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May 26, 2008

The Committee Secretary
Hope Island Resort Principal Body Corporate
C/- Cambridge Management Services
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CC:
The Committee Secretary
Body Corporate for Rosebank Gardens

Dear Sir / Madam

CARRIGG V HOWES
MAGISTRATES COURT AT SOUTHPORT, MATTER NO. MAG37202-07(0)

We act for Prof. Howes in relation to the above proceedings.

By way of background, we note the following:

1. The above matter was a private prosecution commenced by Tim Carrigg by way of complaint and summons under the *Justices Act 1886 (Qld)*.
2. By his complaint, Mr Carrigg sought the imposition of a penalty against Prof. Howes under s.113 of the *Building Units and Group Titles Act (Qld)* for alleged breaches by him of a Referee's order.
3. The matter was heard before Magistrate O'Driscoll over two days from 8th April 2008 to 9th April 2008.
4. On this occasion, Mr Carrigg did not enter an appearance and was not legally represented. However, Mr Michael Labone of Counsel (instructed by McCullough Robertson Lawyers) did purport to appear on behalf of the Hope Island Resort Principal Body Corporate (the Principal Body Corporate).
5. Ultimately, Magistrate O'Driscoll dismissed Mr Carrigg's complaint and ordered that Mr Carrigg pay Mr Howes' costs.
6. On the question of costs, Mr Labone of Counsel submitted (on behalf of the Principal Body Corporate) that the Court should find that Mr Carrigg had brought the complaint and summons as agent for the Principal Body Corporate, such that it was the Principal Body Corporate who was liable on the order for costs and not Mr Carrigg.
7. The Court rejected this submission. His Honour held that Mr Carrigg had brought the complaint in his own name, and as such was personally liable on the order for costs.

You will be aware that, pursuant to s.163(1) of the *Integrated Resource and Development Act (Qld)*, the Executive Committee is not permitted to undertake expenditure,¹ and further that if it wishes to undertake any activity requiring expenditure it must:²

¹ See s.163(1), IRD Act.

² See s.163(2), IRD Act.

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1. Submit the proposal for determination at an Extraordinary General Meeting (EGM) of the Principal Body Corporate; and
2. If the proposed expenditure is in respect of work to be performed or the purchase of personal property – submit at least 2 tenders to that meeting with the proposal.

To the best of our knowledge, there is no valid resolution of the Executive Committee of the Principal Body Corporate, nor of the Principal Body Corporate in General Meeting, either appointing Mr Carrigg as its agent for the purposes of initiating the prosecution against Mr Howes, nor authorising the incurring of any legal expense in relation to the prosecution.

Consequently, there is no legal basis on which the Principal Body Corporate may argue that Mr Carrigg was acting as its agent for the purposes of the prosecution.

We therefore expect that any order for costs arising out of the prosecution will be met by Mr Carrigg personally, and will not be paid by or "reimbursed" by the Principal Body Corporate.

Should the Principal Body Corporate intend to do either of these things, then we will raise the matter with the Rosebank Body Corporate and invite it to take the appropriate steps.

Should you have any queries regarding these matters, please contact Stuart Harrigan of our office.

Yours faithfully
HERDLAW

Robert Herd
Principal

cc: McCullough Robertson Lawyers
Facsimile: (07) 3229 9949