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13 November 2023

Body Corporate for Ridges Peregian Springs CTS 39713
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Dear Committee

**RIDGES PEREGIAN SPRINGS CTS 39713 - ADVICE ON
DISSOLUTION OF LAYERED SCHEME**

Our Ref: 231803

1. Thank you for the opportunity to assist the Body Corporate for Ridges Peregian Springs CTS 39713 (**the Scheme**).

Background

2. The Ridges Peregian Springs Scheme is a large-scale layered Scheme, consisting of a large number of lots.
3. The Scheme is regulated by the *Body Corporate and Community Management (Standard Module) Regulation 2020* (**the Standard Module**).

Instructions

4. You have instructed us that:
 - (a) Lots within the Ridges Peregian Springs CTS 39713 (the Principal Body Corporate) (**PBC**) previously had the benefit of a recreation club (**the Rec Club**);
 - (b) As we understand it, the Rec Club was owned by the developer of the Scheme, who had granted the PBC a 10 year agreement for access to, and use of, the Rec Club;
 - (c) In September 2022, that agreement expired and the developer offered to sell the Rec Club to the PBC. Motions to purchase the Rec Club were subsequently considered, however failed to be successfully resolved;
 - (d) As a result, occupiers have lost the right to use of the Rec Club, which we understand has now been sold privately by the developer;
 - (e) We understand the Rec Club is located in Lot 9007 on SP221511, and searches reveal the current registered owner of that lot is The Corporation of the Synod of the Diocese of Brisbane;

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- (f) The loss of the use of the Rec Club has caused owners to question the reason for maintaining the current composition of the Scheme, on the basis that they no longer perceive there to be any benefit to the “body corporate” arrangement insofar as it relates to being layered. In simple terms, some owners are of the view that they no longer receive the benefit of any shared/recreation facilities, and accordingly no longer see any reason or benefit to contributing financially to the operation of the PBC; and
 - (g) It has therefore been suggested that the layered arrangement of the PBC is dissolved/terminated, so that all lots currently within it are converted to individual lots, rather than remaining part of a community titles scheme (i.e. a body corporate).
5. You have therefore sought for our office to provide advice outlining the process, steps and likely costs which would be involved in effecting the dissolution of the Ridges Peregian Springs Scheme.
6. We understand that the Committee also seeks for our office to discuss aspects of the proposed termination which would be difficult to achieve and/or which would be dependent on external stakeholders and bodies.

Structure of this Advice

7. Given the length, complexity and scope of this advice, we provide a summary of its structure it as follows:
- (a) This cover letter confirms your instructions and provides a summary of our advice.
 - (b) Annexure A outlines the structure and composition of the Scheme.
 - (c) Annexure B considers the question “How can the Scheme be terminated?”.
 - (d) Annexure C outlines relevant issues for any application to the District Court of Queensland (the **Court**).
 - (e) Annexure D outlines some of the practical difficulties which we envisage will be involved in the proposed termination.

SUMMARY

8. From the outset, we advise that a facilitating the proposed termination of the Scheme would not be a simple, fast or cost-effective process. It would involve a significant amount of work, and very significant costs.
9. There are also many practical obstacles to the successful termination of the Scheme and, in a Scheme of this size and scale, such obstacles would likely be insurmountable, meaning that any attempt to terminate the Scheme would likely be unsuccessful.



10. We therefore have concerns that the proposed termination:
- (a) Would ultimately not be possible to achieve; and
 - (b) Would likely not achieve the outcome which owners desire in seeking to “exit” their subsidiary body corporate (**SBC**), further subsidiary body corporate (**FSBC**) (if applicable) and the PBC overall.

Facilitating the proposed termination of the Scheme

11. In summary, the successful termination of the Scheme would require (among other things) the following.

Cost Investment

12. Pursuing termination would require a significant cost investment by all owners, to cover the costs of obtaining advice from a number of specialists/experts, such as town planners and surveyors, in addition to legal advice and assistance to effect the termination.
13. We expect that some of the most significant costs associated with only obtaining the required advice, and pursuing the required steps to effect the termination of each and every FSBC, SBC and PBC would be:
- (a) Surveying costs;
 - (b) Town Planning costs;
 - (c) Legal costs (to provide advice, prepare the necessary general meeting motions, commence District Court proceedings, prepare documentation for registration, liaise with other experts and coordinate the necessary aspects of the proposed termination); and
 - (d) Potential stamp duty costs.
14. As instructed, our office sought an indication as to the surveying costs that would be involved in effecting the proposed termination. Given the complex nature of the proposed termination and the many obstacles that would need to be overcome before a surveyor could be engaged, we were advised that it is difficult for surveyors to accurately ascertain the associated surveying costs at this point in time. The surveyors that our office spoke with were also concerned with the many challenges that the proposed termination would bring. However, as a very rough and preliminary indication, the associated surveying costs have been estimated to be in the vicinity of approximately \$120,000 - \$140,000, assuming that the necessary plans can be predominantly compiled from the current survey plans. We confirm, however, that this estimate should not be taken to be an accurate reflection of the relevant costs, and the actual costs may be much higher.
15. We have not otherwise obtained quotations or estimates for any of the above costs and therefore cannot say with any certainty what the total costs could look like.



However, we expect that those costs would be well into the hundreds of thousands of dollars, particularly if any District Court applications are necessary for the termination of one or more FSBCs, SBCs or the PBC to be authorised.

16. In our view, it would be difficult to see how the costs of terminating the Scheme are justifiable. We understand the motivation for the proposed termination is (at least in part) to reduce costs borne by owners (for instance, associated with maintenance of the PBC common property), however the costs to carry out the proposed termination will be very significant.

Support from owners

17. To successfully terminate the FSBCs, SBCs and ultimately the PBC, there will need to be sufficient support from owners.
18. This would require either:
- (a) For all owners within each and every one of the FSBCs, SBCs and the PBC to support the proposed termination of each Scheme **and** a unanimous agreement amongst all owners and all tenants about termination issues; or
 - (b) For an overwhelming majority of owners (essentially two thirds of owners) within each and every one of the FSBCs, SBCs and the PBC to support the commencement of legal proceedings in the District Court seeking orders for the termination of the Scheme **and** for the District Court to order the termination on the basis that it is just and equitable to do so.
19. Given the scale of the Scheme, comprising as we understand it of more than 1,350 lots, we are not confident that the necessary support would be attainable and achievable.

Involvement of tenants and mortgagees

20. Also important to consider is the involvement that both tenants and mortgagees have in the proposed termination process given that they both have legally recognised interests in the relevant property.
21. In addition to resolving by resolution without dissent to terminate the Scheme, an agreement about termination issues must also be entered with each registered owner, registered mortgagee and tenant of each lot.
22. In particular, it is difficult to say whether mortgagees/lenders would be agreeable to the proposed termination and the re-creation of new lots, or would oppose same.
23. Further, even if they are agreeable to the proposal, in our view mortgagees will be at liberty to enforce their own policies against the owner, which may require a full reassessment and result in delays and/or difficulties in that regard.



Specific issues which may impede or prevent the proposed termination

24. Before giving serious consideration to attempting to terminate any of the FSBCs, SBCs or PBC, specific advice must be obtained (and a suitable solution located) to unique practical difficulties which exist in respect of various individual FSBCs or SBCs.
25. For example, investigations must be commenced in relation to:
 - (a) If the proposed termination can proceed in respect of any lots located in the Scheme which have common walls and/or are registered under a building format plan of subdivision. These lots are inherently connected and in our view they must remain so for the purpose of determining how maintenance, insurance and the like are carried out. While we would need to consider this further and render further advice regarding same, our preliminary view is that the existence of any such lots would present a substantial obstacle to the dissolution of certain FSBCs and/or SBCs, and in fact could render the proposed termination impossible to achieve; and
 - (b) Whether there are any possibilities for certain common property recreational facilities (such as those located within the Pavilions) can be dealt with in the course of the proposed termination, such that those facilities remain accessible to the owners currently receiving the benefit of those facilities if the relevant scheme is terminated.
26. This is certainly not an exhaustive list, and we anticipate that further specific and problematic issues would likely surface if steps were commenced towards the proposed termination.

Approval from external bodies

27. Even if all of the above aspects are satisfactorily addressed, it would not be possible to proceed with the proposed termination without the endorsement of the Council in various respects, including (however not necessarily limited to):
 - (a) The Council would need to agree to significant amendments/revisions to the development approval conditions applying to the Scheme.
 - (i) By their very nature, development approval conditions are imposed as conditions for the development of certain land and are therefore not regularly amended or substantially altered.
 - (ii) It appears that these development conditions have already been the matter of significant contention in the past (having been the subject of proceedings in the Planning and Environment Court). Accordingly, we would be surprised if the Council was open to varying same.
 - (iii) Further, to the extent that the development approval conditions cannot be revised by mutual agreement with the Council, Court proceedings may be required to seek for the necessary revisions. Such proceedings



would again be costly, and there is absolutely no guarantee that such Court proceedings would be successful.

- (b) Unless a different solution is found for dealing with areas of common property as part of the proposed termination, the Council's agreement to acquiring various common property areas will be required.
 - (i) In particular, most of the roadways throughout the Scheme currently form part of the PBC's common property, and should be Council owned and maintained in the event that the lots in the Scheme are converted to individual titles.
 - (ii) We understand that the Council has (understandably) already expressed reluctance to acquiring the common property.
 - (iii) Further, if by chance the Council did agree to acquire those areas of land, it has advised that the costs associated with maintenance and upkeep of those lands would be passed onto the lots currently within the FSBCs, SBCs and PBC via their Council rates. Accordingly, it questions whether there would in fact be any (and if so, how much) cost savings for owners.

Justification for the proposed termination

- 28. We understand that the reason for the proposed termination of the Scheme is primarily from a cost-saving perspective, given that there remains (at least in the eyes of some owners) no reason or benefit to contributing financially to the operation of the PBC.
- 29. In our respectful opinion, however, the termination of the Scheme is unlikely to achieve such cost savings, because:
 - (a) Firstly, attempting to effect the proposed termination would itself involve very significant costs; and
 - (b) Secondly, it is unlikely that the termination of the Scheme would actually result in any significant reduction in the costs borne by owners. This is because it would likely necessitate the handing back of certain common property areas to the Council, who will then impose additional costs upon owners (as ratepayers) to cover the additional maintenance and operating costs which the Council has absorbed.

Recommendation

- 30. In light of the Scheme's structure, nature and size, we do not recommend proceeding with the proposed termination of the FSBCs, SBCs and PBC.
- 31. In our view, attempts to do so will likely be futile, and are unlikely to achieve the desired outcome of owners – being a reduction in the costs of 'running' the PBC.



32. As an alternative option, the Body Corporate could consider strategies which would reduce the PBC's levies (and, therefore, the costs borne by owners in that regard). This might be achieved, for example, by disposing of PBC common property.

- (a) We are instructed, however, that the PBC common property is limited to roadways throughout the Scheme and their adjoining nature strips. Accordingly, the only real option to dispose of those areas would be to seek for the Council to take back ownership of those areas. As outlined in this advice, we understand that the Council has expressed reluctance to do this, and further has advised that it would need to pass on the additional costs borne by the Council to owners via their rates.

If you would like to discuss any aspect of this advice, please contact our office.

Yours sincerely

Grace Lawyers Pty Ltd

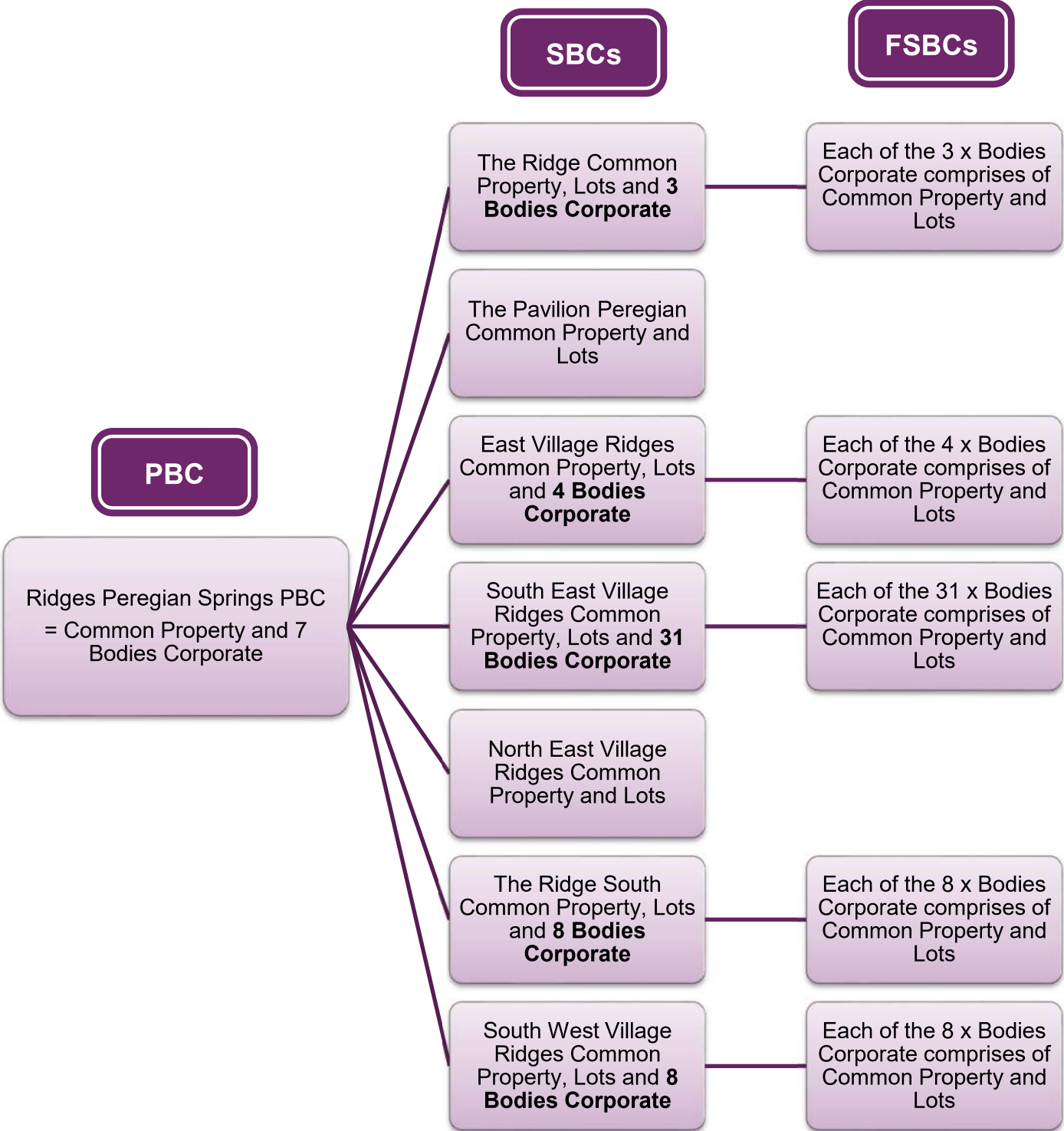
A handwritten signature in black ink, appearing to read 'Jessica Cannon', written over a faint, illegible printed name.

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Annexure A – The Ridges Peregian Springs Scheme

1. To understand the requirements to dissolve the Scheme, it is relevant to understand how the Scheme has been established.
2. The Ridges Peregian Springs Scheme is layered Scheme, meaning that there is a principal Body Corporate (**PBC**), which contains its own bodies corporate (known as subsidiary bodies corporate (**SBCs**)).
3. The PBC is Ridges Peregian Springs CTS 39713. It is made up of common property and 7 SBCs, being:
 - (a) The Ridge CTS 39799;
 - (b) The Pavilion Peregian CTS 41488;
 - (c) East Village Ridges CTS 41995;
 - (d) South East Village Ridges CTS 46052;
 - (e) North East Village Ridges CTS 46271;
 - (f) The Ridge South CTS 47177; and
 - (g) South West Village Ridges CTS 50057.
4. Each SBC is then made up of SBC common property, lots, and some of the SBCs also have further subsidiary bodies corporate (**FSBCs**) within them (i.e. a third layer or tier). For example:
 - (a) The Ridge CTS 39799 has 3 FSBCs within it;
 - (b) East Village Ridges CTS 41995 has 4 FSBCs within it;
 - (c) South East Village Ridges CTS 46052 has 31 FSBCs within it;
 - (d) The Ridge South CTS 47177 has 8 FSBCs within it; and
 - (e) South West Village Ridges CTS 50057 has 8 FSBCs within it.
5. In summary, this means that the Scheme is made up of:
 - (a) 1 PBC; and
 - (b) 7 SBCs; and
 - (c) 54 FBCs.
6. We provide the following diagram to assist in demonstrating the structure of the Scheme.





Annexure B – How can the Scheme be terminated?

1. The *Body Corporate and Community Management Act 1997* (Qld) (**BCCMA**) provides the following two methods by which a community titles scheme (**Scheme**) may be terminated:
 - (a) if the Body Corporate resolves by resolution without dissent to terminate the scheme;¹ or
 - (b) by an order of the District Court of Queensland.²
2. Legislative changes with respect to the termination of a body corporate are currently the subject of consideration by the legislature, with the intention of these changes to be to make it easier to terminate in certain circumstances. At this stage, it appears likely that these changes will result in amendments to the BCCMA in the future (possibly next year).
3. The proposed changes would allow the termination of a body corporate with the support of 75% of lot owners, where the body corporate has agreed it is more financially viable for lot owners to terminate, rather than maintain or remediate, the scheme. In all other situations, however, termination of a body corporate will still require a resolution without dissent, as is currently required.

Termination by resolution without dissent

4. A Scheme may be terminated if:
 - (a) the Body Corporate decides by resolution without dissent to terminate the Scheme; and
 - (b) an agreement about “*termination issues*” is entered into between:
 - (i) all the registered owners of the scheme land (i.e. all lot owners within the Body Corporate); and
 - (ii) if there are any registerable or short leases affecting the scheme land, each lessee of such lease/s (i.e. any tenants).³

The resolution without dissent

5. A resolution without dissent means there must be no ‘no’ votes for a motion. This does not mean that the owner of every lot must vote ‘yes’ to the motion. The motion will still pass if owners choose not to vote on the motion, as long as no owner votes against it (i.e. votes ‘no’).

1 Section 78(1)(a) of the BCCMA.

2 Section 78(2) of the BCCMA.

3 Section 78(1)(b) of the BCCMA.; A short lease is one that is for a term less than 3 years; or on a year to year basis or for a shorter period, *Schedule 2, Land Title Act 1994* (Qld).



6. All owners are entitled to vote on a motion to be decided by resolution without dissent, even if they are unfinancial (i.e. they owe a body corporate debt).⁴

The agreement about termination issues

7. The passing of a resolution without dissent alone is not enough to terminate the Scheme.
8. There is an additional requirement for a unanimous agreement to be reached amongst all owners and any relevant tenants about termination issues to bring the Scheme to an end.
9. Such an agreement will:
- (a) deal with the termination issues by setting out:
 - (i) how the scheme land will be disposed of after termination, and the apportionment of any proceeds of that disposal;
 - (ii) what will happen to any Body Corporate assets;
 - (iii) the sharing of liabilities of the Body Corporate⁵;
 - (b) provide certainty on how the Body Corporate will be dissolved and for the division of any assets or liabilities between owners.
10. Termination does not affect any charge, levy, rate or tax that has accrued on a lot within the scheme prior to termination.⁶

What happens if a resolution without dissent fails or agreement cannot be reached on termination issues?

11. If a motion proposing the termination of the Scheme does not pass by resolution without dissent, the only recourse is to apply to the Court for an order to facilitate the termination.

Termination by an order of the District Court of Queensland

12. A Body Corporate or an owner included in the scheme may apply to the Court to make orders:
- (a) terminating the Scheme; and
 - (b) about termination issues, to the extent it is necessary to effect the termination of the scheme.⁷

4 Section 102(2) of the Standard Module.

5 Schedule 6 of the BCCMA.

6 Section 80(1) of the BCCMA.

7 Section 78(3) and (4) of the BCCMA.



13. In order to bring such proceedings to the District Court, a Body Corporate needs to pass a special resolution.⁸ A motion is passed by special resolution only if:
- (a) at least two-thirds of the votes cast are in favour of the motion; and
 - (b) the number of votes against the motion is not more than 25% of the total number of lots in the scheme; and
 - (c) the total contribution schedule lot entitlements of the votes against the motion is not more than 25% of the total contribution schedule lot entitlements for all lots in the scheme.
14. All 3 of these conditions must be met for the motion to pass by special resolution (i.e. if 1 or more of the conditions are not met, the motion will fail).
15. The Court will only order a scheme be terminated if it decides it would be just and equitable to do so⁹. We consider the meaning of this term below.

Division of Body Corporate assets and liabilities

16. Subject to any agreement entered into about termination issues or an order of the Court, after termination, former owners (being those who owned lots in the Scheme immediately prior to termination) are:
- (a) entitled to Body Corporate assets in shares proportionate to the respecting interest schedule lot entitlements of those former lots;
 - (b) jointly and severally responsible for any Body Corporate liabilities, but able to claim contributions against one another in proportion to their respective interest schedule lot entitlements; and
 - (c) able to deal with Body Corporate assets or land as if those assets were registered or otherwise in the names of the former owners.¹⁰
17. The Court may appoint an administrator and give the administrator authority to put the order into effect in the way directed by the Court¹¹.
18. Case law suggests that a Court usually prefers to appoint an independent liquidator to carry out the winding up of the Body Corporate by ascertaining its assets and liabilities, the application of assets in discharge of any liabilities and the distribution of any surplus.¹²

8 Except in a scheme which is a specified two-lot scheme, in which case proceedings can be started with a lot owner agreement.

9 Section 78(2) of the BCCMA.

10 Section 81 of the BCCMA.

11 Section 78(5) of the BCCMA.

12 *Borsky v Proprietors Strata Plan No 19833 (1986) 7 NSWLR 84; Pritpro Pty Ltd v Willoughby Municipal Council* (18 March 1986m, unreported).



19. Once the Body Corporate is wound up, the freehold land and other body corporate assets may be dealt with by the former owners as if the assets were held in the names of the former owners.¹³
20. In effect, all the former owners become *tenants in common* of the freehold land,¹⁴ which is not dissimilar to the rights and liability they all have with respect to the common property: for example, see section 35 of the BCCMA.
21. An interested person may apply to the District Court for orders dealing with the custody, management and distribution of Body Corporate assets¹⁵, giving weight to the arguments that:
 - (a) an agreement dealing with termination issues should be entered into before termination; and
 - (b) the Body Corporate should appoint a qualified, disinterested person to carry out the winding up of the Body Corporate.

¹³ Section 81(3), BCCMA.

¹⁴ Section 35(1) of the Property Law Act 1974 (Qld).

¹⁵ Section 81(5) BCCMA.



Annexure C – Application to the District Court

1. We are only aware of two decisions in Queensland that has dealt with the termination of a community titles scheme.¹⁶
2. In *Nobbys Outlook* the body corporate made an application to the Court seeking an order for termination of the scheme. However, this decision is not of any assistance as in that case the parties settled the dispute outside of Court, by mediation.¹⁷
3. The second decision was that of Village Square in Hope Island (which is an unreported decision). This matter had a quite unique factual matrix however, in summary:
 - (a) The body corporate consisted of 3,760 individual lots owned by 57 different owners. The scheme fell into disrepair and after the body corporate was not able to make a decision on a path forward, an owner made an application to the District Court calling upon it to terminate the body corporate on the grounds that it was just and equitable to do so.
 - (b) Emphasis was placed on the facts that the development had failed, it was not operating and functioning as planned, numerous owners owed the Council rates and water, numerous owners were deregistered companies and accordingly, it would be more just and equitable to owners to terminate the scheme. The decision of the District Court was ultimately that all lots be amalgamated into one, and an administrator was appointed to sell the property/land.
 - (c) Notably, it was an owner who brought this application rather than the Body Corporate. An owner application means that the court application negates the need for a special resolution at general meeting, as discussed in this advice (Annexure B). However, it will mean that the owner bears the liability for the legal costs.

Just and equitable

4. The District Court to may make an order terminating a scheme if it decides it would be just and equitable to terminate it.
5. The term “just and equitable” is also used at section 85(3) of the Act, where the Court is empowered to order the amalgamation of two community titles schemes it is decides it is just and equitable to amalgamate them.
6. An amalgamation was ordered under section 85 of the Act by the Court in *Body Corporate for Aleutian at Seaforth & Ors v Alexander Management Pty Ltd & Ors* [2010] QDC 342. In that decision the Court made a flexible order that sought to balance the competing interests of all parties to allow the amalgamation to occur.

¹⁶ *Body Corporate for Nobbys Outlook CTS 14822 v Lawes* [2013] QDC 301.

¹⁷ *Ibid.*



7. The term is also used in section 276 of the Act, where an adjudicator is empowered to make an order that is just and equitable in the circumstances. This term was considered in detail in the decision of *Body Corporate for Palm Springs Residences v. J Patterson Holdings Pty Ltd* [2008] QDC 300 where the Court:
- (a) considered the approach in *Cominos v Cominos* (1972) 127 CLR 566. In *Cominos* the High Court was concerned with section 86 of the *Matrimonial Causes Act* 1959, which empowered a court to make an order as the court considers just and equitable in the circumstances of the case. Mason J at p 608 stated:

“To authorise a court to make an order where it is just and equitable to do so creates a judicial discretion exercisable after a consideration of all the circumstances relevant to the making of the order and in accordance with principle.”
 - (b) approved of the approach in *Dindas v Body Corporate for One Park Road CTS 2114* [2006] QDC 302, where it was held at paragraph 40 that:

“The power arising under s 276 may only, as follows from the discussion set out above, be exercised if the orders which are made do not unacceptably trample the appellants’ rights as lot owners.”
8. The fact that a scheme may be terminated by resolution without dissent or by order of the Court if it considers it just and equitable must mean that the Court can order termination of a Scheme, despite owners opposing it.
9. It is our view that the power of the Court to order the termination of the Scheme if it is just and equitable means in effect that:
- (a) the Court is to have regard to all the surrounding circumstances, provided that they are relevant;
 - (b) the interests of those that oppose the termination will have to be balanced with the interests of those that support it; and
 - (c) if a person’s interests would be significantly affected or damaged such that compensation or some other remedy is not available, it may not be just and equitable to order the termination of the Scheme.

Process to follow to apply to the District Court

10. If the Body Corporate wished to make an application to the District Court for an order to terminate the Scheme, it would need to pass a motion by special resolution to authorise the commencement of that proceeding. An owner of a lot that owes a body corporate debt is not entitled to vote on that motion.
11. Further motions may also be necessary, particularly to authorise legal expenditure which will likely be associated with commencing that proceeding.



12. The Court may also:
 - (a) require that the application be served on all lot owners and mortgagees in possession, and possibly also on any lessees or those with a registered interest in a lot (such as a mortgagee that has not taken possession); and
 - (b) provide an opportunity for any of these parties to apply to join the proceeding if they want to be heard on the application.

13. We raise this matter because ensuring that the application is brought to the attention of all interested parties may be a factor that delays the application being determined.



Annexure D – Practical difficulties

Please note that the below is by no means an exhaustive list of the practical difficulties which would be involved in the termination of the Scheme. Further issues would likely need to be investigated and resolved if the proposed termination of the Scheme was to occur.

Termination of a layered Scheme

1. Only a basic scheme may be terminated.¹⁸
2. A basic scheme is one where land is subdivided into lots and common property to create a scheme with a single body corporate (i.e. one level of management). A layered scheme that consists of subsidiary bodies corporate, such as the PBC, is not a basic scheme.
3. This means that to terminate a layered scheme, that scheme must first become a basic scheme by terminating all bodies corporate within it. When all subsidiary schemes have been terminated, the principal scheme may be terminated.
4. Practically speaking, this would dictate the order for the termination of the bodies corporate forming part of the Scheme (i.e. all FSBCs would need to terminate before the SBCs can terminate, and all SBCs would need to terminate before the PBC can terminate).

Practical Example

5. While this might sound fairly simple, in practice it would actually require significant duplication with respect to the termination and creation of new lots.
6. By way of illustration, to terminate a single FSBC within The Ridge:
 - (a) Termination must be approved by resolution without dissent and all owners and lessees in the FSBC having made an agreement as to termination issues (or alternatively via a Court order);
 - (b) A plan cancelling the lots in the FSBC must be filed at the Land Registry for registration, together with either:
 - (i) the resolution of the Body Corporate to terminate the scheme and any agreement entered into about the termination issues; or
 - (ii) the Court order terminating the scheme.¹⁹
 - (c) On registration of the plan:
 - (i) the particulars about the FSBC and its CMS will be cancelled;

¹⁸ Section 76(2) of the BCCMA.

¹⁹ Section 115U of the *Land Title Act* 1994.



- (ii) one or more indefeasible titles will be created for the new lot(s) that comprises all of the land that, immediately before the cancellation, was FSBC land;
 - (iii) the indefeasible title(s) will show the registered owners of all of the lots previously included in the scheme as tenants in common with shares proportionate to the lot entitlements shown in the schedule of interest in the cancelled CMS;
 - (iv) the indefeasible title(s) will also show the share of each registered owner as being subject to any mortgage(s), lease(s) or other interest(s) previously registered on the cancelled title to their lot in the terminated community titles scheme;
- (d) New lots must then be created, reflecting the current boundary designations and ownership status. However, while the FSBC has been terminated, those new lots will need to be contained within The Ridge, possibly by way of an amalgamation (however this will be subject to, and determined by, town planning requirements).
- (e) Amendments to the Community Management Statement for the relevant will also be necessary, as part of carrying out this process.
7. The above process would need to be completed:
- (a) Firstly, by all 54 FSBCs;
 - (b) Once that has occurred, then by all 7 SBCs; and
 - (c) Finally, once the above has occurred, by the PBC.
8. It is important to note, too, that the progressive termination of each subsidiary does not reduce any barriers towards terminating the principal scheme that sits above it.
- (a) By way of example, if all 31 x FSBCs within South East Village Ridges were terminated, the lots previously within each FSBC would become lots within South East Village Ridges;
 - (b) This will increase the number of lots within South East Village Ridges, thereby increasing the number of:
 - (i) Lots with an entitlement to vote on a resolution without dissent motion to terminate South East Village Ridges;
 - (ii) Lot owners and tenants who must enter any agreement as to termination issues.



Format Plans

9. We understand that at least most of the lots in the Scheme are registered under a standard format plan of subdivision (**SFP**), meaning that the boundaries of those lots are determined with reference to pegs in the ground (with everything inside those boundaries forming part of the lot).
10. However, we wish to flag that the termination of the Scheme in such a way as to have each lot registered on its own title, outside of any strata scheme, will be further complicated if any lots in the SBCs or FSBCs:
 - (a) Have common walls with other lots and are registered under a building format plan of subdivision (**BFP**), meaning that the lot boundaries are determined with reference to structural elements, and will therefore be the centre of the relevant walls, floors and ceilings; or
 - (b) Share walls in common with other lots, even if they are registered under a SFP.
11. If any lots within the SBCs or FSBCs have common walls, floors etc with other lots, we respectfully do not consider it likely that such lots would be capable of existing outside of a community titles scheme, because the relationship between those lots needs to exist (for maintenance and insurance purposes and the like).
12. Specific advice would need to be obtained to consider how, if at all, these lots could be terminated (or removed from the PBC). However, our preliminary view is that this may be difficult, or impossible, to achieve and may itself present an insurmountable obstacle to the proposed termination.

Dealing with Common Property

13. There is a significant amount of PBC common property, in particular many roadways and nature strips, which is indicated in blue on the maps in **Annexure E**. In addition, each of the SBCs and FSBCs have their own common property areas.
14. If the schemes were to be terminated, alternative arrangements will need to be made and agreed in relation to the ownership and responsibility for common property which previously formed part of the Scheme.
15. We understand that the suggestion has been made to offer to give the common property area/s back to the Council. While this suggestion seems simple, we flag that:
 - (a) In order for this suggestion to be effective, there must be a willingness from Council to accept those common property areas. We understand that the chairperson of the PBC has made initial enquiries with the Sunshine Coast Council (Councillor Suarez and Warren Bunker (former head of infrastructure at SC Council)) who have indicated that there would likely be some reluctance and/or resistance by the Council to a proposal of this nature;



- (b) We understand that the Council has advised that the reasons for its reluctance are:
 - (i) That the Council does not have a complete understanding of the asset quality that would be handed over to the Council;
 - (ii) The possible short-term costs to the Council to bring assets handed to it up to acceptable standard (if required); and
 - (iii) The longer-term impact on the Council with respect to costs to maintain and/or upgrade those assets, in particular roadways;
 - (c) We also understand that the Council has indicated that, where it has historically agreed to “take back” other areas from landowners, the additional costs to the Council involved in maintaining those areas have been reflected in the rates of the landowners who previously owned the areas. We note that at least part of the reason for the proposed termination is to save such costs, and it therefore seems that such cost savings would realistically be unlikely even if the Scheme was terminated.
16. While there may be other methods for either retaining or selling/gifting the common property, this alone would require specific advice for each FSBC, SBC and the PBC, and consideration of the relevant areas for each scheme.
17. We are aware of at least one SBC which has its own common property recreation club (the Pavilions) and this would present an additional challenge.

Planning Considerations

18. The development of the Scheme was approved on a significant number of conditions.
19. By their very nature, development approval conditions are imposed as conditions which must be adhered to for the development of certain land to proceed. Accordingly, these conditions are therefore not regularly amended or substantially altered.
20. It is an offence to contravene a development approval (i.e. the conditions of the development), and any such contravention can carry hefty fines. Accordingly, any deviation from those conditions would require the consent of the Council.

Relevant development conditions

21. We have been provided with a copy of what we understand to be part of the development conditions applying to the Scheme. We note that those conditions relevantly include, at paragraph 71, a condition which stipulates that

“The applicant shall... prepare and register covenants in accordance with Division 4A of the Land Titles Act, to provide that no cats and dogs (except guide dogs) may be kept within the Coolum Ridges Master Plan Area except where the lots are contained within a Community Title Scheme whereby



specific By-laws are to be developed in consultation with Maroochy Shire Council to limit or control cats and dogs so as not to impact or threaten the native fauna and wildlife particularly koalas living in the nearby habitat, especially in the recognised koala corridor.”

22. We consider that there would likely be various other development conditions applying to the Scheme which would be relevant to and/or affected by the proposed termination of the Scheme.
23. Specific advice regarding these development conditions, and Council regulations and requirements generally, would need to be obtained from a town planner prior to any steps being taken to effect the proposed termination of the Scheme.

Varying the development conditions

24. It appears that at least some of the development conditions for the Scheme have already been the matter of significant contention in the past (having been the subject of proceedings in the Planning and Environment Court commenced by the Sunshine Coast Environment Council Inc and Walscott Animal Law Service Inc).
25. We would be surprised if the Council was open (or even able) to agree to vary same, in those circumstances.
26. To the extent that the development approval conditions cannot be revised by mutual agreement with the Council, Court proceedings may be required to seek for the necessary revisions/relaxations. Any such proceedings would be costly, and additionally there is no guarantee that the proceedings would ultimately be successful in revising the development approval conditions.
27. Without a change to the development approval conditions (whether by agreement with Council or via the Court), the proposed termination cannot be effected. Consideration of the necessary changes, and the likelihood of securing such changes, would be a matter best advised upon by a town planner.

Involvement of Tenants and Mortgagees

28. As outlined earlier in our advice, to terminate a Scheme (without an order of the District Court), there must be:

- (a) A decision by resolution without dissent to terminate the Scheme.

Tenants do not have an entitlement to exercise a vote for a decision of the Body Corporate, and accordingly they have no involvement in same.

- (b) And an agreement about 'termination issues'.

This is where tenants and mortgagees do have a certain level of involvement, as outlined below.

Agreement about termination issues



29. Section 78(1) of the BCCMA states that an agreement about termination issues must be entered into between:

- (a) all registered proprietors of scheme land; and
- (b) each lessee under a registrable or short lease to which scheme land is subject.

30. Those terms are defined as follows:

<i>'Registered proprietor'</i>	<i>Means a person recorded in the freehold land register as a proprietor of the lot"</i> <i>(Land Titles Act (LTA), Schedule 2)</i>
<i>'Proprietor' of a lot</i>	<i>Means a person entitled to an interest in a lot, whether or not the person is in possession.</i> <i>Example— A lessee or mortgagee of a lot is a proprietor of the lot</i> <i>(LTA), Schedule 2)</i>
<i>'Registrable lease'</i>	<i>Means a lease capable of registration under the Land Title Act (defined in the dictionary to the BCCMA)</i>
<i>'Short lease'</i>	<i>Means a lease for a term of 3 years or less; or from year to year or a shorter period</i> <i>(defined in the dictionary to the LTA)</i>

31. Accordingly, in our view the effect of section 78(1) of the BCCMA is that an agreement about termination issues must be reached between:

- (a) any person with a registered interest in each lot – which includes the registered owner/s and any registered mortgagee/s over each lot;
- (b) any tenant with an interest in a lot, where their lease is either:
 - (i) registered against the title for the lot; or
 - (ii) for a term of 3 years or less, or is year to year or for a shorter period (most residential leases will in our view fall within this category).

Tenants

32. Practically speaking, the reason that tenants have a level of involvement in the termination process is that they have been granted a recognised interest in the property, known as indefeasibility of title.

33. Indefeasibility means that a tenant's interest in the lease is protected, including where the landlord sells or disposes of the property. The LTA distinguishes between registrable and short term leases because in Queensland short-term leases have 'indefeasibility' of title without needing to be registered, while leases which do not fall within the definition of a short lease must be registered in order to have indefeasibility.

34. In our view, however, given each tenant's lease is between the tenant and the relevant lot owner, it would be the lot owner's obligation to negotiate the details of these tenancy



arrangements with their tenant (i.e. whether that be for a continuation of the lease following the termination of the Scheme, or otherwise).

Mortgagees

35. Similarly, mortgagees have a registered and legally recognised interest in the property. Again, in our view arrangements with the relevant mortgagee will be the responsibility of the relevant owner.
36. It is difficult to say whether mortgagees/lenders would be agreeable to the proposed termination and the re-creation of new lots, or would oppose same. Each mortgagee will likely have their own policy, position and attitude towards this proposal.
37. However, as the proposed termination will affect the security for the mortgage (i.e. the relevant lot) it is possible that the attitude of mortgagees may present yet another obstacle to termination, particularly given the number of mortgagees likely involved (assuming a mortgage exists in respect of most lots in the Scheme).
38. At the very least, we would envisage that:
 - (a) the consent of the mortgagee would need to be obtained by the relevant lot owner, which may or may not require a full assessment by the mortgagee/lender; and
 - (b) if the mortgagee was agreeable to the proposal, then steps will need to be taken to ensure that, upon the cancellation of the existing lot and creation of the new lot, the mortgage currently registered over the lot is either transferred to the new lot/title (if that is possible) or, alternatively, a new mortgage will need to be lodged over the new title.

There would be costs involved in effecting this with the Titles Office (for example, the cost to register a new mortgage is in the vicinity of \$200).

39. From a more technical surveying perspective, we have been advised by a surveyor that to effect the proposed termination, the Registrar would expect all the common property and lots to be amalgamated into one base parcel, while also having any underlying easements surrendered prior to registration. The surveyor expressed concern that this action may not be acceptable where mortgages exist, unless the lenders were prepared for the mortgage to partially encumber the new amalgamated parcel.
40. While such an issue is not something that our office is qualified to comment on, it appears that this issue would likely be yet another factor that must be considered and overcome as part of any attempt to effect the proposed termination. It is likely that further specialised advice would be required in this regard, if there was an intention to proceed.

Annexure E – Mapping of the Scheme

Scheme overview (blue areas indicating PBC common property – predominantly roadways):



Closer view of parts of the Scheme (blue areas indicating PBC common property):



