



**MINUTES OF EXTRAORDINARY GENERAL MEETING
HELD IN ACCORDANCE WITH THE UNIT TITLES ACT 2010**

**BODY CORPORATE 164980
PROPERTY AT: 148 Quay Street, Auckland**

AN EXTRAORDINARY GENERAL MEETING of this body corporate was held in the Mototapu Room, Mercure Hotel, 8 Customs Street, Auckland on Thursday 31 March 2016 at 6.00 p.m.

PRESENT: As per Attendance List completed by owners
Stephen Dudding (Units 2G & 6D), Peter Stratford (Unit 0D), Mike & Genny Webb (Unit 14), D Brady (Unity 8C), S Bassett (Units 8B, 2B & 2J), A Sullivan & D Margaritis (Unit 4F), P Chaplin & A Sains (Unit 3H), M & A Mummery (Unit 5A), K A Penny (Unit 8E), P McLuckie (Unit 4G), T Leggett (Unit 3B), F Ramsay (Unit QF1 & QF2), R McKinnon, R Boswell (Unit 12A) and Lyn Clapperton representing Body Corporate Administration Ltd as Body Corporate Manager.

IN ATTENDANCE:

Clinton Baker from Price Baker Berridge and Russell McKinnon, Building Manager

1. CONFIRMATION OF QUORUM:

Apology received from William Houngh-Lee, Unit 6F

A quorum was established.

ADDRESS BY CLINTON BAKER

Mike Webb introduced Clinton Baker to those present by explaining that he had been invited along as a representative from Price Baker Berridge solicitors and legal advisors to the body corporate to discuss the Health & Safety legislation which comes into effect on the 4 April 2016.

Clinton Baker opened his presentation by explaining that he had been asked by the body corporate committee to review two aspects of the new Health & Safety legislation. The first aspect was the responsibilities of the body corporate with the second question being the potential liability of committee members under the Act.

The new legislation creates a new 'body' or PCBU, and a residential body corporate which employs anyone is classed as a PCBU and is subject to all of the responsibilities attached, such as ensuring that anyone working on site as either an employee or contractor is advised of any potential risks and hazards prior to entering the site and has a Health & Safety plan in place for his or her own operation.

As a first step, the body corporate would be advised to engage a suitably qualified service provider to complete an initial Health & Safety report for the common areas.

Clinton Baker was of the view that committee members and the chairperson of the body corporate are 'officers' under the legislation and therefore have a responsibility to ensure that the body corporate complies with their obligations under the Act.

If the body corporate failed in their duty of care with employees and/or contractors and an accident resulted, the body corporate may be liable for penalties under the Act.



The second question concerned the liability of the individual committee members while acting in the capacity as committee for the body corporate.

Section 51 of the Health & Safety Act provides an exception for 'volunteers' and a volunteer is considered a person acting in a voluntary capacity. Although voluntary has not been defined by the act, a volunteer is a person who is performing a service for free, hence not for reward or payment, although out of pocket expenses are permitted and do not remove the volunteer status. It is likely that committee members fall within the exception provided for volunteers, under Section 51 of the legislation, which means they are not liable for prosecution.

If the committee members were found to be in breach of their duty of care or turned a blind eye to potential risks and hazards and this resulted in the death of a contractor or employee working on the common area of the building, then a charge of manslaughter could result under other legislation such as the Crimes Act. But this has always been possible and the change in the Health & Safety legislation has not altered this risk.

If the body corporate did not take all steps to mitigate risks and hazards identified on site and an accident occurred resulting in a prosecution and a fine, then there is a possibility that individual owners could bring a civil action against a committee member for breach of duty or due diligence.

On the question of how a body corporate continues to function Clinton confirmed that it was illegal not to have a body corporate chairperson, however there are no penalties within the act for not having a chairperson. Without a committee, the body corporate would need to bring every decision to a general meeting and all matters would need to be resolved by special resolution. A request in writing by no less than 25% of owners would be needed in order to convene a general meeting.

Owners could resolve at this meeting to schedule four extraordinary general meetings a year to decide matters such as the payment of invoices.

In response to a question from the floor, Clinton confirmed that an 'informal' committee of owners would have no powers, and so would be ineffective.

There would need to be measures in place to provide for the immediate attention to urgent maintenance work as this could not be deferred until a meeting was arranged.

Following a number of questions and answers, Clinton Baker was excused and left the meeting.

DISCUSSION

A general discussion followed with the following points noted:

- The Health & Safety standards for the body corporate are not currently up to the requirements required by the new legislation, however a Health & Safety assessment by Health & Safety N.Z. Limited is underway.
- The new legislation comes into effect on the 4 April 2016.
- Owners present offered a number of suggestions including additional support to the current committee members to manage the additional Health & Safety requirements so that they could continue on in their roles as committee members until the next general meeting.
- There were several suggestions put forward by owners many of whom were prepared to assist the committee to ensure the body corporate complied with the Act.



- The body corporate acknowledged that additional training may be required for the Building Manager to ensure that he is equipped in his knowledge to meet the requirements of the Act.
- With his agreement, the building manager's hours on site may need to be extended and remunerated accordingly.
- The body corporate will need to appoint additional fire wardens to assist with fire evacuation processes.

Because of the views expressed by those present and the assurance from Clinton Baker of the likelihood of the volunteer status of the committee under section 51 of the Health & Safety legislation, Stephen Dudding advised those present that he would withdraw and consider further his resignation as a committee member. This would give him and the other committee members time to consider and discuss the points raised at the meeting before a final decision was made.

As there was a suggestion and discussion about adjourning the meeting to the same time the following week to allow the committee time to consider, a question was raised around resolution 9 which was the approval for Unit 4G to carry out the proposed repairs and replacement of the glass door and window leading to the deck area. The committee did not wish to hold up these repairs so the resolution was brought forward in order on the agenda with the agreement of the owners present.

RESOLUTION 9 – APPROVAL FOR THE OWNERS OF UNIT 4G TO CARRY OUT PROPOSED REPAIRS

Paul McLuckie, representative for and owner of Unit 4G addressed the proposed motion and asked that the motion be withdrawn.

ADJOURNMENT RESOLUTION

It was resolved by the body corporate by ordinary resolution that the general meeting be adjourned to the same day and time next week when it will reconvene to continue discussions.
P McLuckie/T Morton **Carried unanimously**

There being no further business, the meeting closed at 7.30 p.m.

Secretary's Note:

Subsequent to the meeting the committee having considered the points raised at the meeting, confirmed the withdrawals of their resignations. The committee will remain in place until the next general meeting. The Secretary was instructed to send notification to owners that the extraordinary general meeting would not therefore be reconvened on Thursday 7 April 2016 and any matters to be addressed would be held over until the annual general meeting.