



# The Aurora TOWER

## CARETAKER MEDIATION

### Word from the Chairman

Welcome to the second newsletter this year. It has been a very busy time for the Committee, and we are committed to keeping you informed of all developments.

This newsletter outlines some major achievements, in particular, the successful conclusion of our mediation with Oaks about our future together.

This newsletter also explains a little more about our working groups and invites you to express your views via an online survey.

This month we have meetings about our Insurance Renewal and updating our Sinking Fund Forecast; more on that in future Newsletters.

We have also provided information about changed legislation, upcoming committee elections, the outcome of the EGM to allow Dexus to use the Laneway for their cladding works and a number of other routine items.

We welcome feedback, you can do that by contacting the Committee Secretary (email at the end of the newsletter).

### Background

Like many residential buildings in Brisbane, Aurora has a Caretaking Agreement and a Letting Agreement (Agreements) that were drafted by the developer.

The Agreements are between Queen Street Property Management P/L (owned by Oaks) (Oaks), and the Body Corporate. The Agreements were prepared and signed by the developer and the wording is relatively loose and open to interpretation. Copies are available on the website [theauroratower.com.au](http://theauroratower.com.au)

Both Agreements have a term of 15 years with an optional extension of a further 10 years.

The extension only comes into effect if, relevantly, Oaks both gives notice to the Body Corporate that it wishes to take up the extension and, importantly, is not in breach of the Agreements at the end of the first 15 year term (which expires on **5-May-2021**).

Due to ongoing concerns about Oaks' performance, the Committee engaged specialists to audit their performance. These reports identified serious deficiencies, some of which the Committee were not aware of.

The Committee then engaged Mahoneys Lawyers, who specialise in body corporate matters, to review and advise. They identified grounds for breaching Oaks and provided advice on how the Committee should proceed to act in the best interests of the Body Corporate.

The usual method for identifying and compelling a caretaker and letting agent to improve is by issuing a Remedial Action Notice (RAN).

Instead of immediately issuing a RAN to Oaks, Mahoneys recommended raising the issues with Oaks and then inviting Oaks to a mediation to see if a sensible commercial resolution could be negotiated without the need for (or significant cost of) litigation.

The major issues were master key management, minor repairs that appeared to have been incorrectly charged to the Body Corporate, and guest management by the Letting Agent.

Oaks contested these allegations but agreed to participate in mediation and a mediation date was set for 19 February 2021. Members of the Committee and representatives from Oaks together with their



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legal teams attended. The mediation was conducted on a without prejudice basis and without admission of liability.

While good progress was made, all matters were not resolved at that session and a second mediation date was held on Wednesday 24-Mar-2021.

An outcome was agreed at the second mediation session which the Committee is keen to share with all lot owners.

RANs have been issued in the interim pending the finalisation of the settlement. This is a risk management step to ensure that the position of the Body Corporate is preserved.

## The Outcome

Moving forward, there are 3 possible alternatives and these will be presented at an Extraordinary General Meeting (EGM) for lot owners to decide. While much more detail will be provided to you in advance of the EGM, we provide this explanation to you now, by way of an early snapshot.

### Option A (term remains limited to 10 years)

The key terms of this option are that:

- The Body Corporate and Oaks will enter into a new agreement, which provides for (among other things) enhanced security obligations and clearer and more detailed duties schedule;
- The term of the agreement will be 10 years;
- Oaks will pay to the Body Corporate a cash settlement of \$375,000 and meet 75% of the weekend security costs.

### Option B (term changed to 25 years)

The key terms of this option are that:

- The Body Corporate and Oaks will enter into a new agreement, which provides for (among other things) enhanced security obligations and clearer and more detailed duties schedule;
- The term of the agreement will be 25 years (10 years plus 3 x 5 year options);
- Oaks will pay to the Body Corporate a cash settlement of \$638,000 and meet 75% of the weekend security costs.

### Option C

The Body Corporate proceeds with issuing RANs and unless the matters are remedied, the Agreements will come to an end.

In this event, litigation will inevitably follow as Oaks seeks to hang on to its remaining 10 year option.

### Comments

Lot owners will be asked to consider and choose the settlement option they wish to adopt at an EGM to be held on 30 April 2021.

An explanatory memorandum (with a detailed explanation of each option) will be prepared to explain the dispute and merits of the respective positions to lot owners.

The Committee recommends that you consider the given information, and if you have any questions or concerns, to contact members of the Committee.

It should be noted that this exercise has incurred significant legal and consultant costs, estimated to be ~\$70,000 this financial year and well within the spending limit.

Given the minimum payment is \$375,000, the Committee believes this investment has been worthwhile.

### Revised Terms (Option A or B)

Further, a revised caretaking agreement will incorporate the following changes:

- revised definition of concierge services
- requirements to deal with operational issues raised in the consultant report
- stricter performance and reporting obligations to promote ongoing compliance
- new schedule of duties (consultant report)
- protocol for provision of security services
- protocol for after-hours issues in a timely way by a qualified person.

# CARETAKER MEDIATION: Q&A



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## **Q: What are the major differences between Option A and Option B?**

A: Option A provides a payment to the BC by Oaks of \$375,000 and Oaks contributes 75% of security costs and the extension of the Oaks contract to 2031.

Option B provides a payment to the BC by Oaks of \$638,000 and Oaks contributes 75% of security costs and the extension of the Oaks contract to 2046, via 3 x 5 year options.

## **Otherwise, the outcome is the same in terms of improvements to the Agreements.**

## **Q: Are there any other options?**

A: The only other option is take this matter to Court. This will be costly and high risk for both sides.

## **Q: What other improvements have been achieved via the mediation process?**

A: The other major improvement is a new agreement with much clearer description of duties and a greater ability to manage the performance of Oaks. This provision is identical in both options.

## **Q: What security arrangements will be in place?**

A: The major change is that Oaks will pay a higher percentage of the security costs (75% under Option A and Option B). However, it is not intended this will be in place long term. There will be a mechanism to reduce security costs if issues reduce satisfactorily, and there will be a mechanism to increase security costs if there is an increase in issues.

Oaks will also introduce new documented strategies to improve residents' lifestyle on the weekend and reduce and possibly even remove security costs in the future.

## **Q: Who is the Caretaker, and what does Letting Agent mean?**

A: Oaks has the contracts to provide Caretaker and Letting duties. Without going into too much detail, the Caretaker is responsible for building management, cleaning and all minor repairs. The Letting Agent provides the letting services.

## **Q: Why did the Body Corporate Committee proceed with Mediation?**

A: Mediation is the step before Litigation. The Committee had been concerned for some time about the performance of Oaks.

The contracts are set up in such a way that a Caretaker can simply be granted their extension option unless they are in breach of their contract.

The Committee has an obligation to all owners to ensure the Caretaker and Letting Agent comply with their agreements.

The Committee has issued breach notices, however in the interest of all concerned it was preferable to reach agreement via mediation. This outcome will provide improved future management.

## **Q: Can I find out any more about what happened?**

A: Yes, all public documents are available on the website, and members of the Committee would be very happy to answer any questions or explain any of those documents.

## **Q: Is the Committee happy with the outcome of the mediation?**

A: The Body Corporate Committee believe the two choices are both commercially sound outcomes for all owners. Each of the options provide for improved security, a significant cash payment and improved duties descriptions allowing better ongoing management.

## **Q: Is the process finished? Do Lot Owners have a say in any of this?**

A: Yes, the negotiations have concluded. Yes, lot owners will have their say. There will be an Extraordinary General Meeting (EGM) where Lot Owners will vote on their preferred option. Further information will be provided with the voting instructions.

## **Q: What else needs to happen before then?**

A: While we have a high level agreement on all the major issues, the drafting of new duties will need to be completed.

Both Oaks and the Committee have engaged experts to undertake this task in collaboration. Further detail needs to be drafted on a number of items.

## **Word From The Committee**

The Committee are very pleased to have negotiated potential outcomes from the mediation that provide a positive result for both investor and resident owners.

The Committee look forward to a positive and constructive relationship with Oaks and have confidence that lot owners will see improved security, better provision of minor works and improved management of keys.

The Committee are united in their view that the future for Aurora will be positive.



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## Aurora Residents Group

The purpose of the Group is to provide a communication venue for the owners and long term tenants who are residents living in the Aurora Tower.

You can become a part of the Group by joining on the FaceBook page (search **Aurora Tower Community**).

### Dates for your diary:

**Annual General Meeting (AGM) 26 May**

**Extraordinary General Meeting (EGM) 30 April**

## Getting involved

Happily, for the first time in some years, we have a **very active and interested** Residents Group and more than ever owners willing to be involved.

In the past, owners have joined with the Committee to carry out projects, and now is a good time to reinvigorate this by creating some **working groups** to harness all that energy and work on issues owners and residents feel need more attention.

These **working groups** will have a direct link into the Committee via an Ordinary Member who will facilitate the activities of the group.

**We want to hear your views via a survey about what these working groups might focus on.**

### Click on this link to access survey

All responses are voluntary and anonymous unless you provide your contact information at the end of this survey. Information will only be used to plan activities and for no other purpose

Greg Lelliott and Bronwyn Dredge, as current Ordinary Members are taking the lead on this and can be contacted at:

[gndlelliott@gmail.com](mailto:gndlelliott@gmail.com)

[bron.dredge@gmail.com](mailto:bron.dredge@gmail.com)

## The Caretaker?

Following our last newsletter, several people asked who the Caretaker is. As the Caretaker is mentioned in the context of mediation and our future working arrangements with Oaks, we describe their role.

The Caretaker is Queen Street Property Management Pty Ltd, a company owned by Oaks / the Minor Hotels Group.

The Caretaker is required to carry out the duties and responsibilities in the Caretaking Agreement. It does this by employing various individuals such as the Building Manager, Facilities Manager, Front Office Manager etc .

The Body Corporate and the Caretaker are parties to the Caretaking Agreement. This Agreement was created by the building developer's lawyers when the building was first constructed. It does not necessarily contain all the requirements and clauses that an active Body Corporate currently needs.

It is for these reasons that the Body Corporate is unable to require the Caretaker to do certain tasks. Alternately the relevant section of the agreement may be so vague it is difficult to enforce. Lack of detail does make it difficult for either party to clearly know what is required.

## Word From The Treasurer

The accounts for the year ending 28 February 2021 are currently in progress. The budgeting process will be completed in April along with the completion of a new 10 year sinking fund projection.

The Treasurer is well supported by Ernst who undertake all the routine accounting functions, however, with a building of this size, there are always anomalies that need investigating. Typically there are issues around the Utilities (Electricity, Water, Gas). Insurance issues are common.

The use of the Stratamax Invoice Hub Portal from February 2021 has assisted in invoice approvals.



### Extraordinary General Meeting (EGM )

Thank you to all owners who voted in the EGM (17 March 2021). This EGM was notable as the voting was electronic (mostly). This will save time for the upcoming AGM as a result of automatic tallying of electronic votes.

The additional cost to the body corporate should now be a thing of the past. In all, the change to electronic voting will prove to be very effective and efficient.

### Committee Elections

Committee elections will be held at the AGM.

This year we had two members leave the Committee for personal reasons and we invited two new members as replacements. These new members have made valuable contributions and we are pleased to welcome them as part of the Committee.

The Committee's commitment to working in the best interests of all owners and the building remains the top priority.

### New Legislation

As of 01 March 2021 the old BCCM legislation of 1997 is replaced by the new BCCM Act 2020. Some relevant changes for owners are:

- Owners are now required to update their details with the Body Corporate roll within 1 month after they become a lot owner, or a lease or sublease is entered into for 6 months or more.
- An owner can submit up to 6 motions per 12-month period commencing on the date the owner submits their first motion. It is the responsibility of the owner to manage their 6 motions.
- If an owner submits a motion and it is declined by the committee, the owner cannot resubmit the same motion for 12 months.
- Documents previously required to be handed to the secretary can now be sent directly to the Body

Manager as an alternative.

- Your email address can now be your preferred method of distribution for all Body Corporate documents

### Vehicles Enter Building Via Garage Doors

In the best interests of the building, the Committee believes that all vehicles should enter the building through the sliding garage doors. This applies to cars, motor bikes, bicycles and also scooters.

The level one and ground entries are for pedestrian traffic. The only exceptions would be prams, strollers and wheel chairs.

All owners and residents are treated in the same way and they can choose to purchase a remote fob reader or use the finger print reader.

The Committee also require that roller blades, skates etc not be used in these pedestrian areas.

### Booking Forms

The Committee are currently reviewing the online booking forms. for the loading dock, lifts, function room.

We anticipate the Lift Booking Form will already have been updated by the time you read this. We have amended the times the lifts are available and also highlighted the need for care when moving large items to avoid damage to emergency lights and sprinklers.

if you have any comments, perhaps about recent experiences please contact the Committee to provide feedback.

### Key Replacement Survey

The Committee will shortly be sending out a **survey** to owners to gather your thoughts about the preferred approach to the key replacement issue.



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## COMMUNICATION

### Smoke Detector upgrade (investor apartments and sales - 1 January 2022)

The Committee has discussed this and is currently considering the options. The solution appears to be detectors with WiFi connectivity that have a lithium battery life of 10 years.

These are changing regularly as new products come on the market. We intend offering suggestions and advice to lot owners in coming months, well before the end of the year deadline 1 January 2022.

[Click for link to QFES Requirements](#)

### Aurora Tower Newsletter

This newsletter is sent via **email**. Owners who haven't provided an email address to EBCM will find a copy posted on the Aurora Tower website.

The Committee encourages the usage of email as it facilitates timely communication and helps to save money for all owners.

### Contacts:

Committee: [secretary@theauroratawer.com.au](mailto:secretary@theauroratawer.com.au) (Russell Christie)

Building Manager: [BMAurora@theoaksgroup.com.au](mailto:BMAurora@theoaksgroup.com.au) (Mark Fogarty)

Facilities Manager: [MaintAurora@theoaksgroup.com.au](mailto:MaintAurora@theoaksgroup.com.au) (Chris Brown)

Ernst (EBCM): [gwillis@ebcm.com.au](mailto:gwillis@ebcm.com.au) (Gary Willis)

### Aurora Tower Website

[theauroratawer.com.au](http://theauroratawer.com.au)

Owners can register for access to confidential information by clicking on 'register' on the top menu of the website.

### Reporting (online)

Please report any noise, cleaning or maintenance matters through the online forms.

Click on 'Reporting' at the top of the website screen.

There is a drop-down menu for:

- Complaints (noise, security)
- Maintenance
- Cleaning
- General Enquiries

### Current Body Corporate Members

Phil Conwell

Russell Christie

Jan Brewer

Greg Lelliott

Greg Firth

Bronwyn Dredge

Tracy Stanley (to be ratified 14 April)