

## Special Edition Pre AGM Information for Owners



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**MARCH AGM**



The date for our next AGM is the 14th March 2011 at 9.30am. The meeting will be held at Kurrawa Surf Life Saving Club, Broadbeach. This will be an important meeting. Your Committee encourages as many owners as possible to attend and VOTE at the meeting or by mail. The Executive positions of Chairman, Secretary and Treasurer are unopposed. We have received 6 nominations for the 4 general committee positions therefore a vote will be required. Details of all candidates will come with the voting papers. The current committee has a good knowledge of the building, are committed to deliver value for money to all owners and represent all owner types (investors, holiday home owners and residents). This team have served all owners well and have had the courage to move to tender for our letting and caretaker contracts - our largest expense. We are also working hard to try and achieve a better deal for investors. You will receive voting papers in the mail shortly. If you have any concerns that you would like to discuss with us do not hesitate to email, or phone Peak and we will return your call. **With just 125 owners every vote is important. PLEASE VOTE**

### Your Committee

Chairman: Gay Stevens

Secretary: Roger Dearing

Treasurer: Doug Snowdon

Wayne Robinson

John Tydeman

John Dundas

Barry Kave

### Corporate Owners

If you are a new owner and you own your apartment through a company or super fund you need to appoint a corporate representative to vote at the AGM. The required form is on the website under Forms.

Staymint have again put forward 2011 AGM Motions that, if passed, could separate the existing Caretaker (Management) agreement and Letting Agreement into stand alone agreements and also extend these agreements for a further 5 years to 17th October 2017. The result, if passed, is that existing agreements, that we have believed for many years were flawed, would be extended with the same old terms and conditions (put in by the developer) and without owners having the opportunity to seek alternative tenders. **Agreeing to such motions, we believe, is uncommercial.**

**Our objectives are to achieve a better deal for all owners, that means:**

- New 3 year contracts that go to tender — a summary will be presented by the Chairman at the AGM
- Clear and comprehensive Caretaker performance standards — a major current shortcoming
- More control as regards the transfer of agreements
- A better deal for investor owners—lower commissions and fees and charges
- A high quality building with a sustainable cost structure



**We thank owners for their past support of our objectives and ask for your ongoing support . We are almost there.**

### The Letters



Last year owners received several letters from individual owners. Two of these letters emanated from Staymint's Brisbane Head Office. This is very disappointing, particularly in view of Greg Elix's expressed opinion that the Carmel committee is "the very best I've ever worked with". The two initial letters were processed through the postal meter (franking machine) number 2050502947 which stamps the envelope. This machine is registered to Ariadne Pty. Ltd, Brisbane where Staymint Head office is based. Ariadne Pty. Ltd own 50% of Staymint.



# Carmel Courier

## COMPARISON of Caretaker Costs on a per unit basis for similar sized complexes

Source audited annual BC accounts.

Building/Complex Name	Location	No. of Lots (Units)	Annual
			Management Fee Per Lot
Air on Broadbeach	Broadbeach	131	831
Bel Air East	Broadbeach	104	878
Brighton on B'Water The Shores	Gold Coast	255	967
Admiralty Towers I	Brisbane CBD	151	1,008
Xanadu North (StayMint bld)	Gold Coast	75	1,029
Xanadu East (StayMint bld)	Gold Coast	75	1,032
Skyline Apartments(StayMint bld)	Brisbane CBD	185	1,071
River Park Central	Brisbane CBD	120	1,087
River Place (Ex-StayMint bld)	Brisbane CBD	326	1,114
B'ton on B/Water Dune	Gold Coast	133	1,151
Aqua	Gold Coast	104	1,433
<b>Carmel by the Sea – HIGH END</b>	Broadbeach	<b>125</b>	<b>1,661</b>
The Mediterranean	Gold Coast	122	1,711
<b>Average</b>			<b>1,152</b>



Are we getting value for money ?

Why not go out to tender to find out ?

**Copies of audited Annual Financial Statements can be provided to authenticate these figures.**

### Leasebacks Information - Provided for our Investor Owners

**The following is reproduced from a Management Rights Training Manual written by the lawyer currently representing Staymint.** This manual was provided to all those who attended a public seminar held on 19th November 2010 that was attended by two Committee members.

“Sometimes a letting agent agrees to lease a unit from an owner on a long term basis for a set weekly rental. The Letting Agent then lets out the unit at a higher rental making a profit from the difference. This practice is **not illegal**, but is to be **discouraged**—it leaves the letting agent open to allegations of discrimination against other owners in the letting pool who are not on a leaseback arrangement. If there is any such arrangement, care should be taken so that you do not breach your letting duties under the Letting Agreement with the Body Corporate. Further, under the legislation, you must **disclose** this to your letting owners.”

When Staymint bought the caretaking / letting rights at Carmel by the Sea there were two leasebacks in place. There are currently at least 5 such leasebacks. Your committee agrees that such arrangements **are to be discouraged** as the conflict of interest potential is enormous. How does a letting agent deal with a rental enquiry when their leaseback unit is vacant ? There is also the temptation to upgrade an existing booking to a larger unit (that the letting agent has a leaseback agreement on) at the expense of the owner of the smaller apartment. These conflicts of interest have been recognised by legislation (Section 16 of the PROPERTY AGENTS AND MOTOR DEALERS (RESTRICTED LETTING AGENCY PRACTICE CODE OF CONDUCT REGULATION 2001).

We are not aware (after checking with several rental owners) that Staymint have alerted investors of their Leaseback conflict of interest (as required by the law) and of the growth of Leasebacks at Carmel by the Sea, hence this article.

*We appreciate owner feedback.*

*Please email your comments or suggestions or write to us via Peak*

# Carmel Courier

## The Truth is Out There

The following article on the management rights issues at “Carmel by the Sea” was written by one of Australia's most experienced and largest body corporate lawyers (Michael Teys). At the time of publication on the Teys Lawyers website no member of the committee had met or spoken to this gentleman but he somehow became aware of the decisions made by owners at “Carmel by the Sea”. It is well worth a read. It is very pleasing to read that such an experienced professional working in the industry believes that “**Carmel by the Sea has it right**”.

### More Care Less Take

Michael Teys, LLB, FACCAL, Principle Lawyer and Founder  
Teys Lawyers. **Source:** [www.teyslawsyrs.com.au](http://www.teyslawsyrs.com.au)

1 October 2010

While in Queensland last week, ironically in a trial about the termination of long-term body corporate management rights, I came by some interesting developments concerning that very subject. The body corporate of a prestigious high rise at Broadbeach, Carmel by the Sea has denied the managers an extension when their fifteen-year contracts expires in two years and are putting their contracts to tender.

What's unusual about this, the more commercial of you might ask? In the management rights industry, this hardly ever happens, Managers with agreements for terms up to 25 years for letting and caretaking usually apply every 5 years or so for 'top up' and for some inexplicable reason are granted what they ask which are then sold for millions on the open market to a new manager without any significant benefit to the owners.

The incumbents at Carmel by the Sea, almost certainly paid millions for the management rights believing they too would receive the customary extension but their investment would now seem to be worthless.

According to the newsletter of the body corporate for Carmel by the Sea 94 % of voters rejected a proposal by the incumbent managers to extend the contracts. The newsletter also reports that since the formation of a 'Management Options Panel' to run the tender process later this year they have noticed an improvement in the standard of caretaking. The newsletter notes this is consistent with their view that 'when you think you cannot be dismissed for a poor job humans tend to underperform'.

There are management rights arrangements that work well, but when a good manager sells and a bad or average one takes over, bodies corporate suffer under long-term contracts. This inherent disadvantage of long-term contracts is at the heart of ongoing debate about the system.

**More informed** bodies corporate in Queensland are asking what is the benefit of this long-term arrangement for us? The only reason the long term contracts exist in the first place is that the developers got more for them when they sold them to the first managers and pocketed the fee.

**Carmel by the Sea has it right** – in business, people behave the way they are paid. A virtually guaranteed income stream for a long term for supervising grounds and maintenance is hard to justify when we all know the best work comes from those who can be sacked on a moments notice.

It will be interesting to see how many more bodies corporate choose to let their contracts expire and explore other options rather than give away their future rights for no reason.



## Staymint 2010 AGM Motion Withdrawal - the facts

As previously advised Staymint have again put forward 2011 AGM Motions to extend for five years the existing agreements. Before the 2010 AGM a similar, but different, motion was proposed by Staymint and then withdrawn by them literally at the last minute.

Late last year owners received a barrage of material from Staymint Brisbane about the agreements. At the time we decided not to bore owners with a "blow by blow" rebuttal of much of the contents of this correspondence. After all you have elected your Committee to deal with these matters.

There is however one statement made by Staymint that we feel we must address as it has been raised several times in an attempt to discredit the Committee.

Staymint's chairman recently wrote that Staymint's 2010 AGM motion to extend the Letting Agreement (only) was withdrawn by Staymint "on the understanding and expectation that the BCC (Body Corporate Committee) would enter into negotiations to finalise acceptable terms under which Staymint could extend its term under The Agreements".

We reproduce below two excerpts from Staymint / Body Corporate Committee emails so that you can form your own opinion on the accuracy of this statement. (If any owners would like to read these emails in full we will provide them upon request).

**Staymint email of 9<sup>th</sup> February to Committee** - *"On receipt of written confirmation that the committee agrees to undertake its best endeavours to work towards achieving the goal of (establishing new Agreements) within 60 days following completion of the March 2010 AGM, I have instructions to immediately notify Michael Groves, Body Corporate Manager to withdraw our motion."*

**Body Corporate Committee reply email of 10<sup>th</sup> February to Staymint** - *"In reply to your email yesterday and phone calls today, I have contacted available Committee members who make the following comments. They reiterate that Staymint's withdrawal of their Further Option for Letting Agreement motion is not dependent on nor related to any other matter."*

As you can read Staymint pressured the Committee to complete new agreements within 60 days. If we agreed they would withdraw their motion. We did not agree yet we were advised by a fax from their solicitor at 11:24 am on the 11<sup>th</sup> February 2010 that their motion had been withdrawn. **No formal withdrawal document was ever received.** This Fax was received in the Body Corporate Manager's office on the last day that all notices for the AGM needed to be posted. The "withdrawal" fax was left far too late (we will provide a copy of the Mahoney Lawyers fax upon request).

**The office of the Commissioner for Body Corporate and Community Management confirmed that the Committee acted in accordance with the law in regard to this matter.**

Your committee would like to be able to work with Staymint Brisbane in a co-operative way but with these almost constant attacks designed to undermine your committee and the decisions that us owners have made at the last two AGM's, our patience is being tested. We are hopeful that Staymint will come to realise that the days of owner ignorance of their rights are in the past. Staymint needs to accept the fact that owners have the legal right to say "NO" to extensions and we quote Staymint's own legal advisor Mahoney Lawyers' website "agreements can and do come to an end". Staymint also need to accept the fact that we (the owners of Carmel) have decided to seek tenders for our caretaking and letting services and that we want the one contractor be provide both caretaker and letting services. Although our patience has been tested we have agreed to put Staymint on the short list to tender. If they are competitive, agree to the terms of the new agreements and performance standards, then Staymint have a "box seat" opportunity to be re-appointed. Directors and Brisbane based management will however need to "wake up" to the fact that times have changed to be able to convince the committee and owners that they have earned this opportunity to be re-appointed.

The Committee offered to meet with Staymint in January but they were not available. Maybe they will be available after the AGM.