

Member call no. 40: How to purchase part of the common property: Chris' project
Publication Date: 12 May 2021

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Amanda Farmer: Hi, Chris. Thank you for joining us for our member call today. I'm going to hand it straight over to you, you've got some exciting plans for your property. Tell us about them, and I will do my best to help you with the legal side today.

Chris: Thanks very much, Amanda. Yes, I've lived with my wife in a small unit block of 4, and our unit is at the bottom of the slope of the 4. And at the front, we have some common property, which is open to the street frontage at the moment. And we had the idea that it wouldn't be a bad idea to try to incorporate that common property into our lot, with the future intention of renovating our own unit to try to access that to have some sort of front yard to our unit. And so you start down the rabbit hole of how to find out how to purchase that common property from the owners corporation. And what other avenues there might be available, the costs involved, the very legal aspects to it. And all of the service providers that are needed to advise and recommend on that process.

So we'd like to understand a bit more about the sequence, I suppose, of trying to achieve this. And that's for starters. And potentially also, some of the key points we could make to the other owners in the block to accept our proposal. And whether that's as basic as a financial windfall or whether there are other things that I might not be aware of to kind of encourage them to accept our proposal. So that's the sort of idea that we'd like to try to talk about today, to understand what's possible, what's not.

Amanda Farmer: Excellent. Great question, great topic to be talking about. And I'm sure it will help so many of our other members as well. This is becoming more and more common in our strata schemes, owners get savvy learning how to make better use of the property. Particularly areas like you're talking about, where nothing much else happening in that common property area and it can be of great value to you. Am I right that you said, 4 lots? You've said sloping block, you guys are at the front. Does that mean this area is really only of use to you or is it being used by others? Could it be used by others?

Chris: No, we don't think it could be used by others. Each unit in the block has its own small courtyard to the southern side of the building. Yet because of the nature of the slope, it means that they're kind of restricted to that small courtyard. And so it's at the front of the property, at street level is where this common property exists. And where really, it would only benefit unit one, namely our unit.

And, yes. As I say, currently it's unfenced, it's open to the front so it's quite undeveloped. There's a basic, ugly rockery in the front. It really has no landscaping to it. So at the moment, it's not being really used by anybody, other than the classic verge car park, which is very frustrating in and of itself. But, yes. We would think that in time if we were successful, we would invest in potentially ourselves or with the owners corporation... Hard to know how that would go. In the fence itself and in the landscaping, and potential beautification to the front of the property. Which I think would be met very well by the other owners, because it clearly would enhance the value of the overall building and property.

Amanda Farmer: Okay. All righty. Now, I know because you've put in your notes to me, that you have thought about the option of getting the right to use this area via a common property rights by-law. And you've discounted that because you understand that that is not a legal ownership, it is simply a right pursuant to a by-law to use the area, which can be revoked, it can be changed. Yes, that change needs your consent, but our Tribunal can certainly revoke those by-laws. So I agree with you, it's not as valuable a right if you only have it pursuant to a by-law. But if other members are thinking along those lines, then that could definitely be an option to explore. A by-law, special resolution. And yes, you can have a payment incorporated into the terms of a by-law.

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Amanda Farmer: What I know Chris, you specifically want to talk about today, is this option of purchasing the area. Then yes, you become the legal owner of that area, a more valuable right and no one can take that away from you. Or at least, the owners corporation can't take that away from you. In terms of the steps in that process, I know also from your notes, that you've already been thinking about this. And probably doing some research because you've really hit a lot of those key points that I would be telling clients whom I speak to about this to start thinking about. So I'll try and keep it fairly practical for you. First of all, because this is the front of the property. You've said, it's street level, street side. And it may be that in the future, I imagine if you become the owner of this land you in the future plan to renovate your apartment to extend into that property, that kind of thing.

Chris: Potentially not to extend into it as such, with the building. But certainly to incorporate it as a front yard. So there could be some access from our lot into it. But there wouldn't be any sort of building into it, I don't think.

Amanda Farmer: Okay. All right. That'll be good to let the owners corporation know, so let's flag that when we get down the track, how do we convince the owners corporation to support this? But where I'm starting from now, actually, is the local council. And that was on your list of, where do these guys sit? Are they involved? The short answer is, yes, they are involved. And I always tell clients who are wanting to go down this path to have a chat with the council first. Because I see too many people make the mistake of doing that the other way around. Doing all of the efforts, speaking to their owners corporation, putting together... Whether it's a by-law or whether it is a subdivision of the land, and an ultimate purchase, which is the process you're talking about. Enter into contracts, make those contracts perhaps subject to council approval, which any lawyer will be telling you to do. Sign up the contract and then say, *"Oh got to get council approval before we actually complete the transaction."* Go to council and council says, *"No, there is no way we're going to let you do this."*

It could be for a number of reasons, I often see this with parking and that's not your situation. But where people want to purchase a parking space from the owners corporation. Council goes back to the original development consent, and says, *"No, you can't have that parking space. A, maybe because it's not big enough, it never should have been a parking space."* Or, *"We must have a certain number of visitor parking spaces or parking spaces left on the common property pursuant to the development consent."* So I'd be wondering with your building, whether there may be some rules about how much common property there has to be, relative to lot property. And whether the council, just as a general planning rule for your area, has an issue with that.

That's essentially the change you're making here now, you're not yet, but you don't necessarily want to restrict yourself. You're not proposing to do any building works, so we're not really having a discussion about landscaping relative to the internal property area. That's another thing council gets concerned about. But there is nothing to lose and a whole lot to gain by having what can be, an informal, at this stage, discussion with council. And just saying, *"Look, is this something that is possible? Can you tell me what your specific requirements might be, if any, at this stage? I am talking to the owners corporation about it. I understand the strata law aspects of the subdivision, the purchase, the special resolution that will be required. But I'm also conscious that council approval is very likely."*

I don't know. I don't know your council, and I say that... I haven't even looked at the address on your strata plan so I don't know what their position will be. And all councils are definitely different in this respect. But my practical first step would be to go and have at least an informal chat with them. And if you're met with, *"Absolutely not. This has been tried before."* Or, *"This building down the street tried to get it."* Then that's really valuable information to have.

Chris: Yes, sure. Right. Thanks for the tip on that one first up, because it could prevent a lot of expenditure and energy.

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Amanda Farmer: Yes, definitely. Then if council says to you, "Yes, this is definitely something that we can do or we can look at." And you feel comfortable and confident enough to take the next step with your owners corporation. Then having an informal chat with them is the next thing to do. And I think maybe you've already done that and you've said you've got some sort of in principal support for this, which is great.

Chris: More or less, yes. We flagged it in general terms, in the sense that we propose potentially extending our balcony across the front of the building which would say, that yes there's some sort of building into the common property area, as it exists currently. But if that were to happen, it would enhance the value for ourselves but also for the block broadly speaking. So there's that little bit of acceptance that, yes that would be good. And so we figure that this proposal would also be quite... We hope, positive.

Amanda Farmer: Yes, okay. So the reason that we need to be talking to the owners corporation and seeing how many, if not all, are on side, is because we do ultimately need a special resolution to approve the subdivision and the sale of parts of the common property. And that's in the Strata Schemes Development Act. You're a 4 lot scheme, do you have equal unit entitlements?

Chris: No. So that's a factor, where 3 of the 4 are equal but number 4, has a larger lot and therefore-

Amanda Farmer: Could block.

Chris: Could, potentially. That individual owner was the more receptive to any sort of general proposals that I had sort of flagged previously. And because it would be about cost and not on them, then yes I think they would be quite happy for that to proceed. But there is that acknowledgement, that yes in a block of 1000 unit entitlements, they hold 280 as opposed to 240 for each of the other 3. So yes, that is a factor. And it would possibly be a factor come to any potential realignment or reallocation of unit entitlements down the line. So I would be interested to find out about that sort of thing too if you don't mind going over that at some point.

Amanda Farmer: Yes, if we've got time we can definitely get into that. Okay, interesting. Well, it's good to hear that that owner is receptive. That owner certainly would have the power to block. You need, a special resolution passes if no more than 25% vote against. So you could have, if you've each got other lots have 240, then you could have one other person vote against as long as that person's not Lot 4, you're all right.

Chris: Yes.

Amanda Farmer: So in having this informal discussion with them, I don't know whether that has been part of a formal meeting yet? Do you have committee meetings? Do you just have an AGM? How does that work in your building?

Chris: We're about to have our AGM for this year, next week. But we are in the process, through that AGM, of establishing a strata committee much more effectively with the classic by-law of delegating some of that OC responsibility to the strata committee. So we have ongoing strata committee meetings. But I acknowledge that there would need to be a general meeting for this type of special resolution.

Amanda Farmer: For this type of special resolution, yes. What I'm getting at is having some kind of paper trail of this initial proposal, okay? When I work with big buildings, I usually do this whether it's for the owners corporation who's wanting to sell part of its property and is taking the front seat here, or whether it's an owner who's purchasing part of it. I like to put to the general meeting that a proposal has been made, and it has been accepted in principle. And what that does is gives you some comfort that should people sell down the track... And it may not be as relevant in your small building. But should people come and go and change their

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minds about things, you can go back and say, "Hey, 12 months ago..." And bear in mind, these things can take this long. "12 months ago there was a resolution passed at a meeting and it was unanimously resolved." Or, "The vast majority of owners said that they were happy with this and in principle they would support it."

Now, that is not your special resolution that you need to certify when you go to the Land Registry to formalise everything, it's not that I'm talking about. I'm talking about the step before that, that gives you as the owner comfort that you can now go and spend what's going to be thousands of dollars, on this process. And you don't want to get to a general meeting at the end and for people to go, "Oh, what's this? What's going on? Oh, no. We don't support that." You want to be able to wave those meeting minutes, and say, "Well, this is news to me guys." And have a little bit of pressure there, that they feel like they've committed to the process just as you have.

Chris: Good.

Amanda Farmer: So you said you have an AGM coming up, has the agenda gone out for that?

Chris: Yes, just earlier this week. And it occurred to me, that in line with what you're sort of talking to here, to flag it. Was it whether I could raise it in general business? And I wasn't too sure to do that because our proposal isn't very well fully developed to be able to answer those early queries as to, "What are you doing? What's in it for me?" So I might just leave it for the moment to then come back at it in another general meeting, which we'll need to have for other matters.

Amanda Farmer: And think about this, if you are talking about formally establishing the strata committee... So do you have a strata manager?

Chris: Yes.

Amanda Farmer: Okay, great. So that manager should know that you've got a motion on the agenda for the election of the strata committee, that's a mandatory motion that we must have at an AGM. Would you expect that there'd be a representative of each lot on the strata committee that would put up their hand?

Chris: Well, the 3 of the 4 key lots, yes they would be the 3 owner-occupiers of the 4 would be representative.

Amanda Farmer: Yes. Okay, great. So what you could do is at a future strata committee meeting, put this proposal forward in principle, to a future Strata Committee Meeting. I accept that you don't have everyone present at that meeting, but you've got 3 of the 4 owners. Lot 4 is an owner-occupier?

Chris: Yes.

Amanda Farmer: Awesome. Okay. So you can get at a strata committee meeting, in principle approval at the threshold that you would ultimately need at a general meeting if you follow?

Chris: Yes.

Amanda: So I don't have a problem with you saying nothing at this AGM. Unless obviously someone asks you, "Hey Chris, are you still interested in this idea?" "Yes, we're investigating it. I'd like to discuss it with the strata committee at a future strata committee

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meeting. I'm just getting some more information." That kind of thing. And then at a future strata committee meeting, you might want to... I'm thinking about what you'd approach them with. I'd say that you should have at least spoken to the council by then. And they'll have a question about that, "Does this involve the council? Yes? What does that mean, what do we have to do?" Hopefully, you can answer those questions having had help from the council. You're saying to them you're proposing a subdivision and a purchase, not a by-law. You are going to... And I think you may have done this already, but I don't know how much they know. You're going to get the land valued so that you can make them an offer basically.

Chris: Effectively, yes that's right. And that, I guess, would answer the question from the other owners, what's in it for me? I think is the main key question.

Amanda Farmer: Yes. So I think you've got to go in reasonably early in this discussion saying, "I am proposing to purchase this." So the purchase price is paid to the owners corporation. The interesting thing about your building is because you are so small, you are a recipient of about a quarter of this purchase price. Now, as far as I'm aware, there is no real way around that. I've spoken to clients in similar positions before and I have said, maybe think about... You have to bear in mind stamp duty considerations and tax implications on this as well. But have a think about, would it be feasible to up the purchase price in acknowledgement that part of it is coming back to you?

Chris: Yes, I see what you mean.

Amanda Farmer: So to do a formula calculation where you pay a little bit more so that everybody else gets a little bit more, in acknowledgement that part of it is coming back to you. I don't know the numbers, I don't know if we're talking about 2 grand, I don't know if we're talking about 200 grand. That is relevant because that's going to change your stamp duty implications and your tax implications.

Chris: My own or the owners corporations or both?

Amanda Farmer: Your own. The important thing to remember here, I know this was in one of your questions. Is that owners do have to... There's a tax ruling and Richelle just leave me a note, we'll send Chris the link to our podcast episode. Reena and I talked about this on the podcast, and she quotes the tax ruling. Where the money received from this kind of transaction by an owners corporation, is taxed in the hands of the owners.

Chris: Anyway, whether or not it goes to the OC or to them individually?

Amanda Farmer: Correct.

Chris: Interesting.

Amanda Farmer: Yes. So we will get you and we will post the link under this video as well for anyone watching it later. We'll get you the link to that tax ruling. So your Accountant, as you may have already guessed, is another one of those professionals who needs to be on board with you as part of your team. To say, "Okay if we're talking about this kind of purchase price, this is what the tax position looks like, at least for you Chris." And then you, of course, can't give any financial advice to your fellow owners. But you can say, "Look, I've chatted to my Accountant, they've looked at this tax ruling, this is how it applies. We suggest that you do the same to work out how it impacts your specific circumstance." And that all, of course, you don't know how that impacts somebody, what their income is, what their usual financial positions is. It may have a big impact, it may not.

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Chris: Okay.

Amanda Farmer: So that is a relevant consideration, particularly in a small building where the proceeds could well be significant for each owner. Well, you don't need it but I recommend a formal sales contract. That just keeps everything tidy should there be any problems, any delayed settlements, any push back. The normal sales contract has all of the conditions that lawyers usually rely on when buying and selling land. And they're very simple to put together. Whether you have a contract or not, you have a document called a transfer that has to be signed. And that is the document on which the stamp duty is paid. So some people think, "Oh well, it's just a small parcel of land. We're just transferring, we don't need a big long document and we don't need anything stamped." You do, and you will need to pay stamp duty on the purchase.

Chris: Yes, of course.

Amanda Farmer: In terms of the price, when you go to the owners corporation, be prepared that they may have a different view of what the price should be.

Chris: Yes, I wondered that. Yes.

Amanda Farmer: And when I act for buildings who say, "An owner has come to me and proposed to purchase this part of the common property, they say it's this much. We think it's more." And I say, "Well, somebody's got to get a valuation, if not both of you." And see what they each say. Now, if you're an owner as you are, I suggest you get that valuation. You tell the valuer that they are engaged by you and what the purpose of the valuation is. These people are experts, they are professionals, they should then proceed to do their job in accordance with their professional obligations. But it's important that they understand that they act for you, they don't act for the building.

The building on the other hand gets a valuer who acts for them, and that valuer produces their report. You guys then get together if they are different and you do some horse-trading. You negotiate what each party would be comfortable with. Again, I have no idea of the size or value of this land. There may be a few thousand dollars in it, there may be tens of thousands of dollars in it difference. So that too is a process that's done reasonably early, and you are very clear if you have a bottom line, they have a bottom line, if you're not going to get there, you're not going to get there. And you don't put too much more time and energy in to the process. The purchase price is, of course, disclosed on the contract and once that's agreed, that's agreed. You may agree to pay a deposit, that may go in to a solicitors trust account. And you should be able to have reasonably short settlement period.

Chris: Very good.

Amanda Farmer: Being simply a block of land and you're already there, there aren't sort of inquiries to be made like when we purchase a house. The thing that often takes time, is council, Number 1. And you make your settlement subject to council approval. Number 2, is having a surveyor draw up the plan of subdivision. So we need a new plan that will now show the boundary of your lot as further than it is now.

Chris: Yes, of course.

Amanda Farmer: So that is the other person to start talking to. And depending on who that person is, they may have some experience with your local council. So they may be good to get involved early as well so that they can give you some guidance in that council direction. And what I usually have them do is draw up a draft plan or a proposed plan of subdivision, because sometimes the council wants things changed on a plan. But we do need a plan of some sort, a proposed or draft plan to attach to

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the contract. So we're saying to the owners corporation, *"We are purchasing the land shown in this proposed plan of subdivision, but it's subject to council approval and there may be changes."* All of this goes in the special conditions of the contract.

Chris: Of course, yes. That stands to reason.

Amanda Farmer: So I'm not sure if you've spoken to someone-

Chris: I can tell you that, yes we have talked to, not only the valuer. But yes, prior to them a surveyor who is a town planner. Who does understand the local situation somewhat, with their experience, which is helpful? And because I wasn't too sure at that point as to which individual to proceed with first. So that was the whole sequencing issue that I was concerned by, where if you go down one path, do you then have to bring them in concurrently or is it staged and sequenced? Or can we actually continue to talk to everybody at the same time or do we need to talk to everybody at the same time? And it appears we do, to try to expedite the actual information and investigation. So that's really helpful that yes, I'm kind of on the right track I think, as it stands.

Amanda Farmer: Yes, you are. Absolutely. And this person should have, preferably... And again, it depends on the complex nature of things and yours probably isn't as complex as others. But some experience in strata subdivisions because there are specific requirements in the Strata Scheme Development Act about what those plans look like. As well, and I know you mentioned reallocation of unit entitlements earlier, but I don't know if you were thinking about this in the context of your subdivision. But there should be a new schedule of unit entitlements drawn up.

Chris: That stands to reason, doesn't it? Based on the new area.

Amanda Farmer: Yes.

Chris: Yes. Coming into the plan.

Amanda Farmer: And as well as your surveyor being involved in drawing up the plan, they talk to the valuer about the new schedule of unit entitlements because-

Chris: The valuer, not the surveyor?

Amanda Farmer: The new schedule of unit entitlements is the valuer's job. And that may be a different valuer. It doesn't have to be, depends on the valuer's experience. Some valuers will say, *"Don't do UEs, I just don't get into that area of the law. But I do land valuations and that's what I've done for you."* So ask this valuer that you are using, would you also be able to do the new schedule of unit entitlements for us?

Chris: Yes, great. Is that a consideration in talking with the owners in the owners corporation as well, because of that change or that level of discrepancies that could arise?

Amanda Farmer: Yes. If they don't ask you straight away, someone will think of it down the track. And say, *"Hang on a sec, Chris is getting more land, he should have higher unit entitlement."* Absolutely, and that makes sense.

Chris: Of course.

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Amanda Farmer: And hopefully, what your valuer comes up with is agreeable to the owners corporation and you don't have any dispute about that. Of course, if there is a dispute it becomes a matter for competing valuers to advise on. That is something that you should be very upfront about, in addition to saying, *"Of course, I'm going to pay."* And without making any promises about what the difference will be, right? You don't know and I have no idea about the land size. But don't make any promises about, *"Oh, I'll have 10% more unit entitlement."* Or whatever it is. It could be a tiny bit depending on how the valuer sees your change of position.

Chris: Okay, that's good to know. In your experience when this has happened with the reallocation of UE, does it happen by aggregate? In so far as the unit entitlement currently to me is added to and therefore the whole schemes UE is added to. Or is it still the portions underneath the 1,000 UE that we have existing?

Amanda Farmer: It depends on the valuer, I've seen both. I've seen both. So it depends on what the valuer suggests. Your building is going to have to be careful for obvious reasons, because you at the moment have a setup, whether you think it's fair or not. And I got the impression maybe you didn't. That one lot can block a special resolution, and that's a relevant consideration from a management perspective, not necessarily from a valuation perspective. And what you are now doing, you're sitting at 240, would your increase put you in that position also?

Chris: That is a fascinating concept to think of because it goes to the power of the owners in the owners corporation and the politics potentially too, if all is well. And so that's where I wondered whether, yes, the various levels would change based on the reallocation. Which could possibly be quite fair. Or whether we just tack on an extra 40 to make it relatively even between ours, unit one and then 4 as it is currently. And leave the 2 in the middle as it was, the same.

Amanda Farmer: Yes. All I can suggest because the valuer doesn't have to take in to account... As far as I'm aware, they might tell you something different. But as far as I'm aware it's not relevant to them how the voting power ultimately ends up. It's about having an accurate reflection of the value of the property. But you've got to sell this, right? You've got to sell this to the owners corporation. So I would be saying to the valuer, when your doing this exercise can you bear this in mind? And whatever you come up with has to be preferably something that is palatable to the owners when it comes to, yes I'm making an extra contribution but I'm not suddenly becoming the king of the castle, able to dictate what everybody does.

Chris: Yes, that's right. And that would be a question mark raised in people's minds and I think the answer could potentially be... Correct me if I'm wrong here. That our own fees towards the administrative fees as well as the Capital Works Fund would increase with the UE.

Amanda Farmer: Absolutely.

Chris: So that's a factor too, for the future.

Amanda Farmer: Yes. And that's what you should be focusing on, talking to the owners about. In my experience, the first thought is, *"Oh well, he should be paying more. He should have a higher unit entitlement so he should pay more."* And then when they see the schedule, they start to realise *"Oh, you've also got more voting rights."* And it doesn't usually matter, except in your building it might. So we just have to be a bit conscious of that.

Chris: Yes, that's okay. Yes. It will work out I think relatively even, I would anticipate. But I'm not a valuer so I might be speaking out of turn. But, yes. I'll be interested to see how that all goes actually.

Amanda Farmer: Yes. Another reason to get a valuer who's experienced in these kinds of strata subdivisions, because they'd be

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better placed, probably more so than I am to tell you what the usual situation is and why they do things the way they do things.

Chris: Something that you mentioned earlier that I wanted to clarify, was in regards to the payment of the purchase money to the owners corporation. Can we stipulate that that amount goes into the capital works fund? Or how do we structure that so that it's not really going into an individual's pocket so they can take a holiday rather than it goes into the building?

Amanda Farmer: Okay. Well, first of all, it definitely doesn't go into any individual's pocket. It must be paid to the owners corporation full stop, and let's see that they have an account that sits with your strata manager.

Chris: Indeed, it does.

Amanda Farmer: So it's paid to the strata manager. Then what the strata manager does... This is a paper exercise. They say, "Okay. Is this income to the admin fund or this income to the capital works fund?" I am just looking up the legislation here for the sections and we'll send you links to these.

Chris: Thanks.

Amanda Farmer: As to what goes in and what comes out of these funds.

Chris: It's a relevant point currently because the owners corporation is about to agree at next week's AGM, to a series of works, external works for cladding and window replacements. So there's quite a bit going on. And so this proposal of mine is quite a bit of a fill-up to the owners corporation. In the sense that several tens of thousands of dollars could go into the capital works fund for future capital works. And that's to me, quite a good selling point.

Amanda Farmer: It is. I've answered this question for somebody before, and I'll dig it out to make sure I'm on the same lines. But my gut feeling here is that it must go to the admin fund, simply because it is any other income of the owners corporation. And I'm looking at Section 73 of the Strata Schemes Management Act, and Richelle will send you a link to this. We'll put a link below as well. This says what amounts must be payable into the admin fund. We have to pay contributions levied on owners for that fund in there, of course. The proceeds of the disposal of any personal property of the owners corporation... This is not personal property, this is land. So it's not that. But interesting that that falls into the admin fund definition. Fees paid for inspection of records, any monetary penalty that's been paid to the owners corporation, the proceeds of any investments of the fund. Also, any amounts paid by way of discharge of insurance claims. Any income of the owners corporation.

Chris: That's broad.

Amanda Farmer: Yes. I'm thinking, is it income? Any amount that may be but is not required to be paid into the fund under the Act. Now, capital works fund is Section 74 and we pay contributions levied for capital works fund. Discharge of insurance claims unless they're paid into the admin fund. Part 11, payments is I believe collective sales. Which is not this. Part 11, what's part 11? Have a look at that. Any amount that is not required or permitted to be paid into the admin fund. The proceeds of the investment of the fund.

Oh look, it's got an identical section. Any income of the owners corporation, that's what it says in the admin fund.

Chris: You could trade them off against each other.

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Amanda Farmer: Yes. I've said to a strata manager about 4 months ago who asked me this question, "In my view, the legislation Section 73 and 74 read together is unclear. Because of that lack of clarity, in my view, you can pay the proceeds of sale to the capital works fund."

Chris: Okay.

Amanda Farmer: There you go.

Chris: That's good to at least get on that sort of path.

Amanda Farmer: So I think, yes, use that as your selling point. I'd be recommending that both sides are legally represented in this process. So that is a question that can be looked into further. But there's nothing obvious stopping you from depositing it to the capital works fund, and I think that's a good pitch.

Chris: Does the owners corporation or is this strata management potentially, have its own solicitors? Would it have to engage its own solicitor?

Amanda Farmer: It's entirely up to them and the strata manager may recommend that. And say, "*Look, these are lawyers that we've used before. They're strata lawyers, they know their stuff. We recommend that they're engaged.*" Usually, the person who is selling prepares the contract, that's kind of the normal way that it goes. You can do it that way, you don't have to but they can do it that way if they want to. They will want, as you've already been attuned to, all of their fees covered. And that would be normal, including their legal fees. When that comes up, assuming that they want to be represented. And again, it's a matter for them and you should remove yourself from any decision making about that. Only about the legal fees, you don't have to remove yourself from the vote on the actual subdivision, right?

Chris: Thanks, yes.

Amanda Farmer: There's nothing stopping you from voting in favour of your own subdivision at the general meeting.

Yes, if they want to engage someone and they say, "We want you to pay." Ask for a fixed fee and it should be in the contract for sale, that you pay that fixed fee in that sum. Don't agree to pay the lawyers fees forever and ever.

Chris: Yes.

Amanda Farmer: They could get a bit of a windfall. So it's normal but be careful to cap it.

Chris: Understood. Yes, that's helpful to understand that aspect of it, when it gets down to the nitty-gritty specifics of it all.

Amanda Farmer: Yes. And do your spreadsheet as you probably already started doing with these kinds of expenses, it all becomes relative when you're talking about what the land is worth to you. And this is sometimes the reason why some owners think, "It would be great to purchase this. But it's a 4 metre squared little bit outside my window and it would be much cheaper to do it by way of by-law." Because as you can see, and I hope it's coming across to others on this call, this process of subdivision and sale is not necessarily complicated. I sometimes call it glorified conveyancing. But there's a lot of moving parts and there's a lot of people, and the fees... Not so much the legal fees but the fees, we've got council, we've got surveyor, we've got valuer. We haven't

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even got here yet but you ultimately have Land Registry Services, LRS. That's the place where the plans all get registered. And they all have these lodgment fees, registration fees. Council DA lodgment fees can be in the thousands of dollars. All of that's really important for you to know and have on your spreadsheet straight up, to be able to make a proper assessment of the commercial viability of this kind of transaction.

Chris: Great. That's great, thank you. Does my bank need to be involved at all when it comes to the mortgage I hold over the current unit?

Amanda Farmer: Yes. What's essentially happening there is that their security is changing. You're changing the nature of your property, you are altering the boundaries of the strata plan. It's another good question actually for the surveyor, and I don't know whether you've already had this discussion. I've seen these things done a couple of different ways, and I'm never quite sure why. But is it a process where the common property will be incorporated into your existing lot, or is a new lot going to be created and purchased by you?

Chris: Yes. The valuer did talk to that a little bit, as to say, currently there are 4 lots and that this potential subdivision would be a fifth and then associated with lot one. I can see the logic in that, I'd like it to be incorporated, just for clarity I suppose. But I'm open to that discussion.

Amanda Farmer: Yes. It's the valuer who said that?

Chris: It was their advice that that would possibly be the way it would go. They didn't sort of definitively say that that is how it would happen.

Amanda Farmer: Yes. I think ultimately it will be up to the surveyor as to how they draw the plan, and why they might draw it a certain way. And it could involve the council, there could be a council consideration as well. If you're creating a new lot in a strata scheme, it may be something that the council won't do. But shifting the boundaries of your existing lot might be something that they will do. So in my mind, that's a surveyor question. You ultimately want to do whatever it is A, going to be approved by the council. And B is compliant with the strata law. And this is why the surveyor needs to understand the Strata Schemes Development Act so that they can draw the plan properly.

The reason I'm asking that now or thinking about that now is because where your bank is involved, if it was a brand new lot, then in my view, no. Unless you needed finance for that. So if it was a brand new lot it doesn't have a connection to your existing lot or your existing security. You're not changing anything. Obviously, if you needed to borrow money to make this new purchase, then you could talk to your banker or anybody else. And they may accept the security of the land itself, or they may want additional security for your current property. And then there's those complexities there. But that is a connected question to your bank question, how exactly is the subdivision done? And if it's a standalone lot, then it wouldn't impact your current bank.

Chris: Bank arrangements. Yes, okay. As you go through, it's interesting the questions that arise out of sequence or out of order in what would otherwise be in an order. So it's hard to then go, okay, when do they come in? And, yes. It's interesting going through it steadily.

Amanda Farmer: Yes. What I think we're covering off here is that your council, hand in hand with your surveyor/town planner are your sort of priority one people. Because a lot of these preliminary questions depend on what those people or entities think about the proposal.

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Chris: Great.

Amanda Farmer: Make sense?

Chris: And that conversation hasn't been had, as yet. So now that I understand that there's a dollar figure potentially in the mix, which is now leading me to think this could be feasible. I can now have these conversations based around in my own mind, this figure could work. Yes.

Amanda Farmer: Yes, exactly.

Chris: So thanks. All right. Thank you. I think that basically covered most of my queries. It's just I suppose if there's anything else that you thought was relevant that I needed to be aware of in all of this?

Amanda Farmer: I think your question about how best to approach the owners and to really sell this is a critical one, and it's one that is so often overlooked. If you can't get this special resolution, there's not much you can do about it. It's not like when we propose a common property rights by-law and the owners corporation can't act unreasonably. If the owners corporation says, "No, we're not selling you this property." Then that's it. You don't have any right to challenge that decision. So you have to put your best foot forward in explaining to them why this is in their best interests. So, yes. They get some money. They get some money deposited to their capital works fund, that's great. We can have lower levies or we don't have to raise levies. Or we can do a project that we've been planning to do, which is wonderful.

You said right at the beginning of this call that you have a plan for that area and for beautifying and for looking after and for perhaps a new fence. Be clear, so you can answer their questions about that. You can say that to them and then answer their questions. Is that something you're going to do within that land once it's yours? And what is that going to look like? I've seen some owners be very successful at general meetings where they prepare beautifully drawn architectural plans, colours. It looks great, this is what our buildings going to look like and I'm going to do that. That's going to be my job and I'm going to pay for it.

Chris: It's going to be on me, yes. That's the selling point right there for that aspect.

Amanda Farmer: Exactly. So be clear about that when you're talking about a fence, are you saying a fence on the common property that's still there that you'll contribute to? Or you're going to put a fence and it's going to be, you'll own it but you'll also pay for it and they don't have to worry? Also, that the area is only of use to you is relevant. It's relevant because you might not always be there and you're willing now, today, to purchase this. And this could be their only opportunity to get off their hands, if you like, this area of common property that is of no use to anybody other than you. And you're willing to buy it. In 2 years time when you sell, someone else is in there, they don't have the money, they don't want to do it, they don't have the time or the energy so they've lost their opportunity. So really pitching this as a moment in time, a limited-time opportunity. Right person, right place, right personality, easy to get along with, offering the right number. This doesn't come along every day, and the stars are now aligning. That kind of messaging and you'll do it in a way that suits your personality and that they're receptive to. But that is not legal stuff, that's not council stuff, that's emotional stuff. And that's what's going to get these things across the line.

Chris: Yes. Well, my wife and I are good at that sort of stuff I think. So we'll get our messaging aligned and we'll then be able to sell it quite well in the pitch. Thank you, those points are very valid particularly that we are the market for this bit of land, the neighbours aren't able or willing or interested. And that is the next-door neighbours as opposed to anybody else in the block. We are it really when it comes to buying this. So, yes. This is a one time opportunity, I like that aspect, thanks.



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Amanda Farmer: And they may have some concerns about, well, when you've got this land, what are you going to do with it? And as I said earlier, you don't want to lock yourself into that. When I'm acting for buildings sometimes I say, "Yes, we'll sell it but we'll only sell it hand in hand with a by-law that says what you can and can't do with it," right? Because the owner says, "I want this piece of land and then maybe I'll do this although I'm kind of planning to do that." We say, "No, we want the proposal approved as one, otherwise we're not going to approve the sale." So they may be concerned that you're then going to build something ugly or you're going to extend out all the way. So giving them some assurance about that, without restricting yourself. But giving them some assurance that if you do something it's tasteful. Or if you do have something in mind show it to them. Or just being conscious that that could be an objection, and being ready to address it.

Chris: Good, yes. Good point. Excellent. I think that pretty much covers off of what I wanted to learn and understand.

Amanda Farmer: Fantastic.

Chris: Yes, that pretty much covered my questions. Thank you.

Amanda Farmer: Thank you, Chris. I'm just scanning through your notes and I think I agree. We've covered all of that. Now, I know so many of our members will be interested in this discussion and also following your progress. So don't hesitate to update us in the forum. If you haven't been over there yet to the members-only forum, have a poke around. Do that. And you'll have more questions probably that come up, and maybe some of the things that I've been a bit vague on or said, "Have a talk to your valuer or your surveyor about that." I would love to hear what they have to say, particularly about the form of the subdivision and the unit entitlement schedule because we're always learning. So do let me know how you go with them as well.

Chris: Great. Thank you. Well, I've got my next phone calls to make now, thank you for that sort of steer as it were, in the right direction.

Amanda Farmer: All good.