

VIRTUOSO NEWS

Chair's Message

Thank you all once again for the co-operation which has been displayed on a daily basis in observing the Government's health and movement restrictions. We have had no internal gatherings, the pool has been left unused and residents have generally observed social distancing advice. I think all of us are looking forward to a less restricted future, hopefully without a second phase.

The Body Corporate Committee has continued its efforts on behalf of all residents. We have been considering two significant issues in particular – a revision of our By-Laws and Defect Remediations.

By-Laws

We have had an interesting response to the draft revision of the By-Laws which was circulated in April. Thank you to Paul Worland for starting a debate within our Facebook Group. With one exception most comments and suggestions have been well argued and respectful. Our attention was drawn to one Adjudicator's ruling in 2017 which really should have shaped our own By-Laws. The Ruling declared void or invalid some of what, until then, had been considered standard clauses. We are advised that this ruling applied to the particular circumstances of the Body Corporate under examination and do not have the force of law. Nevertheless we have decided to adopt a different approach to any revision and to start afresh by drafting a set of By-Laws based on Schedule 4 of the BCCM Act adding only what we believe is required to comply with other relevant legislation.

We realise that some residents may have concerns that this may expose them to behaviour which they would regard as aberrant without any protection from our By-Laws. There may, for example, be an increase in disputes and complaints about noise and behaviour which we will simply have to work through in a neighbourly and respectful manner. It has also become apparent that some Lot owners do not accept that living within a strata title building is different from living in a freehold or leasehold property. They are prepared to pursue this view in a persistent and aggressive manner. They label the "rule of the majority" as oppressive and unreasonable and argue that their title gives them complete freedom to do what they like, particularly within their Lot.

However, reliance on a reduced set of By-Laws will not absolve the Body Corporate and Owners from complying with other legislation such as Brisbane City Council's requirements in respect of a Development Approval, Fire Safety, Workplace Health and Safety or the Building Code of Australia. The Body Corporate Committee will continue to work for all Lot Owners to ensure that we live in a safe, comfortable and equitable environment.

Defect Remediations

The Committee has also been considering how to work with RGD and Stockwell in ensuring that all defects, whether located within Units or in Common Areas, are dealt with in a more timely and satisfactory manner. Mark Stockwell has consistently assured us that his company is not going

to go away and this has been reflected in the way Stockwell management has continued to work with Owners in correcting defects well beyond the statutory period. The Committee has been attempting to obtain a more tangible assurance from RDG to the same effect and beyond the verbal assurances which we have been given by the CEO. We have also been exploring what legal avenues are open to us including a submission to QBCC and taking action to obtain a subrogation of rights in respect of any Warranties or Guarantees between the Developer and Builder as provided for in S36 of the BCCM Act.

I was advised late last week that Stockwell had called in the Bank Guarantee provided by RDG as a warranty for the post construction Defects Liability Period. Stockwell will use the funds so released to establish a more structured approach to ensuring that all identified defects in individual Apartments and in Common Areas are remediated within an agreed timescale and in a satisfactory manner. The work will be carried out by RGD and contractors under Stockwell management supervision. RGD, as the licensed builder, will continue to be liable for all Tier 1 structural defects that occur within the statutory post construction period of 6 years and 3 months, including:

"any work that falls below the standard reasonably expected of a licensed contractor for the type of building work and either:

- *adversely affects the structural performance of a building to the extent that a person could not reasonably be expected to use the building for the purpose for which it was, or is being, erected or constructed (i.e. requires substantial reconstruction or demolition), or*
- *is likely to cause the death of or grievous bodily harm to a person (i.e. fire protection not up to safety standard)."*

We will continue to press the CEOs and Boards of both companies to confirm, in writing, their verbal commitment to complete the Defect Rectification Programme in all areas of Virtuoso in a timely and satisfactory manner. To this end it would be very helpful if all Lot Owners could confirm their list of outstanding defects with Stockwell's Jemima Bartlett as soon as possible.

A legal firm has been identified to advise us on these issues as well as our By-Laws and we will be working to clarify all of these issues in the coming weeks.

In the meantime please keep safe and healthy.

Douglas Porter.

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