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**Community Titles:
By-laws and Building
Management Statements**

*Their Drafting and
Interpretation*

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Annexure: Page from King Street Wharf strata management statement



Community Titles: By-laws and Building Management Statements

Their Drafting and Interpretation

Gary Bugden

About the Topic

In this paper I will consider building management statements in the context of community title schemes. However, it should be remembered that a building management statement may apply to 2 or more lots without any involvement of a community title scheme. Because the principles, as well as much of the detail, are the same whether or not a community title scheme is involved, the content of this paper may also be useful for all projects involving a building management statement.

Many will agree that community title projects in Queensland are tending to become more complex. Fortunately, the development related mechanisms in the *Body Corporate and Community Management Act 1997* (“**BCCM Act**”) and the *Land Title Act 1994* (“**LTA**”) are some of the best in Australia and are able to cope with most of the requirements of the more complex projects.

The building management statement is a key mechanism for use with mixed use buildings. It is used in conjunction with a volumetric subdivision and replaces the need for an umbrella management agreement to be entered into by the owners of lots in a volumetric subdivision. Because of this it is important to understand the fundamentals of mixed use projects, particularly those involving one or more community title schemes.

Mixed Use Buildings

The simplest mixed use building would comprise one or more commercial lots and a larger number of residential lots, all within the same building. An example would be say 4 retail shops on the ground floor of a building with say 8 home units situated above the shops, all having a common basement.

At the other end of the spectrum, a building may have a number of different component uses, including a large number of residential home units. An example would be a building comprising –

- Common basement with car parking and loading dock facilities
- Shopping arcade above the basement but below a landscaped podium
- 3 tower buildings rising from above the podium, separately used as:
 - Commercial offices
 - Stand alone hotel
 - Residential home units.

The title, subdivision and management structuring of these buildings is a critical exercise if future operational problems and internal conflict is to be avoided. In particular, the interaction among the various component use owners and occupiers needs to be minimised as much as possible. This is because each owner of a component use area within the building has different goals and aspirations, many of which are competing with the goals and aspirations of other owners. For example:

- The owners of the shopping arcade and office tower will be looking to maximise revenue and the capital value of their asset. Things such as visibility, signage, cleanliness, attractiveness to people, etc. will be important.
- The hotel owner will be concerned to ensure that its operation is as independent as possible from the other components so that its guests have privacy, are not inconvenienced and standards are maintained.
- The residential owners will be concerned to have an affordable, liveable environment without being hassled by shoppers, hotel guests and office workers.

Some of these goals and aspirations can be accommodated by building design solutions (e.g. separate foyers, secured parking areas, privacy and noise barriers). However, physical and economic constraints mean that design solutions are not always possible. In those circumstances legal solutions are the only option. These legal solutions must be built in to the title, subdivision and management structuring of the project.

One area of particular importance concerns the “**common elements**” within a mixed use building. These are areas, facilities, equipment and services that are

situated within one of the component use areas but are used by one or more of the other component use areas. They are like common property to the whole of the building as distinguished from common property within a particular component use area. In larger projects the list of common elements will be extensive. For example, in a large Sydney project, *King Street Wharf*, the list of common elements goes for 7 pages and comprises some 61 items of facilities, equipment and services. A page from the common elements listing for that project appears at the end of this paper. It shows how the items are identified and the cost sharing is allocated.

Common elements can include such things as:

- Driveways and walkways
- Fire stairs and stair pressurization equipment
- Elevators
- Water, gas, electricity, communication, sewer, drainage and other services
- Fire safety facilities (e.g. sprinkler system, fire alarms, fire doors, extinguishers, hose reels, etc.)
- Plant and equipment (e.g. basement exhaust fans, emergency generators, water pumps, air conditioning chillers, boilers, etc.)
- Administrative and other services (such as valuation fees).

There needs to be arrangements for the maintenance of such facilities and their renewal and replacement, including rights of placement, access and cost sharing.

Practice Pointer

The secret to mixed use volumetric subdivisions operating smoothly for everyone involved is a well designed building with quality legal documents and carefully structured management arrangements.

The building management statement is the mechanism used to put all the necessary arrangements in place for the ownership, use and maintenance of the common elements. The volumetric subdivision and the building management statement ensure that the commercial components of the building are not included in a community title scheme and can operate relatively independently to the residential component and the body corporate that regulates that residential component. This is most important to preserve the value of the commercial components. If the commercial components were included in a community title scheme then they would be less attractive to institutional investors. Indeed, some institutional investors will not acquire

property that is situated within a community titles scheme. Consequently, the market for and value of commercial property within a body corporate structure can be adversely impacted.

Practice Pointer

When planning mixed use volumetric projects always ensure –

- *Equipment used by only one component use area is located within that area*
- *Equipment used by 2 or more component use areas is, where practicable, located within one of those areas in the most accessible position.*

Volumetric Subdivisions

In simple terms, a volumetric subdivision is used to subdivide a building into different lots, each lot generally corresponding to a component use area within the building. The plan used for this subdivision is a volumetric format plan. In turn, one or more of those lots (i.e. component use areas) may be subdivided by a building format plan to establish one or more community title schemes.

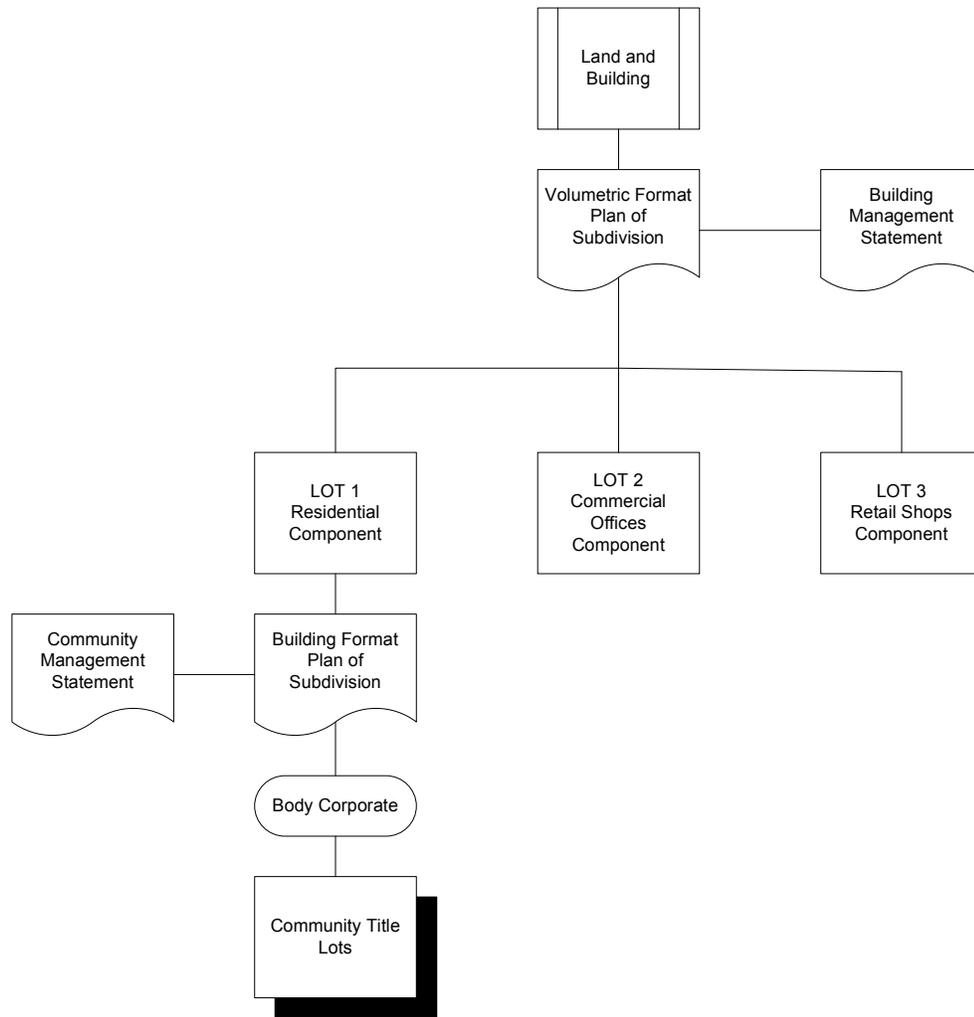
By definition, a volumetric format plan of survey defines land using 3 dimensionally located points to identify the position, shape and dimensions of each boundary surface.¹ The boundaries may be above or below the surface of the land. A volumetric plan of survey may create common property if there are 2 or more lots or the common property is to be added to common property within an existing community titles scheme.² If common property is created and it is not included in an existing community titles scheme, than a body corporate must be created upon registration of the plan.³

The following diagram illustrates a volumetric format plan of subdivision that has been placed over a building that has 3 component use areas, one of which comprises residential home units subdivided by a building format plan of subdivision.

¹ Section 48D of the LTA.

² Section 49D(2) of the LTA.

³ See Registrar of Titles Direction 11.2.



Conventional building format subdivisions

There is nothing to prevent a mixed use building being subdivided by a conventional building format plan. This would result in the commercial components of the building being a lot or lots within a community titles scheme. Apart from the impact this may have on the value of the commercial components, there is no real ability to deal with the differential use of common property that inevitably exists in mixed use community title schemes. For example, how do you stop the shops and their customers from using the swimming pool and how do you move the maintenance costs for the pool on to the units and away from the shops?

In New South Wales, in the case of very simple mixed use buildings (e.g. 3 shops at ground level with say 10 residential home units above) a simple strata subdivision is a clear option. Ordinarily with this approach there is likely to be conflict between the shop owners and the unit owners about a range of things such as cost distribution, use of certain common property (e.g. the pool use alluded to above), signage, maintenance standards, etc.

In New South Wales these potential problems can be dealt with by a combination of design and legal solutions. The principal legal solution would involve a notional division of the common property into 3 components–

1. Common property used only by the shops
2. Common property used only by the residential home units
3. Common property used by both the shops and residential home units.

An exclusive use by-law would then be made conferring joint exclusive use (including joint maintenance responsibility) over the common property in (1) on the owners of the shops. This would ensure that the shop owners are the only ones who use the common property related solely to the shops and that they are the ones responsible for its maintenance. The contribution to maintenance costs would be determined by a formula set out in the by-law. An exclusive use by-law would also be made conferring joint exclusive use (including joint maintenance responsibility) over the common property in (2) on the owners of the residential home units. Again, the contribution to maintenance costs would be determined by a formula set out in the by-law. Similarly, this would ensure that the unit owners are the only ones who use the common property related solely to the units and that they are the ones responsible for its maintenance. The common property used by both the shops and residential home units would be dealt with in the normal way – shared use and shared maintenance responsibility.

This approach effectively requires the body corporate to have 3 divisions within its administrative and sinking funds, as well as 3 divisions to its annual budget. The expenses must be tracked for each division. Normal maintenance contributions would be imposed for the jointly used common property and separate bills would be issued to owners to cover the amounts payable under the exclusive use by-laws.

Other by-laws would need to be carefully drafted to cover any possible areas of contention (e.g. signage, use of amplified music in the shops, garbage arrangements).

The New South Wales strata titles legislation⁴ allows an exclusive use by-law to be made for the benefit of 2 or more lots. This is an essential mechanism to facilitate the above described structure. In Queensland there are no express provisions that allow the making of an exclusive use by-law in favour of more than one lot. Indeed, the wording of the legislation⁵ is such that it is strongly arguable that exclusive use can only be conferred on a single lot. Furthermore,

⁴ See sections 52-54 of the *Strata Schemes Management Act 1996* (NSW)

⁵ See for example sections 170 and 171(3) of the BCCM Act.

there is an express prohibition on giving exclusive use over “utility infrastructure”.⁶

It follows that, in Queensland, a building format subdivision should not be used for an entire mixed use development unless the developer is prepared to accept the consequences of that structure, as outlined above.

Requirements for Building Management Statements

By definition, a building management statement is⁷ “*an instrument that –*

- (a) identifies lots to which it applies; and*
- (b) contains provisions benefiting and burdening the lots to which it applies; and*
- (c) otherwise complies with the requirements of this division for a building management statement.”*

A very important requirement of Part 4 Division 4 (being the division referred to in the above quotation) is that at least one of the lots to which the statement applies must be a lot entirely or partly contained in, or entirely or partly containing, one or more buildings.⁸ The word “building” is defined in the Dictionary to the LTA as “*a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a part of a building*”. It follows that a building management statement cannot be put in place for a future building unless at least part of that building has been completed at the time the building management statement is registered.⁹

Another important requirement is that the lots to which a building management statement relates must form a single, continuous area of land, subject to 2 exceptions¹⁰ –

- Where a road or watercourse is within the external boundaries of the area comprising the lots.
- If the Registrar is satisfied on reasonable grounds, that all the lots are located within an area that is sufficiently limited to ensure the effective and efficient application of the provisions of Part 4 Division 4 of the LTA.

⁶ Section 177(1) of the BCCM Act.

⁷ Section 54A(2) of the LTA.

⁸ Section 54A(3) of the LTA.

⁹ Refer to section 54A(4) and (6) of the LTA.

¹⁰ Sections 54AA.

The last exception is an important one, because it is virtually inevitable when structuring a complex project that a lot for a particular component use area will need to have a number of parts. Because such a lot is usually within the same building there is a strong argument for the Registrar being satisfied that the area is sufficiently limited.

Practice Pointer

Where it is proposed to have different parts to a lot that will be the subject of a building management statement, always check in advance to ensure that the Registrar will be satisfied that the area is sufficiently limited.

It should also be noted that the lots to which a building management statement applies must comprise –

- (a) 2 or more volumetric format lots; or
- (b) One or more volumetric format lots and one or more standard lots,

and it must be signed by the registered owners of all the lots to which it applies.¹¹ This requirement is intended to allow more flexibility in the use of building management statements. In the case of large infill projects it will not normally be required, but it could be useful where a project is more spread out than the typical urban redevelopment project.

If a building management statement applies to scheme land for a community titles scheme, it is binding on that scheme. Also, if the statement provides for the establishment and operation of a management group, any decision made by that group under the statement is binding on the community titles scheme.¹² This applies notwithstanding the prohibition in section 97 of the BCCM Act against a body corporate delegating its powers.

Contents of Building Management Statements

There are compulsory and optional provisions for a building management statement.¹³ The compulsory provisions must be about the following –

- The supply of services to lots
- Rights of access to lots
- Rights of support and shelter
- Insurance arrangements.

¹¹ Section 54B of the LTA.

¹² Section 54I of the LTA.

¹³ They are all contained in section 54C of the LTA.

Neither the LTA nor the regulations go into detail as to what should be contained in these provisions. However, they should be carefully drafted having regard to the specific requirements of the particular project. Most of these provisions are intended to replace formal easements, so they need to be identified and drafted with the same care that would be required if easements were being used to create all the necessary rights and obligations relating to use of the building. (Refer to the heading below “Compulsory Content of a Building Management Statement.)

The voluntary provisions may be about the following –

- Establishment and operation of a management group
- Imposition and recovery of levies, how levy amounts are to be kept and how levy amounts are to be spent
- Property maintenance
- Architectural and landscape standards
- Dispute resolution
- Rules for common services and facilities
- Administrative arrangements
- Arrangements for accomplishing the extinguishment of the statement
- Proposed future development.

A dispute resolution provision may impose an alternate dispute resolution process, but the provision is ineffective to the extent that it purports to operate to stop final determination of the dispute in a court of competent jurisdiction.¹⁴

Practice Pointer

A well structured building management statement will deal with all of the optional content allowed by the LTA and, in particular, the administrative arrangements will be very detailed.

Amendment of Building Management Statements

A building management statement may be amended by registering an instrument of amendment signed by the registered owners of all the lots to which it relates but it must not change the lots to which it relates.¹⁵ Where a

¹⁴ Section 54C(4) of the LTA.

¹⁵ Section 54E of the LTA.

lot under a building management statement is the subject of a community title scheme, the body corporate for the scheme is taken to be the registered owner of the lot for the purpose of signing the amendment instrument.¹⁶

Who is Bound by a Building Management Statement

In New South Wales there is legislation¹⁷ that introduces a “strata management statement”, which is essentially the equivalent of the Queensland building management statement. The New South Wales provisions include comprehensive statements of who is bound by the statement and how they are bound. It is also very clear that the rights and obligations under the statement run with the land.

In Queensland it is clear that a right of access, support or shelter, or other right in the nature of an easement, under a building management statement may operate according to its terms, and may be effective, despite the absence of a formal registered easement establishing the right.¹⁸ It is also clear that –

- A building management statement is binding on a community titles scheme.¹⁹
- Contains provisions benefiting and burdening the lots to which it applies.²⁰
- A building management statement benefits and burdens the land over which it is registered.²¹

Beyond those provisions, whether a building management statement generally binds the owners of the land is a matter that is inferred. There is a strong likelihood that a Court will conclude that the clear intention of the legislature is that the building management statement binds the owners for the time being of the land to which it relates. This is particularly so given that the statement was originally signed by the relevant land owners and incoming owners have notice of the statement by virtue of its registration. The position in relation to mortgagees and registered lessees is less certain and it seems unlikely that mere occupiers will be bound in any way.

¹⁶ Section 54I of the LTA.

¹⁷ Division 2B of the Strata Schemes (Freehold Development) Act 1973 and Division 5A of the Strata Schemes (Leasehold Development) Act 1986.

¹⁸ Section 54C(3) of the LTA.

¹⁹ Section 54I(2) of the LTA.

²⁰ Section 54A(2) of the LTA.

²¹ Section 54J(1) of the LTA.

Practice Pointer

It may be possible to extend the operation of the building management statement –

- *By including a by-law in any community title scheme requiring all owners and occupiers of lots in the scheme to observe the terms of the statement.*
- *By setting out in the statement itself the persons who are bound by the statement and the way in which they are bound.*

Compulsory Content of a Building Management Statement

As mentioned, a building management statement must contain certain provisions relating to services, access, support and shelter and insurances. I will deal with insurances separately, but in relation to the “easement type” matters consideration should always be given to a number of potential provisions relating to support and shelter. The reason for this is that there are no implied easements or rights in relation to the support and shelter of lots comprising part of a building in a volumetric format plan of subdivision. The provisions I refer to are:

- Rights in favour of each lot that includes a part of the building for the subjacent and lateral support of that part by such other parts of the building as are capable of affording support.
- Rights against each lot that includes part of the building for the subjacent and lateral support of such other parts of the building as are capable of enjoying support from that part.
- Rights in favour of each lot that includes a part of the building for the shelter of that part by such other parts of the building as are capable of affording shelter.
- Rights against each lot that includes part of the building for the shelter of such other parts of the building as are capable of being sheltered by that part.

Those rights should include all ancillary rights and obligations reasonably necessary to make the principal rights effective, including the right to enter to replace, renew or restore any support or shelter.

In addition, consideration should be given to the need for rights of vehicular access or rights of personal access, or rights for a specified service, over or through or as appurtenant to a lot that includes part of a building, the site of which is identified on an attached plan. “Service” will need to be defined and the various rights will need to be specified in much the same way as they are in an easement of the corresponding type.

Insurances

Insurance arrangements are another compulsory requirement. The following should be considered:

- A requirement for the whole of the building to be insured under the one building policy in the names of the owners of all the volumetric format lots (including the relevant body corporate), for their respective rights and interests. It is normally not practical for each owner to take out their own building insurance.
- The cover under the building policy should be at least comparable with insurance the body corporate is required to affect under the relevant regulation module.²²
- A formula for allocating the premium among the various lot owners (e.g. on the basis of the respective value of the various component uses areas with an adjustment to take account of how particular uses may impact on the level of premium charged).
- A way to resolve disagreement about the allocation of premium costs.
- A joint public liability cover for an amount at least equivalent to the amount of public liability cover required to be affected by the body corporate.
- The types of additional cover that should be taken out (e.g. fusion, voluntary workers, workers compensation, etc.).

Management Group

The point has already been made that one of the optional things that can be included in a building management statement relates to the establishment and operation of a management group. This management group is commonly called a building management committee. Although it is an optional matter it will normally be included in a statement because it is the most convenient way to deal with the day to day operational aspects of the building. For convenience I will refer to it as the “**Committee**”.

The Committee will usually comprise representatives of all the owners of lots bound by the statement. It is not essential that all owners are members of the

²² To understand the reason for this, see, for example, section 128(7) of the *Body Corporate and Community Management (Standard Regulation) Module 1997*.

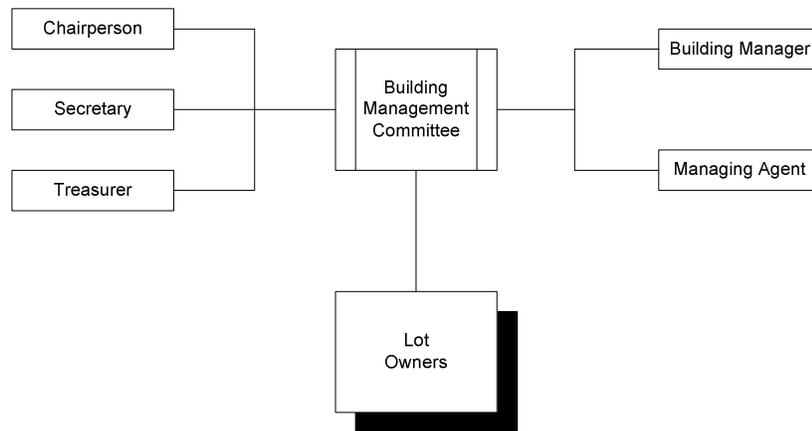
committee. If there are numerous owners, then it would be possible for the committee to be an elected group to represent owners. However, one would seriously question the wisdom of this approach.

The Committee is not a separate legal entity. It is like the committee of an incorporated association. It relies entirely on the terms of the building management statement for its powers, authorities, duties and functions.

Practice Pointer

When drafting a building management statement you should keep in mind that the committee relies entirely on the terms of the statement for its powers, authorities, duties and functions, as well as procedural operations.

The function of the committee is to administer the common elements and ensure that sufficient funds are raised from its members to keep those facilities in proper repair and maintenance. It is not uncommon for a committee to be structured very similar to a body corporate committee. The following illustrates a formally structured building management committee –



Managing Agent

A common “administrative arrangement” included in a building management statement is provision for the appointment of a “managing agent” to undertake the administrative functions of the committee. The managing agent is appointed in the same way as other appointments are made by the committee. This starts with the passing of a resolution by the committee authorising the appointment of the managing agent and entering into an appropriate management agreement.

The role of the managing agent is determined by the provisions of the agreement under which they are appointed. Their role is also determined by the extent to which the committee can, under the terms of the building management statement, delegate particular functions to the managing agent.

In most cases, the agent’s role is restricted to a secretarial and record keeping role. The status of the managing agent (i.e. straight contractor or an “agent”) will be determined by the provisions of the building management statement and/or the management agreement.

Practice Pointer

Ensure that the powers, authorities, duties and functions of the managing agent are clearly set out in the building management statement.

Not surprisingly, the preferred professional for appointment as managing agent is a body corporate manager. It is unlikely that the term restriction in the BCCM Act that applies to body corporate managers will apply to the appointment of a managing agent, even if they practice as a body corporate manager. Although the body corporate is one of the parties making the appointment, that appointment is not in the nature of the appointment of a body corporate manager within the meaning of the BCCM Act. However, they are most likely a “service contractor” within the meaning of the that Act. Therefore, if the appointment is for more than one year the off-the-plan disclosure provisions in the BCCM Act would apply. It is most likely that other provisions of the Act and the relevant module relating to body corporate contracting would also apply.²³

Building Manager or Caretaker

Because of the size and likely complexity of mixed use schemes involving volumetric subdivisions, there is often a building manager or caretaker. Sometimes the building manager is a fully qualified and experienced facilities manager. Sometimes they are also a letting manager for a community title scheme included in the volumetric subdivision. They are always a “service contractor” so far as a body corporate is concerned. These managers are appointed in the same way as the managing agent is appointed – using the standard contractual provisions and an appropriate agreement. However, the term of appointment of a building manager or caretaker is likely to be substantially longer than that for a managing agent. Typically, managing agents are appointed for up three years, while building managers or caretakers can be appointed for as long as ten years or more, depending on the term restriction that applies.

The building manager or caretaker usually attends to repairs and maintenance and the day to day operational issues for the building. For example, most complex mixed use buildings will have a common basement with different sections housing shared and unshared equipment, services and facilities

²³ For example, the spending control provisions in section 103 and the major spending quotes in section 104 of the *Body Corporate and Community Management (Standard Module) Regulation 1997*.

(including separate car parking areas for the various component use areas). The building manager or caretaker will manage the operations of the basement, including things such as access, visitor parking, rubbish removal, loading docks, deliveries and workplace health and safety.

The building manager or caretaker will also be involved in the budgeting process, because they are the one who are directly concerned with the maintenance of the shared equipment, services and facilities. They will work with the managing agent and committee to draft and finalize the budgets. They will also arrange and supervise maintenance and service contracts (such as fire safety, cooling tower cleaning, electrical and gas installations). Invoices will usually be checked and approved by them before authorization by the committee and payment by the managing agent. The managing agent will be ultimately responsible for the paper trail recording those authorizations and payments.

Practice Pointer

Ensure that the building management statement sets out the functions of the building manager or caretaker and is clear on the things that can be delegated to them by the committee and how they relate to the managing agent.

Meetings of the Committee

Meetings of the committee are regulated by the relevant building management statement. This document is effectively the constitution of the committee and all processes and procedures are regulated by its terms. Because there is no separate legal entity involved in a committee, there is no general meeting or annual meeting of property owners. All meetings are meetings of the committee.

To determine questions such as the period of notice for meetings, the number of persons who constitute a quorum, the right to appoint alternates and the rules relating to voting, reference must be made to the relevant building management statement. Building management statements frequently provide for different types of majorities to decide different types of questions. For example, routine questions might be decided by simple majority while more significant issues might require a special resolution (as defined in the statement) or unanimous decision. Again, it is necessary to refer to the particular statement in order to determine the rules that apply.

Practice Pointer

Be careful to ensure that the building management statement contains extensive procedural provisions, along the lines of a constitution of an association.

In all cases, a minute book should be required to be kept in which is recorded the minutes of all meetings of a committee. These minutes can be required to be kept in much the same way as minutes of a body corporate meeting are kept.

Record Keeping (Excluding Accounting)

Although record keeping is a management issue, because the manager will manage in accordance with the building management statement, it is important that the statement sets out everything that is required of management. Lawyers preparing statements are therefore concerned to ensure that appropriate management requirements are specified in the statement.

The first and obvious set of records that should be kept by a committee is a record (in the form of a copy) of its constituent documents. These include the various subdivision plans, the building management statement and easements and covenants applying to the land.

In addition, it is suggested that the following records should also be required to be kept:

- Owners register (recording the names, addresses and other contact details of the owners of the component use areas)
- Committee register (recording the names, addresses and other contact details of the representatives of the various owners)
- Contracts register (recording the key provisions of the documentation relating to the building manager, managing agent and various longer term service contractors)
- Shared facilities register (which starts with the list of shared facilities and equipment taken from the schedule of the relevant statement, these items being subject to change, and making provision for any required updating)
- Asset register (recording equipment or materials, such as spare parts and jointly owned chattels)
- Minute book.

Practice Pointer

When drafting building management statements, ensure that the record keeping requirements are set out in detail.

Accounting Records

Again, accounting records are matters of management. However, when drafting a building management statement lawyers need to understand the accounting process that management should undertake so that they can prescribe the relevant processes and records in the statement.

A committee, or a managing agent on behalf of the committee, should keep the normal accounting records, such as cheque book, receipt book, bank deposit book, bank statements, cash books and journal (if necessary). If a computerized accounting system is used, then that list should be modified accordingly.

Special attention needs to be paid to the chart of accounts for the income and expenditure cash books. This chart of accounts needs to mirror the shared facilities (i.e. common elements) register so that each item of shared facilities or equipment is independently tracked from a budgeting, income and expenditure point of view. The cash book should be overlaid with a cost sharing allocation ledger. This is simply a ledger account for each item in the chart of accounts showing how that item is allocated among the two or more component use areas within the building that share that item, as well as recording income and expenditure in respect of that item. This is effectively the recording of the basis on which each of those component use areas contributes to the cost of the particular item. While this is complex, it is the only fair and satisfactory way in which to allocate maintenance responsibility and collect funds to cover the cost of such maintenance. If this is not done fairly, then discontent or outright dispute will occur among the various owners.

Practice Pointer

The chart of accounts must reflect the various cost sharing items on an item by item basis and both income and expenditure must be tracked on an item by item basis.

The way in which budgets are prepared will be determined by the terms of the relevant statement. There will always be need for a maintenance fund and in some cases there may be a reserve or sinking fund. Reserve funds will often be controversial where there are commercial or retail facilities within the building. This is because values of non-residential components are usually determined with reference to a capitalisation rate. The capitalisation rate will be adversely affected if the outgoings are increased because of contributions to a reserve fund. This is inconsistent with normal practice for commercial buildings. In the case of most commercial building owners, reserve funds are not drawn from the building's income stream to fund future renewals and replacements. Instead, those costs are met on an 'as required' basis and sometimes taken up in a corporate owner's balance sheet. This limits any adverse impact on the capitalisation rate for the building.

The timing of the budget of the committee needs to be set having regard to the fact that the total amount payable by a body corporate member has to flow through to the body corporate budget. It is preferable for the committee budget to be finalised shortly before the time for finalising the body corporate budget. In this way, the body corporate budget can reflect the actual amount required to contribute to the committee.

The final record that needs to be kept is an owners' levy register. This is the record of contribution levies imposed on the various owners and payments received in respect of those levies. It enables easy determination of an owner's current financial status vis a vis the committee.

Financial Reporting

Again, an understanding of financial reports can be useful when drafting the building management statement. The financial reporting for a committee will be determined by the way in which it conducts its accounting. If accounting is on a cash basis, then reporting will normally be by way of profit and loss (with comparison to budget) and possibly with the addition of a debtors and creditors statement at the relevant reporting date.

If accounting is done on an accruals basis, then a balance sheet will usually be completed, along with the normal profit and loss statement.

For management accounting purposes the income and expenditure for each shared expenditure item in the chart of accounts will need to be separately recorded and reported. For example; if an emergency generator is shared by 3 component use areas on a one-third each basis, the income raised by way of contributions for that item should be recorded against that item, as should be the expenditure relating to that item. Any surplus or deficiency for that item for the relevant period should be carried over to the next period and taken into account when budgeting for future contributions in respect of that item.

Dispute Resolution

The dispute resolution options are all those normally considered for the resolution of disputes in commercial transactions (e.g. mediation, determination by an expert or arbitration). It is most likely that the jurisdiction under Chapter 6 of the BCCM Act could not be invoked for dispute resolution, nor should it be invoked.

It is no accident that the dispute resolution processes set up by that Chapter have not been imposed on committees. This is because commercial property owners, particularly institutional investors, will not want disputes involving them to be determined in what is essentially a residential dispute resolution environment. Instead, such owners prefer to have their disputes dealt with by the normal processes of commercial dispute resolution.

No provision is made in relation to appeals from any dispute resolution process. However, in the case of commercial dispute resolution processes, depending upon the mechanisms chosen, appeals to courts may only be permitted in very restricted circumstances.

The Future

Building management committees (or management groups) are not popular with body corporate managers and some unit purchasers. Indeed, some body corporate managers are very critical of their use under any circumstances. The fact is that building management statements are a critical mechanism to accommodate mixed use projects and, particularly, to preserve the value of the commercial components of those projects.

This dislike of committees by body corporate managers is probably because they are relatively unusual arrangements and special attention is required to manage them. They do not readily fit into the normal community title 'mould' or the computer systems and processes commonly used for community title. This attitude is likely to change with time.

The likelihood is that building management statements are here to stay until someone can come up with a better way of dealing with mixed-use projects and, like the projects they serve, they are likely to become more rather than less complex.

Gary Bugden

March 2007

Extract from Shared Facilities Listing in the *King Street Wharf* Strata Management Statement

Sheet 76 of 90 sheets

| No. | Shared Facility | Commercial Strata Scheme | Combined Retail | Xerts | Charters 1 - 6 | Single Retail | Serviced Apartments | Residential Strata Scheme | Method Of dividing cost |
|-----|--|--------------------------|-----------------|-------|----------------|---------------|---------------------|---------------------------|---|
| 7 | Valuation Report Shared Facility | 15% | 14% | 14% | 14% | 14% | 14% | 15% | Cost per Member distributed evenly. |
| 8a | Airconditioning and ventilation plant and equipment Global Cost Item | 29% | 17% | 2% | 5% | 5% | 11% | 31% | Calculation based on area served, estimate of time served and equipment rating. |
| 8b | Airconditioning and ventilation plant and equipment Shared Facility | 29% | 17% | 2% | 5% | 5% | 11% | 31% | Calculation based on area served, estimate of time served and equipment rating. |
| 9a | Cleaning-loading dock Global Cost Item | 10% | 45% | 2% | 32% | 1% | 0% | 10% | Distribution based on estimated benefit. |
| 9b | Cleaning-garbage rooms Shared Facility | 10% | 45% | 2% | 32% | 1% | 0% | 10% | Distribution based on estimated benefit. |
| 10 | Cleaning- public areas Global Cost Item | 0% | 25% | 0% | 75% | 0% | 0% | 0% | Distribution based on estimated benefit. |
| 11 | Cleaning - waterfront awning / steelwork Shared Facility | 50% | 36% | 6% | 8% | 0% | 0% | 0% | Distribution based on estimated benefit. |
| 12a | Cleaning-other Shared Facilities and areas Global Cost Item | 18% | 12% | 2% | 3% | 3% | 27% | 35% | Relative area of each Strata Scheme and Stratum Lot. |
| 12b | Cleaning-other Shared Facilities and areas Shared Facility | 18% | 12% | 2% | 3% | 3% | 27% | 35% | Relative area of each Strata Scheme and Stratum Lot. |
| 13a | Toilet supplies Global Cost Item | 0% | 25% | 0% | 75% | 0% | 0% | 0% | Distribution based on estimated benefit. |