



Department of  
Justice and Attorney-General

## **NOTICE OF A REFEREE'S ORDER 1217-2018 Gracemere Island One**

5 April 2019

The Body Corporate for Gracemere Island One  
C/- The Manager Ms Katy Kapnia  
Cambridge Management Services  
PO Box 175  
**OXENFORD QLD 4210**

Dear Owners

In accordance with *section 95* of the *Building Units and Group Titles Act 1980*, you are hereby given Notice of a Referee's Order regarding the above dispute resolution application. Enclosed is a copy of the order and statement of reasons. ■

### **Appeal of orders**

*Section 106* of the Act provides that the applicant, a person who made written submissions to the referee, or a person required to do or refrain from doing a specified act may appeal an order made under Part 5 to a tribunal by lodging a written notice of appeal with the referee, accompanied by the prescribed fee, not later than 21 days after the order takes effect.

*Section 96(1)* provides for the appointment of a tribunal and states every stipendiary magistrate and acting stipendiary magistrate shall by virtue of appointment to that office and without any further or other appointment whatsoever constitute a tribunal for the purposes of this Act while he or she continues to be a stipendiary magistrate or an acting stipendiary magistrate.

Accordingly, written notice of an appeal may be lodged with this Office together with payment of the prescribed fee. Any appellate proceeding will be heard in the Magistrates Court having jurisdiction over the area in which the body corporate is situated.

### **Enforcement of orders**

Referee's orders may be enforced through the Magistrate's Court (see *section 113*). This Office does not initiate enforcement proceedings.

**Office of the Commissioner for Body Corporate  
and Community Management**

# REFEREE'S ORDER

Office of the Commissioner  
for Body Corporate and Community Management

**CITATION:** *Gracemere Island One* [2019] QBCCMCmr 183  
**PARTIES:** Body Corporate for Gracemere Island One (**applicant**)  
**PLAN:** GTP 107087  
**JURISDICTION:** *Section section 77 of the Building Units and Group Titles Act 1980 (Qld)*  
**(Act).**  
**APPLICATION NO:** 1217-2018  
**DECISION DATE:** 5 April 2019  
**DECISION OF:** R Miskinis, Referee  
**CATCHWORDS:** Maintenance, Compliance with by-laws  
*Act, ss 27(3), 77(1), 78(1)(b).*

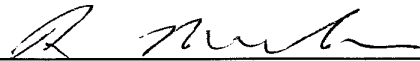
## ORDERS MADE:

The owner is to attend to ongoing maintenance of the gardens on a regular basis in accordance with by-law 5. This includes the following:

- Removal of weeds
- Removal of fallen palm fronds
- Removal of fallen fruit
- Ensuring adequate irrigation of plants.

**I HEREBY CERTIFY this is a true copy of the order and reasons for decision.**

Dated this 5<sup>th</sup> day of APRIL 2019.



**R Miskinis**


## REASONS FOR DECISION

### Application

- [1] This application is brought by the body corporate for Gracemere Island One against the respondent who is the proprietor in relation to alleged contraventions of by-law 5 (Repair and maintenance) and by-Law 7.04 headed (Vehicles).
- [2] Gracemere Island One GTP 107087 is a plan for the *Integrated Resort Development Act 1987 (IRDA)*. The scheme is a subsidiary scheme in Hope Island Principal Body Corporate.
- [3] The *Building Units and Group Titles Act 1980 (Act)* applies for the operation of IRDA (section 5A, Act) and continues to apply to a group titles plan subject to IRDA (section 328, *Body Corporate and Community Management Act 1997*). Section 179A IRDA provides –
- "Subject to subsection (2), a dispute about the operation of this Act or the rights and obligations of persons under this Act may be dealt with under the Building Units and Group Titles Act 1980, part 5".*
- [4] Part 5 of the Act concerns disputes. Part 5, division 3 makes provision for orders by a referee. Within division 3, section 77(1) provides a general power for a referee, on application of a body corporate, a body corporate manager, a proprietor, a person having an estate or interest in a lot or an occupier to "make an order on any person entitled to make an application under this subsection or on the chairperson, secretary or treasurer of the body corporate for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act in connection with that parcel".
- [5] Given section 179A of IRDA, the body corporate may make an application against a proprietor in the scheme seeking an order under section 77(1) of the Act.
- [6] The Body Corporate is seeking orders pursuant to Section 78 (1) (b) of the *Building Units and Group Titles Act 1980*, that the respondent be instructed to
1. attend to ongoing maintenance of the gardens at the lot and
  2. remove a caravan from the front of the lot so that the caravan cannot be seen from outside the lot.
- [7] The Body Corporate also request that should the proprietors be unable to attend to the ongoing maintenance of the gardens, that a gardener may be engaged by the Body Corporate to attend to the ongoing maintenance of the gardens and the Proprietors be on-charged the costs accordingly.
- [8] By Law 5.00 'Repair and Maintenance' provides as follows:
- Every Proprietor or Occupier of a Lot will:
- i) maintain in good condition and repair the exterior of his Dwelling including without limitation all fences, walls, windows, gates, sidewalls, walkways and driveways within his or her Lot;
  - ii) maintain in a clean condition the interior of his or her Dwelling and take all practicable steps to prevent infestation by vermin or insects;
  - iii) maintain in good condition and repair all yard landscaping, irrigation facilities, drainage facilities, spas, fountains, private mooring facilities and other surrounds within his or her lot;
  - iv) have the duty and obligation to make any necessary arrangements for sufficient water required for the maintenance and irrigation of all yard landscaping.
- [9] The Body Corporate says the respondent is in contravention of by-law 5.00 due to the following:-

*A. Rubin*  
5/11/19

- Overgrown vegetation to the front and rear of Lot is not being maintained
  - Weed control is not being administered
  - Palm Fronts are being left on the parcel;
  - Irrigation Services are not being utilised;
  - Plants are beginning to perish.
- [10] By Law 7.04 'Vehicles' provides as follows:  
*A Proprietor or Occupier will not part, store or keep upon the Common Property, a Lot or any part of the Parcel any motor vehicle (which will for the purposes herein include a motor cycle and a motorised buggy, being an electric or motorised cart or buggy used to transport persons, luggage or golf clubs), boats, trailers, jet skis and caravans other than:*
- i) *in garages;*
  - ii) *in the case of motor vehicles only, on driveways in front of garages; and*
  - iii) *on other parts of a Lot that are screened so that the thing parked cannot be seen from outside the Lot.*
- [11] The Body Corporate says the respondent is in contravention of by-law 7.04 by storing a caravan on the lot which is visible from common property.
- [12] Section 30 (5) of the *Building Units and Group Titles Act 1980* prescribes, in part, that:  
*"The by-laws for the time being in force bind the body corporate and the proprietors of a lot to the same extent as if the by-laws had been signed and sealed by the body corporate and each proprietor and as if they contained mutual covenants to observe and perform all the provisions of the by-laws."*
- [13] In accordance with *section 73(1)(d)* of the Act, submissions were invited from the respondent and all lot owners, being persons who in the referee's opinion, would be affected if the order sought was made.
- [14] Submissions were received from the respondents as well as the owners of two other lots.
- [15] By email dated 15 November 2018, the respondents stated that they had recently returned from overseas and had since taken steps to ensure that they complied with the by-laws.
- [16] By submission dated 7 December 2018, the owners of lot . . . say the owners of lot . . . continue to contravene the by-laws and that the body corporate has been tardy in dealing with this issue.
- [17] They state that the respondents reside overseas and do not undertake regular maintenance of their lot. For example they do not believe that landscaping, pool cleaning and pest control are attended to on a regular basis. In addition a caravan has been parked on the lot where it is visible from common property.
- [18] The owners of lot . . . say that between November 2016 and November 2018 the body corporate issued the respondents with 18 notifications regarding contravention of the by-laws. This included the issue of multiple Contravention Notices before lodging this application.
- [19] Further, they say there was no interest to fix the problem earlier but just to "monitor" a deteriorating non-compliance situation for an unacceptable length of time. This was despite a Circular issued by the body corporate manager on 23 February 2018 to all Hope Island Committees, noting that there was a resort-wide problem with unmaintained "Unoccupied Dwellings and Landscaping" and reminding the committees of their obligation to take action. They wrote to the Secretary on several occasions and also tried to meet with the committee on a number of occasions without success.
- [20] In June 2018 their gardener informed them that the . . . Magnolia trees along the dividing wall were diseased and this was leading to infection of palm trees and hedges . . .

  
5/4/19

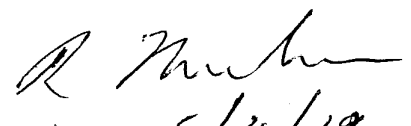
- [21] At the beginning of November 2018 a number of people were observed undertaking work including tidying up the front and back yards. However, they say the infested trees along the adjoining wall are still affecting their palm trees and hedges.
- [22] A submission was received from another nearby owner who says that the front and rear yards, as well as their swimming pool had been neglected.
- [23] The applicant replied to the submissions on 18 January 2019. They advise that the respondents have their principal place of residence elsewhere and reside for a few days each year. The respondents attended to maintenance of the gardens on 5 November 2018, and undertook further work on 13 November 2018.
- [24] The body corporate manager visited the site on 10 December 2018 and on that date was of the view that the gardens were in a satisfactory condition. However a subsequent inspection undertaken on 8 January 2019, revealed that there was fallen fruit on the driveway, the grounds were dry and weeds were starting to reappear.
- [25] On 11 January 2019, the applicant again wrote to the respondents regarding the lack of ongoing maintenance and requested that they attend to this immediately. In response a representative of the respondents advised that landscape maintenance had been attended to and was ongoing. They further advised that gardeners now attend the property twice a month and that fallen fruit would be removed. However the applicant says maintenance is not of a high standard and minimal works are carried out.

## Determination

- [26] It is evident that the Hope Island Resort is a residential community which seeks to ensure a high aesthetic standard to all developments within the resort. The body corporate for Gracemere Island One places importance on ensuring that residences are maintained to this standard.
- [27] Section 51(2) of the Act requires a proprietor to maintain and repair his or her lot and keep the same in a state of good repair, reasonable wear and tear excepted.
- [28] In this matter, the body corporate seeks to enforce by-law 5 which requires a lot owner to maintain in good condition and repair all yard landscaping, irrigation facilities, drainage facilities, spas, fountains, private mooring facilities and other surrounds within his or her lot. The body corporate is required to do all things reasonably necessary for the enforcement of the by-laws.<sup>1</sup>
- [29] There has been a long-running dispute between the body corporate and the respondents regarding garden maintenance. On many occasions between January 2016 and November 2018 the body corporate notified the respondents that landscaping maintenance was not being undertaken on a regular basis they were in breach of by-law 5 with 18 notifications regarding contravention of the by-laws. This included the issue of Contravention Notices before lodging this application. In particular, I note that on 22 August 2018 the body corporate issued a Notice of Continuing Contravention of a by-law and requiring them to attend to required landscape maintenance within 7 days.
- [30] It is evident that the respondents have made efforts to address the concerns of the applicant. Further photographs were provided by the applicant on 18 January 2019. The caravan is not visible and I do not therefore propose to make an order that the respondents comply with by-law 7.04 regarding vehicles.
- [31] I also note that the respondents have taken steps to tidy up their yard and have engaged a contractor to attend to the grounds twice a month. The Body Corporate is nevertheless of the view that the gardens are not up to the standard required by the by-laws.
- [32] Photographs taken on 16 January 2019 show that on the day the photograph was taken:
- There were fallen palm fronds
  - Fallen fruit was laying in the driveway

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<sup>1</sup> Section 27(3), Act.



A handwritten signature in black ink, appearing to read 'R. M. ...', with the date '1/2/19' written below it.

- Gardens were dry due to lack of watering.

[33] The material before me satisfies me that there has been a breach of by-law 5 by the proprietors. I am also satisfied that the proprietors have been notified of the breach, and although they have taken some steps to remedy the breach, the maintenance work is not of a high standard.

[34] I have therefore made the following order:

The owner \_\_\_\_\_ is to attend to ongoing maintenance of the gardens \_\_\_\_\_ on a regular basis in accordance with by-law 5. This includes the following:

- Removal of weeds
- Removal of fallen palm fronds
- Removal of fallen fruit
- Ensuring adequate irrigation of plants.

*R. Muthu*  
5/4/19