

**Hume House
Body Corporate 83149**

**Notice of the
2024 EXTRAORDINARY GENERAL MEETING**

To be conducted via: Zoom Conference

Date:

Friday, 27th September at 12.00 noon

Website: www.ypm.co.nz, select "Member Login"
Username: bc83149 Password: 8o745tfdb

**2024 EXTRAORDINARY GENERAL MEETING OF
HUME HOUSE BODY CORPORATE 83149**

Please find enclosed,

- Notice & Agenda
- Chairperson's letter
- Letter of advice on dissolving a Unit Title
- Proxy form
- Postal voting form
- Owner Contact Details Form

Attached to this Notice of Meeting is a Proxy Form, that should be completed if:

- You are the legal representative of an owner, or
- You are unable to attend the meeting and wish to appoint a proxy.

As owners, you are strongly urged to attend or submit your proxy in order to ensure a quorum is attained and the meeting can proceed.

Please see the signing instructions contained in the Proxy and Postal Voting forms.

In the meantime, should you have any questions regarding the Body Corporate, please do not hesitate to contact me.

We look forward to seeing you.

Yours sincerely



Dricky Croucamp
Your Property Matters Ltd
Body Corporate Manager for BC 83149

18 September 2024

**HUME HOUSE CORPORATE 83149
2024 EXTRAORDINARY GENERAL MEETING**

AGENDA:

1.0 Meeting Formalities

- 1.1 Present
- 1.2 Proxies
- 1.3 Apologies
- 1.4 Postal Votes
- 1.5 Quorum
- 1.6 Conflict of Interest

2.0 Introduction by Chair

3.0 Dissolving the unit title and selling the building to a buyer

Resolutions:

Ordinary Resolution: That the Body Corporate elects to dissolve the unit title and sell the building to a buyer, if one can be found at the minimum price agreed by all owners based on the rateable value (RV) of the total of all units minus 15% (not including sale costs).

Ordinary Resolution: That during the interim period the Body Corporate seeks other quotes on the detailed plan from other contractors via the Project Manager.

Notes:

1. Please note that Unit Owners may not vote unless all Body Corporate levies and other amounts that are from time to time payable to the Body Corporate in respect of the Unit have been paid.
2. Voting procedures:

Section 97: Counting of votes for ordinary resolution subject to request for poll

- (1) This section applies if a motion is to be decided by ordinary resolution, subject to a request for a poll, at a general meeting of a Body Corporate.
(2) One vote only may be exercised for each principal unit.
(3) A subsidiary Body Corporate representative has 1 vote for the principal unit that was subdivided to create the subsidiary unit title development.
(4) For a Body Corporate meeting to pass an ordinary resolution, a majority in number of the eligible voters who vote on the resolution must vote in favour of the resolution.
(5) An eligible voter whose interest in his or her unit is subject to a registered mortgage must, if required by that mortgage, obtain the consent of the mortgagee before exercising a vote.
(6) An ordinary resolution passed under this section is subject to a request for a poll under [section 99](#) and the motion being confirmed by that poll.

Section 98: Counting of votes for special resolution subject to request for poll

- (1) This section applies if a motion is to be decided by special resolution, subject to a request for a poll, at a general meeting of a Body Corporate.
(2) One vote only may be exercised for each principal unit.
(3) A subsidiary Body Corporate representative has 1 vote for the principal unit that was subdivided to create the subsidiary unit title development.
(4) For a special resolution to pass, 75% of the eligible voters who vote on the resolution must vote in favour of the resolution.
(5) An eligible voter whose interest in his or her unit is subject to a registered mortgage must, if required by that mortgage, obtain the consent of the mortgagee before exercising a vote.
(6) A special resolution passed under this section is subject to a request for a poll under [section 99](#) and the motion being confirmed by that poll.

Section 99: Request for poll

- (1) A poll may be requested by any eligible voter or their proxy who votes on a motion passed by ordinary resolution under [section 97](#) or by special resolution under [section 98](#).
(2) The eligible voter or their proxy must request the poll in person at the meeting or by audio link, audiovisual link, or other remote access facility.

Section 100: Counting of votes if poll requested

- (1) This section applies if—
 - (a) a motion is passed by ordinary resolution or special resolution; and
 - (b) a poll is properly requested.
(2) One vote only may be exercised for each principal unit and only those who voted on the motion under [section 97](#) or [98](#) are entitled to vote.
(3) For the motion to pass by ordinary resolution where a poll is requested, a majority of the ownership interest represented by those voting must vote in favour of the motion.
(4) For the motion to pass by special resolution where a poll is requested, 75% of the ownership interest represented by those voting must vote in favour of the motion.
(5) The result of any poll is the resolution of the general meeting.

3. Procedure if no quorum present:

Regulation 13: Quorum

- (1) A general meeting of a Body Corporate may proceed without a quorum if the persons who have cast postal votes together with those present are entitled to exercise the voting power in respect of not less than 25% of the principal units in the unit title development.
(2) If a quorum is not reached at a general meeting of a Body Corporate, and subclause (1) does not apply, the following procedure applies:
 - (a) the meeting must be adjourned until the same day 1 week later; and
 - (b) the reconvened meeting must be held at the same time and place, unless the chairperson has notified all unit owners of a change to the time or place (or both) at least 3 days before the reconvened meeting is due to take place; and
 - (c) the reconvened meeting must proceed, whether a quorum exists or not.

4. Ownership and Utility Interests

Section 38: Ownership interest

- (3) The ownership interest is used to determine a range of matters, including, but not limited to,—
- (a) the beneficial interest of the owner of the principal unit in the common property:
 - (b) the share of the owner of the principal unit in the value of any buildings, fixtures, and other improvements in relation to leasehold land:
 - (c) the voting rights of the owner of the principal unit when a poll is requested under [section 99](#):
 - (d) the share of the owner of the principal unit in the underlying fee simple in the land on the cancellation of the unit plan:
 - (e) the extent of the obligation of the owner of the principal unit in respect of contributions levied by the Body Corporate under [section 121](#) in respect of any capital improvement fund:
 - (f) the rights of the owner of the principal unit in relation to a distribution of any surplus money of a capital improvement fund under [section 131](#):
 - (g) the extent of the obligation of the owner of the principal unit for payment of ground rental under [section 87](#):
 - (h) the extent of the liability of the owner of the principal unit for damages and costs under [section 142](#).

Section 39: Utility interest (other than for future development units)

- (3) The utility interest is used to determine a range of matters including, but not limited to,—
- (a) the extent of the obligation of the owner of the principal unit in respect of contributions levied by the Body Corporate under [section 121](#) in respect of the long-term maintenance fund, the optional contingency fund, and the operating account:
 - (b) the rights of the owner of the principal unit in relation to a distribution of any surplus money in the long-term maintenance fund, the optional contingency fund, or the operating account, or personal property of the Body Corporate under [section 131](#).

Proxy Appointment Form

As per Section 102(3), Unit Titles Act 2010

To:

Charlene Newall (Charlene@ypm.co.nz)

Unit plan:

DP 83149

Body Corporate Number:

83149 (Hume House)

Proxy appointment

We/I*, _____ [full name, address],

being the owner/owners* of _____ [principal unit] and therefore an

eligible voter within the meaning of section 96(1) of the Unit Titles Act 2010, appoint

_____ [full name] as my/our* proxy for the

purposes of the general meeting of the Body Corporate to be held on 27 September 2024.

*Select one

If the general meeting is adjourned and reconvened, this proxy appointment is valid for the purposes of the reconvened meeting.

Motions.

Motion	Type of resolution	Direction On Resolution
That the Body Corporate elects to dissolve the unit title and sell the building to a buyer, if one can be found at the minimum price agreed by all owners based on the rateable value (RV) of the total of all units minus 15% (not including sale costs).	Ordinary (non-designated)	
That during the interim period the Body Corporate seeks other quotes on the detailed plan from other contractors via the Project Manager.	Ordinary (non-designated)	

Date: ____ / ____ / ____

Signature of eligible voter: _____

Notes

1. This proxy appointment expires at the end of the general meeting referred to in the form or, if that meeting is adjourned, the end of the reconvened meeting.
2. The full text of motions is contained in the notice of general meeting, a copy of which should be provided to the proxy.

3. Your proxy may not vote unless all Body Corporate levies, and other amounts that are owing in respect of your unit, have been paid.
4. If the unit owner is a Body Corporate or an unincorporated body, the representative (recorded in the register of unit owners) of the unit owner must sign the form.
5. If the unit is owned by more than 1 person, every owner must sign the form.
6. If the unit is owned by more than 1 person, one of the unit owners may be appointed as proxy.
7. The chairperson of the meeting is not required to ensure that your proxy follows any direction on resolution set out in the form.
8. When entering a direction on resolution, you can use the statements such as (for example):
 - I am for (which means you support)
 - I am against (which means you do not support)
 - I abstain (which means you decline to vote either for or against the motion)
9. It is recommended that you provide the instructions in this form to your proxy before delivering it to the Body Corporate in the manner required.

Postal Voting Form

As per [Section 103](#), Unit Titles Act 2010

To: Charlene Newell (Charlene@ypm.co.nz)

Unit plan: DP 83149

Body Corporate Number: 83149 (Hume House)

Instructions

You are entitled to vote at the Body Corporate meeting to be held on Friday 27th September 2024 by casting a postal vote. The motions to be decided at the meeting are summarised in the table below and more particularly set out in the notice of meeting. If you intend to cast a postal vote, you must indicate your vote in the final column of the table and return the form to Your Property Matters Limited so that it is received by Thursday 26th September 2024.

Postal vote

We/I*,

_____ [full name, address], being the

owner/owners* of _____ [unit number] and therefore an eligible voter within

the meaning of [section 96\(1\)](#) of the Unit Titles Act 2010, intend to cast the following postal

vote(s) at the meeting of the Body Corporate to be held on 27th September 2024.

*Select one

Motion	Type of resolution	Instructions on voting procedure	Vote
That the Body Corporate elects to dissolve the unit title and sell the building to a buyer, if one can be found at the minimum price agreed by all owners based on the rateable value (RV) of the total of all units minus 15% (not including sale costs).	Ordinary (non-designated)		
That during the interim period the Body Corporate seeks other quotes on the detailed plan from other contractors via the Project Manager.	Ordinary (non-designated)		

If the general meeting is adjourned and reconvened, this postal vote is valid for the purposes of the reconvened meeting.

Date: ____ / ____ / ____

Signature of eligible voter: _____

1. The Body Corporate completes the instructions section and the text of the motions. You should complete the postal vote section and the vote section.
2. Your postal vote will not be counted if any Body Corporate levies, or other amounts that are payable in respect of your unit, are outstanding.
3. If a poll is requested, your ownership interest will be counted as part of the poll. If no poll is requested, your postal vote will be counted as 1 vote. You cannot request a poll.
4. If at the general meeting of the Body Corporate the wording of a motion is materially altered, your postal vote in relation to that motion will not be counted. It is the responsibility of the chairperson to decide what constitutes a material alteration. If you are concerned that your postal vote may not be counted as a result of an amendment to a motion, you should consider appointing a proxy to attend and vote at the meeting on your behalf.
5. If a quorum is not present at the general meeting of the Body Corporate, and regulation 13(1) of the Unit Titles Regulations 2011 does not apply, the meeting will be adjourned until the same day 1 week later and your postal vote will be counted at that meeting.
6. If the unit owner is a Body Corporate or an unincorporated body, the form must be signed by the representative (recorded in the register of unit owners) of the unit owner.
7. If the unit is owned by more than 1 person, every owner or his or her authorised representative must sign the form.

5 September 2024

Body Corporate 83149 - Hume House

By email: humehousecommitteechair@gmail.com

For Saya Hashimoto

Collapse of Unit Plan and Sale of Property

1. The following outlines our views on the sale of 152 The Terrace (“Hume House”), in light of the unit owners being unable to finance necessary remedial work to the property.
2. You have asked for our advice regarding the likelihood of the courts granting the necessary orders for sale, the details of the legal process involved, and a potential timeline for achieving this.
3. For the reasons outlined below, we consider it reasonably likely the Court would make such an order if a potential buyer was in place. However, the outcome will depend heavily on the Body Corporate (“BC”)’s situation, and, particularly, the impact of the offer of sale on any unit owners objecting to the sale. Without a potential buyer lined up, the Court may struggle to determine if the BC’s situation meets the legal requirements for it to grant an order. This means that from a practical standpoint, the BC may wish to focus on securing a potential buyer for Hume House, as this will have the most significant impact on what options are viable going forward, including whether this matter is best resolved by the Court.

Background

4. We understand that in 2023, the BC agreed to renovate the windows and façade of Hume House in order to remediate potential weathertightness issues. The subsequent works on this project revealed that remediating these issues would require around 40% more work than initially thought. Some of the unit owners in Hume House cannot currently finance the increased scope of remedial works.
5. One suggestion for addressing this has been for the BC to explore the sale of Hume House to a developer. While the majority of unit owners have indicated interest in this option, a few unit owners are concerned about agreeing to a sale price that is lower than RV. As an ordinary sale would require the unanimous assent of the unit owners, you have enquired with us on behalf of the BC about seeking a court order for a sale instead.

Legal Processes

6. There would be two parts to the sale of Hume House: cancelling the unit plan under the Unit Titles Act 2010 (“the UTA”), and arranging the sale of the underlying estate under

the Property Law Act 2006 (“the PLA”). These steps do not necessarily require the Court’s involvement if the unit owners are unanimous.

Cancellation of the unit plan

7. Cancellation of the unit plan is done under the UTA. It collapses the units into the underlying estate, so that the whole property can be sold to a single purchaser. The unit owners become co-owners of the underlying estate, and are allocated shares proportional to their ownership interest.
8. There are two options for cancelling a unit plan: either by applying to LINZ for approval under section 177 of the UTA, or by seeking an order from the High Court under section 188. Applying to the High Court under section 188 is open to individual unit owners, not just body corporates, but only a body corporate may make a section 177 application to LINZ.
9. Before a body corporate can take either of these steps, it must first pass a special resolution (with a 75% majority) agreeing to the unit plan’s cancellation. This special resolution is deemed a “designated resolution” under the UTA, meaning it is subject to additional requirements to ensure fairness, outlined at sections 213-216 of the UTA. This includes providing notice to all the unit owners, and giving the unit owners opportunity to raise any objections. If there are objections, then a hearing in a court or a tribunal might be held to address this.
10. If there are no objections, then the BC can issue a certificate documenting this, and seek permission directly from LINZ to cancel the unit plan under section 177. This option will likely be quicker and less costly than seeking an order from the Court, so if the unit owners are clearly unanimous, it may be the preferred option.
11. However, if other court orders are necessary or the unit owners are not in agreement, then it is possible to apply to the High Court to cancel the unit plan under section 188. Unlike applying to LINZ, this can be done by individual unit owners, not just the BC.
12. When considering whether to grant an order under section 188, the Court will ask whether it is “just and equitable” to cancel the unit plan, considering the rights and interests of every person with an interest in the units or the underlying estate, and the rights and interests of any of the BC’s creditors. As this is a discretionary test, it is not possible to guarantee what the Court will decide in a given situation. The Court will consider the rights and duties of everyone involved alongside what would be most fair.
13. There are a number of past cases similar to Hume House’s where the Court has considered cancelling the unit plan to be just and equitable. The reasons for this have included the BC’s inability to meet its statutory duties of repair and maintenance, whether the building was fit for habitation, how many owners were in favour of the proposal and whether there were any objections, and whether any owners had proposed alternative

solutions to the matter. If a small proportion of the unit owners refuse or object, the Court may consider factors like whether those unit owners live permanently in their own unit, the overall condition of the property, and the size of the objecting owner's interest relative to the majority in favour of the proposal.

14. In summary, if there are no objections or the unit owners are unanimous, then cancelling the unit plan can be done without a court hearing, under section 177. If a court order is necessary under section 188, then the Court will weigh up any objections to the proposal against other factors like the BC's duties and the other owners' interests.

Sale of the land

15. Once the unit plan has been cancelled and the unit owners have become co-owners of the underlying estate, co-owners can unanimously agree to sell the property without the need for the Court's involvement. However, if the co-owners cannot agree on the sale, then one or more co-owners can seek a court order for the sale under section 339 of the PLA.
16. Under section 339 of the PLA, the court has to consider the whole circumstances of the situation when making this decision, and ultimately has full discretion on what factors it considers and whether to make the order. Again, this can make it difficult to predict the potential outcome of an application.
17. As part of this decision, the Court must consider a range of factors set out in section 342 of the PLA. This includes:
 - (a) The proportion of owners in favour of the sale and the size of their shares in the property;
 - (b) The nature and location of the property;
 - (c) The total number of co-owners and the size of their shares;
 - (d) The hardship that would be caused to the applicant by refusing the order, relative to the hardship that might be caused to any other party by making the order;
 - (e) The value of improvements or maintenance made by each co-owner; and
 - (f) Anything else that the Court considers relevant.
18. A key factor is the question of hardship, set out at section 342(d) of the PLA. The High Court considers that hardship does not necessarily need to be "severe privation or suffering", but it must be more than mere inconvenience or disappointment. The Court has previously refused orders for sale where it would seriously adversely affect the lives of young children or the elderly residing at the property.

19. In similar cases to that of Hume House, other factors that have informed the Court's considerations of hardship are whether the building is fit for purpose or habitation, the benefit received by each unit owner, and the sale price relative to the property's market value. Where there are no objections by the affected parties, the Court will usually grant an order for the property's sale. This means that the likelihood of the Court ordering the sale of a property will depend heavily on the nature of any objections to the sale, and whether the objecting parties would be caused real hardship by an order for sale that outweighs that of the owners wishing to sell.

Timeline and Application to Hume House

20. If the unit owners of Hume House are unanimous, then it may not be necessary to seek orders from the Court for the property's sale. This option would be significantly less costly and likely be more efficient.
21. However, if court orders are needed, then this will significantly protract the process of a sale. The court process will depend heavily on the availability of hearings and the complexity of the proceedings involved. A hearing can usually be scheduled 4-6 months after making an initial application, unless the matter is subject to additional delays, and a judgment issued around 4-6 weeks following that. The timeline will also need to factor in the designated resolution process under the UTA, the availability of the unit owners, and the progress of negotiations with a buyer. One previous case took three years to resolve from the time an offer of sale was arranged for the properties, although we do not have enough information about this situation to determine if seeking orders for Hume House would require a similar timeline.
22. As set out above, the Court has significant discretion in granting the required orders. The Court would need to be satisfied that cancelling the unit plan is just and equitable in the circumstances, and weigh up all the factors affecting the sale, including potential hardship to the parties involved. Hume House's BC is unable to meet its statutory obligations for maintenance and repair, and the majority of the unit owners seem interested in seeking a sale. In previous similar cases, the Court has agreed to cancel the unit plan and order the property's sale.
23. One key area where Hume House differs from these past cases is the extent of the building defects faced by the property. In these previous cases, the Court described the units as not fit for purpose or not fit for habitation. It is not clear how the Court will view a property in need of remediation but that is not subject to the same severity of damage. However, it is likely this will not present a serious issue for an application, given any weathertightness issues will interfere with the unit's residents and the unit's adherence to regulatory standards such as the Healthy Homes Standards.
24. Additionally, the properties in these previous cases have already had a prospective buyer arranged, and an established sale price that the Court factored into their analysis. It is not clear how the Court would respond to a situation where there is no offer of sale already in

place. In such a case, the Court may struggle to answer questions of equity and hardship, given the potential financial impacts on the unit owners would not be known until an offer is finalised. It seems unlikely that the Court would readily order a sale before a potential buyer has been identified.

Conclusion

25. The sale price seems to be the key concern for Hume House's unit owners. While it would be possible to seek a court order for the sale if some owners remain dissatisfied with the potential sale price, the Court may not be guaranteed to make an order for the sale, depending on how seriously it would impact the objecting owners.
26. This means that from a practical standpoint, the BC may be better placed to focus on the non-legal steps of this process first, particularly on securing a potential buyer for the property (albeit subject to owner approval or a court order). This will determine what options are available going forward, and whether this matter can be resolved without the costs and delays associated with the court process. In light of this, our recommendation to the BC is to discuss this matter with real estate agents and/or property consultants, and identify how they see a sale process like this working and whether finding a potential buyer for Hume House would be viable.
27. Please let us know if you have any questions about the above advice, or if there is anything further you wish to discuss.

Yours faithfully
JB Morrison



Matthew Whimp
Partner

Direct Line: (04) 495-8909
Mobile: 029 479 4807
E-mail: matthew.whimp@jb Morrison.com
Website: www.jbmorrison.com

Dear members,

Thanks for your responses to the informal survey on options for the project, I had responses from about three quarters of owners. The majority indicated they would prefer an option to sell to a developer if a reasonable price could be obtained, and agreed by owners. A majority also indicated that their first or second preference is to move ahead with the detailed plan. There were also some owners who wished to go back to market to explore quotes from other contractors for the detailed plan.

Please note that the committee does not have capacity to manage exploring a sale to a developer and a working group would need to manage this, and provide the committee with updates so we can keep owners in the loop. This can be discussed at the EGM.

I have provided further details below, and have called an EGM to vote yes or no on the following proposal:

- Dissolve the unit title and sell the building to a buyer, if one can be found for minimum price agreed by all owners based on the rateable value (RV) of the total of all units minus 15% (not including sale costs).
- During the exploratory period for the sale, we will seek other quotes on the detailed plan from other contractors via the project manager.

This would mean if the sale to developer option was unable to go ahead, we would be able to vote on the cost options provided by the various contractors for the detailed plan.

Sale to developer

Big thanks to Maya who pulled together a spreadsheet of the RVs of all apartments except MOTT which was unavailable online.

I have obtained legal advice on what the process to dissolve the unit title involves, and provided it with this pack.

Essentially, it says that if everyone agrees and a potential buyer is in place, it is reasonably simple to dissolve the unit title and sell. If anyone disagrees, 75% of owners need to agree to a sale before the Body Corporate can apply to the courts to make a decision on whether they would order the unit title to be dissolved. The court would make their decision based on reasons including whether the Body Corporate is able to maintain the building in a habitable state and whether it is fair and just to the owners to dissolve the unit title.

Although only a 75% majority is required to pass a special resolution to cancel the unit plan, doing so without a potential buyer in the picture or while there are genuine objections to the proposal is likely to create significant issues for the Body Corporate going forward.

In the meantime, we would look to:

Fix immediate windows issues

This would involve replacing only broken windowpanes to address the immediate problems of safety and water ingress, and hardware repairs where there is a safety risk. Louise advises that a glazer could quote to replace these, possibly using photos provided by owners, and a site visit would not be required until repairs began.

Obtain further quotes for detailed plan

The steps for going out to market below with anticipated timeframes associated are listed below.

- Project manager to prepare an RFT Document and canvass the market for contractors willing to price: 10 days
- Issue tender docs for pricing: 6 weeks
- Quantity surveyor to review and clarify pricing, Project manager to review and clarify tags and programme, prepare recommendation report: 10 days
- Present results to body corp: 1 day

The price and programme would be based on the current design documentation, but the individual contractor would propose their own methodology based on what they understand to be the best solution. This is because if we dictate the methodology this could inflate the price if a contractor sees a more economical way of completing the works. There will be an opportunity for us to challenge the methodology once we receive it from the contractor, this would form part of the tag clarification phase.

OWNER CONTACT DETAILS: HUME HOUSE BODY CORPORATE NO. 83149

To assist us in keeping you informed, please complete and return this page to:

Your Property Matters Ltd
P.O. Box 12-123
Thorndon
WELLINGTON

or

FAX: (04) 473-7331
Email: charlene@ypm.co.nz

Date: _____

Unit: _____

Car Park: _____

FULL LEGAL NAME OF OWNER/S OR COMPANY/TRUST/PARTNERSHIP*

Postal address if other than Apartment: _____

Contact details:

Contact Name: _____

Home Phone: _____ Work Phone: _____

Mobile Phone: _____ Email: _____

*COMPANIES / TRUSTS / PARTNERSHIPS

If the Unit is owned by a Company, Trust or Partnership, it is now mandatory for the Body Corporate to have on record the contact details of **all the Directors, Trustees or Partners**. Please attach these on an additional page.

TENANTED PROPERTIES

Presently tenanted by: _____

Contact details:

Home Phone: _____ Work Phone: _____

Mobile Phone: _____ E-mail: _____

Managed by: _____

Contact details:

Home Phone: _____ Work Phone: _____

Mobile Phone: _____ E-mail: _____

MORTGAGEES

It is now mandatory for the Body Corporate to have on record all the interested parties for the Unit.

Please note all interested parties: _____