Body Corporate & Community Management & Other Legislation Amendment Bill 2012 Submission 164

From: Richard Phillips
To: Legal Affairs and Community Safety Committee
Subject: Pinnacle Owner response to Law Change
Date: Wednesday, 17 October 2012 8:03:08 PM
Attachments: Richards Response Letter.pdf

Hello Ray,

As an Owner of an Apartment in the Pinnacle Building in Surfers Paradise I am fully against the Current Liberal Government changing the Law allowing the Body Corporate Laws to change from when we ALL bought into the building.
I have attached the copy of a letter that I sent back in 21/02/2009 to the then Attorney General, Mr Kerry Shine.

Whilst the date is a few years ago the relevance is still exactly the same!

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21st February 2009

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Concerned Owners Group [redacted]

Dear Mr. Shine,

I am writing this email to you to express my complete opposition to the current application with the Commercial and Consumer Tribunal by one of the Sub-Penthouse owners within the Pinnacle Apartments, Surfers Paradise, namely [redacted] to alter the existing Lot Entitlements schedule (application # KL049-08).

I am against this application on the basis that apparently the Law allows one Individual unit Owner of a High rise building that contains 76 Apartments and 1 River House the ability to have Lot Entitlements changed that will affect **ALL** Owners within that building without seeking any approval by way of the Body Corporate or the building unit owners.

I too am an owner (and full time resident) of a unit within the Pinnacle and if this application was to be approved I would actually benefit from lower Body Corporate Fees, however I am, like many others within the building strongly opposed to the view that the costs of Repairs and Maintenance of the Common Areas should be equally distributed throughout the building regardless of units size/position.

I am also a member of the Concerned Owners Group, a group of Owners within the Pinnacle set up to review the Current Application before the Commercial and Consumer Tribunal and as such has already submitted a response to the Discussion Paper on Distribution of Lot Entitlements.

You would have no doubt found it difficult to not have noticed the front page of the Courier Mail on Thursday 19th February and whilst we are all against any unlawful activity against any other owner and I also believe that the "Bullet" "Shots Fired" allegation as reported is false and unrelated, there

is however significant opposition to this application within the Pinnacle Building which needs your attention to be recognised.

One assumes that the reason that there is a Discussion Paper out asking for public comment suggests that there is uncertainty about how Lot Entitlements should be fairly distributed. This being the case, why is the current application by [redacted] currently under review by the Tribunal? Surely logic and a commonsense approach say that **ALL** applications currently before the Tribunal be halted until a full review of the responses to the Discussion Paper has been adequately undertaken??!!

Please keep in mind that many of the owners of units in High rises actually live in their units like me, it is actually their home and on that basis alone this issue of allocation of lot entitlements should not be treated flippantly.

Please tell me what you think would happen if the GCCC decided to lift council rates by 70%?? There would be riots in the streets, the council elect would be dumped and the State Government would be under threat to act.

Better still, going by the current system with the Commercial and Consumer Tribunal, if the same rules applied to the Council it would only take 1 Councillor to increase Council rates without consultation with anyone else..... there is **NO WAY** any Government would allow that to be Law, but apparently, even though 1 Sub Penthouse owner can effectively change the lives of 75 others within the same building this is acceptable! **I THINK NOT** and someone such as yourself that has the power and position to make change needs to understand the full implications of the existing Law when applied to a residential high rise building.

It has been a long held belief that the allocation of Lot entitlements be based on Area/Size of units, ie: the larger the unit the more you pay, this follows the simple and true philosophy that the larger the unit the greater the potential for occupancy within that unit and therefore the greater the potential to use/or impact on the Common Areas of the dwelling. It is ridiculous to suggest (as the existing Law does) that lot size or potential occupancy does not come into it. How can this possibly be the case when in my own building [redacted] own level 18 (487m2 and one of 2 sub penthouses they own) which has 5 double bedrooms and has the potential to house at least 6 – 8 people, my apartment with only 2 bedrooms (162m2) has the potential to house significantly less people. All of the potential extra people residing in the building have the ability to use all of the facilities (as they should) and therefore increase the costs of repairs and maintenance, which is the very reason that the larger the unit the more they should pay.

I myself back in Dec 2006 bought a two bedroom unit within the Pinnacle on a low floor and sold it in February 2008 to buy a larger two bedroom unit on a higher floor and totally expected that not only was the Apartment worth more but also that the Body Corporate Fees were higher and I made my decision knowing that was the case. Take the example of one couple who bought a One Bedroom unit in January 09 and Two days after settlement found out that the $80p/w Body Corporate fees that they knowingly agreed to pay when signing contacts, potentially will go to $138 p/w if this application gets passed. How "fair and Just" is that?? I am aware of at least one pensioner that lives also in a one Bedroom apartment that may potentially be forced to give up his home through lack of

affordability if this application is passed. Nor I or the others mentioned here were aware that our Contributions schedule could be altered until we were notified of the current application in Dec 08, otherwise our decisions may have been different.

My understanding is that Surfers Hawaiian next door has their body corporate levies in relation to the common areas equally divided amongst the units; this makes sense as they are all 2 bedroom units. The Pinnacle however is very different with 76 apartments comprising of 6 different sizes of units (7 including the "River House") ranging from 93m2(1bed) – 473m2 (Penthouse) – 487m2 (Level 18 [redacted]) and therefore should not be treated the same. Please also keep in mind that the Pinnacle is a Residential Only building and only allows Long Term rentals, as we do not have "Holiday makers" which would normally occupy the smaller units, which suggests that their impact on the Common areas is significantly reduced.

At present there is One Sub – Penthouse (3bed) up for lease and is looking at getting approx $1000 p/w rent, there is a 1 Bedroom apartment also up for lease which will possibly get $400 p/w rent, if the current application is granted the Owner of the 1 Bedroom unit will lose $138 (34%) approx. from their rent takings in Body Corporate Levies and the Sub Penthouse will lose $152 (15%) approx.

As the 1 bedroom unit owner will have little hope in raising the rent to cover the extra cost, they will be forced to make a decision as to whether the unit remains a viable proposition. **IF** they were to place the apartment on the market, how attractive do you think it would be to a potential buyer?? Not very as, no gain to rent it out and why buy a 93m2 unit to live in and be paying only $14 less in Body Corporate Levies than a huge Sub Penthouse. It doesn't take a Mathematical Genius to work out the potential for disaster here.

Besides all of the above, the facts are that the Pinnacle Building was completed in September 2003 and ALL residents including [redacted] (2007) bought into the building knowing the Lot entitlements schedule and all parties accepted that, until last November 27th 2008 when [redacted] lodged the application to the Commercial and Consumer Tribunal. You may ask if there is any support for the application before the Tribunal, as far as I am aware there is, mostly coming from the Penthouse owner and some of the Sub Penthouse owners.

To put you fully in the picture the way in which this application was done, legally correct however morally???? The application was received and stamped as so by the Tribunal on 27thNovember 2008, unbeknown to 95% of the residents of the Pinnacle including most members of the Body Corporate. On 19thDecember 2008 was our scheduled AGM, which was when it was first announced, however could not be discussed as the topic submission had not been previously submitted and the Body Corporate was only officially informed on that day. It was not until 24th December that mail arrived in our letter boxes notifying owners of the application. As this was the Xmas period many owners were totally oblivious to what was taking place. There was an initial meeting held at the Pinnacle in early January to explain to owners the changes that the application, if granted, would make. It was at this meeting that 1 Sub Penthouse owner who attended told all 30+ people in the room that there had been a "slush fund" put together by the applicant and the Penthouse owner to invite the remaining 12 sub Penthouse owners to chip in to fund this application. What is also interesting is

that the one who stands to gain the most, the Penthouse owner has stated to me of their intention to sell the Penthouse apartment, lower body Corporate fees = more Interest in the Penthouse.

The main point here is that the issue of changing of the allocation of Lot Entitlements should be brought to an AGM or EGM and has the ability to be discussed and voted on by ALL that are affected both positively and negatively; after all we all live in a *Community* Title building.

We now unfortunately have a situation of great division within the building and this has only been brought about by one Individual who understood the Law better than anyone else in the building, and as such I have no issue with them raising the question of Lot Entitlements, more the way it was done and the fact that the Law as it stands apparently supports their position and takes little into account. This is why the elected Government Representatives need to look at this closely.

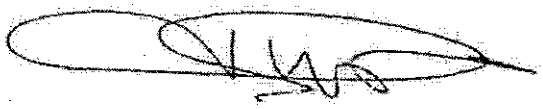
This application (KL 049-08) should not be just "rubber stamped" as suggested it would be by Lawyers the Body Corporate have engaged, which is why I ask for your intervention to halt this and other applications before the Commercial and Consumer Tribunal until after you and Government Ministers have done due diligence in reviewing the Law. Might I also add that at least one local MP, Mr Peter Lawlor (Southport) does not support the current Law on Common areas as he mentioned along with many others on ABC radio last Thursday 19th February. On behalf of the 330,000 (Gov figures) apartment residents that call their apartment home, I ask that you consider the effect of this existing Law on all of those residents.

To part quote from Case Law in the matter of Fisher v Body Corporate for Centrepoint Community Titles Scheme 7799(2004) QCA214 (the Centrepoint judgement) Here the Court of Appeal held that the Act is intended to produce a contribution lot entitlements schedule which divides Body Corporate expenses equally ***except to the extent that the apartments disproportionately give rise to those expenses, or disproportionately consume services...*** - this is the exact case with the Pinnacle, all apartments are not created equal and therefore Lot entitlements should not be divided equally.

This may or may not be important to you but as my apartment is my home it is to me!

I would very much like to hear from you by email or phone, at the absolute least to acknowledge my letter. Both I and/or members of the Concerned Owners Group of the Pinnacle would also be happy to meet with yourself or your representative to discuss the implications further at your convenience.

Yours sincerely



RICHARD PHILLIPS

Ps: I ask that you also read the Responses to the Courier Mail Article, see attached.

Pps: Now that the QLD Premier has called a March 21st Election, it will be interesting to see where both sides of Politics stand on this issue, especially as this Law has the potential to affect the hundreds of thousands of people who call an Apartment their home.