

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Body Corporate for Platinum Commercial CTS 33636 v
Body Corporate for Platinum CTS 33635* [2022] QCAT
240

PARTIES: **BODY CORPORATE FOR PLATINUM
COMMERCIAL CTS 33636**
(applicant)

V

BODY CORPORATE FOR PLATINUM CTS 33635
(respondent)

APPLICATION NO/S: OCL029-22

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 29 June 2022

HEARD AT: Brisbane

DECISION OF: Member Lember

ORDERS:

1. **Tribunal directions 3, 4 5 and 6 made 8 June 2022 are vacated.**
2. **The interest lot entitlement schedule for the Platinum CTS 33635 be adjusted to allow a total of 2,000 lot entitlements, with the respective interest schedule lot entitlement for each lot allocated as follows:**
 - (a) **Body Corporate for the Platinum Commercial CTS 33636 – 192; and**
 - (b) **Body Corporate for the Platinum Residential CTS 33637 – 1,808.**
3. **Body Corporate for Platinum CTS 33635 record a new Community Management Statement for the Platinum CTS 33635 (new CMS) as soon as practically possible, and to that end, Body Corporate for Platinum CTS 33635 must use best endeavours to deliver the signed, sealed new CMS to the solicitors for Body Corporate for Platinum Commercial CTS 33636 by 2pm on 30 June 2022.**

CATCHWORDS: REAL PROPERTY – STRATA AND RELATED TITLES
– VARIATION, TERMINATION AND RENEWAL –
OTHER MATTERS – Application for adjustment to
interest schedule lot entitlement – where market value of

two lots disproportionate –whether grounds for application exist – whether valuation evidence sufficient – where application dealt with urgently

Body Corporate and Community Management Act 1997 (Qld) s 18, s 46B, s 48, s 194

Body Corporate and Community Management and Other Legislation Amendment Act 2013 (Qld)

Land Tax Act 2010 (Qld) s 29

Land Valuation Act 2010 (Qld)

Local Government Regulation 2012 (Qld) r 72

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 3, s 4, s 28

Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Qld)

Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175

Creek v Raine & Horne Real Estate Mossman [2011] QCATA 226

Higham v The Body Corporate for the Palms No. 3 Warana CTS [2013] QCAT 228

Nunn v Body Corporate for Skye Gardens CTS 20379 [2015] QCAT 8

Pitt v Body Corporate for Aqueous on Port CTS 33821 [2014] QCAT 245

Thompson v Capricorn Pacific Apartments CTS 5587 [2013] QCAT 227

APPEARANCES & REPRESENTATION: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

REASONS FOR DECISION

What is this decision about?

- [1] The applicants represent the owners of six commercial units in the “Platinum” complex in Maroochydore, comprised in the Platinum Commercial CTS 33636 (“Commercial Scheme”), valued at approximately \$7,230,000.¹
- [2] The complex also includes twenty-one residential accommodation units comprised in the Platinum Residential CTS 33637 (“Residential Scheme”), valued at approximately \$68,000,000.²
- [3] The respondent represents the principal scheme within a layered arrangement³ comprising the Commercial Scheme and the Residential Scheme.

¹ Unit Interest Schedule Assessment by Herron Todd White dated 19 April 2022.

² Ibid.

- [4] Despite the disparate property valuations, the interest schedule lot entitlements (“ISLEs”) recorded in the community management scheme (“CMS”) for the principal scheme allocate an equal interest entitlement of one each for the Residential Scheme and the Commercial Scheme.⁴
- [5] ISLEs are used, among other things, to calculate the liability of lot owners within a community titles scheme (“CTS”) for land tax⁵ and rates⁶. Under the *Land Valuation Act 2010* (Qld), land values are apportioned to the lots in the CTS according to ISLE of the lots.
- [6] Accordingly, the practical impact of the current distribution of ISLE under the principal scheme is that, according to the applicant, it does not reflect market values and, as of 30 June 2022, the lot owners of the Commercial Scheme will overpay approximately \$38,000 in rates and land tax for the impending 2022/2023 financial year if the ISLEs are not adjusted.
- [7] On 1 June 2022 the applicant filed an application for adjustment of a lot entitlement schedule – *Body Corporate and Community Management Act 1997* (Qld) (“BCCMA”) that, read with its application for miscellaneous matters filed 29 June 2022, seeks that the ISLE for the Platinum CTS 33635 be adjusted to allow a total of 2,000 lot entitlements, with the respective interest schedule lot entitlement for each lot allocated as follows:
- (a) Body Corporate for the Platinum Commercial CTS 33636 – 192; and
 - (b) Body Corporate for the Platinum Residential CTS 33637 – 1,808,
- and that the respondent records a new CMS accordingly on or before 30 June 2022.
- [8] The respondent neither supports nor contests the application (save for the issue of costs), indicated that it would not make any submissions or take any steps in the proceedings and advised the tribunal of its resolve to abide by any orders made by the tribunal in these proceedings.⁷ This is not surprising given that the respondent:
- (a) is under the joint control of the applicant and the Body Corporate for the Residential Scheme; and
 - (b) effectively has no interest in the relative quantum of the ISLE of lots within the principal scheme.
- [9] Rather, the Body Corporate for the Residential Scheme is the logical contradictor for the application because the lot owners within that scheme will experience financial consequences of a decision in the applicant’s favour. To that end, the applicant served the Body Corporate for the Residential Scheme with the proceedings and the tribunal made directions to the Residential Scheme to make submissions on whether it should be joined to proceedings and giving it an opportunity to respond.

³ Section 18 of the *Body Corporate and Community Management Act 1997* (Qld) (“BCCMA”).

⁴ CMS 33635 dated 16 October 2015.

⁵ Section 29 of the *Land Tax Act 2010* (Qld).

⁶ Section 194 of the BCCMA and section 72 of the *Local Government Regulation 2012* (Qld).

⁷ Letter dated 28 June 2022.

- [10] The Body Corporate for the Residential Scheme confirmed they did not seek to be joined to the proceedings, and indicated that it, too, neither supports nor contests the application (save for the issue of costs), would not make any submissions, or take any steps in the proceedings and had resolved to abide by any orders made by the tribunal in these proceedings.⁸
- [11] On 29 June 2022 the applicant sought an urgent determination of the proceeding on the papers, requesting a decision of the tribunal by 4pm that day.

Should the matter be dealt with urgently?

- [12] The urgency of the application pertains to significant financial consequences (in the form of excessive and disproportionate rates and land tax assessments) that will be visited upon the applicant's lot owners if the new CMS is not effective from 30 June 2022.
- [13] Having said that, the applicant does not appear to have acted with urgency given that the existing ISLE has been in effect since 2015 and it seems unlikely that the market value of the six commercial units was, until very recently, similar to the market value of the twenty-one residential units. Even if I am wrong about that, and the disparate market values are a relatively recent event, despite having put the respondent on notice of its intention to file the application for adjustment of interest schedule lot entitlements on 1 April 2022, and its receipt of the Valuation on 20 April 2022, the applicant delayed its application to the tribunal until 30 May 2022, when it posted filing and service copies of the application to the registry.
- [14] The application was, therefore, filed on 1 June 2022 and by 8 June 2022 directions had been made for the progress of the proceedings through the tribunal.
- [15] There is and can be no suggestion of any delay on the part of the tribunal in progressing the proceedings.
- [16] Further, it is well recognised that the tribunal's resources are in high demand and as the High Court has observed in relation to court resources generally, they serve "the public as a whole, nor merely the parties to the proceedings".⁹
- [17] However, I am mindful that:
- (a) The objects of the tribunal set out in section 3 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ("QCAT Act") include to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick.
 - (b) To that end, section 4 of the QCAT Act requires that the tribunal, among other things, ensures proceedings are conducted in an informal way that minimises costs to parties, is as quick as is consistent with achieving justice, and is responsive to the diverse needs of persons who use the tribunal.
 - (c) Section 28 of the QCAT Act provides that the procedure for a proceeding is at the discretion of the tribunal, that the tribunal must act fairly and according to

⁸ Letter dated 22 June 2022.

⁹ *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175 at 217; cited in *Creek v Raine & Horne Real Estate Mossman* [2011] QCATA 226 at [13].

the substantial merits of the case and that, among other things, the tribunal must observe the rules of natural justice, is not bound by the rules of evidence, or any practices or procedures applying to courts of record, may inform itself in any way it considers appropriate and must act with as little formality and technicality and with as much speed as the QCAT Act and a proper consideration of the matters before the tribunal permit.

[18] Bearing those principles in mind, I decided the matter with the urgency sought because:

- (a) The financial impact upon the lot owners in the Commercial Scheme of a delayed decision (although noting the making of the decision does not guarantee that the new CMS will be lodged and recorded on time) may be significant. This cost may, ultimately, be passed on to tenants of those lot owners, whether directly by the passing on of outgoings, or indirectly by the raising of rent to cover expenses at a time when commercial tenants and their landlords are still recovering from the economic impacts of the Covid-19 pandemic.¹⁰
- (b) The financial impact will not be transferred to the Residential Scheme owners in equal, or even similar measure, due to the different method by which residential property is assessed for rates and land tax purposes.
- (c) The difference in market value between the Commercial Scheme and the Residential Scheme is not moderate, but, rather, is significant. The equal distribution of ISLE between the two Schemes is therefore grossly unfair and inequitable and will remain so until it is adjusted.
- (d) Importantly:
 - (i) the applicant's application and filed material was concise, issue-focused and comprehensive, which minimised the time and resources required to consider it;
 - (ii) the new CMS has been prepared in anticipation and the parties appear to be ready, willing, and give urgent effect to an order of the tribunal, if made;¹¹
 - (iii) procedural fairness has been observed and neither the respondent, nor the Residential Scheme opposed the orders sought, and, appreciating the urgency of the matter and to their credit, acted quickly to inform the tribunal of their position and their intentions should the application progress (those intentions being to do nothing other than to oppose any costs orders sought); and
 - (iv) the tribunal's resources, on this day, permitted the matter to be addressed with the urgency sought.

¹⁰ Consider the National Cabinet's introduction of a *Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID-19* which was given effect in Queensland by the passing of the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (Qld) and the introduction of a permanent Queensland Small Business Commissioner to assist small businesses.

¹¹ Affidavit of Michael Young sworn 27 June 2022 at paragraphs 26 and 27.

On what basis can interest schedule lot entitlements be adjusted?

- [19] The *Body Corporate and Community Management and Other Legislation Amendment Act 2013* (Qld) amended the BCCMA relevantly in relation to adjustment of lot entitlements such that:
- (a) the tribunal’s power to order an adjustment is quite limited;¹² and
 - (b) ISLE can only be adjusted if¹³ the ISLE do not reflect market values of the lots,¹⁴ applying the “market value principle”,¹⁵ namely that lot entitlements must reflect the respective market values of the lots except to the extent to which it is just and equitable for them not to reflect respective market values.
- [20] Therefore, the application ought success if the tribunal are satisfied that the ISLE do not reflect the market value of the two lots in the principal scheme, and there are no circumstances which point to it being just and equitable for the ISLE not to reflect the respective market values of the lots.

Should the interest entitlements be adjusted applying the market value principle?

- [21] The applicants bear the onus of satisfying the tribunal that the current interest lot entitlements are not consistent with the market values of the various lots.¹⁶
- [22] In *Nunn v Body Corporate for Skye Gardens CTS 20379*¹⁷ the tribunal found that valuation evidence tendered was insufficient to ground a determination that the ISLE is not consistent with market values because:
- (a) the valuation relied upon was over twelve months old;
 - (b) the purpose of the tendered valuation was a security assessment for mortgage purposes; and
 - (c) there was no valuation evidence tendered of any of the other lots in the scheme.
- [23] The evidence of value tendered by the applicant in these proceedings comprises a Unit Interest Schedule Assessment by Herron Todd White dated 19 April 2022 (the “Valuation”) that, relevantly, included the following information:
- (a) The purpose of the valuation is for unit interest schedule entitlement purposes only, specifically to assess whether the ISLE are currently reflective of the respective market values of the lots pursuant to part 5 of the BCCMA;
 - (b) The report was prepared by Chris McKillop, a director of Herron Todd White, registered valuer and associate member of the Australian Property Institute, holding a Bachelor of Business (Property Studies) and having 20 years’ experience as a registered valuer.

¹² As observed in *Thompson v. Capricorn Pacific Apartments CTS 5587* [2013] QCAT 227 and *Higham v. The Body Corporate for the Palms No. 3 Warana CTS* [2013] QCAT 228.

¹³ *Pitt v Body Corporate for Aqueous on Port CTS 33821* [2014] QCAT 245.

¹⁴ Section 48 of the BCCMA.

¹⁵ *Ibid*, section 46B(1).

¹⁶ *Nunn v Body Corporate for Skye Gardens CTS 20379* [2015] QCAT 8 at [11].

¹⁷ *Ibid*.

- (c) After a comprehensive assessment, including of comparable recent sales, the market unit entitlements of the two lots was determined as follows:

Principal Scheme

<i>Scheme</i>	<i>Adopted Market Values</i>	<i>Current</i>	<i>Market</i>
Commercial CTS 33636	\$7,230,000	1	192
Residential CTS 33637	\$68,000,000	1	1,808
<i>Totals</i>	<i>\$75,230,000</i>	<i>2</i>	<i>2,000</i>

Commercial Scheme

<i>Lot</i>	<i>Adopted Value</i>	<i>Current Interest Entitlement</i>	<i>Market Interest Entitlement</i>
1	\$1,300,000	244	244
3	\$2,200,000	413	413
4	\$1,700,000	318	319
21	\$800,000	154	150
22	\$530,000	99	100
23	\$700,000	130	132
<i>Total</i>	<i>\$7,230,000</i>	<i>1,358</i>	<i>1,358</i>

Residential Scheme

<i>Lot</i>	<i>Adopted Value</i>	<i>Current Interest Entitlement</i>	<i>Market Interest Entitlement</i>
101	\$2,600,000	125	125
201	\$2,700,000	130	130
202	\$2,700,000	130	130
301	\$2,650,000	135	128
302	\$2,650,000	135	128
401	\$2,750,000	140	132
402	\$2,700,000	140	129
501	\$2,800,000	145	135
502	\$2,800,000	145	135
601	\$2,900,000	150	140
602	\$2,900,000	150	140
701	\$3,050,000	155	147
702	\$3,000,000	155	144
801	\$3,100,000	160	149
802	\$3,100,000	160	149

901	\$3,200,000	165	154
902	\$3,200,000	165	154
1001	\$3,500,000	170	169
1002	\$3,500,000	170	169
1101	\$5,500,000	200	265
1201	\$6,700,000	250	323
<i>Total</i>	<i>\$68,000,000</i>	<i>3,275</i>	<i>3,275</i>

- [24] I am satisfied on balance that there is sufficient evidence to support a finding that the ISLE for the principal scheme are currently inconsistent with market values of the various lots within the scheme.
- [25] No evidence has been tendered nor submissions made to suggest or support a finding that it would be just and equitable that the lot entitlements not reflect the market values of the various lots. It follows that the ISLE require adjustment to reflect market value principles.

Decision

- [26] For the reasons given, I order that the interest lot entitlement schedule for the Platinum CTS 33635 be adjusted in accordance with the Herron Todd White valuation, namely, to allow a total of 2,000 lot entitlements, with the respective interest schedule lot entitlement for each lot allocated as follows:
- (a) Body Corporate for the Platinum Commercial CTS 33636 – 192; and
 - (b) Body Corporate for the Platinum Residential CTS 33637 – 1,808,

with further orders to support the lodgement of a new CMS to give effect to the order as a matter of urgency.