

our ref: FCH:BZC:MAN20120906

19 October 2012

**Body Corporate & Community
Management & Other
Legislation Amendment Bill 2012
Submission 227**

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

BRISBANE
Level 1, 25 Montpelier Road
Bowen Hills Qld 4006
PO Box 196 Fortitude Valley Qld 4006
Telephone: 07 3828 5555
Fax: 07 3257 2215

SYDNEY
Level 29, Chifley Tower, 2 Chifley Square
Sydney NSW 2000
Telephone: 02 9231 3252
Fax: 02 9231 3272

Email: info@hyneslawyers.com.au
www.hyneslawyers.com.au

the advantage of focus®

By email: lacsc@parliament.qld.gov.au

Dear Committee

**BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION
AMENDMENT BILL 2012 - MANGO PROPERTY PTY LTD – SUBMISSIONS TO LEGAL
AFFAIRS AND COMMUNITY SAFETY COMMITTEE**

The Committee has sought written submissions from all Queenslanders on the *Body Corporate and Community Management and Other Legislation Amendment Bill 2012 (the Bill)*.

Please accept this correspondence as submissions made on behalf of Mango Property Pty Ltd (**Mango**).

1 Background to Submissions

- 1.1 Our client is the owner of Lot 12 in West End Central Commercial CTS 33391 (**West End Central**).
- 1.2 On 15 November 2010 our client lodged an application for the adjustment of the contribution schedule lot entitlements (**CSLEs**) for the twelve units in the Scheme (**the Application**).
- 1.3 The Application was supported by an expert report commissioned by our client and prepared by SSKB. In response to the application, the Body Corporate commissioned its own expert report. Both reports found that the CSLEs were not just and equitable.
- 1.4 On 11 April 2011 an order was made by Ms Anne Forbes, Member of the Queensland Civil and Administrative Tribunal (**QCAT Adjustment Order**), adjusting the CSLEs as follows:

Lot Number	Lot Entitlement
1	832
2	850

3	820
3	829
5	828
6	830
7	832
8	825
9	827
10	824
11	834
12	869

- 1.5 This Order essentially stated that our client should be responsible for only 8.69% of the of the CSLEs, which has been a yearly cost of approximately \$15,757.41 per annum on average, with other owners being responsible for between 8.2% and 8.6% of the CSLEs per lot.
- 1.6 Unfortunately, before a new Community Management Statement (**CMS**), was registered by the Body Corporate for West End Central to reflect the Order entitlements, the 2011 ALP amendments to the *Body Corporate and Community Management Act 1997* (**BCCMA**) were introduced and came into effect on 14 April 2011.
- 1.7 Consequently, the CSLEs were never changed to reflect the QCAT Adjustment Order and they remain unjust and inequitable.
- 1.8 The current CSLEs for West End Central are as follows:

Lot Number	Lot Entitlement
1	126
2	245
3	48
4	107
5	104
6	112
7	130
8	91
9	94
10	77
11	96
12	572

- 1.9 As can be seen from the current CSLEs, our client is responsible for a disproportionate amount of the contributions for West End Central. On any basis, our client is bearing more than what it should have to in terms of common costs.
- 1.10 Our client is currently responsible for 31.92% of the CSLEs for West End Central, when the owners of the other 11 lots are responsible for between only 2.68% to 13.67% of the CSLEs each.
- 1.11 The QCAT Adjustment Order found it to be just and equitable that our client has an 8.69% share of the Body Corporate's expenses. This is a significant difference to the current unjust and inequitable CSLEs.
- 1.12 The introduction of the 2011 Amendments has led to our client's yearly CSLEs cost being fixed at an average of approximately \$108,000 per year . If the entitlements agreed by QCAT were in place, our clients levies would be approximately \$29,400.
- 1.13 In addition to the proportionate change in normal operating costs, our clients CLSE has also led to significant costs with respect to special levies struck because of flood damage.
- 1.14 The overall cost of the 2011 Amendments to our client has been incredible. Had the QCAT Adjustment Order been acted on and not reverted, our client would have saved about more than \$200,000 in normal and special levies.

2 Submission

- 2.1 Our client strongly supports of the intent of the Bill. It will provide much needed relief to many owners whose rights and interests were adversely affected by the introduction of the ALP's 2011 Amendments.
- 2.2 However, our client takes issue with the limited application of the Bill.
- 2.3 The Bill proposes at section 400 that:
"400 Application of div 3

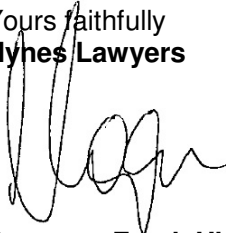
"This division applies to an existing scheme if, before the commencement of this section, the body corporate for the scheme lodged a request under part 9, division 4 to record a new community management statement for the scheme incorporating a change to the contribution schedule lot entitlements for the lots included in the scheme to reflect the pre-adjustment order entitlements for the scheme, with or without changes under sections 381 to 384."
- 2.4 The Bill as it currently stands only allows for the reinstatement of CSLEs made pursuant to an adjustment order that have been reverted by operation of the 2011 Amendments.
- 2.5 The Bill does not provide for circumstances such as West End Central, where an adjustment order **had** been made but the 2011 Amendments prevented the recording of a new CMS to give effect to that adjustment order.
- 2.6 In its current state, the Bill does not provide any recourse to allow owners of lots in schemes such as West End Central to correct the mischief caused by the 2011 Amendments, particularly where a tribunal has independently determined that the CSLEs are not just and equitable.
- 2.7 Our client implores the Attorney-General to consider a minor amendment to the Bill so that section 400 reads:

“This division applies to an existing scheme if, before the commencement of this section-

- (a) an adjustment order was made which required the body corporate for the scheme to lodge a request under part 9, division 4 to record a new community management statement for the scheme incorporating a change to the contribution schedule lot entitlements for the lots included in the scheme; or*
- (b) the body corporate for the scheme lodged a request under part 9, division 4 to record a new community management statement for the scheme incorporating a change to the contribution schedule lot entitlements for the lots included in the scheme to reflect the pre-adjustment order entitlements for the scheme, with or without changes under sections 381 to 384.”*

- 2.8 The amendment to section 400 would be the addition of subsection (a). This subsection would entitle lot owners in schemes to make a request under section 403 in the event that an adjustment order was made, yet a request to record a new CMS was not made or a new CMS was not recorded by the time the 2001 Amendments took effect.
- 2.9 The Bill should be extended to cover situations where an application was made, a tribunal independently ordered the adjustment of the CSLEs yet the 2011 Amendments prevented any further action. Registration of a CMS was the final requirement to record a change, but in our view it was not fundamental to the change itself. The fact that our client had obtained an adjustment order should be recognized.
- 2.10 We appreciate that the Attorney-General may be considering further amendments beyond this Bill to provide a long-term solution to this issue, such as re-establishing the right to make applications to adjust CSLEs. However, an inequity created by the 2011 Amendments would continue if the Bill was not extended to cover situations such as that experienced by our client.
- 2.11 If our suggested amendment is not taken up, our client respectfully requests that the Attorney-General quickly consider and put forward further amendments to the BCCMA to give lot owners the ability to address inequitable and disproportionate CSLEs.

Yours faithfully
Hynes Lawyers



Contact: Frank Higginson, Partner
(07) 3828 5894
frank.higginson@hyneslawyers.com.au