, including, if appropriate, the body corporate for a community titles scheme, may make an application if the person is a party to, or is directly concerned with, a dispute to which this chapter applies.”*
18. From 21 September 2004, an application by the registered owners of lots 16 (Helgeson), 18 and 20 could be made pursuant to Section 238 of the Act.
19. On 15 June 2005, the owners of lot 22 gave me notice that they wished to be joined as applicant in the application.
20. On 15 June 2005, the new owner of lot 16 (Lockhart) gave me notice that they wished to be joined as an applicant in the application.
21. Section 48(1)(b) of the Act provides:
- “48 Adjustment of lot entitlement schedule*
- (1) *The owner of a lot in a community titles scheme may apply [my underlining]*
-
- (b) *under chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule.”*
22. Pursuant to Section 48(1)(b), any owner in a scheme is entitled to make an application for the adjustment of a lot entitlement schedule. I consider that the reference in Section 48(1)(b) to “*under chapter 6*” is only a reference to the provisions set out in that chapter as to the method and form of application and procedures to be adopted by the Commissioner and Specialist Adjudicator and not a reference to any specific requirement for the existence of a “dispute” as defined in Section 227 of the Act. The right to make an application for the adjustment of a lot entitlement schedule is provided by Section 48(1). On that basis the owner of lot 22 and new owner of lot 16 are entitled to be joined as applicants in the Application. I also consider that, on that basis, the original application of 19 August 2004 was valid.
23. These circumstances gave rise to the issue which I was required to consider, namely, “*to change the contribution of lot entitlements – register new schedule to make all lots equal as per Section 46 of the Body Corporate & Community Act 1997. (see enclosed current lot entitlements and contributions – lots 10 to 24 adversely affected by current scheme.*”

REFERENCE TO SPECIALIST ADJUDICATION

24. Section 48(1)(b) of the Act provides:

“48 Adjustment of lot entitlement schedule

(1) The owner of a lot in a community titles scheme may apply—

(b) under chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule.”

25. Section 265(1)(c) of the Act provides:

“265 Specialist adjudication of particular disputes

(1) The adjudication of a dispute must be specialist adjudication if—

(c) another provision of this Act requires the adjudication to be specialist adjudication.”

26. Section 239(2)(d) of the Act provides:

“239 How to make an application

(2) The approved form for the application must provide for each of the following matters to be stated in the form—

(d) for an order about a dispute mentioned in section 265—the name and address of 1 or more persons—

(i) considered by the applicant as having the appropriate qualifications, experience or standing for acting as a specialist adjudicator for the application; and

(ii) nominated by the applicant for appointment as the specialist adjudicator.”

27. The Application, lodged on 19 August 2004, provided my name and address as the nominee for appointment as the specialist adjudicator.

28. Section 265(2) of the Act provides:

“265 Specialist adjudication of particular disputes

(2) The specialist adjudicator must be the person chosen by the commissioner, and need not be a person nominated by a party to the application.”

29. I was nominated as specialist adjudicator by the Commissioner in a letter, copied to the parties, dated 2 June 2005.

PROCEDURAL STEPS

30. On 18 March 2005, the Commissioner invited all lot owners in the Scheme to make submissions on the Application by 8 April 2005. On 13 April 2005, the Commissioner extended the closing date for such submissions to 27 April 2005.
31. Ten (10) submissions were provided in response to the Commissioner's invitation.
32. Section 48(2)(a) of the Act provides:

"48 Adjustment of lot entitlement schedule
(2) Despite any other law or statutory instrument—
(a) the respondent for an application mentioned in subsection (1) is the body corporate"
33. The Commissioner's file on this matter includes the following record of telephone advice, dated 24 May 2005, Trotter advised that *"the Body Corporate Committee did not intend to supply a submission as the committee. Some have made an individual submission."*
34. Section 48(2)(b) of the Act provides:

"48 Adjustment of lot entitlement schedule
(2) Despite any other law or statutory instrument—
(b) at the election of another owner of a lot in the scheme, the other owner may be joined as a respondent for the application"
35. Section 48(3) of the Act provides:

"48 Adjustment of lot entitlement schedule
(3) An owner who elects, under subsection (2)(b), to become a respondent for the application must give written notice [my underlining] of the election to the body corporate."
36. Following my instructions of 3 June 2005, Trotter, on 7 June 2005, forwarded by post to all lot owners in the scheme my process notes and directions for the further conduct of the matter. Those notes and directions advised all owners that if wishing to be joined as a Respondent for the application a written notice of that election was to be provided in accordance with the provisions of Section 48(3) of the Act.
37. By correspondence, dated 5 July 2005, Trotter provided copies of the written notices of election to be joined as a Respondent for the application that had been provided to the body corporate in accordance with the provisions of Section 48(3) of the Act.
38. Those notices were made by Bunting, dated 15 June 2005, Philips, dated 16 June 2005 and Upton dated 20 June 2005. Philips by further notice, dated 23 June 2005, withdrew her joinder notice.
39. By correspondence, dated 3 July 2005, the parties were advised that an informal hearing would be conducted in conjunction with a view of the Scheme on 15 July 2005.

40. On 15 July 2005, an informal hearing was held at the Scheme which was attended by Helgeson, Haire x 2, Sutton, Wood, Philip, Grant and Arkcoll. During the course of the hearing a view was made of the Scheme with the represented parties. During the view frequent discussion took place in the presence of all parties about the various features of the different lots and the scheme.

FINDINGS AND REASONS

41. In addition to the documents submitted prior to my appointment as specialist adjudicator, the applicant also tendered copies of documents relied upon by them bearing on the issues, namely:
 - a. The Community Management Statement;
 - b. The Survey Plan;
 - c. The sinking fund analysis/forecast
 - d. The current sinking fund budget; and
 - e. The current administrative fund budget.
42. I observe that the Scheme is a new scheme and therefore does not have any historical records upon which to rely for the purposes of determining historical spend patterns for the establishment of appropriate expenditure allowances.
43. Following my instructions Trotter, on 7 June 2005, forwarded by post to all lot owners in the scheme my process notes and directions for the further conduct of the matter. Those notes and directions provided directions for owners wishing to be joined as a Respondent for the application and their subsequent delivery of submissions in respect to the application. Two Respondent submissions were received, one from Bunting and one from Upton.
44. The represented parties attended a hearing to present their submissions and to hear the submissions of the other parties. The matter was determined on the hearing, taking into account the parties documents, written and oral submissions and a view of the Scheme.
45. The outcome sought in the Application is:

“to change the contribution of lot entitlements – register new schedule to make all lots equal as per Section 46 of the Body Corporate & Community Act 1997. (see enclosed current lot entitlements and contributions – lots 10 to 24 adversely affected by current scheme.”
46. When queried at the hearing as to the outcome sought, the Applicants confirmed that they were not seeking any adjustment to the interest schedule and that the adjustment sought to the contribution schedule was not specifically to make it equal but rather to make it equitable. The applicants confirmed that they also relied upon an expert report titled “Contribution Lot Entitlement Schedule Analysis for Newport on Main CTS 32750” dated 28 January 2005, hereafter referred to as the “Arkcoll Report”, in support of their application for adjustment of the contribution lot entitlement schedule.

Findings on the application for adjustment:

- 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. 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 Schedule Lot Entitlement
1	36
2	37
3	37
4	37
5	37
6	37
7	37
8	37
9	37
10	41
12	41
14	41
16	41
18	41
20	41
22	41
24	41
26	41
27	41
28	41
29	41
30	41
31	41
32	41
33	41
AGGREGATE	988

Reasons

Legislative Considerations

47. Section 47(2) of the Act provides:

“47 Application of lot entitlements

(2) The contribution schedule lot entitlement for a lot is the basis for calculating—

*(a) the lot owner’s share of amounts levied by the body corporate, **[my underlining]** unless the extent of the lot owner’s obligation to contribute to a levy for a particular purpose is specifically otherwise provided for in this Act;¹ and*

(b) the value of the lot owner’s vote for voting on an ordinary resolution if a poll is conducted for voting on the resolution.

¹ *The regulation module applying to a community titles scheme might provide that a lot owner’s contribution to some or all of the insurance required to be put in place by the body corporate is to be calculated on the basis of the lot’s interest schedule lot entitlement.*

48. Consideration of Section 47(2) would suggest that, of those provisions set out, the only provision capable of quantitative assessment, rather than on some idiosyncratic basis, is that regarding a lot owner’s share of amounts levied by the body corporate.

49. It also makes some commercial sense for the value of a lot owner’s vote (if polled) to be proportional to that lot owner’s share of amounts levied by the body corporate.

50. On that basis, the proper determination of a lot owner’s share of amounts levied by the body corporate, in satisfaction of Section 47(2)(a), would also satisfy Section 47(2)(b).

51. Accordingly, I consider that Section 47(2) requires that when determining a contribution lot entitlement, unless specifically otherwise provided for in the Act (such as some components of insurance premiums), regard should only be had to relevant amounts for which the body corporate is liable.

52. 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. Section 48 of the Act provides:

53. Section 48(4)(a) of the Act provides:

“48 Adjustment of lot entitlement schedule

*(4) The order of the court or specialist adjudicator must be consistent **[my underlining]** with—*

(a) if the order is about the contribution schedule—the principle stated in subsection (5)”

54. Section 48(4)(a) of the Act limits an adjudicator's discretion as it requires that an adjudicator's order must be consistent with the stated principles. It also implies that an adjudicator has a duty to ensure that any order made is consistent with the stated principles.

55. Section 48(5) of the Act provides:

"48 Adjustment of lot entitlement schedule

(5) For the contribution schedule, the respective lot entitlements should be equal [my underlining], except to the extent to which it is just and equitable in the circumstances for them not to be equal."

56. Given the provision in Section 48(5) of the Act, once an Applicant has established a prima facie case that the existing schedule is unjust and unequal the onus then is on the Respondent to place material before me to prove that any departure from equal **in the existing** schedule is just and equitable in the circumstances.

57. Section 49 of the Act provides, inter alia:

"49 Criteria for deciding just and equitable circumstances

(2) This section sets out matters to which the court or specialist adjudicator may, and may not, have regard for deciding—

(a) for a contribution schedule—if it is just and equitable in the circumstances for the respective lot entitlements not to be equal; and

(3) However, the matters the court or specialist adjudicator may have regard to for deciding a matter mentioned in subsection (2) are not limited to the matters stated in this section.

(4) The court or specialist adjudicator may have regard to—

(a) how the community titles scheme is structured; and

(b) the nature, features and characteristics of the lots included in the scheme; and

(c) the purposes for which the lots are used.

(5) The court or specialist adjudicator may not have regard to any knowledge or understanding the applicant had, or any lack of knowledge or misunderstanding on the part of the applicant, at the relevant time, about—

(a) the lot entitlement for the subject lot or other lots included in the community titles scheme; or

(b) the purpose for which a lot entitlement is used.

(6) In this section—

relevant time means the time the applicant entered into a contract to buy the subject lot.

subject lot means the lot owned by the applicant."

58. Section 49 provides some criteria for deciding just and equitable circumstances for contribution schedule lot entitlements not to be equal. It enables an adjudicator to 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, but does not limit an adjudicator's regard to only those matters. However, when considering the earlier analysis of Section 47(2) of the Act, those considerations set out in Section 49 can only be in respect of the impact of those criteria on relevant body corporate expenditure.

59. Section 49(5) specifically prevents an adjudicator from having regard to any knowledge or understanding that the Applicant's had with respect to lot entitlements when they contracted to buy their lot.
60. Consistent with these conclusions, *Fischer & Ors v Body Corporate for Centrepoint Community Title Scheme 7779 [2005] QCA 214* relevantly provides the following at paras 26 to 33:

[26] *Although the Act gives no clear indication one way or the other, the preferable view is that a contribution schedule should provide for equal contributions by apartment owners, except insofar as some apartments can be shown to give rise to particular costs to the body corporate which other apartments do not. That question, whether a schedule should be adjusted, is to be answered with regard to the demand made on the services and amenities provided by a body corporate to the respective apartments, or their contribution to the costs incurred by the body corporate. [my underlining] More general considerations of amenity, value or history are to be disregarded. What is at issue is the 'equitable' distribution of the costs.*

[27] *There are a number of reasons for this conclusion. The first is to be found in the terms of the Explanatory Notes which accompanied the 2003 Act and the content of the second reading speech when the Bill for it was debated. Because the meaning of the Act is unclear it is permissible to consult these materials.*

[28] *Section 10 of the 2003 Act inserted s 46(7) which is in these terms:*

'(7) For the contribution schedule for a scheme for which development approval is given after the commencement of this subsection, the respective lot entitlements must be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.'

This replaced an earlier provision, which was repealed by the 2003 Act, to the effect that upon registration a community titles scheme did not have to provide for equal contribution lot entitlements. Explaining the change the Note said:

'The change is intended to reinforce the concept that 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.

The need for difference is best shown by examples.

...

Example 3 In a basic scheme, if all the lots are residential lots ranging in size from a small lot to a penthouse, the contribution schedule lot entitlements generally would be equal. However, the contribution schedule may be different if the penthouse has its own swimming pool and private lift. The contribution schedule should recognise this type of difference. The other lots in the scheme despite being of differing size or aspect would be expected to have equal contribution schedule lot entitlements.'

[29] *In the Second Reading Speech it was said:*

'The issue of the nature of the contributions schedule for a body corporate scheme has created some discussion. The guiding principle for both setting and adjusting the contributions schedule is that it involves the equitable sharing of the costs of operating and maintaining the common property. [my underlining and emphasis] These costs should be borne in proportion to the benefit, not in

proportion to the unit's value. It is not a contribution linked to an ability to pay, but as a payment for services. [my underlining] ... There is not an argument ... against the fact that, in terms of costs related to a property's value – costs such as rates and insurance – owners whose properties are worth more should pay more. But when we are talking about those parts of a property where the benefits are shared more or less equally, we cannot apply the same formula.'

[30] *These materials make it tolerably plain that the Act is intended to produce a contribution lot entitlement schedule which divides body corporate expenses equally except to the extent that the apartments disproportionately give rise to those expenses, or disproportionately consume services. That determination can only be made by reference to factors which have a financial impact or consequence on the body corporate. [my underlining] It cannot be affected by factors which go to an apartment's value or amenity.*

[31] *Secondly, the nature of a contribution lot entitlement schedule itself suggests that the allocation of lot entitlements is to be made on the basis of the impact that individual apartments make upon the costs of operating and running a community titles scheme. Contribution lot entitlements determine the apartment's share of the outgoings. The starting point is that the entitlements should be equal. A departure from that principle is allowable only where it is just, or fair, to recognise inequality. The departure must take as its reference point the proposition, from which it departs, that apartment owners should contribute equally to the costs of the building. The focus of the inquiry is the extent to which an apartment unequally causes costs to the body corporate. [my underlining]*

[32] *The third consideration is that if this principle not be the applicable one then there is no basis on which applications for adjustment of a contribution lot entitlement schedules can consistently be made. As the evidence in this application shows, if the inquiry is limited to the extent to which an apartment creates costs, or consumes services, above or below the average, one can readily determine what the contribution lot entitlement should be. The high degree of similarity in the reports of Mr Sheehan and Mr Linkhorn demonstrates this. If the inquiry be wider and include such nebulous criteria as the structure of the scheme, or the nature, features and characteristics of the apartments in the scheme, and the purposes for which they are used, there is no intelligible basis on which there could be a consistent and coherent determination of applications for adjustment of lot entitlements. Each case would be determined idiosyncratically and a vast variety of circumstances might be relied upon to depart from, and therefore erode, the principle said to be paramount, that there should be an equality of entitlements.*

[33] *Accordingly I would construe s 49 of the Act, and in particular subsection (4), as meaning that those identified matters to which a court may have regard are to be regarded only to the extent, if any, that they affect the cost of operating a community title scheme. [my underlining]”*

61. The Court of Appeal has clearly stated that the Act is intended to produce a contribution lot entitlement schedule which divides body corporate expenses equally except to the extent that lots disproportionately give rise to those expenses, or disproportionately consume services. That determination can only be made by reference to factors which have a financial impact or consequence on the body corporate, this judgment is binding not only on me, but on any adjudicator or single judge in Queensland.

Scheme Considerations

62. I now turn to consideration of the matters the legislation requires to be considered in respect of the Scheme.
63. The Applicant's grounds for the Application are set out as follows:
- "Newport on Main, new building – lots registered by Developer are grossly unequal. (see encl) Lots 1 to 9 are 2 units per floor & regd correctly, units 10 to 33 are all equal (one unit per floor and are ALL IDENTICAL – lot entitlements are NOT EQUAL unit lots 10-24 contributions much greater than lots 26 to 33. We would like all lots to be of equal value."*
64. As set out earlier, the Applicants also confirmed at the hearing that they also relied upon the Arkcoll Report in support of their application.
65. Arkcoll, the author of the Arkcoll Report, has tertiary qualifications in quantity surveying and law along with significant experience with numerous aspects of body corporate planning and expenditure. The Respondents did not in their written submissions, or at hearing through Wood, Philip and Grant when provided a further opportunity to make a submission, did not make any submission as to why Arkcoll should not be accepted as an expert.
66. I accept the Arkcoll Report as that of an expert within their area of expertise for this application and therefore find that it is admissible as expert evidence. 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.
67. For the purposes of determining the relevant body corporate expenditure, I reviewed the following information regarding the scheme;
- a. The sinking fund analysis/forecast, dated 18 January 2005;
 - b. The current Sinking Fund Budget (to 31 May 2005);
 - c. The current Administrative Fund Budget (to 31 May 2005) ; and
 - d. The financial statements to 31 May 2005 (ordered subsequent to the hearing).
- [N.B. The financial statements to 31 May 2005 are appended to this order.]
68. During the view the building manager also provided a copy of a recent quote for the external cleaning of the building.
69. The Respondents did not raise 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 in the Arkcoll Report. I have considered those matters and I generally accept that the administration and sinking fund costs and the life expectancies and physical measurements for the various elements included in the sinking fund and as adopted in the Arkcoll Report are reasonable.
70. As noted earlier the Scheme is a new scheme and does not have historical expenditure records upon which forward assessments may be made. The expenditure used in the calculations included in the Arkcoll Report is drawn primarily from the sinking fund forecast and the existing administrative fund budget.

71. As the contribution schedule lot entitlements are required to be fair and equitable for the foreseeable future of the Scheme, for the purpose of determining appropriate contribution schedule lot entitlements, it is necessary for me to anticipate and balance to some degree the forward body corporate costs. It is clear that it is simply not possible to determine a highly accurate long term assessment which will provide exacting cost apportionments both now and into the future.
72. The Arkcoll report was amended following the hearing with the benefit of the additional information from the building manager and the financial statements to 31 May 2005. Where actual expenditure in the administrative fund was in excess of the administrative fund budget, and where it was also considered that the actual expenditure was more likely to be typical, the actual expenditure was included when the amended calculations were undertaken. The quote for the external cleaning of the building was also included in the amended calculations. [N.B. The amended pages of the Arkcoll Report are appended to this order.]
73. The administration fund, once excluding matters such as building insurance which are specifically otherwise provided for in the Act, accounts for 57% of the total costs to the body corporate to which I have had regard. The administration fund includes allowances for in excess of 35 items which have been individually considered. Those items which account for 5% or more of the fund are:
- “Repairs and maintenance” (11 items) being, I understand, repairs and maintenance of air conditioning, building, electrical, fire equipment, grounds, keys, locks, lifts, pest control, pool, spa, sauna heating, security equipment and forming 35% of the total administration fund item costs to be considered; and
- “Management Agreement” being, I understand, the fees of the building manager arising out of the management, caretaking and letting agreement and forming 29% of the total administration fund item costs to be considered; and
- “Community Electricity” being, I understand, the electricity charges associated with the lighting and other use of the common property and forming 18% of the total administration fund item costs to be considered; and
- “Building Cleaning” being, I understand, the cost for the quarterly washing of the external façade of the building and forming 5% of the total administration fund item costs to be considered (apportioned on the basis of the measured external area per lot, including some common property); and
- Numerous other minor miscellaneous administrative items form the remaining 13% of the total administration fund item costs to be considered.
74. The sinking fund, accounts for the remaining 43% of the total costs to the body corporate to which I have had regard. The sinking fund includes allowances for in excess of 125 separate items which have been individually considered. Those items which account for 5% or more of the fund are:
- “Paint building facade” being, I understand, the painting of the building façade for which the Body Corporate is liable and forming 24% of the total sinking fund item costs (apportioned on the basis of the measured external area per lot, including some common property); and
- “Contingency” being, I understand, unscheduled repairs and maintenance of common property not included in the administration fund “Repairs and maintenance” item and forming 11% of the total sinking fund item costs (apportioned equally as it is not possible to predict beneficiaries); and

“Replace membrane to balconies” being, I understand, the replacement of the membrane to the balconies for which the body corporate is liable and forming 7% of the total sinking fund item costs (apportioned on the basis of measured quantity per lot, including some common property); and

“Replace glazed aluminium balustrade” being, I understand, the replacement of the balcony balustrades for which the body corporate is liable and forming 6% of the total sinking fund item costs (apportioned on the basis of measured quantity per lot); and

“Replace membrane to podium” being, I understand, the replacement of the membrane to the podium for which the body corporate is liable and forming 5% of the total sinking fund item costs (apportioned pro rata on the basis of the area of each lot); and

Numerous other (120 plus) minor miscellaneous sinking fund items form the remaining 47% of the total sinking fund item costs to be considered.

75. For the purposes of determining the impact of the various criteria, for deciding just and equitable circumstances, I reviewed the following information regarding the scheme;
- a. The Community Management Statement; and
 - b. The Survey Plan; and
 - c. The Management, Caretaking and Letting Agreement.
76. Section 49(4) of the Act provides:
- “49 Criteria for deciding just and equitable circumstances*
(4) The court or specialist adjudicator may have regard to—
(a) how the community titles scheme is structured; and
(b) the nature, features and characteristics of the lots included in the scheme;
and
(c) the purposes for which the lots are used.”
77. The CMS for the Scheme confirms that the Regulation Module applying to the Scheme is the Body Corporate and Community Management (Accommodation Module) Regulation 1997.
78. The Scheme is a basic scheme, not part of a layered arrangement.
79. No submissions have been made, in regard to Section 49(4)(a), which provide any reason for depart from equal. Based on the circumstances in the Scheme and on the face of the documentation there is no apparent basis for departure from equal arising out of this provision.
80. The by-laws for the scheme are set out in the CMS. By-laws 31 and 32 provide that all lots shall only be used for residential purposes except lot 1 which may conduct the business of management and letting of lots in the building and caretaking of the common property.
81. By-law 43 sets out various exclusive use entitlements attaching to lots in the Scheme.

82. No submissions were made by the Respondents, in regard to Section 49(4)(c). The Arkcoll Report does specifically consider the effects of the duties of the manager / caretaker / letting agent which attach to lot 1 when considering the apportionment of costs in the Scheme. The Arkcoll Report also specifically considers the effects of the exclusive use entitlements attaching to lots 1, 10, 12, 14, 16, 18, 20, 22, 24, 26, 27, 28, 29, 30, 31, 32 and 33 when considering the apportionment of costs in the Scheme.
83. The submission made by Bunting addresses matters to which I may have regard by virtue of Section 49(4)(b), however Bunting's submission generally, consisted of broad statements with little or no relevant evidence and could only be weighted accordingly. It is apparent that in preparing the submission Bunting either did not consider, or did not comprehend, the Arkcoll Report. Bunting's submission appears to have been prepared on the basis that the Arkcoll Report recommended an equal apportionment of costs, which it does not. Therefore, there are numerous statements made about the Arkcoll Report which are simply incorrect. Contrary to Bunting's submission the vast majority of the issues raised for consideration are, in fact, addressed in the Arkcoll Report. Furthermore, Philip and Grant (Bunting's Representatives) at the hearing did no more than ask questions and make broad statements. While Arkcoll conceded that, on a very limited number of items, there may exist other views as to appropriate methods which may be adopted for the apportionment of costs, Arkcoll was of the view that any alternative methods did not provide an apportionment that could be determined in a consistent and coherent manner. Neither Philip nor Grant provided any evidence to support any alternative apportionment.
84. The Arkcoll Report, provided by the Applicant's, considers the cost burden that the nature, features and characteristics of the lots within the Scheme place on the body corporate expenditure in extensive detail.
85. I agree with Arkcoll's apportionment of the administration fund costs on an equal basis between all lots (excluding the building washing which has been apportioned taking account of the external area of each lot). The Respondent, at hearing through Philip and Grant, did not raise any objection to any of the costs apportionments made by Arkcoll. It seems clear that these costs, excluding the building washing, are equally beneficial to all of the lots within the scheme.
86. I agree with Arkcoll's apportionment of the sinking fund costs. The Respondent, at hearing through Philip and Grant, did raise some alternative views however they provided no supporting evidence. The Respondent, at hearing through Philip and Grant, raised no objection to the cost apportionments made by Arkcoll. The sinking fund costs are all items of expenditure relating to common property elements which can generally be identified as beneficial either; equally to all lots, or alternatively, to particular lots within the Scheme in such a manner as may be measured and the cost burden on the body corporate attributable to each lot accurately determined. Any departure from those two positions is typically not capable of quantitative determination and is anticipated to be inconsequential in the circumstances.
87. The primary submission made by Upton is: *"I would hope you would find that the original entitlement schedule be maintained as it was accepted by all buyers as being fair at the time of purchase."*

88. Section 49(5) of the Act provides:

“49 Criteria for deciding just and equitable circumstances

(5) The court or specialist adjudicator may not have regard to any knowledge or understanding the applicant had, or any lack of knowledge or misunderstanding on the part of the applicant, at the relevant time, about—

(a) the lot entitlement for the subject lot or other lots included in the community titles scheme; or

(b) the purpose for which a lot entitlement is used.

(6) In this section—

relevant time means the time the applicant entered into a contract to buy the subject lot.

subject lot means the lot owned by the applicant.”

89. Section 49(5) of the Act specifically prevents an adjudicator from having regard to any knowledge or understanding that the Applicant's had with respect to lot entitlements when they contracted to buy their lots.

90. Therefore an adjudicator is unable to consider such a submission when determining a just and equitable contribution lot entitlement schedule.

91. In the alternative Upton relies upon Bunting's submission.

92. The Respondents, represented at hearing through Woods, Philip and Grant, raised no further matters for my consideration.

93. Having given due consideration to the relevant matters pursuant to Section 49 of the Act, I consider that an adjustment to the contribution schedule lot entitlements that would reflect the just and equitable contribution of each lot to the ongoing administration and maintenance of the Scheme is set out in my findings on the application for adjustment above.

COSTS

Findings:

- i. No costs should be ordered against the Body Corporate.
- ii. No costs should be ordered against the Second or Third Respondent
- iii. That the Applicant is responsible for the cost of the adjudication.

Reasons:

Legislative Considerations

94. Section 265(1)(c) of the Act provides:

“265 Specialist adjudication of particular disputes

(1) The adjudication of a dispute must be specialist adjudication if—

(c) another provision of this Act requires the adjudication to be specialist adjudication.”

95. Section 48(1)(b) of the Act provides:

“48 Adjustment of lot entitlement schedule

(1) The owner of a lot in a community titles scheme may apply—

(b) under chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule.”

96. Section 280 of the Act provides:

“280 Costs of specialist adjudication

(1) This section applies to an application dealt with by specialist adjudication mentioned in section 265.

(2) Unless the adjudicator otherwise orders, the applicant is responsible for the costs of the adjudication.”

97. Thus 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.

Application Considerations

98. Section 48(2)(a) of the Act provides:

“48 Adjustment of lot entitlement schedule

(2) Despite any other law or statutory instrument—

(a) the respondent for an application mentioned in subsection (1) is the body corporate”

99. In this instance the Body Corporate Committee, by advice to the Commissioner on 24 May 2005, advised that *“the Body Corporate Committee did not intend to supply a submission as the committee. Some have made an individual submission.”* No submission was made by the Body Corporate at the hearing of the matter. Therefore no costs should be ordered against the Body Corporate by virtue of that position.
100. Section 48(2)(b) of the Act provides:
- “48 Adjustment of lot entitlement schedule*
- (2) Despite any other law or statutory instrument—*
- (b) at the election of another owner of a lot in the scheme, the other owner may be joined as a respondent for the application”*
101. In this matter three owner(s) elected to be joined as Respondents.
102. The second respondent, Bunting, gave a notice of election to be joined dated 15 June 2005. Bunting provided a submission of some 13 pages, however the submission generally, consisted of broad statements with little or no relevant evidence and could only be weighted accordingly. It was apparent that in preparing the submission Bunting either did not consider, or did not comprehend, the Arkcoll Report. Numerous statements made about the Arkcoll Report were simply incorrect. Contrary to Buntings submission the vast majority of the issues raised for consideration were, in fact, addressed in the Arkcoll Report. Furthermore, Philip and Grant (Bunting’s Representatives) at the hearing but did not do any more than ask questions and make broad statements. While Arkcoll did concede that on a very limited number of items there may exist other views as to methods which may be adopted for the apportionment of costs, though Arkcoll was of the view that any alternative methods could not provide an apportionment that could be determined in a consistent and coherent manner. Neither Philip nor Grant provided any evidence to support any alternative apportionment. In normal circumstances, I might have given further consideration to the exercise of my discretion however, although given the opportunity at the hearing, the Applicants have not requested any apportionment of costs against Bunting.
103. Philips, gave a notice of election to be joined dated 16 June 2005, however by further notice, dated 23 June 2005, Philips withdrew the joinder notice. Philip’s conduct was such as to not give rise to any additional cost in the application and therefore no reason exists for me to exercise my discretion.
104. The third respondent, Upton, gave a notice of election dated 20 June 2005. Upton provided a submission of less than 2 pages which contained only misguided statements with no evidence. Upton ultimately relied upon Buntings submission in the alternative and was not represented at hearing. Upton’s conduct was such as to not give rise to any additional cost in the application and therefore no reason exists for me to exercise my discretion.
105. Every party is deemed to know the law, albeit technical in these cases. However, the true interpretation of the relevant sections of the Act has been set out clearly by the Court of Appeal in *Fischer & Ors v Body Corporate for Centrepont Community Title Scheme 7779 [2005] QCA 214* as detailed above. Normally, there would be no question that the Respondents Bunting and Upton would be at jeopardy for costs by virtue of their joinder and subsequent submissions which, in Buntings case, raised concerns already addressed in the Arkcoll Report and nevertheless produced no contrary evidence. Upton simply raised matters dealt with by the Court of Appeal. In future, any Respondent who appears before me and behaves in like manner will be held by me in jeopardy for costs.

106. If the Applicant's had requested that I exercise my discretion to order costs against the Body Corporate I would have been inclined to so order, as the Body Corporate is best placed to pursue the recovery of the cost of the adjudication which have only arisen due to the developer's non-compliance with Section 46(7) of the Act.
107. The Act does not provide me with the power to exercise my discretion to order costs against the Scheme developer as Stencraft Pty Ltd, whilst providing a submission to the Commissioner, did not elect to be joined as a respondent in the matter pursuant to Section 48(3).
108. When the matter of costs was specifically addressed at the hearing the Applicant's indicated that they did not seek costs against the Body Corporate or any Respondent. Therefore I leave the cost of the adjudication with the Applicant's.

NEWPORT ON MAIN CTS 32750

BALANCE SHEET

AS AT 31ST MAY 2005

<u>OWNERS FUND</u>	ACTUAL 31/05/05	ACTUAL
Administrative Fund	39,051.82	0.00
Sinking Fund	14,193.12	0.00
<u>TOTAL</u>	\$ 53,244.94	\$ 0.00

THESE FUNDS ARE REPRESENTED BY

CURRENT ASSETS

Cash At Bank	70,516.50	0.00
Electricity - Deposit	500.00	0.00
Gas Deposit	150.00	0.00
Prepayments	779.94	0.00
Sundry Debtors	1,202.39	0.00
Petty Cash - General	800.00	0.00
Levies - Billed Not Due	55,728.72	0.00
Levies - In Arrears	1,499.35	0.00
Costs Under By-Laws Unpaid	484.45	0.00
Secondary Debtor	1,255.42	0.00
Bulk Power Charges Unpaid	4,589.50	0.00

TOTAL ASSETS

137,506.27 0.00

LIABILITIES

G S T Clearing Account	2,608.08	0.00
P A Y G Clearing Account	364.43	0.00
Sundry Creditors	8,121.63	0.00
Levies - Billed Not Due	50,662.47	0.00
Levies - In Advance	22,504.72	0.00

TOTAL LIABILITIES

84,261.33 0.00

NET ASSETS

\$ 53,244.94 \$ 0.00

NEWPORT ON MAIN CTS 32750
STATEMENT OF INCOME AND EXPENDITURE
 FOR THE PERIOD 30TH JUNE 2004 TO 31ST MAY 2005

<u>ADMINISTRATIVE FUND</u>	ACTUAL 30/06/04-31/05/05	BUDGET 30/06/04-31/05/05	%	ACTUAL LAST YEAR
<u>INCOME</u>				
Levies - Administrative Fund	116,491.42	116,491.42	100.00	0.00
Interest Received - Admin Fund	990.87	0.00	0.00	0.00
TOTAL ADMIN. FUND INCOME	117,482.29	116,491.42		0.00
<u>EXPENDITURE - ADMIN. FUND</u>				
Audit Fees	500.00	660.00	75.76	0.00
Bank Charges - No GST	442.30	308.00	143.60	0.00
Cleaning - Carpets	38.18	484.00	7.89	0.00
Cleaning - Material	868.94	1,407.00	61.76	0.00
Cleaning - Windows	0.00	1,055.00	0.00	0.00
Consultants Fees	3,636.36	0.00	*****	0.00
Electricity - Bulk - Admin	525.00	0.00	*****	0.00
Electricity - Community	28,774.49	21,986.00	130.88	0.00
Electricity - Ambulance Levy	2,032.58	0.00	*****	0.00
Electricity - Community-Reimb	(11,953.67)	0.00	0.00	0.00
Elect.-Ambulance Levy-Reimb.	(2,023.95)	0.00	0.00	0.00
Fees & Permits - No GST	0.00	220.00	0.00	0.00
Gas Hot Water Service	66.14	0.00	*****	0.00
Income Tax - PAYG	269.67	440.00	61.29	0.00
Insur. - Building	0.00	5,716.00	0.00	0.00
Insur. - Office Bearers	0.00	440.00	0.00	0.00
Insur. - Public Liab.	0.00	1,209.00	0.00	0.00
Insur. - Excess Paid	227.27	0.00	*****	0.00
Internet Information Facility	250.00	0.00	*****	0.00
Levy Recovery Costs - Paid	1,033.47	0.00	*****	0.00
Levy Recovery Paid - No GST	44.00	0.00	*****	0.00
Levy Recovery Costs - Billed	(1,093.47)	0.00	0.00	0.00
Management - Agreement	36,191.51	34,826.00	103.92	0.00
P P & O - General	3,193.78	1,886.00	169.34	0.00
P P & O - Egm	180.78	440.00	41.09	0.00
P P & O - Owners - Ctee Agenda	103.13	176.00	58.60	0.00
P P & O - Owners - Cte Minutes	116.34	352.00	33.05	0.00
P P & O - Own.Gen.Meet.Minutes	40.24	176.00	22.86	0.00
P P & O - Referee	175.00	0.00	*****	0.00
P P & O - Building Manager	56.67	0.00	*****	0.00
R & M - Air Conditioning	0.00	3,078.00	0.00	0.00
R & M - Building	144.55	1,319.00	10.96	0.00
R & M - Electrical	323.05	704.00	45.89	0.00
R & M - Fire Equipment	464.41	5,277.00	8.80	0.00
R & M - Gardens & Grounds	198.91	2,199.00	9.05	0.00
R & M - Keys & Locks	341.95	220.00	155.43	0.00
R & M - Lifts	210.00	19,348.00	1.09	0.00
R & M - Pest Control	0.00	440.00	0.00	0.00
R & M - Pool, Spa, Sauna	1,141.88	2,375.00	48.08	0.00
R & M - Pool Spa-Ins Ref-Nogst	(357.27)	0.00	0.00	0.00
R & M - Pool, Spa Heating	5,007.05	0.00	*****	0.00
R & M - Security Equipment	0.00	3,078.00	0.00	0.00
Secretarial - Admin	2,520.90	2,902.00	86.87	0.00

NEWPORT ON MAIN CTS 32750
STATEMENT OF INCOME AND EXPENDITURE
 FOR THE PERIOD 30TH JUNE 2004 TO 31ST MAY 2005

<u>EXPENDITURE - ADMIN. FUND (Continued)</u>	<u>ACTUAL</u> 30/06/04-31/05/05	<u>BUDGET</u> 30/06/04-31/05/05	<u>%</u>	<u>ACTUAL</u> LAST YEAR
Secretarial - Additional	2,425.18	528.00	459.31	0.00
Secretarial - Egm	958.00	0.00	*****	0.00
Signs	0.00	440.00	0.00	0.00
Sundry Expenses	0.00	132.00	0.00	0.00
Tax Fee - Income Tax	0.00	220.00	0.00	0.00
Tax Fee (Bas)	775.00	879.00	88.17	0.00
Telephone - Fire & Lifts	0.00	1,055.00	0.00	0.00
Workplace Leg. Comp - No GST	562.10	528.00	106.46	0.00
<u>TOTAL ADMIN. EXPENDITURE</u>	78,430.47	116,503.00		0.00
<u>SURPLUS / (DEFICIT)</u>	\$ 39,051.82	\$ (11.58)		\$ 0.00
Opening Admin. Balance	0.00	0.00	0.00	0.00
<u>ADMINISTRATIVE FUND BALANCE</u>	\$ 39,051.82	\$ (11.58)		\$ 0.00

***** amount not budgeted for

NEWPORT ON MAIN CTS 32750
STATEMENT OF INCOME AND EXPENDITURE
 FOR THE PERIOD 30TH JUNE 2004 TO 31ST MAY 2005

<u>SINKING FUND</u>	ACTUAL 30/06/04-31/05/05	BUDGET 30/06/04-31/05/05	%	ACTUAL LAST YEAR
<u>INCOME</u>				
Levies - Sinking Fund	17,425.31	17,425.31	100.00	0.00
Interest Received - Sink Fund	348.19	0.00	0.00	0.00
<u>TOTAL SINKING FUND INCOME</u>	17,773.50	17,425.31		0.00
<u>EXPENDITURE - SINKING FUND</u>				
Building	0.00	17,476.00	0.00	0.00
Carpets/Floor Tiles Etc	1,321.35	0.00	*****	0.00
Income Tax - PAYG S.F	94.76	0.00	*****	0.00
Plant & Equipment	471.77	0.00	*****	0.00
Security System / Equipment	312.50	0.00	*****	0.00
Trolley	1,380.00	0.00	*****	0.00
<u>TOTAL SINK. FUND EXPENDITURE</u>	\$ 3,580.38	\$ 17,476.00		\$ 0.00
<u>SURPLUS/(DEFICIT)</u>	\$ 14,193.12	\$ (50.69)		\$ 0.00
Opening Sinking Fund Balance	0.00	0.00	0.00	0.00
<u>SINKING FUND BALANCE</u>	\$ 14,193.12	\$ (50.69)		\$ 0.00

***** amount not budgeted for

Table 1 - Administrative Budget Expense Inclusions (Amended 26.7.05)

Expenditure Items	Budget 30/6/04 to 31/5/05	Analysis Budget Allowance	Comment
Audit Fees	\$660.00	\$660.00	
Bank Charges	\$308.00	\$308.00	
False Fire Alarm - Paid-No GST	\$0.00	\$0.00	Actual expenditure of \$419, not in budget and excluded as not expected to be a typical annual expense
Cleaning - carpets	\$484.00	\$484.00	Gym room area
Cleaning - materials	\$1,407.00	\$1,407.00	
Cleaning - windows	\$1,055.00	\$6,353.00	New quotation for cleaning exterior of building
Electricity - Bulk Admin	\$0.00	\$200.00	Not in budget but actual expenditure of \$175 to 18/1/05 potentially a typical annual expense
Electricity - community	\$21,986.00	\$21,986.00	
Fees & permits	\$220.00	\$220.00	
Gas hot water service	\$0.00	\$0.00	Actual expense of \$22.62, not included as it appears to be more typically a general M & R expense
Income tax - current year	\$440.00	\$440.00	
Insurance - building	\$5,716.00	\$0.00	See Part A: section 5.3
Insurance- public liability	\$1,209.00	\$1,209.00	
Insurance - office bearers	\$440.00	\$440.00	
Internet facility	\$0.00	\$250.00	Cost for connecting to BCM information service. Not in budget but actual expenditure to 18/1/05 and expected to be an annual expense
Levy recovery costs	\$0.00	\$0.00	Actual expenditure of not in budget and excluded as costs recovered
Management agreement	\$34,826.00	\$36,191.51	Actual expense amount
P P & O - General	\$1,886.00	\$3,193.78	Actual expense amount
P P O - EGM	\$440.00	\$0.00	Not expected to be a typical annual cost
P P O - Committee Agenda	\$176.00	\$176.00	
P P O - Committee Minutes	\$352.00	\$352.00	
P P & O - General Minutes	\$176.00	\$176.00	
P P & O - Building Manager	\$0.00	\$100.00	Not in budget but actual expenditure of \$56.67 to 18/1/05 and likely to be a typical annual expense
R & M - Air conditioning	\$3,078.00	\$3,078.00	Includes regular maintenance and repairs
R & M - Building	\$1,319.00	\$1,319.00	

Expenditure Items	Budget 30/6/04 to 31/5/05	Analysis Budget Allowance	Comment
R & M - Electrical	\$704.00	\$704.00	
R & M - Fire equipment	\$5,277.00	\$5,277.00	Includes regular maintenance and repairs
R & M - Grounds & maintenance	\$2,199.00	\$2,199.00	
R & M - Keys and locks	\$220.00	\$220.00	
R & M - Lifts	\$19,348.00	\$19,348.00	
R & M - Pest control	\$440.00	\$440.00	
R & M - Pool, Spa, Sauna	\$2,375.00	\$2,375.00	Includes regular maintenance and repairs
R & M - Pool, Spa, Sauna Heating	\$0.00	\$5,000.07	Actual expense amount
R & M - Security equipment	\$3,078.00	\$3,078.00	
Secretarial - General	\$2,902.00	\$2,902.00	
Secretarial - Additional	\$528.00	\$528.00	
Secretarial - EGM	\$0.00	\$0.00	Actual expense of \$360.00, not in budget and excluded as not expected to be a typical annual cost
Signage	\$440.00	\$440.00	
Sundry expenses	\$132.00	\$132.00	
Tax Fee - Income Tax	\$220.00	\$220.00	
Tax Fee (BAS)	\$879.00	\$879.00	
Telephone - Fire & lifts	\$1,055.00	\$1,055.00	
Workplace health & safety	\$528.00	\$528.00	
Total	\$116,503.00	\$123,868.96	

Table 2 - Allocation Methodology for Administrative Fund Expense Items (Amended 26.7.05)

Expenditure Items	Analysis Budget Allowance	Budget / 25 lots	Allocation Method	Comment
Audit fees	\$660.00	\$26.40	Equal	Administrative expense - not affected by lot specific factors.
Bank Charges	\$308.00	\$12.32	Equal	Administrative expense - not affected by lot specific factors.
Cleaning - carpets	\$484.00	\$19.36	Equal	For gym room. Identical service provided to all lots and cost not likely to be affected by lot specific factors.
Cleaning - materials	\$1,407.00	\$56.28	Equal	See Part A: section 5.5.
Building Cleaning	\$6,353.60	\$254.14	Quantity per lot	Cleaning to exterior of lots allocated based on lot area cleaned and to common property areas shared equally between all lots.
Electricity - Bulk Admin	\$200.00	\$8.00	Equal	Administrative expense - not affected by lot specific factors.
Electricity - community	\$21,986.00	\$879.44	Equal	See Part A: section 5.4.
Fees & permits	\$220.00	\$8.80	Equal	Administrative expense - not affected by lot specific factors.
Income tax - current year	\$440.00	\$17.60	Equal	Administrative expense - not affected by lot specific factors.
Insurance- public liability	\$1,209.00	\$48.36	Equal	See Part A: Section 5.3.
Insurance - office bearers	\$440.00	\$17.60	Equal	See Part A: Section 5.3.
Internet facility	\$250.00	\$10.00	Equal	Administrative expense - not affected by lot specific factors.
Management agreement	\$36,191.51	\$1,447.66	Equal	See Part A: Section 5.5.
P P & O - General	\$3,193.78	\$127.75	Equal	Administrative expense - not affected by lot specific factors.
P P O - Committee Agenda	\$176.00	\$7.04	Equal	Administrative expense - not affected by lot specific factors.
P P O - Committee Minutes	\$352.00	\$14.08	Equal	Administrative expense - not affected by lot specific factors.
P P & O - General Minutes	\$176.00	\$7.04	Equal	Administrative expense - not affected by lot specific factors.

Expenditure Items	Analysis Budget Allowance	Budget / 25 lots	Allocation Method	Comment
P & O - Building manager	\$100.00	\$4.00	Equal	Administrative expense - not affected by lot specific factors.
R & M - Air conditioning	\$3,078.00	\$123.12	Equal	Identical service provided to all lots and cost not likely to be affected by lot specific factors.
R & M - Building	\$1,319.00	\$52.76	Equal	Nature of expenditure not predictable and it is not possible to predict if or how it may be affected by lot specific factors.
R & M - Electrical	\$704.00	\$28.16	Equal	Nature of expenditure not predictable and it is not possible to predict if or how it may be affected by lot specific factors.
R & M - Fire equipment	\$5,277.00	\$211.08	Equal	See Part A: Section 6.2.5.
R & M - Grounds & maintenance	\$2,199.00	\$87.96	Equal	Identical service provided to all lots and cost not likely to be affected by lot specific factors.
R & M - Keys and locks	\$220.00	\$8.80	Equal	Nature of expenditure not predictable and it is not possible to predict if or how it may be affected by lot specific factors.
R & M - Lifts	\$19,348.00	\$773.92	Equal	See Part A: Section 5.4.
R & M - Pest control	\$440.00	\$17.60	Equal	To common areas only. Identical service provided to all lots and cost not likely to be affected by lot specific factors.
R & M - Pool, Spa, Sauna	\$2,375.00	\$95.00	Equal	See Part A: Section 6.3.
R & M - Pool, Spa, Sauna Heating	\$5,000.07	\$200.00	Equal	Identical benefit provided to all lots - will be affected by usage, but usage likely to be for set period not affected by lot specific factors.
R & M - Security equipment	\$3,078.00	\$123.12	Equal	To common areas only. Identical service provided to all lots and cost not likely to be affected by lot specific factors.
Secretarial - General	\$2,902.00	\$116.08	Equal	Administrative expense - not affected by lot specific factors.
Secretarial - Additional	\$528.00	\$21.12	Equal	Administrative expense - not affected by lot specific factors.

Expenditure Items	Analysis Budget Allowance	Budget / 25 lots	Allocation Method	Comment
Signage	\$440.00	\$17.60	Equal	Identical service provided to all lots and cost not likely to be affected by lot specific factors.
Sundry expenses	\$132.00	\$5.28	Equal	Nature of expenditure not predictable and it is not possible to predict if or how it may be affected by lot specific factors.
Tax Fee	\$220.00	\$8.80	Equal	Administrative expense - not affected by lot specific factors.
Tax Fee (BAS)	\$879.00	\$35.16	Equal	Administrative expense - not affected by lot specific factors.
Telephone - Fire & lifts	\$1,055.00	\$42.20	Equal	Identical service provided to all lots and cost not likely to be affected by lot specific factors.
Workplace health & safety	\$528.00	\$21.12	Equal	Identical service provided to all lots and cost not likely to be affected by lot specific factors.
Total	\$123,868.96	\$4,954.75		

Allocation Summary	Analysis Budget Allowance	Total Budget / 25 lots
Equal	\$117,515.36	\$4,700.61
Quantity per lot	\$6,353.60	\$254.14
Total	\$123,868.96	\$4,954.75

Extra Table 4 Calculation

Lot No	External cleaning area based costs			
	Area of lot cleaning	Equal share of area of common cleaning	Area per lot	% of total cleaning per lot
		3,719.21		6,353.60
1	0.00	148.77	148.77	2.96%
2	32.55	148.77	181.32	3.61%
3	32.55	148.77	181.32	3.61%
4	32.55	148.77	181.32	3.61%
5	32.55	148.77	181.32	3.61%
6	32.55	148.77	181.32	3.61%
7	32.55	148.77	181.32	3.61%
8	32.55	148.77	181.32	3.61%
9	32.55	148.77	181.32	3.61%
10	65.10	148.77	213.87	4.26%
12	65.10	148.77	213.87	4.26%
14	65.10	148.77	213.87	4.26%
16	65.10	148.77	213.87	4.26%
18	65.10	148.77	213.87	4.26%
20	65.10	148.77	213.87	4.26%
22	65.10	148.77	213.87	4.26%
24	65.10	148.77	213.87	4.26%
26	65.10	148.77	213.87	4.26%
27	65.10	148.77	213.87	4.26%
28	65.10	148.77	213.87	4.26%
29	65.10	148.77	213.87	4.26%
30	65.10	148.77	213.87	4.26%
31	65.10	148.77	213.87	4.26%
32	65.10	148.77	213.87	4.26%
33	65.10	148.77	213.87	4.26%
	1302.00	3,719.25	5,021.25	100.00%
				6,353.51

Table 4 - Additional Apportionment Calculations

Table 5 - Cost Impact Assessment & Recommended Entitlement Schedule (Amended 26.7.05)

Lot No	Admin costs allocated equally	SE costs allocated equally	Typical lobby cost items	Lot area roof items	Parking space basement items	Balustrade replacement	Balcony membrane	Unit fire detectors	External paint and render	Building cleaning	Total expenses allocated	% of total to each lot	Recom. contribution schedule	Cost allocated on Recon Schedule	Variation from allocated expenses	Current entitlement	Current entitlement as %
1	4,700.51	1,909.07	4,922.38	5,030.03	647.08	5,176.50	6,770.23	537.60	22,835.25	6,353.60	217,534.84	3.62	36	7,926.75	-42.55	939	2.65
2	4,700.51	1,909.07	202.44	116.70	11.98	129.41	173.23	16.07	673.04	229.36	8,161.91	3.75	37	8,146.93	14.98	947	2.67
3	4,700.51	1,909.07	202.44	117.70	11.98	129.41	173.23	16.07	673.04	229.36	8,162.91	3.75	37	8,146.93	15.98	949	2.67
4	4,700.51	1,909.07	202.44	116.70	11.98	129.41	173.23	16.07	673.04	229.36	8,162.91	3.75	37	8,146.93	14.98	949	2.67
5	4,700.51	1,909.07	202.44	117.70	11.98	129.41	173.23	16.07	673.04	229.36	8,162.91	3.75	37	8,146.93	15.98	952	2.68
6	4,700.51	1,909.07	202.44	116.70	11.98	129.41	173.23	16.07	673.04	229.36	8,161.91	3.75	37	8,146.93	14.98	952	2.68
7	4,700.51	1,909.07	202.44	128.77	23.97	129.41	173.23	16.07	673.04	229.36	8,183.97	3.76	37	8,146.93	39.04	953	2.68
8	4,700.51	1,909.07	202.44	127.76	23.97	129.41	173.23	16.07	673.04	229.36	8,184.96	3.76	37	8,146.93	38.03	954	2.69
9	4,700.51	1,909.07	202.44	117.70	11.98	129.41	173.23	16.07	673.04	229.36	8,162.91	3.75	37	8,146.93	15.98	955	2.69
10	4,700.51	1,909.07	193.78	237.92	23.97	258.83	332.85	24.08	1045.6	270.66	8,997.37	4.14	41	9,027.68	-30.31	1,915	5.39
12	4,700.51	1,909.07	193.78	254.52	23.97	258.83	332.85	24.08	1045.6	270.66	9,043.46	4.16	41	9,027.68	-13.71	1,919	5.41
14	4,700.51	1,909.07	193.78	269.05	47.93	258.83	332.85	24.08	1045.6	270.66	9,013.97	4.14	41	9,027.68	-13.71	1,919	5.41
16	4,700.51	1,909.07	193.78	252.53	35.95	258.83	332.85	24.08	1045.6	270.66	9,023.94	4.15	41	9,027.68	-15.78	1,925	5.42
18	4,700.51	1,909.07	193.78	261.06	47.93	258.83	332.85	24.08	1045.6	270.66	9,044.47	4.16	41	9,027.68	-16.79	1,930	5.44
20	4,700.51	1,909.07	193.78	248.99	35.95	258.83	332.85	24.08	1045.6	270.66	9,026.42	4.15	41	9,027.68	-1.74	1,935	5.45
22	4,700.51	1,909.07	193.78	364.58	47.93	258.83	332.85	24.08	1045.6	270.66	9,047.99	4.16	41	9,027.68	-2.26	1,939	5.46
24	4,700.51	1,909.07	193.78	363.57	47.93	258.83	332.85	24.08	1045.6	270.66	9,046.98	4.16	41	9,027.68	-2.31	1,943	5.48
26	4,700.51	1,909.07	193.78	237.92	23.97	258.83	332.85	24.08	1045.6	270.66	8,997.37	4.14	41	9,027.68	-30.31	1,948	5.49
27	4,700.51	1,909.07	193.78	238.93	23.97	258.83	332.85	24.08	1045.6	270.66	8,998.38	4.14	41	9,027.68	-30.31	1,428	4.92
28	4,700.51	1,909.07	193.78	237.92	23.97	258.83	332.85	24.08	1045.6	270.66	8,997.37	4.14	41	9,027.68	-29.30	1,433	4.94
29	4,700.51	1,909.07	193.78	237.92	23.97	258.83	332.85	24.08	1045.6	270.66	8,997.37	4.14	41	9,027.68	-30.31	1,438	4.95
30	4,700.51	1,909.07	193.78	237.92	23.97	258.83	332.85	24.08	1045.6	270.66	8,997.37	4.14	41	9,027.68	-30.31	1,443	4.95
31	4,700.51	1,909.07	193.78	237.92	23.97	258.83	332.85	24.08	1045.6	270.66	8,997.37	4.14	41	9,027.68	-30.31	1,450	4.98
32	4,700.51	1,909.07	193.78	237.92	23.97	258.83	332.85	24.08	1045.6	270.66	8,997.37	4.14	41	9,027.68	-30.31	1,455	4.98
33	4,700.51	1,909.07	193.78	260.05	53.95	258.83	332.85	24.08	11,900.49	270.66	9,094.38	4.18	41	9,027.68	66.70	1,450	4.38
25	117,515.25	47,726.75	4,922.44	5,032.04	647.10	5,176.56	6,770.13	537.92	22,863.47	6,353.51	217,545.17	100.92	988	217,545.07	-0.10	35,495	99.98