

**Strata and Community Title in
Australia for the 21st Century**

30 September 2005

Issues 1

Current Challenges

Gary Bugden



Some preliminary points

- Disclaimer
- Objectives
 - Identify issues
 - Provide foundation for expansion in next session
 - Set the scene for discussion
- Terminology

Topics

- Development and redevelopment
- Consumer protection
- Management
- Sociological change
- Disputes
- Legislative issues
- Specific sectors

Development and redevelopment

- The “drivers” of density
 - Government policy
 - Use of existing infrastructure
 - Consumer choice
- Trend is towards higher density
- Follows our “leader” – North America

Development and re-development (continued)

USA experience

Community association housing units as a percentage of
the total housing units in the United States

1970	1975	1980	1985	1990	1995	1998
0.5%	2.58%	4.14%	5.37%	11.38%	12.47%	14.67%

Estimate for 2005 = 16%

The consequences

- Mixed use projects
- Larger projects
- More complex projects
- Staged projects
- Range of uses (marinas to shopping centres)
- Example – King St Wharf

The other end of the spectrum

- Buildings of 1940's, 1950's and 1960's strata converted
- Various states of maintenance
- Many are at end of their economic life
- "Life cycle change" is an impediment to redevelopment
- Underdeveloped prime sites
- Need for compulsory acquisition for re-development?

Challenges

- Dealing with increasing size and complexity of developments
- What to do about buildings and estates needing to be re-developed

Consumer protection

- Caveat emptor
- Buyers need better tools to inform themselves
- Gap between information and consequences
- Legislation needed to fill that gap
- Risk allocation is a component of consumer protection
- Example – unfunded body corporate liabilities

Current approach

Involves one or both of –

- Disclosure of information
- Allocation of responsibility for consequences

Current approach

- NSW examples
 - Disclosure of title documents
 - Initial period
- Qld examples
 - Disclosure statement
 - Information Sheet + Warning Statement
 - Land Sales Act disclosure
 - Statutory warranties
 - Buyer's cancellation rights
- Vic example
 - Vendor's statement + body corporate certificate

Other issues

- Product disclosure statements or prospectus
- State inconsistencies
- “Information overload”
- Buyer due diligence issues
 - Volume and complexity of records
 - Poor filing and business processes
 - Off-site storage
 - Concealment
 - Electronic storage

Consumer protection

(continued)

Challenges

- Increasing need for consumer protection
- Ensure disclosure appropriate and relevant
- Simplify and integrate disclosure materials
- Inter-state uniformity of disclosure
- Consider alternatives to disclosure
- Reassess consequences of non-disclosure

Management

Two sectors -

- **Body corporate management**
(Body corporate managers)
- **Building management**
(Caretakers)

Sector overview

- Dominance of “mum and dad” operators
- No formal qualifications
- Formal qualifications not relevant or “low level”
- Skill levels – record keeping
- Not progressive or innovative

Macquarie Bank survey

- Smallest operators = lowest revenue per lot
- Source of revenues fairly common
- Size not an indicator of efficiency
- Smallest operators most profitable
- Strategic planning and practice management are not the strength of the sector

Body corporate management

(continued)

Sector issues (With qualifications!!)

- Shortage of high level skills
- Poor professional standards
- Poor strategic and business management skills
- Narrow focus – out of line with market
- Lack of vision and innovation
- Low credibility with Government
- Poor technology – lack of resources to address
- Burden of over regulation
- Inadequate remuneration
- Unrealistic customer expectations
- High level of customer dissatisfaction

The challenge!

How to address those issues in the face of an expanding and more demanding market

Sector overview

- Previously confined to holiday letting buildings
- “Mum and dad” operators are being challenged
- Other facets have emerged
 - On-site contract caretaking of residential buildings
 - Off-site version of above
 - Full scale facilities management
 - Permanent employed building managers
- Hotel chains, aggregators and branded apartments are increasing

Building management

(continued)

Sector overview (continued)

Facilities Management

- Record keeping
- Testing
- Basement management
- Deliveries and movement of goods
- Rubbish removal & recycling management
- Repairs & maintenance
- Risk identification and management
- Security
- Fire safety
- Workplace health and safety
- Strata manager and committee reporting

Challenges

- “Mum & Dad” –v- Brand & other large operators
- Increase revenues/improve returns/maintain service levels
- Relationship between manager and body corporate
- Balancing expectations of stakeholders
- Preserving & enhancing value of management rights
- Increasing skill levels (particularly in facilities management area)

Features of strata living

- **Physically close living conditions**
- **Interaction among owners and residents**
- **Need to conform** (conduct, democratic processes)
- **Confined internal unit space**

Sociological changes (continued)

Plus daily life

- General community and work stress levels
- Job insecurity
- Changes occurring in family unit
- Problems with young people
- Ageing population
- General changes in modern day society

Challenges

- Building standards (design and construction)
- How to deal with the usual CRAP
- Socio-Economic mixes
- Occupant mixes
- Management standards
- Community building
- Conflict management and dispute resolution

Sector overview

- Dispute characteristics
- Current dispute resolution mechanisms
- Education and information
- Dispensing justice by adjudication

Challenges

- Preventing disputes – conflict management
- Further assessment of current processes
- Improving communications
- Education and information
- Research based approach by Government to sector problems

Overview

- Most serious issue confronting us all
- Key issues are –
 - Over regulation
 - Quality of legislation
 - Policy making and bureaucratic processes
- Governments “shoot from the hip” and are “trigger happy”
- Serious consolidation issues
- Uniformity issues

Legislative issues (continued)

New South Wales

- *Strata Schemes (Freehold Development) Act 1973*
- *Strata Schemes (Leasehold Development) Act 1986*
- *Strata Schemes Management Act 1996*
- *Community Land Development Act 1989*
- *Community Land Management act 1989.*

Legislative issues

(continued)

Queensland

- *Building Units and Group Titles Act 1980*
- *Registration of Plans (HSP (Nominees) Pty Limited) Enabling Act 1980*
- *Registration of Plans (Stage 2) (HSP (Nominees) Pty Limited) Enabling Act 1984*
- *Sanctuary Cove Resort Act 1985*
- *Integrated Resort Development Act 1987*
- *South Bank Corporation Act 1989*
- *Mixed Use Development Act 1993*
- *Body Corporate and Community Management Act 1997*

Sector specific issues

Overview

- Tourism
 - Export earner
 - Serviced apartments are a major component
 - Australian “brand” is at risk
- Retirement
 - Discouraged as a means of title
 - Interface with retirement village legislation
- Day spas and wellness centres
- Timeshare

Conclusions

- 45 years experience behind us
- Growth phase ahead of us
- Poor record of strategic approach to problems
- Issues confronting all sectors of the industry
- Everyone needs to lift their game
- We must work out where we need to go and how we get there

TO BE CONTINUED

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Issues 2

Future Directions

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Objectives

To give my views on -

- Likely direction in which the various sectors will head over the next 5-10 years
- Response required by various stakeholders (particularly Government)

The future

- Increased density
- Larger, more complex projects (mixed uses/new uses)
- More lifestyle facilities (all age groups)
- More emphasis on technology
- Higher security
- Community building
- Real estate based investment products
- More strata title “hotels” (as opposed to apartment hotels)
- Revival of timeshare
- More redevelopment of older schemes

The challenges for Government

- Open up development provisions
- Balance this against consumer protection
- Tap expertise outside the bureaucracy
- Adopt a strategic approach (based on research)
- Avoid private agendas
- Resisting the temptation to “amend”
- Funding this new approach

What the industry needs

- Workable staged development
- Tailored management arrangements with less restrictions
- More developer control (to facilitate flexibility to respond to the market and the economy)
- A compulsory acquisition regime
- Rationalization and co-ordination of consumer protection provisions

Challenges for consultants

- Includes –
 - Legal
 - Development management
 - Strata management
 - Project marketing
- Lift your game (i.e. knowledge and skill levels)
- More specialization

Required direction

- Needed more than ever – must be better than ever before
- Balanced and co-ordinated Government response
- Mechanisms must –
 - Be more effective
 - Operate more fairly
 - Be based on an understanding of the development and financial processes

Challenges for Government

- Complete review of consumer protection
- Treat strata title individually
- More fairly allocate risk
- Adjust the balance between disclosure and risk
- Reassess the consequences of non-compliance
- Face up to the need to protect owner's funds

Additional (principal) “driver” of change

- The push towards consolidation
- The emergence of companies with –
 - Strong capital base
 - Good management skills
 - Latest technology and equipment
 - Strategic commercial connections
- The impact of this on the sector

Drivers of consolidation

- Pressure of market demand
- Need for substantial investment in technology
- Need to ensure scalability of businesses
- Potential for efficiency and productivity gains
- Need for higher profits
- Complexity of strata title legislation and costs of compliance

What changes will be necessary?

- Change from “process” focus to “service” focus
- A professional services sector approach
- Substantial investments in technology
- A broader range of services (“aggregation”)
- More appropriate fee structure
- Rise in skill levels
- New educational standards and career paths

Outcomes

- Better service levels to bodies corporate
- Enhanced value of unit owner's asset (i.e. their unit)
- More pleasant living environment (with fewer disputes)
- Higher fee levels for strata management
- More professional and efficient strata management sector
- More profitable strata management sector

Likely outcome of consolidation

A 3 tier structure –

1. 3 or 4 well resourced corporates in premium segment (probably listed)
2. 6 or 8 large second tier corporates (privately owned and operated)
3. Smaller boutique firms

Building management

- Large and “brand” companies will expand
 - Better owner returns
 - Vertical integration/cross marketing
 - Demand for consistent standards
 - New entrants to market
- Emergence of branded “chains”
- Enhanced facilities management capacity
- Increase in stand alone caretaking
- Lifting of skills and qualifications
- Greater strength in dealings with other stakeholders
- Positive contribution to Australian tourism

Sociological change

The future

- More research needed
- Adequate funding is needed
- Design and construction standards to be addressed
 - Changing demographics
 - Improved regulation (building code)
 - Market demand
- More emphasis on community building
- Ongoing work on dispute resolution

Moving forward

- Pressure points
 - Existing dispute systems – further improvements
 - No dispute systems – pressure to establish
- Review of evidence gathering and “testing”
- Time taken to resolve disputes
- Quality of decisions of adjudicators and tribunals
- Enforcement of remedies

Disputes (continued)

Government encouragement needed

- Research into conflict issues and feeding results into policy making and solutions
- Community building to minimize disputes
- Increase awareness of and encourage conflict management within schemes
- More focus on education to improve management standards and limit disputes

Imperatives for legislators

- Serious consideration of uniformity
- Comprehensive reviews of legislation
- Deregulation of management provisions
- Consolidation of legislation
- Facilitating tailored management structures
- Changing the public consultation process
- Commission and rely upon quality research
- Find ways to use expert industry knowledge

Strata Reform Commission

- 3 to 4 members (one from Government)
- Range of appropriate skills
- Statutory duty to act in public interest
- Responsible for commissioning and interpreting relevant research
- Designated body to receive and assess submissions from public
- Recommendations to Government on changes to the law
- Properly funded and adequately resourced

Summary

- Entering period of rapid and fundamental change
- Challenges for Government and stakeholders
- No easy answers
- Government needs to provide legislative and social infrastructure
- Industry needs to respond positively and decisively
- Prospects for substantial improvements for all sectors

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