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FROM THE PRESIDENT



The year ahead in 2011

David Ferguson, President

Welcome to the first edition of Inside Strata for 2011. I hope everyone had a great summer and that you've all come back from holidays ready for the new challenges and changes ahead.

This year will see the launch of the new national brand and this will mean the introduction of some new ways of doing things. We will be more involved with our colleagues from the other states as together we build a stronger organisation ready for national licensing in 2012. For example, ISTM is currently working with CTIQ to deliver a new Certificate IV Property Services (Operations), which will have 100 percent strata content and be available across Australia.

We will take every opportunity to listen to members views on new proposals. I hope you all will become involved by supporting new initiatives and giving your honest feedback on how things affect you – we want the good and the bad so don't hold back.

While there will be change I am pleased to say that the Board, committees and ISTM team will be the same. I am particularly excited at the work that the committees will be undertaking this year. As we described at the end of 2010, a lot of work has been put into planning for 2011 and now we need to implement those plans. We'll report more to you as things happen so look out for stories and updates in Inside Strata and via the Executive Officer's fortnightly reports.

Out of those plans has come our first review of ISTM's policies. The new 2011 policy position has been provided to both the Government and Opposition. To date both Suresh and I have had positive and constructive meetings with representatives from the office of the Minister for Fair Trading, as well as with members of the Opposition - Mr Greg Aplin, MP (Fair Trading), Mr Brad Hazzard, MP (Planning and Infrastructure) and Mr Greg Pearce, MLC (Housing and Industrial Relations). All have welcomed the ISTM's policy position paper.

I would also like to take this opportunity to wish our colleagues in both Queensland and Victoria well as they battle some of the worst floods ever experienced and undertake the massive clean up and restoration of homes and businesses.

I was glued to the news coverage and will never forget the images of the wall of water sweeping through Toowoomba or the flotsam and jetsam speeding down the Brisbane River. By 11 January 2011, the Queensland Premier, Anna Bligh had declared three quarters of the state as a disaster area. This is extraordinary in a state that is almost seven times larger than the United Kingdom including Ireland.

As Queenslanders and Victorians count the cost of so much water and destruction it's timely for us in NSW to encourage our owners corporations to look at things like building maintenance, evacuation procedures and getting their insurance valuations up-to-date. This edition of Inside Strata gives you the low down on all these areas and you may be surprised at just what you may learn.

With the NSW Election nearly upon us we also invited politicians from both sides of the political divide to give us their views on planning. We are pleased to have a contribution from Mr Brad Hazzard, MP, Member for Wakehurst and Opposition spokesperson on Planning and Infrastructure.

Finally I'd like to offer congratulations to ISTM's Events Manager Lucy Byers (nee Pantling). Lucy was married on Saturday, 22 January 2011 to her long-time partner Alex Byers. We wish you both all the best for your future lives together.

If the start to 2011 is this hectic hang on for one big year. Until next time .. ■

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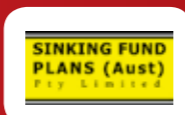
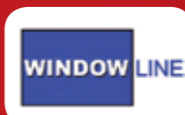


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More details to come....



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Executive Officer's Report

Suresh Manickam
ISTM, Executive Officer

In my last column for 2010 I talked about the need to be a part of the policy debate in NSW, with the aim of improving strata in NSW.

To this end, the Secretariat has reviewed and revised the Policy Directions Statements of 2008 and then launched the 2011 Policy Directions Statement. This is an important document for ISTM as it sets out those issues that we as an industry see as important for 2011.

In developing our 2011 policy positions, it was clear that "improving education, boosting capacity and ensuring residential equity" was a common theme in every policy position. Within this theme it was apparent that residential equity (those living in semi detached housing versus those living under strata arrangements) was anything but equitable.

ISTM'S NINE POLICY POSITIONS FOR 2011 ARE:

1. Equity for strata residents
2. Termination of strata schemes
3. Self-managed schemes
4. Inappropriate uses of buildings
5. Certainty of ownership
6. Preparing for a carbon economy
7. Digital switchover and the National Broadband Network
8. OH&S clarification
9. Clarification of service providers

Each policy carries with it a recommendation and in certain cases a request for state government funding to enable ISTM to undertake and implement an education (member or public) campaign, research, or continue to boost initiatives that are already underway.

ISTM will continue to pursue a non-partisan approach when engaging with all our key stakeholders. With this in mind, ISTM encourages both the government and opposition to put strata issues front and centre in 2011. ISTM believes that these policies provide realistic and tangible solutions – some of which are short term, so longer term.

The debate has only just started and we have a long road ahead. ISTM believes that the end goals of improving education, boosting capacity, ensuring residential equity will be beneficial for not only our members but also the strata residents of NSW.

On another note, ISTM will be holding its Industry Briefing Sessions again during 2011 where we have a variety of speakers on a number of industry specific issues. Guests being approached range from politicians to those in compatible industry associations who may support us in our debates with government on certain issues. We are aiming to have the first of our sessions towards the end of March so make sure you keep an eye out for more information about this. We have also taken members feedback on board about having panels of industry representatives to debate issues and will be including a few more of these during the Industry Briefing Sessions this year.

2011 is shaping up to be a very busy but memorable year. I hope you all come along for the ride and look forward to your contributions and attendance at the many events and education sessions we will be holding.

Don't forget to put your calendars up in a place in the office where everyone can see what's happening at ISTM this year. ■

'twas a week before Christmas 2010



Around 150 people from across the strata industry descended on the Waterfront Restaurant under Sydney's famous Harbour Bridge on 15 December to make the most of the festive season.

As the sun set, the lights on the Harbour added to the magic of the season. Along with great food, plenty to drink and lots of friends – it was one of the stand out parties for 2010.

ISTM thanks its business partners Macquarie Bank, CHU, Integrated Consultancy Group and Bannermans Lawyers for making this happen.





Responding to the flood crisis

Mark Lever
NCTI, Executive Officer

The whole nation has been transfixed by the devastation being left in the wake of this summer's wild weather. For our industry, the impact is real and direct with unprecedented numbers of buildings damaged by flood and cyclone. Many, many more have been crippled by lengthy power outages which often mean far more serious implications for safety and livability than in ordinary residential housing.

Our own members have been in the middle of it all, in some cases impacted personally and more instances experiencing severe disruption to their businesses and working conditions.

Spontaneous offers of practical support from all over the country have demonstrated that we are a national industry, not just a collection of states. In the short term, the focus is on repairing the damage and rebuilding the communities we serve. This necessarily includes attending to the human and social aspects of community living as well as physical assets.

The task for many has been enormously complicated by the lack of insurance cover for flood.

Natural disasters are a very emotional experience and the longer term recovery process can fracture relationships just as the initial events bind us together. The task will test the depth of the soft people skills of our strata manager members as much as their technical expertise.

The financial implications will only add to the pressure on those communities. At the outset it was clear that the government disaster assistance arrangements speak only of businesses and individual households and do not expressly provide for body corporates.

NCTI has raised this with the relevant authorities at federal and state level and will continue to actively engage with them to ensure that initial and ongoing assistance is available to everyone affected on an equitable basis, including where needs arise in a strata or community title situation.

Longer term there will be lessons to be learnt in terms of planning for future disasters, which the climate change science suggests will be more frequent and more severe.

We need to better understand how new buildings should be designed and built and how existing buildings can be made more resilient. There will be implications for sinking funds and maintenance and more generally for planning to ensure the safety of residents and occupants.

Governments who require body corporates to take out insurance will need to give more thought to the type of cover mandated as well as to situations where that cover might not be affordable or indeed available at all in the market, as is the case currently with flood damage and increasingly for any type of coverage at all in the cyclone-prone areas of northern Australia.

It is vital that the industry responds to these issues in a clear, coherent and considered fashion. In the wake of these disasters, the timing of our transition to a single national identity over the course of this year could not be better. More on that in the next issue. ■



Regular inspection or costly restoration?

Carrying out a regular building inspection on a strata property is the best way to maintain the fabric of the building.

Regularly attending to the upkeep of this major asset ensures the value of the building is protected for its owners and it ensures the owners corporation fulfils its statutory obligations to keep the property in a reasonable state of repair.

The priority for many strata-title property owners is understandably their own domain and the four walls of their own apartment, with few noting the exterior or the common areas until something goes wrong or starts to look unsightly. However protecting the investment made in a strata property doesn't stop at the owner's front door, it starts at the property boundary. This is where a building inspection is a valuable tool, which when performed regularly can identify any areas that could result in costly problems down the track.

Steve Murphy, Principal of Consolidated Quality Projects recommends that an inspection be carried out every three years, and that the inspection and reporting should always be undertaken by a specialist professional.

"Seek out a specialist in strata and make sure they have a certified Quality Assurance system in place. That way you'll get a professional who really knows what they are doing. A building inspector will look to ensure that the building fabric is adequately protected. This means checking that the exterior paint, protective coatings and sealants are in good condition, he or she will then be guided by what they discover. The external elements are often the things that the inspectors may look at first," Steve says.

"For example if the property is near a beach, the inspector will look to see what corrosion may have occurred from the effects of the salt and sand. They'll also look at the age of building and the type of materials used in its construction," continued Steve.

The most common issues inspectors find are cracking brickwork, displacement of gutters and timberwork and corrosion on elements such as window and doorframes, as well as concrete balustrades. The item that needs the most regular maintenance is often the paint and protective coatings. The harsh Australian sun is a paint manufacturers dream, and it's not just marketing hype from the painting industry, those claims on the damage our climate can wreak are real. Once all the issues have

been identified and documented by a building inspector this is when Consolidated Quality Projects comes in to undertake any remedial work.

"We specialise in a variety of services including restoration of historical buildings. Apart from the 30 years experience we have of strata properties, we've also been involved in works on the Sydney Opera House and Royal Prince Alfred Hospital. Both these iconic buildings required sensitivity and highly qualified trades people," Steve says.

The bottom line in all this is the willingness of the owners corporation to proactively look after its asset. Regular maintenance ensures the value of the asset is protected, and while they may be concerned about special levies and sinking funds, the return on investment in maintenance is much better than not doing the work at all. ■

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And for my next trick

Jimmy Thomson

There's nothing harder than getting an executive committee to agree on anything ... apart from not spending money.

Too often getting them to loosen the purse strings requires diplomacy, psychology and patience, as well as magical skills like mind-reading and slight of hand. Hypnotism would be great – imagine putting EC members in a trance and getting them to employ logic and common sense.

Actually, a conjuror might be the perfect second job for a strata manager. Pulling rabbits out of hats is already expected but when things go horribly wrong, a disappearing act would be handy. Sawing people in half, while tempting, is not covered by professional indemnity insurance.

The problem is that you are dealing with people with conflicting priorities and a wide range of disposable income. From the cash-strapped first-timers who had no idea that the levies existed, to the retirees

who have plenty of money but whose life-expectancy might outstrip their financial health, they either can't or won't pay a cent more than they have to.

The NSW government, realising that a significant proportion of strata owners would rather watch their buildings crumble around their ears than put money aside for a rainy day, forced every strata plan to have a sinking fund assessment. Sadly, though, wasn't backed up by a clear and inarguable legal obligation to fund it or even spend it.

The government would rather you strata professionals banged your heads against those particular brick walls (but not too hard!) than erode the preposterous notion that unit dwellers have as much freedom to choose as house owners. But even in buildings that have a healthy sinking fund, as with political parties in election mode, surplus seems to be an end in itself and spending is regarded as the greatest of all evils. So what is a strata manager to do?

Explain all you like how faded foyers and flaking facades damage the value of every property in the building – if people aren't planning to sell or believe they'll make a handsome profit anyway, that argument won't wash. Buildings tend not to deteriorate dramatically. They call it a sinking fund but blocks very rarely sink. Like seeing an old friend every day and then not for a month – only then do you realise how much they've aged.

So it's time to bring in some new technology. What we need is an app for strata managers' iPhones where you can take a picture of a building and then show the EC what it will look like in the next five years with the gradual decline speeded up.

Add in a counter that shows the value of apartments going down instead of up as the years tick by and they'll be fighting to get to the corporate chequebook. Then, of course, you need agreement on how much to spend and what to spend it on first. Hmmm ... look into my eyes ... you are feeling sleepy ... very sleepy ...

Safe as houses

Building maintenance doesn't just stop at the condition of the paint, windows or bricks and mortar.

Ongoing maintenance should also include a discussion by the executive committee and strata manager of the emergency procedures as well as the occupational health and safety issues that may exist in the building.

A lot of newer builds are offering mixed use – that is residential, commercial and retail – and this can complicate matters, but companies such as Quality Building Maintenance (QBM) and Philip Chun can offer assistance and solutions. QBM's Katrina Miller says her company offers a complete health check of a building from the condition of the structure to health and safety assessments, risk assessments and so on. "One of the things we aim to do is help our clients keep on top of their maintenance requirements and identify potential risks before they arise. Regular checks for potential safety hazards are essential and if minor issues are discovered early and immediately rectified they can save the owners corporations a great deal of money."

Seeing homes and businesses in both Queensland and Victoria subjected to flooding and cyclones this summer also reminds us that the other risks to property come from natural and man-made disasters. All strata-titled properties including residential buildings are required under the *Strata Schemes Management Act 1996* to carry out a fire safety inspection of the common property but the legislation is silent on how often this should be undertaken. Katrina recommends having an inspection carried out annually to identify issues relating to the fire services within the building. A thorough inspection involves ensuring evacuation routes are clear of obstructions, all fire safety installations are tested at regular intervals and a log of these tests is kept (in commercial buildings), checking that exit doors have the correct hardware, documentation is complete and available, staff are trained, a Fire and Evacuation Co-ordinator is appointed for the site and the certificate of classification is displayed on the building.

Terry Moran from Philip Chun agrees that typical safety measures in a commercial building should include evacuation signage, fire and emergency evacuation plans, emergency safety plans and staff training.

"This could be applied to a residential building as well if the owners corporation believes it's a good idea and that it would get co-operation from the lot owners. A fire and evacuation plan lays out the roles, responsibilities and required actions for a building's key personnel, employees and tenants. It should be simple, effective and generic in

nature. The intent of the plan is to provide co-ordinated and key emergency services but it is not a be all for every emergency," Terry warns.

Situations can arise that are often unforeseen but at least being prepared for a disaster can provide a focus and some direction should one occur. If your owners corporation decides that it would like an evacuation plan both QBM and Philip Chun can assist with this. Katrina says this involves undertaking a site survey to identify the safest route possible and then the development of site specific diagrams in accordance with Australian Safety Standard 3745-2002. The diagrams are then installed at various points within the building.

State legislation is very specific when it comes to safety obligations including evacuation plans for buildings where people work. In NSW it is covered by the Occupational Health and Safety Act 2000 so if your building is mixed use you must ensure there is a plan in place. ■

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ISTM launches new policy statement

The Institute of Strata Title Management (ISTM) has launched its new policy statement following the first review of its policies in more than three years.

The new policy statement pares down the previous policy directions statement to nine key areas under the banner "Improving Education, Boosting Capacity, Ensuring Residential Equity".

ISTM's Executive Officer, Suresh Manickam has been busy introducing the policy statement, "ISTM has kicked off 2011 by positively engaging with all key stakeholders about the issues that are at the forefront of our industry. We've had some very constructive discussions with our stakeholders, together with positive feedback. We will continue to promote our policies throughout 2011."

The following is an overview of each of the policy areas for 2011. In addition to the recommendations, and where appropriate, ISTM has provided realistic indicators where government funding may be sought.

1 EQUITY FOR STRATA RESIDENTS

This policy is aimed at gaining better recognition by government of the role of owners corporations. ISTM believes that governments often fail to take into account the role of owners corporations and their relationship with owners and residents.

There are a number of policies recently made by government that either do not benefit or in fact disadvantage owners and residents in strata-titled properties. Amongst them are disaster relief, renewable energy subsidies, the Fire Services Levy, assistance for the digital switchover of TV and others. ISTM's solution is that there be a whole of government approach to strata and community living that recognises the role of owners corporations and community associations in service delivery. This may include a requirement that all regulatory impact statements, which is a standard requirement for all new legislation, specifically include the examination of the impact on these entities.

2 TERMINATION OF SCHEMES MECHANISM

Since 2003 the NSW Office of Fair Trading has been engaged in a consultation process to simplify the laws around the termination of strata schemes. The vision was

to assist NSW replace its ageing building stock. To date that process appears to have stalled with NSW no closer to having a set of laws that provides a simple framework where schemes can be terminated appropriately.

Apart from applications made through the Supreme Court, the only other current method for the termination of a strata scheme is by seeking a termination under section 51A of the *Strata Schemes Freehold Act 1973*. This allows the Registrar General to terminate a scheme but only where all owners, lessees and mortgagees agree. Requiring 100 percent agreement on the wind-up of a strata scheme is very difficult to achieve and ISTM sees this as a major barrier to the redevelopment and improvement of strata stock in NSW. With around three quarters of strata stock in NSW being comprised of lots of less than 10 adds to the challenges as one person can block a redevelopment proposal and effectively hold the other owners to ransom.

ISTM proposes that for lots of 10 or more the requirement for 100 percent agreement be reduced so that it mirrors Corporations Law requirements, which enable compulsory acquisition of the remaining 10% shareholding in a listed company.

Further, that the percentage of votes required to facilitate termination would stagger depending on the age of the building:

- a. 90% requirement for buildings up to 15 years old
- b. 80% requirement for a building more than 15 years old

Termination of Schemes would also require a valuation report of the whole development that specifically proposes the method of distributing the sales proceeds.

3 SELF-MANAGED SCHEMES

The regulatory and administrative environment for all schemes is becoming increasingly complex – as highlighted by the recently introduced *Strata Schemes Management Regulation 2010*, OH&S requirements and ongoing financial prudential obligations.

Typically self-managed schemes (SMS's) are administered in a voluntary capacity by residents. These volunteers are responsible for the compliance and regulatory administration of the scheme in place of a strata manager and many may not be aware of their legislative responsibilities. ISTM recognises that most office bearers govern with the best of intentions.

Such requirements continue to impose considerable time, resources and specialist knowledge on volunteers. ISTM is concerned that many volunteers do not have the necessary resources or knowledge to appropriately and adequately discharge their obligations on behalf of the tens of thousands of people living under strata-titled arrangements.

ISTM has a robust track record, established over many years, in the provision of quality education to professionals in the strata sector as well as the delivery of consumer awareness seminars. With this in mind, ISTM is seeking financial support from the government so that it can deliver a state-wide training program to executive committees involved in SMS's. This would include the necessary knowledge for volunteers to appropriately and adequately discharge their duties.

4 INAPPROPRIATE USE OF BUILDINGS

Strata and community living by its nature means that residents live in close proximity to one another. In some instances, small numbers of owners and/or residents can (intentionally or otherwise) place substantial burdens on the majority of residents.

Examples of these inequities include:

- Short-term letting in buildings not designed for that purpose
- Excessive, ongoing or inappropriate noise
- Overcrowding
- Disparate wear and tear on common property
- Excessively disproportionate utility usages

Activities such as these can have a huge impact on the building such as increasing the risk of fires and hazards, increasing the expense burden to residents by way of increased wear and tear on common property, excessive or inappropriate use of utilities and impact on the value of the lot as well as cause social problems.

ISTM's solution is to seek an Intention of Scheme Living Statement be included when a scheme is registered. This would provide a broad direction to all future residents as to the intended use of the scheme such as short-term rentals, pet friendly, child friendly, retirement orientated and so on. Legislative reform would be required that enables the distinction between strata scheme governance and strata scheme use. The Intention of Scheme Living Statement would either be achieved by way of notation on the strata plan or as a reference in the by-laws.

5 CERTAINTY OF OWNERSHIP

One of the main disputes in strata schemes concerns repairs and maintenance. The common issue for those who own strata title residences is the uncertainty around what defines individual property and the ambiguity of what is common property.

A robust definition of 'responsibility' is not clear and as a result there remains an inconsistent interpretation or application of the law or governing documents when repairs are carried out. In response to this ISTM developed a guide called *Who's responsible?* This document seeks to address many of the queries that the various stakeholders have in relation to roles and responsibilities. This has been an invaluable tool for our members to pass on to their Executive Committees.

ISTM is keen to further develop the *Who's responsible?* guide. A memorandum is to be lodged with Land and Property Information division of the Land and Property Management Authority (LPMA) so that it may be easily referenced in future strata plans or used as an interpretative source when dealing with the ambiguity of the current registered strata schemes. Additionally a consumer awareness campaign will be developed promoting the document prompting ISTM to seek funding for a state wide education campaign of strata owners to clearly describe what common property is, identify other grey areas and further develop and promote the *Who's responsible?* guide.

6 PREPARING FOR A CARBON ECONOMY

It's broadly accepted that the Federal Government will move to some form of carbon pricing in the near future. The objective is to create a clear price signal to reduce consumption of carbon emitting energy sources and to encourage the utilisation of low-carbon and renewable energy.

This has specific issues for strata and community living because of the energy consumption patterns of common property and the limited ability of lot owners to directly control energy consumption, particularly in older buildings with shared metering. To date, policy responses have not adequately addressed the role of owners corporations. A failure to explicitly identify owners corporations as eligible entities has effectively denied many buildings access to renewable energy credits and therefore considerable cost savings for solar installations. The primary policy focus to date has been on detached housing via "green building" initiatives.

ISTM asserts that "green building" initiatives must be extended, on an equitable basis, to all strata residents. ISTM believes that any meaningful impact on overall energy consumption must include measures directed at the existing housing stock.

Apart from a few local government level initiatives, no substantive government programs have yet to target energy consumption in the medium and high density



housing sector. This presents an opportunity for the provision of "green building" program incentives specifically targeted at common property areas and owners corporations. It might also include subsidies for installation of sub-metering, for example.

ISTM will approach government for potential funding opportunities that could emerge from an effective "green building" program including:

- Support for consumer education and awareness programs
- Development and delivery of specific "green building" training modules
- Development and delivery of specific "green building" assessment and ratings programs

7 DIGITAL SWITCHOVER AND NATIONAL BROADBAND NETWORK

The Digital Switchover is turning off analogue television transmission in regional areas in 2010 and 2011 before reaching metropolitan areas in 2012 and 2013. It is becoming increasingly apparent that many buildings will require upgraded or new antennas and wiring. A subsidy scheme for eligible households (extended to Centrelink clients) provides set top boxes and aerial upgrades. However, this does not extend to the cost of any additional levies such as those needed for upgrades through owners corporations.

A new set of issues is likely to arise later this decade when the NBN rollout reaches metropolitan areas. The NBN Co has made public statements to the effect that it will meet the cost of cabling existing buildings and has also committed to cable all new buildings from January 2011. However the implementation, particularly in existing buildings, can be expected to pose a range of issues for owners corporations and strata managers.

ISTM seeks amendment to the current Digital TV household assistance scheme to provide owners corporations with pro rata rebates on aerial upgrades and installations on confirmation of occupant eligibility status. This should be administered by strata managers. Similarly, ISTM will engage with the NBN on protocols for building upgrades. Discussions will commence in early 2011 on a more formal comprehensive national relationship in readiness for the metropolitan switchover phase.

8 OH&S CLARIFICATION OF CONTROLLER

When repairs and maintenance for a strata complex fall due, ambiguity exists regarding the clarification and appointment of the Controlling Officer for OH&S purposes. A common concern for lot owners is the uncertainty and ambiguity as to what defines individual property and common property.

A robust definition of who is responsible for OH&S as the Controlling Officer is not clear. It is loosely captured

between the relevant OH&S legislation, the registered strata plan and the bylaws registered with the strata scheme, but there is still considerable uncertainty around:

- Definition of the controller for OH&S purposes
- The assignment of a controlling officer for OH&S purposes
- The interpretation or application of laws or governing documents when repairs are carried out
- Exemption of the requirements, if appropriate.

ISTM will seek clarity regarding the definition and appointment of the Controlling Officer for OH&S purposes in the strata context. Further, as it is the Executive Committee that determines the appointment, scope and direction of works on common property, ISTM will seek exemptions from the relevant OH&S legislation for strata managers as the controlling officer.

ISTM will also seek funding for a state wide information and education campaign. The campaign would include the definition and appointment of the Controlling Officer for OH&S purposes as well as the obligations of strata managers, suppliers and executive committees. In the context of this issue, the campaign would also include the further development and promotion of ISTM's *Who's responsible?* guide.

9 CLARIFICATION OF SERVICE PROVIDERS

When executive committees place work orders for repairs and maintenance, ambiguity exists regarding the clarification of the service provider. In this context, it is the strata manager who is appointed as facilitator of works on behalf of the executive committee.

It is currently the case that both the strata manager and the caretaker may be the service provider. Several scenarios need to be considered, including:

- Variations in professional standards, ethics and governance
- Decreased ability to provide the continuity of the quality and workmanship
- Confusion on the part of contractors as to which party has authority
- Inability to provide strata residents with timely, accurate and complete information

Other than Self Managed Schemes, ISTM asserts that strata managers be the only party to be able to issue work orders on behalf of the owners corporations in accordance with their fiduciary duties. This is another instance where the ISTM would seek funding to provide an education campaign that would include the definition and clarification of the Service Provider as well as the promotion of the *Who's responsible?* guide.

A full copy of the policy document is available on the ISTM website www.istm.org.au ■



Getting planning right in NSW

BRAD HAZZARD, MP

In addressing the policy position of the Barry O'Farrell led Liberal & Nationals Coalition for the March 2011 election, it is important to acknowledge the role of the Institute of Strata Title Management.

The Coalition recognises the sound advocacy of the ISTM and appreciates the policy input of the organisation. The ISTM constantly reminds decision makers that almost 15% of Australian's live in (either rent or own) or work in a strata-title complex. So – getting planning and the strata aspects of planning right is vitally important.

On Election Day (26th March) NSW residents will have a clear choice between two markedly different approaches to governing NSW. The Labor Party is intent on persisting with its centralised decision making particularly in the planning context. That approach has delivered the lowest housing starts in 50 years as well as alienating residents who consider their voices are not being heard on the future of their neighbourhoods/communities.

In the broad planning context the NSW Liberals & Nationals have been listening to community concerns and will, if elected in March:

- Immediately commence a complete review of the Environmental Planning and Assessment Act (EP&A Act) with a view to creating new legislation with a major strategic planning focus;
- Work with the Department of Planning and Local Government to reflect a 'can do' culture within a community/business consultative framework; and
- Continue working with the ISTM to address current and evolving strata and community title issues.

The Coalition believes that current planning legislation fails to address strategic planning and gives inadequate focus on economic, social and environmental considerations while strata legislation needs to evolve to reflect the planning needs of NSW. All aspects of the EP&A Act including the 2008 amendments to the Act will be up for review in the Liberals & Nationals inquiry into what is needed in a new Act. It is clearly understood that

there will be increased levels of medium density (and hence more strata-titled units) which will naturally evolve across the Sydney basin. This makes it essential to get the legislative context right.

Planning forecasts anticipate that in 21 years time there will be at least three million people living in strata title complexes. So getting the planning system working well and addressing the particular needs of strata complexes are important issues for the Liberal & Nationals Coalition.

The ISTM has ensured that the big strata challenges facing government have been well articulated. We recognise that one of the biggest issues is renewal of aged strata stock. The position put to us is that 100% agreement on wind-up of strata schemes can be extremely difficult to achieve. It has been put to the Coalition (and I understand to the Keneally Labor Government) that a lesser percentage should be legislated to achieve renewal of stock. The same arguments have been put to the Coalition by property development interests. Whilst the Coalition recognises and understands the challenges – we have sought input from relevant peak groups for a formula that would ensure no vulnerable strata title owner is disadvantaged.

So far we have not been presented with a proposal that addresses our concerns. The NSW Liberals & Nationals are not supportive of any approach that would force any owner from his or her home. The challenge for the strata and property industry is to work with the NSW Liberals & Nationals, (if we are elected on March 26) to find a solution to a problem that Labor has failed to address.

A further issue in the planning context is the ISTM's suggestions that an 'Intention of Scheme Living Statement' be included in a scheme when it is registered. ISTM argues that such a statement would provide a broad direction to all future residents as to the intended use of the scheme.

In the planning context, the Coalition will work with the ISTM to address the validity of such a statement. It may be that, depending on the extent of the regulatory impact of such a statement, there could be positive benefits for not only the residents in the scheme but also neighbours in the local community. As the review of the EP&A Act proceeds - if the Coalition is elected - strata issues should be considered at the discussion table.

Accordingly the Coalition undertakes to each of the members of the ISTM that issues raised by the Institute will be considered as the planning review proceeds. Planning for our State of NSW in the 21st Century requires planning for an increased presence of strata titled complexes where many residents will chose to live in the years ahead. ■

Mr Brad Hazzard, MP, is the Member for Wakehurst and Opposition spokesperson on Planning and Infrastructure.

When engaging with parliamentarians, ISTM will continue to seek a balanced view from both the Government and Opposition. The Minister for Planning, Mr Tony Kelly, MLC was also invited to submit an article to Inside Strata on the future of planning in NSW. However, at the time of printing his office had not responded to our requests.



Get it sorted at the CTTT

The Consumer, Trader and Tenancy Tribunal (CTTT) deals with various types of Strata disputes. Common disputes include excessive noise, damage to common property, appointment of a strata manager, keeping pets, and contributions and levies. During 2009-2010, 1,469 strata applications were received – 66 percent were lodged by lot owners and 32 percent were lodged by owners' corporations.

Adjudication is the specialised dispute resolution process used by the CTTT to resolve most strata disputes. Usually, before an application can be lodged with the CTTT, the people involved in the strata dispute must attempt mediation. This is a requirement of the strata legislation. NSW Fair Trading has qualified specialist mediators who are skilled in dealing with strata disputes. Other approved mediation services may also be used.

If no settlement is reached during mediation or an agreement breaks down, an 'application for orders by an Adjudicator' may be made to the CTTT. Applications can be lodged at one of the eight CTTT Tribunal registries, or at one of the 24 Fair Trading Centres. An application fee of \$72 applies, or just \$5 if the applicant is a pensioner or a student.

The application is determined by an Adjudicator 'on the papers'. This means the decision is based only on the information provided in the application and any written submissions received. There is no face-to-face hearing. An Adjudicator is a person appointed under the Strata Schemes Management Act 1996 or Community Land Management Act 1989. Most Adjudicators at the CTTT are also appointed as Tribunal Members.

It is also possible for a party to lodge an additional application for an 'interim order' with their substantive application in an attempt to stop some action by another person while the substantive application is being considered. A separate application fee applies. The interim order is made by an Adjudicator without the need for mediation or written submissions. An interim order application is generally determined within 48 hours from the time the application is received by the CTTT. The Adjudicator must be satisfied, on reasonable grounds, that urgent considerations justify the making of the interim order. After the Adjudicator makes his/her decision, copies of the orders are sent to all parties.

Once the application for an interim order has been determined, the substantive application will be dealt with. The Adjudication process generally takes between eight to twelve weeks after an application is lodged for an order to be made. All parties in

the scheme or those affected by the order sought are provided with a copy of the application and are invited to make written submissions. The submissions period timeframe is generally set at 28 days.

Submissions received are made available to parties to view for up to three days before the application and then referred to the Adjudicator for determination. The Adjudicator considers the application and all the submissions and then makes orders in writing.

THE TYPES OF ORDERS AN ADJUDICATOR CAN MAKE INCLUDE:

- Repairs to common property, ceilings, walls and floors
- Water penetration through a window or the roof
- Breach of by-laws - such as keeping pets, excessive noise, insufficient floor coverings and parking on common property
- Unauthorised alterations to common property
- Making, changing or invalidating a by-law
- Appointment of a managing agent
- Validity of meetings and resolutions
- Variation of insurance
- Contributions and levies

An Adjudicator's decision is binding and it is an offence to wilfully contravene or fail to comply with the Adjudicator's orders. A party can apply to the CTTT to impose a penalty order on anyone who does not comply with an Adjudicator's decision. You should get advice before pursuing this option. A party may appeal the Adjudicator's orders to the CTTT within 21 days of the order.

A new fact sheet about the Adjudication process at the CTTT and further information are available on the website at www.cttt.nsw.gov.au or call 1300 135 399. ■



CASE STUDY

It's a matter of access



An owners corporation may enter an individual strata lot for the purpose of carrying out essential work, but only with the lot owner's consent. If consent is not given, the owners corporation may apply for Adjudicator's orders to allow them access.

An owners corporation applied for interim orders allowing access to a strata lot for the purposes of investigating a water leak. The application was urgently referred to an Adjudicator on the same day. The owners corporation provided evidence of correspondence between themselves and the plumber contracted to do the work.

In examining the evidence submitted, the Adjudicator was satisfied that there was a significant leak into the unit below that was caused by a problem in the

respondent's unit, and that further damage could result if prompt action was not taken.

On reading correspondence written by the respondent to the owners corporation, it was clear to the Adjudicator that he had refused entry to the plumber on a number of occasions over a period of weeks.

An interim application is not granted lightly as it is considered on an ex parte basis 'on the papers'. An Adjudicator must be satisfied that the urgent circumstances of the case justify the making of the order

without notice being given to the respondent.

In this matter, the Adjudicator was satisfied that real damage and inconvenience would result from continued leaking water and that it was appropriate that the owners corporation be allowed to investigate and repair the source of the leak as soon as possible.

Interim orders were made that the respondent must give the plumber access to his unit at a mutually convenient time no later than seven days after the date of the order.

CTTT – 5 STEPS IN STRATA ADJUDICATION



Caring for our Heritage?

After seeing an older apartment block undergoing some renovations *Inside Strata* started wondering about how complex this may be so we sent Nicola Perez to investigate.



Owners often call to ask how they should handle day-to-day problems about barking dogs or kids playing in the driveway. Occasionally problems border on the more surreal, like the one about the owner who placed an 'evil eye' in his courtyard so it stared directly into his neighbour's kitchen window. Or the high rise residents throwing dirty nappies down to the café level below.

Many of us when searching for that perfect apartment want something with character and charm, and to achieve this we look to an older, or heritage building, that we can remould and renovate to our own needs and tastes.

However, with older buildings comes a whole set of rules, regulations and guidelines to ensure that a building is not only renovated sympathetically and safely, but also that it's compliant.

To get all the essential facts, recommendations and some top tips on renovating older properties, *Inside Strata* spoke to two experts in the field; John Graham of John Graham & Associates Architects and Ken Demlakian of Demlakian Consulting Engineers.

John Graham & Associates Architects is a city-based architectural practice established in 1986. Residential work includes new dwellings, medium-density town house projects, dual occupancies, alterations and additions and historic restorations.

Demlakian, contributing to the construction industry for over 25 years, offers engineering solutions to architects, developers, project managers and builders, as well as strata and remedial services to strata managers, strata lawyers, executive committees and individual lot owners, and has consulted on over 4,000 projects.

So, you've found your dream apartment and it's in an older building. We asked John and Ken to talk us through the things they would recommend considering before making an offer, and then called upon their expertise to advise us on some of the insights and pitfalls of buying and renovating an older apartment.

"If you are serious about purchasing an apartment, whether in an older style building or not, the most essential building or engineering issue to consider is that the building complies with relevant fire or other Building Code of Australia (BCA) requirements, including stairs and exits and relevant standards governing safety," said Ken.

"Consider if the building has any issues of deteriorated or dilapidated building elements, which can give rise to water penetration, rising damp or structural failure. Check if the building exhibits any signs of corrosion in the concrete or any of the building elements, and pay particular attention to the lintels over the windows and doors. Ask yourself does the building look like it needs to be repainted and has the external façade been adequately maintained."

John recommends his clients speak to the strata manager and get a feel and understanding of their, or the owners corporation, ethos and role in the building, and question the following:

- Are the strata levies up to date and is the sinking fund adequate?
- Has there been special levies raised in the last five years, and if so what were they for, and has the work been done?
- What is the general condition of the common property?
- Is the building adequately insured?
- What, if any, are the by-laws?
- What is the proportion of owner occupiers to investors?

Both agree that it's important to check if a building is Heritage-listed, as this can have a big impact on any modernisation or renovation that can be undertaken.

There are two levels of heritage listing that can apply to a property. The first, not as stringent, is a property of Heritage interest which will be listed with the local council; the second, of more significance, is a property listed with the Heritage Council of Australia as a Heritage property.

John recommends searching on the heritage database; www.heritagensw.com.au, or the relevant LGA website, where conservation areas and individual heritage items are listed.

It's important to note that many changes undertaken within an apartment building may require council approval, to ensure that the building is upgraded to satisfy the requirements of current standards. Applications for anything other than internal cosmetic work also require the approval of the owners corporation prior to any application being made to a local council.

John and Ken advise owners to always consult with their strata manager in the first instance if unsure about their responsibility to meet any legal requirements. They can also seek the advice of a suitably qualified building specialist, such as an engineer or architect, preferably one that has strata knowledge and experience.





“Usually, the most knowledgeable experts in this area are the engineers who design new buildings, who collaborate with local councils, architects and principal certifiers on a regular basis,” said Ken.

“Most of the problems that we see in an older style apartments during renovations is work or services that are non compliant with current standards or requirements. This can result in additional costs on top of any budget estimation when work needs to be re-done.

“Undertaking unauthorised works in breach of the Environmental Planning Act can result in being penalised up to \$50,000 or even conviction.”

John advised when budgeting for any renovation work to consider all the extra cost associated with upgrading of services, particularly electrical wiring and supply, plumbing, including hot water and exhausts from kitchens, laundries and bathrooms.

“Noise can sometimes be an issue in older buildings too. The windows are mainly part of the common property, but in older buildings, they often don’t work properly and in many cases can provide inadequate insulation from noise. Some older buildings also have timber floors and ceilings which transmit noise from apartments either above or below,” he said.

Inside Strata concluded by asking our two experts to share some of the high and lows they have experiences working in this area.

“A lesson in ensuring all work is compliant is a project we recently come across involving an upper level apartment in an old strata building.

“The roof structure over the lower level units was previously converted to being a trafficable deck for the upper level penthouse apartment. However, the sub structure was not constructed in accordance with the relevant codes, and it transpired it didn’t provide the necessary fire separation between the apartments or provide adequate water protection to the apartment below,” said Ken.

While John tells us that some years ago they we were called in to help gain approval to upgrade the foyer of the Culwulla Chambers in Sydney, a building that had been modernised in the 1980’s.

“We opened an access hatch in the false ceiling, which had been installed as part of the modernisation, and discovered the original ceiling, complete with the original gold leaf decoration, cornices and paintwork.

“We went to the Mitchell Library and found that they held the original architectural drawings from 1911; these drawings gave us sufficient insight and evidence to reconstruct the interior, modified in part to comply with the current provisions for fire escape, to its original glory.

“The owners corporation was delighted with the outcome and supportive of the process throughout, as the upgraded foyer was in keeping with the original building,” said John.

John concluded by imparting this last piece of advice; “work with the building, not against it. This will promote an outcome that is sympathetic to the building and the occupants. Older buildings may be more expensive to maintain than newer ones, but are often more durable too.

“Our recommendation is to simply always engage a good strata manager and to take their advice.” ■



PROFILE: STRATA MANAGER



Business Model Success

JOHN METCALF

Thirteen years ago John Metcalf was talking to the strata manager who was managing the strata plan he lived in at the time and from that moment, the investment banker realised that perhaps this was the something different he had been looking for in a career.

He joined Strata Partners which was undergoing an expansion at the time and has been there ever since. Now he is licensee and one of seven owner partners who both work on and in the business and to talk to him you get the feeling he couldn’t be happier.

“It was my time for a sea change - I wanted to get into my own business and being a strata manager seemed ideal at the time. What I have now is close to having my own business but with the support of six other partners and 30 staff. With over 60 years of collective experience at Strata Partners we have a great sounding board to discuss and resolve the many interesting and complex issues that appear almost daily” John said.

“We manage our own portfolios and look after properties mainly on the lower North Shore, extending to Manly and the Northern Beaches with others across the bridge in the city, Eastern and Inner Western suburbs. Our portfolios include a range of residential, commercial, industrial, community title and BMCs – from a couple of buildings of 2 to our largest of over 360 lots.”

John says this model of working on the business has been very successful and has resulted in Strata Partners’ strata managers forming professional, long-term relationships with their clients.

“We are helping people to manage their major asset and believe it’s important that they have that continuity with the same dedicated strata manager,” John explained.

“It’s also becoming more complex to manage buildings with increasing compliance and regulatory issues. The key to asset management, given the increasing complexity of building management is, according to John, the ability to act quickly.

“We teach our strata managers to put themselves in the position of the owner which helps them have empathy

for any situation that arises. We also try to encourage owners corporations to engage the right people and when necessary to engage professional advice from professionals such as consulting engineers, building consultants and specialist strata lawyers.”

John also has praise for the industry which he says is becoming much more professional with the ITSM playing an important role in lifting the profile and educational standards of strata management.

“Strata management is no longer just a job, it’s a profession with a career path. In the last 13 years it has changed dramatically,” he concluded ■



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Making everyone happy

What scenario is almost guaranteed to bring terror to the face of most strata managers? The answer is the one where the Executive Committee resolves that it needs to do some major building maintenance.

Whether you've managed one or one hundred building maintenance projects each one undoubtedly has come with its own challenges. From owners and tenants who would try the patience of a saint, to budget blowouts and tradesmen who disappear, never quite finishing the job.

More often than not the strata manager also ends up being the project manager and if you have a full case load, adding in the role of project manager can mean that one or more of your clients gets neglected while you are managing and juggling a building project. The solution to this is engaging a project manager. Companies such as Consolidated Project Management can take the headache out of building projects and enable strata managers to focus on what they do best. Jim Athanassiou, a director of Consolidated Project Management noted that "project managers can provide a professional value-added service for strata managers and owners corporations.. We act as independent consultants acting on behalf of the owners corporation with no affiliations with builders, contractors and so on. The benefit is not only do we take the headache out of managing a project we can also ensure we get the best price and experts to undertake the work."

A project manager takes on the overall responsibility for a project. They monitor all aspects, manage the scheduling of the works and foresee issues that could impact on the overall scope of the project and cause delays and/or cost blow outs.

"Having a birds eye view and also being experienced in managing a number of projects, means we are able to anticipate problems even before work gets underway," Jim explains.

"Calling a project manager prior to embarking on larger scale projects is a good idea as we can review the details such as the project cost and the timelines. One thing

we often find is that clients don't allow enough time or enough money to suitably complete their projects so we aim to provide a more realistic framework for each stage of the works as well as keep an eye on the program, budget and also quality of the works."

THE KEY SERVICES THAT A PROJECT MANAGER CAN PROVIDE ARE:

- develop scope from initial brief
- establish budgets, programs and time schedules
- source consultants and contractors via a competitive tender/quotations process
- manage design development
- prepare contract documents
- liaise with statutory authorities for relevant approvals
- manage the construction/upgrade process
- provide regular updates to the strata manager and owners corporation

If your owners corporation is spending a large amount of money which has been either raised through a special levy or comes out of the sinking fund, it makes sense to spend the extra to pay for a project manager who can look after the interests of the owners corporation.

"We understand the need to get the work done with the least possible disruption and project managers like ourselves are experienced in ensuring the operating environment continues to function," Jim said.

"Overall we can manage client expectations and understand the key for the strata manager is to ensure their client – the owners corporation – has a good, positive experience and at the end of the project are left with building works that meet or even exceed their expectations."

Next time you hear the words "we've decided to upgrade ..." don't reach for the headache tablets, instead call a project manager such as Jim Athanassiou and his team and ask them for help. You'll be glad you did. ■

PROFILE: STRATA SUPPLIER



Diving into strata

Andrew Walker

Andrew Walker loves his job. It seems to be something a lot of the Poolwerx people say about working for the company.

Andrew also understands the strata business and has a wealth of experience as a small business owner.

Since joining Poolwerx in 2006 he has worked at different levels in the company firstly as a Business Development Manager and then as the regional manager for Brisbane South. In April 2010 Andrew gave up the Queensland lifestyle to move to Sydney.

"A lot of people move in the other direction and go to Queensland," he jokes.

"But for me a great opportunity came up and now I'm the Regional Manager NSW and ACT."

With two direct reports, Andrew spends a lot of time managing and building relationships as well as helping Poolwerx franchisees grow their businesses.

"I do some business coaching and assist with systems and procedures. You could say that I cover every aspect of the business."

The area that Andrew excels in is his relationships with strata managers. When he first started with the company he was employed to develop relationships with the strata industry. He worked at a national level and has been involved in the strata and community title in every state in Australia.

"I have a good understanding of the industry and consumer issues regarding pools."

"One of the areas that the company is strong on is helping owners corporations to maintain their pools and plant equipment. This also assists strata managers with their

duty of care when it comes to pool safety."

Andrew notes the most important part of pool maintenance is keeping an accurate log which records the chemicals used and when as well as the results of each water quality test.

"Keeping these records up-to-date is essential because if someone falls ill and can trace it to the pool, the strata manager and owners corporation may find themselves in some trouble if the records have not been well kept."

One of the other things he points out is the need to keep other items such as pool fencing in good order and he is quick to stress the importance of getting advice to ensure the pool fence complies with the rules and regulations.

"Another thing people forget is to display a CPR chart – it's surprising how many pools don't have one yet it is mandatory."

Andrew is also a former small business owner and understands the responsibility that strata managers have as business owners.

Since trying the corporate world several years ago it's probably safe to say he'll be around as Regional Manager NSW and ACT for a little while yet.

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The Building Maintenance Dilemma

Peter Johnsson – President of the Australian Concrete Repair Association (ACRA) provided *Inside Strata* with this insight into building maintenance.



As an asset owner, the focus is on living in a nice place, with a big TV and a nice lounge and still having enough money to 'live the life'. As an investor, the focus is on reducing any capital expenditure on your investment property - unless it increases the rent!

These two goals are a little at odds with doing unplanned maintenance on your building, like when a big lump of concrete falls off a balcony or there a big bits of rusty steel which start showing up all over the outside of the building.

The key is planned maintenance, which can be budgeted into the property's expenses or the sinking fund.

This is particularly relevant for strata-title properties, where you are likely to find a mix of owner occupiers and investor's rental properties. If you know a bit about property investment, you'll know that special levies don't do an investor any favours at all. Of course, they don't do owner occupiers any favours either...

That's why knowing the current and predicted condition of the property is good asset-management practice.

A condition assessment report undertaken by an appropriately experienced specialist consultant/engineer can identify these issues well before they happen and recommend ways they can be avoided. A Quantity Surveyor can provide cost estimates of immediate and future maintenance and repairs. This can then all be accounted for in the strata levies with no big surprises or massive outlays of money.

When repairs or maintenance are required, it is important to again seek the advice of a specialist consultant/engineer to ensure that the technical quality of the works and the materials are such that you get the best value for money and the repairs last as long as they possibly can. These consultants can specify the works and oversee their implementation, taking the time and liability away from the DIY people.

Then, who would you choose to do the work? Someone from the local paper? Yellow pages? Your neighbour's mate? Or a company that has built a reputation, has a long history and that has passed a series of criteria laid down by the only building/asset repair organisation in Australia.

Membership of most building associations requires payment of a fee, but that may not mean that the company actually has the appropriate level of experience or that it has proven this to anybody other than their web page designer.

It is important to employ professional engineers and contractors that know what the problems are likely to be and how they are best going to be fixed.

Appropriate investigation, planning and quality work saves everybody money in the long run.

CASE STUDY Building maintenance, long-term solutions

The Australian Concrete Repair Association provided this case study courtesy of ACRA member Matthew Ball from Buildcorp Asset Solutions.

30 Moore Road, Freshwater is an eight storey 1960's building block of residential apartments overlooking Freshwater Beach. It's a concrete framed structure with brick walls and timber windows and doors opening onto balconies on the east elevation and open access walkways to unit entries on the west elevation.

Due to the age of the building, the location in an aggressive marine environment and lack of protection of the concrete elements there has been a need for regular and ongoing concrete spalling repairs costing tens of thousands of dollars on an annual basis. The owners realised they needed to seek a long-term solution to address this problem.

A full assessment of the structure was undertaken which revealed significant corrosion of the embedded steel reinforcement due to chloride ion ingress in the balconies, rear walkways, columns and car park levels. Based on this assessment of the concrete elements of the building, cathodic protection was chosen as a long-term solution to prevent further deterioration of the structure. Cathodic protection works by introducing a small electrical current to the reinforcing bars within the concrete which repels the chlorides and in turn, "cathodically protects" the steelwork against rusting. A well maintained system can provide anywhere between 25 – 100 years of protection.

To address water penetration problems through deteriorated timber windows and doors, and



to provide greater usable balcony space, all windows and doors on the front elevation were replaced with marine grade clear anodized, full height windows and doors. The glazing system was constructed on new concrete hobs which rectified existing water penetration issues. The new glazing along with new anodised aluminium balustrading provides the building with a modern and attractive appearance.

As a project of this size and complexity requires a building contractor who is qualified and experienced in projects and technologies such as this, the owners decided to award the contract to a company which held corporate membership of the Australian Concrete Repair Association (ACRA). Buildcorp Asset Solutions were awarded the contract on the quality and detail of their tender submission, including their innovative and alternative recommendations. Their experience in this field of repair meant they were able to give the owners the best possible solution whilst remaining cost effective. The contract period was 40 weeks was achieved, despite wet weather

delays and the client's request for additional work. This contract was carried out without the need for residents to vacate the building, due to the professional and flexible approach adopted by Buildcorp Asset Solutions in both the planning and execution of the contract. This resulted in an excellent relationship being developed between the project manager and the owners corporation building committee. The cathodic protection system on this building has been installed for four years now and continues to provide cost effective long term protection of the structure, avoiding costly, repetitive conventional concrete repairs. It is anticipated that cathodic protection will gain further acceptance as the only proven long term solution for concrete structures suffering deterioration due to long term exposure to marine environments.

For more information regarding ACRA, please visit the website www.acrassoc.com.au



BUSINESS TIPS

Save time through effective communications

If you find yourself forever putting out fires but aren't a fireperson then you may have a problem.

Working in a reactive environment is not for everyone, and even the NSW Fire Service is proactive in encouraging people not to engage in activity that could spark a fire...but, effective communications can help to head off any problems before they arise, and end up saving time as well as a lot of headaches.

In the strata industry all too often both strata managers and suppliers are so focussed on ensuring they stay ahead of the game, that they sometimes don't see the bigger picture. For some, better and more consistent communication may mean a shift in thinking, but it's worthwhile.

Being reactive in communications is necessary when a situation hits you unexpectedly, and this is sometimes unavoidable. By engaging in well-planned and effective communication, consistently and proactively, reactive situations can be less frequent and more easily managed.

Effective communication is all about being analytical, knowing your clients, your colleagues and your staff and working out the best way to get key messages across to them in the most effective way. Good communications will result in the right message getting out to the right people at the right time. To get you started here are ten tips for effective communications:

1. Be an assertive communicator. Get to know yourself and your style of communicating. If you feel you could benefit from being more assertive consider taking some assertiveness training, which may help perfect your communication skills.
2. Whether you are communicating verbally or through print, always tailor your communications to suit your audience and your relationship with them. Use words that will resonate, that they will understand, and use common references. Be warm but respectful.
3. Keep to the point. There's no need to be abrupt, but you do need to be concise and direct. Don't presume your listener knows all the facts, or has some psychic way of interpreting what's important.

4. Pay attention to the role body language plays in communicating your message. Be open and not defensive in the way you stand, hold yourself and speak.
5. Watch where you position yourself in relation to your client or colleague. Some experts believe our 'communications zones' are culturally programmed - but a new business contact may feel uncomfortable if you stand as close to them as you would a trusted colleague. Be sensitive about giving people space.
6. Listen, listen, listen. And then listen again.
7. Don't be afraid to ask questions if you don't understand or need further details. Remember a conversation is an interactive event, not a one-way dialogue.
8. It helps to end a business discussion by summarising the main points and the decisions reached by the participants. Clarity now will help save time further down the line.
9. Plan tricky phone calls beforehand by deciding (but not scripting) exactly what you want to say and the goal of the call. It helps to stand up and smile when making an important call.
10. Remember to give feedback to show you've been listening - even if it means summarising what they've said and repeating it back to them. Not only does this reassure the speaker that their remarks have registered with you, it also confirms that you have understood what they have been saying.

There are a number of communication tools available to help convey your messages. Email is an efficient way of getting a short message across, but remember, anything you write and send should be treated as a public document. It's best to always think about what you are going to say and avoid anything inflammatory.

Some executive committees are happy to communicate this way on a regular basis, but you should not limit all communications to email.

If you have always wanted to do a newsletter but can't find the time, ISTM offers strata companies (but not yet suppliers) a newsletter called Strata and Community Living, which you can brand with your logo and even include some articles. Alternatively you can just order the generic version; it's available online in web ready or printable format.

The aim is to get information out to lot owners that updates them on legislation, education and issues, with the bonus of making you look both proactive and positive by actively providing your clients with useful information. To find more information contact Lucy Byers at ISTM on 8904 0450.

WHAT MAKES A GOOD STRATA MANAGER?

By Sarah Judd and Hazel Easthope, City Futures Research Centre, UNSW

According to a recent survey of NSW executive committee members conducted by the City Futures Research Centre at the University of New South Wales, the most important factor affecting an executive committee's satisfaction with a strata managing agent is the time he or she takes to respond to calls or emails and implement decisions without needing to be 'chased up'.

Value for money was also an important factor, as were accuracy of documentation and advice, people skills and positive relationship, and knowledge and experience. Interestingly, a handful of respondents commented that their managers appeared to have too much other work to be able to give proper attention to their particular scheme.

THE MAKINGS OF A GOOD STRATA MANAGER

1. Responsiveness
2. Value for money
3. Accuracy of documentation & advice
4. People skills & positive relationships
5. Knowledge & experience

The survey sought the opinions and experiences of executive committee members across NSW. Although the sample cannot be considered representative of all executive committee members (413 people completed the survey), the survey produced many interesting findings that provide a useful picture of what works and what doesn't in strata. Some other highlights of the survey were:

Disagreements and Disputes

Two thirds of survey respondents had experienced disputes in their schemes, but the majority were resolved without formal measures (such as issuing a Notice to Comply, undertaking formal mediation or seeking an order from an adjudicator). Parking, noise, breaking by-laws and lot renovations were major causes of disputes.

Many respondents referred to the difficulty of reconciling different interests and opinions in decision making. Self-interest and undue influence - either by individuals or factions - emerged as the most commonly cited reasons for dissatisfaction with their executive committees.

TOP 5 REASONS FOR DISPUTES

1. Use of common property
2. Parking
3. Noise
4. Breaking of by-laws
5. Lot renovations

Defects

Nearly 70% of respondents had experienced problems with building defects in their scheme at some point, with almost half of all respondents citing current defects that had not yet been adequately remedied. The most common problem experienced regarding defect rectification was the developer or builder retaining control of the scheme and delaying rectification.

TOP 5 PROBLEMS IN RECTIFYING CURRENT DEFECTS

1. Developer/builder control
2. Builder no longer operating
3. Home warranty insurance claim being settled
4. Legal case ongoing
5. Incompetent or deadlocked EC

Information and Education

Strata managers were the most common point of call for executive committee members seeking information on managing their schemes. After that, most executive committee members surveyed looked to Fair Trading for information. The internet and other executive committee members in the same scheme or other schemes were also common sources of information.

Most respondents had not experienced difficulty accessing the information they needed to run the scheme successfully. However, three quarters of survey respondents thought that formal training for EC members would be beneficial, and more than half of respondents thought that the general understanding of non-EC owners of their right and responsibilities was less than satisfactory.

TOP 5 SOURCES OF INFORMATION

1. Strata manager
2. Fair Trading
3. The internet
4. Other EC members
5. ECs in other schemes

This survey was carried out as part of a larger project on the governance and management of strata schemes in NSW. To read more about this project, and to access the full survey report, visit: www.fbe.unsw.edu.au/cf/research/cityfuturesprojects/governingthecompactcity/





Why do I need to worry about asset management?

Peter Callaghan looks at the role strata managers play as asset managers and discovers a few interesting points.

Looking for an investment that's hard to beat? For many of us the term "asset management" means looking for an investment that's safe, has a proven track record and will provide a reliable income with little worry. Hopefully, someone else is going to look after it (for a modest fee). In other words it's a terrific product. It's the best place to put your hard earned cash! Trust me!

Well, have you ever thought that one of the best assets you have is right under your feet; and you already have a stake in its value. That's right – it's your own strata scheme; your own development. And the people best qualified to look after it is you and your fellow owners; most probably assisted by a caring and competent strata manager.

Let's remember that an owners corporation is created upon registration of the strata plan. Its role is to manage, control and administer the affairs of the strata scheme. Principally, the management of the strata scheme means in a very practical manner the repair and maintenance of the common property to keep it "...in a state of good and serviceable repair..."

But is this requirement sufficient? Perhaps it is just a little short sighted.

What we all really want is "asset management." Someone to protect our interests and to help us grow the value of the asset so that we can eventually sell and make some money out of it – or at least the kids will if it's property that is to be passed along.

As owners in a strata scheme we look for our property to be effectively and efficiently managed as follows:

- resources to be allocated in a way commensurate with the job to be done, especially in an environmentally sensitive community
- planning for future works so that unforeseen special levies don't send some of the owners into a tail spin
- regular feed back as to the condition of the development
- monitoring of all these activities so we can review and adjust our budgeting on an annual basis.

Not too much to expect you'd say. Enter the basic tool for achieving this result – the Sinking Fund Plan.

All strata schemes that came into existence on or after 7 February 2005 are required to have a 10 year Sinking Fund Plan for the life of the strata scheme. The Plan has to be reviewed every five years. The rationale for this amendment to the Act was to assist owners corporations to budget better, to think about their longer term major maintenance items so as to forestall the calling of "special levies." An owners corporation may undertake this review task itself or engage an expert to prepare the plan, with most preferring to engage an outside independent expert.

Most owners corporations take the recommendations in the plan into account when setting the Sinking Fund levy contribution. Some will adopt the findings of the plan in total and others will adjust to suit differing circumstances.

It's important the plan is not ignored. It's probably one of the best financial planning tools the owners corporation

will ever have. If certain parts of the report are not being adopted, then the reasons for doing so should be recorded.

George Vumbaca is highly experienced Strata Managing Agent. His business, Jamesons Strata Management on Sydney's lower north shore, has been providing specialised property management services for close to forty years. George holds very firmly to the view that owners corporations need to go further than just relying on the occasional building inspection or reacting when something has gone wrong.

“ IT'S TOO LATE WHEN A BALCONY HAS COLLAPSED TO RESTORE THE BROKEN LIVES OF PEOPLE AFFECTED BY SUCH DISASTERS ”

"Maybe in time the engineering profession will be able to include as part of the registered strata plan, a notation or similar guide for an owners corporation, to carry out an inspection of certain parts or features of the building to check for its structural integrity."

In the meantime, George says an engineer's inspection and report ought to be obtained more regularly; particularly when buildings are in higher risk areas, such as near the coast, for the early signs of concrete spalling or where built over difficult terrain, to ensure the underpinning is stable.

This is part of the asset management view - a more holistic approach –which will become vital, particularly for high rise and unusual developments.

Sinking Fund Plans used in this way are the basic tool for a more enlightened property management view.

"We need to use these professional reports in conjunction with our Owners Corporations to become more actively involved in the management of their asset," George advises.

Larger and more diverse developments with Building Managers and Building Management Committees may be in a better position to implement the scale of the works listed in these Sinking Fund Plans, but smaller strata schemes must adopt the same attitude.

The Sinking Fund Plan needs to be transformed into a Major Works Program with realistic time lines to carry out recommendations. These programs will contain more detail about the "how", "where" and "when" of doing the works.

It's a good idea to allocate this responsibility to one or two executive committee members to manage, follow-up and report back to the full executive committee. These members need to have a closer interest in and a sound understanding of the owners corporation requirements. They need to be responsive to them - a pro-active approach.

These qualities ought to be evident in the strata management company that services the needs of the owners corporation also.

At CB Richard Ellis, property management teams are built around the expertise of experienced technical personnel supported with the latest property management information systems. CB Richard Ellis is a leader in the residential and commercial property management field, both in Australia and overseas.

Mahi Ratnapala, Director, NSW Technical Services and Brett Langham, Senior Building Services Manager, have extensive experience in the field of asset management.

Both Mahi and Brett agree that the role of property management is often either misunderstood or undervalued in maintaining the market appreciation of a development.

"Too many times have I seen management pull back from important decisions due to their failure to properly plan for major expenditure resulting in dire cost escalation later on. Active property management maintains a building at peak operating capacity and ensures its longer commercial life delivering owners overall visible economic benefits," Mahi says.

"Sinking Fund Plans required by the Strata Schemes Management Act are an excellent tool for us to review. With our technical skills, we can transform the various components in the budget schedule into a meaningful major works program; these can be prioritised by the owners corporation."

Brett Langham's role is to ensure his property managers work closely with both strata managers and building managers to identify issues for attention before they become expensive major works.

"This requires us to have an effective reporting system in place and we make sure this information is communicated to strata managers and their committees on a regular basis."

Brett agrees that all Sinking Fund Plans need rigorous review.

"This is where we can help an owners corporation examine its major remedial works program and budget for it in a balanced way."

Brett's right - owners corporations are more content when there are no special levies for unforeseen events.

If funding is required urgently for any of these works, then various financial organisations are available to assist. Owners corporations should consider not only the cost of these works but the benefit of them in maintaining their primary asset. In other words, a well-maintained building will hold its value in the market place and be an attractive proposition for new residents and investors alike.

Keeping all this moving forward is the strength of the relationship between the owners corporation, its executive committee, building committee and strata manager. If there is clear and effective communication about the core role of asset management of the strata or community title development, then financial decisions are easier made because budgets have been implemented to raise sufficient funds to meet known major maintenance works.

Peter Callaghan is a past President, Life member and Fellow of the Institute of Strata Title Management.



Where to get maintenance help

Building maintenance encompasses a range of responsibilities, some are ongoing tasks which are done daily and some can be done every few years. *Inside Strata* asked suppliers who are involved in building maintenance for their advice on keeping strata title properties in tip-top condition. Important points to consider are accessing sinking funds and insuring the property for the right amount.



Sinking funds and finance

One of the most important areas to be covered is how to fund the required capital works. The Office of Fair Trading advises that a sinking fund is set up by the owners' corporation to cover the costs of future capital expenses which include, for example, painting the building, driveway refurbishment, lift overhauls and replacement of common property items like carpets, roofing and guttering.

All NSW strata schemes are required by law to have a 10-year plan in place. This means that owners corporations must plan for anticipated major capital works on the common property. In the annual budgeting process, they must make decisions about how they wish to fund those works and consider what is best in their particular situation.

What happens then when building maintenance is needed? Paul Morton, CEO of Lannock Strata Finance, told *Inside Strata* that owners' corporations should use the sinking fund first - perhaps keeping a portion back for contingencies.

"Sinking funds are the most expensive way of funding capital works in strata and are very inefficient for owners, so it's usually best to use those funds and then start proper and careful planning for the best mix of sinking funds, special levies or borrowing you will employ for future projects."

“ CONSIDER BORROWING AS IT IS USUALLY CHEAPER FOR OWNERS THAN A SINKING FUND ”

Paul believes that discussions about the relative merits of sinking funds, special levies and strata borrowing often miss the point.

"It's not a choice of three distinct funding alternatives, it's a choice between a small number of large levies (a Special Levy) or a large number of small levies (levies to a sinking fund or levies to service borrowing). There is a strong imperative to consider borrowing as it is usually cheaper for owners than a sinking fund," he said.

Whatever form of funding is chosen, it's important to work out whether the levies are affordable. But unlike buying a house or a car, capital works in strata are not discretionary - the owners corporation must repair and maintain the common property. A loan requires owners to make a large number of small payments over time. But if owners can't afford to service a strata loan, it's likely that they will not be able to afford sinking fund levies. And even less likely that a Special Levy will be suitable.

According to Paul, owners corporations should make very considered and informed decisions about the mix of funding that they will employ.

"Take into account the positive and negative attributes of each funding alternative and how it best meets the needs of that particular situation."

Getting an updated valuation

While on face value getting an updated valuation may not make it into the building maintenance category, it is certainly a regular duty and has everything to do with the fabric of the building.

CHU's John MacGregor says that it is a primary legal obligation and responsibility for every owners corporation to ensure that there is no dollar shortfall for the rebuilding or replacement of their apartment block.

"If there is a shortfall, then it is the responsibility of the owners corporation members to meet this financial shortfall," John said.

"Ultimately, this means any financial gap as a result of underinsurance can be met from the personal assets of the owners. This is an important legal obligation that not all owners fully appreciate."

Getting a regular valuation is important. John suggests two to three years as being a more practical period between valuations with annual increases made to the Sum Insured amount.

"This goes beyond the minimum legal requirements set out in legislation but we advocate this as best practice for a number of good reasons."

Valuations will often determine the amount of insurance that's in place so you need to remember the basis of the valuation is all important. The critical area to consider is the extent of the instruction given to the valuer, which if it falls short could lead to an inadequate level of insurance. It could also lead to both the owners corporation and lot owners looking to their strata manager for answers.

The law states that the building must be insured for 'at least' the value of the building indicated by the last valuation, which under the *Strata Schemes Management Act 1996* is required at least every five years. There are a number of factors that will affect the actual costs to 'fully replace' a building, especially over a five year period. All valuations make assumptions to arrive at the 'Recommended Sum Insured' amount, which is why there is no 'guarantee' that all costs will be picked up by the valuation. There is no cast iron guarantee because under the law, valuations provide a minimum figure at one point in time, are a recommendation only and contain a number of assumptions and 'unknowns', including:

- The type of disaster
- Under-estimation of reinstatement time
- Compliance to planning laws
- Escalation of costs
- Undisclosed additions

John advises that if strata managers have any doubts they should talk to insurers to make sure their clients' best interests are being looked after.

Painting – keeping it fresh

Regular painting is key to maintaining the upkeep and appearance of a building according to Les Robertson, Managing Director of Robertson's Painting and Decorating Pty Ltd. Robertson's are a multi-award winning painting and decorating company. They have





received accolades from the Master Painters Association of NSW, winning their Customer Service Award, Multi Residential Repaint and Domestic Dwellings Awards for consecutive years, as well as the Inner West Local Business Award for Outstanding Trades and Services for three years running.

Les says that depending on climate and environment the exterior of a building should ideally be re-painted every six to seven years and the interior every seven to eight years. This lick of paint will contribute to the overall maintenance of a building, and will particularly protect timber areas and reduce metal rusting which in the long-term reduces costs.

Telltale signs that your building may be in need of a re-paint are peeling and cracking of paint, or visible signs of rust. The repaint of a small strata building can be complete within seven days, with medium and larger multi-building complexes taking between three to six months.

Paint manufacturers are continuously developing new ways to reduce the environmental impact of their products, for instance by producing carbon neutral paints. The latest industry trend is towards high performance water-based coatings.

Two final pieces of advice shared by Les are: keep all paintwork as clean as possible as this will stop contaminants etching into surfaces; and remember to do regular "touch ups" to high-traffic areas.

Keeping it spick and span

Regular cleaning of an apartment block not only contributes to the overall appearance, maintenance and value of a property, but according to Frank Boross of Havencab, it can also promote a healthier and happier place to live, reduce the spread of germs and bacteria, and creating a sense of pride and wellbeing among residents.

Frank advises that any property housing over 100 lots should be cleaned at least Monday to Friday. If this increases to over 130 lots, this should be a seven days a week, 365 days a year job, depending on the location and prestige of the building and the owners' corporation's budget and expectations.

To benefit most from your cleaning contractor, Frank's advice is to have a regular service and always ensure a good and thorough scope of works is given at the briefing and tender stage. Owners need to be involved in this process.

"It's essential to check that any cleaning company has a good reporting and quality assurance procedure in place to monitor and sustain a good standard. Choose a reputable company that specialises in strata cleaning and compare all your submissions thoroughly. The cheapest quote is the cheapest for a reason!" Frank said.

When tendering a cleaning contract the building manager or strata manager should look to the building manual. This advises on the specifics of the building, including the materials, surfaces, equipment and how to maintain these surfaces.

"For example the foyer tile may be sealed with a special sealer and a certain type of product needs to be used, along with guidelines on the frequency that it should be cleaned and maintained. Unfortunately if you do not follow the manufacturer's instructions your warranty could be void," Frank said.

"This can sometimes be a challenge and we would urge those compiling the tender document to consider the full scope of works for the strata plan and cleaning requirements. It really does make a huge difference if our briefing comes from a professional who really understands the complexity of the building."

Understanding all the complexities and challenges experienced by strata managers and owners' corporations and developing procedures to address these and ideally exceed the owner's expectations can be a wonderful experience for all parties.

Garden and lawn care

First impressions count and if the building's exterior and garden are in top condition this will add value to the property.

Matthew Boorer, General Manager, Horticultural Landscapes Australia (HSA) says landscaping adds value to the aesthetic appearance and potentially rental and sales value to the properties inside.

"Gardens that are not maintained and are full of weeds and dead plants give potential buyers the impression that the building is uncared for and inadequately looked after," Matthew said.

Garden maintenance doesn't have to be a big job. Depending on the size and design of the garden it could require only a fortnightly or a monthly visit.

"Maintenance involves a range of jobs, including: lawn care; garden hedging and pruning; weed removal and control; removal of leaves, dead plants and litter; monitoring for pests and diseases; and regular fertilisation of lawns and gardens."

HSA has undertaken a lot of strata work and Matthew says that he aims to ensure that the gardens are properly designed, suitable plant species are selected and existing gardens are upgraded so that they work in with the overall vision.

A garden in good shape will turn heads and potentially make a building highly sought after which is great for the bottom line. ■

EDUCATION

Say no to plagiarism

ISTM is proud of its record of training entrants to the Strata Industry and we continue to evaluate and upgrade our programs to ensure we offer high quality courses that meet the demands of a strata workplace. An important component of this education is ensuring that students have understood the work they have covered and have been assessed as being able to take this knowledge back and apply it to their jobs.

A rigorous evaluation program ensures that students are competent and that they will be a credit to their organisations. Sometimes this evaluation process can overwhelm a student who has returned to a busy work schedule and a set of competing priorities. However an element of learning is the commitment a student must make to gain the qualification they need in order to work in their chosen field.

Students may draw on many resources when completing an evaluation, however it is essential that these resources are used in a responsible manner and that if work is taken from another source, that source is acknowledged and identified. It is not a demonstration of competence if another person has done the work and is not acknowledged.

When students fail to acknowledge another's work, and pass it in as their own, the result is what is referred to in education as plagiarism or 'cheating'. We don't like to think of ourselves in this way, but that's what it amounts to whether we do it intentionally or through some misguided intention.

ISTM takes plagiarism very seriously and has a policy against such an occurrence with a heavy penalty for students caught out plagiarising another's work. That is immediate failure of the course, no refund of fees, and a six months minimum exclusion from further courses or membership with ISTM.

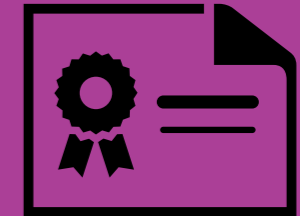
This can mean the difference between having a job and a career, or being out of work without qualifications as well as no references from your past employer. So think carefully about the work you hand in and make sure it's your own! It's your job at stake!

Will you be ahead of the game?

This year's Principal's Retreat is scheduled from 13th to 16th April in Queenstown, New Zealand. Information on this event has been sent out already and the response has been very positive. Numbers are limited so get in quickly if you haven't already booked! The program is currently being developed but we promise some very interesting and worthwhile speakers, topics and activities. In addition we should mention the breathtaking scenery that will make it hard to concentrate – but hopefully we will make the most of it.

More information is available on the ISTM website.

NEW COURSE FOR 2011



ISTM is very excited with its latest education offering for 2011. We have formed a partnership with our Queensland counterparts, CTIQ to develop our own Certificate IV in Property Services (Operations) with 100% strata content to be offered this year.

As part of this course, and to assist many of you who have been practising in the strata industry for years, we will be offering a recognised prior learning (RPL) option this year to those would like to consolidate this and become a fully licensed Strata Managing Agent

The course will be offered by correspondence so you can work at your own pace to gain qualifications, either for selected units which you may not be able to obtain through RPL, or for the whole course if that's what you need.

Alternatively, face-to-face learning will be offered in our North Sydney training room, commencing from 28th March. We expect this to be held one night a week, for four hours and spread over about 18 weeks.

For those who are just entering the strata sector, ISTM will continue running the regular Certificate of Registration course every second month. It is of course a vital component of the Certificate IV as it makes up three of the 21 units required for the NSW Licence qualification.

For more information or to register your interest in attending a course visit the ISTM website www.istm.org.au. or call 8904 0450.



Q&A

There's nothing harder than getting an executive committee to agree on anything ... apart from not spending money.

QUESTION 1

When our block of units was constructed the builder put the hot water heaters and air conditioning units on the common property roof. While this has been OK for a while we are now having to repair or replace some of them and need to know if they are the owners corporation responsibility or not.

ANSWER 1

Firstly, reference should be made to the registered strata plan. This will show if there are any notations by the surveyor who prepared the strata plan prior to registration whether these hot water heaters and air conditioning units are part of the common property or not. The next step is to check the Certificate of Title for the common property. This will reveal if there are any registered by-laws that specify the ongoing repair and maintenance responsibility for these items. It is possible each of the lots may have a special privilege to locate the water heaters and air conditioning units on the roof. If so, they may have the ongoing repair and maintenance responsibility for the granting of that special privilege.

In the absence of any registered by-law or surveyor's notation about the water heaters and air conditioning units on the common property roof, it then becomes clearer about who is responsible. As they are outside the lot and located on common property they presumably were in place at or before the registration of the strata plan. Accordingly they will be the responsibility of the owners corporation to repair/maintain or replace whenever necessary.

QUESTION 2

We have had an instance recently where the underground sewer pipes blocked up and four ground floor units were damaged by effluent. Is this an insurance claim for the owners corporation or an individual owner.

ANSWER 2

Any pipes, wires, cables or ducts that are not for the enjoyment of a single lot will be the responsibility of the owners corporation. It is difficult to foresee these types of instances and even though the owners corporation has the maintenance responsibility, it is also the responsibility of each resident not to use the services in such a manner that might cause blockages. This means disposing of items down the toilet system that should be placed in the general garbage.

Older terracotta sewer pipes often develop cracks or openings especially around the joins. If there are large trees in the vicinity sometimes the roots will find their way into the pipes and start to reduce the internal space making it more likely of a blockage.

Sewer blockages must be attended to without delay. Any resultant damage to common property may be covered by the owners corporation insurance. The policy details must be checked to see if this is the case.

If there is an accidental spillage inside an individual lot, then the lot owner's internal contents insurance policy will provide some relief for the cost of making good the damage. As the

owners corporation has no ownership of items within a lot, it is not responsible for a lot owner's goods. It makes good sense to have a contents insurance policy for your own possessions in the event of such an occurrence. However, if an owners corporation has to undertake works that affect a lot, the owners corporation is responsible for making good any damage so caused when the works are complete.

QUESTION 3

In our block of apartments one of the owners has a problem with the ceiling. There was some water damage from a roof leak and settlement cracks are also appearing. When the Executive Committee inspected the ceiling we noticed the ceiling sheets actually pulling away from the beams. The internal paintwork is naturally damaged and peeling away from the plaster as a result of these problems. Does the owners corporation have to paint the ceiling when it repairs or replaces the ceiling sheets?

ANSWER 3

The owners corporation is responsible for the care and maintenance of all common property. Common property is all the areas of land and building not included in any lot. So this means the common property boundaries of each lot are generally formed as follows:

- The upper surface of the floor (but not including carpet)
- The under surface of the ceiling
- All external or boundary walls (including doors and windows)

Generally speaking, common property includes vermiculite ceilings, plaster ceilings and cornices. In addition, structural cubic space is usually common property, unless the registered strata plan shows that it forms part of the lot.

In this case as damage has occurred to the common property ceiling affecting the lot, caused by say a defect in either the waterproof membrane or external damage to roof tiles allowing water to enter the lot, the replacement of the ceiling and any other work associated with the job is the responsibility of the owners corporation. Any part of the common property ceiling affected by the water damage, which is restored or replaced by the owners corporation, must be met from its funds. This includes the painting of the ceiling to match others existing within the lot to restore it to a condition similar before the damage occurred and the remedial works were undertaken.

QUESTION 4

Our strata scheme completed its first Sinking Fund plan three years ago and we have generally followed the funding recommendations in the report. However now some of the owners are saying this is not really necessary and we don't have to adopt the contents of the report at all! What would it mean if we now ignored the report and its findings?

ANSWER 4

All strata schemes that came into existence on or after 7 February 2005 are required to have a ten year Sinking Fund plan for the life of the scheme. The plan has to be reviewed every five years.

The Strata Schemes Management Act 1996 has made this a mandatory requirement. The plan takes into account the future capital needs of the strata scheme and is directed towards such items as the painting of the common property; the acquisition of any personal property; renewal of common property fixtures and fittings; replacement of roof, guttering, fencing, windows, doors, fire safety services, air conditioning plant, etc. An owners corporation may undertake the task itself or engage an expert to prepare the plan.

An owners corporation must present the Estimates of Expenditure at each Annual General Meeting so the lot owners may determine the levy contributions required to maintain the building. There is no set ratio between the amounts to be raised for the Administrative and Sinking Funds. However, a well prepared Sinking Fund plan will help the owners set a realistic levy, which will hopefully avoid the need for special levies at sometime in the future.

The recommendations contained in the report do not have to be adopted either completely or in part only. However, lot owners would need compelling reasons to ignore the Sinking Fund plan completely. If this were to be its approach it would be advisable to state the reasons in the Minutes of the meeting.

If there is a possibility the finances of the strata scheme would be adversely affected by not following the recommendations in the Sinking Fund plan, and owners are very concerned, then an Application to the Consumer, Trader and Tenancy Tribunal might be considered. An Order could be sought for the owners corporation to adopt in total the recommendations of the Sinking Fund plan and set a levy contribution accordingly.

The questions and advice in this article were prepared for Inside Strata by Peter Callaghan.



A lot has been written by many people about the responsibilities of the owners corporation to maintain and repair the common property. The simple answer is they have to do it – the problem is working out how, why and what can happen if they don't.

Under most strata and community title legislation throughout Australia, owners corporations (or body corporate) are obliged to maintain and repair the common property that services and belongs to all of the owners.

Over the years those legislative requirements have been reviewed by the Courts and Tribunals and whilst setting out the requirements for owners to follow the question still remains – how far do we have to go and how quickly?

To understand where we are we have to look at where we have been. There is a long standing list of cases under both the *Strata Titles Act* (as it then was) and the *Strata Schemes Management Act* that set up the basic obligations of an owners corporation in maintaining and repairing the common property.

The modern starting point is the case of *Seiwa v SP 35042* which was decided in 2006. The salient facts were that water was penetrating into lot space from a terrace area. The water proofing membrane was to blame (common property). As result the unit (lot) was uninhabitable due to the water penetration. The tenant moved out and the owner sued for damages. The Court in making its decision made a few important points:

maintenance & repair obligations

A BROAD PERSPECTIVE

- The duty was to maintain the common property but importantly not allow the common property to fall into disrepair and this was a strict obligation;
- There is an obligation to take preventative measures before there is a malfunction in the common property;
- The owners corporation's duty extends to remedial works to defects in original construction of the building;
- As soon as something is no longer operative (effectively or at all) there is a breach of section 62 of the *Strata Schemes Management Act*;
- Whether the owners corporation had taken reasonable steps is irrelevant;
- That contributory negligence (where the occupier and owner may have contributed to the problem) is not a defence for statutory duty (not in this case);
- That damages in the order of \$150,000 (approx) plus costs were made.

From this we can take that the Court was very strict in its interpretation of section 62. Many authors, including myself, have felt that the Court took the obligations too far in this case.

Since this decision cases in NSW, Victoria and Queensland have followed the basic principles found in *Seiwa*. In *Trevallyn-Jones v SP 50358* (2009) the Court found in making orders that the owners corporation did not take adequate steps in complying with its obligations to maintain the common property (but it did leave the door slightly ajar that an argument may be made out if the owners corporation had done more).

The Court went further in *Stolfa v SP4366* (June 2009) when considering the impact of section 65A on repairs and maintenance under section 62. Whilst the facts are relatively complex some assistance on some issues under section 62 are as follows:

- Section 65A applies to additions or alterations that will improve or enhance (and needs a special resolution) as distinct from section 62 which relates to repair and maintain only;
- Section 65A is concerned with regulating additions and alterations to common property other than repairs and maintenance;
- The works related to common property and even if works to common property may benefit one lot owner more than another this does not amount to a 'fraud' on the minority and they have to pay their share of any levy.
- Section 62 is an absolute duty to repair and maintain; and
- The duty extends to oblige an owners corporation to do things for the benefit of all lot owners, a majority of them or even only for the benefit of one lot owner more than any other.

However, in *Nicita v SP64837* (February 2010), the Court placed its heavy hand on the owners corporation. In this case the owners corporation had not done repairs for some considerable years and even after numerous complaints from the lot owner (including her undertaking some works herself) the owners corporation still did not repair the problems. In making its decision the Court held:

- That the owners corporation was in breach of its strict obligations;
- That the owners corporation ordered to do works by a certain date;
- That the owners corporation were ordered to pay damages for loss of rent;
- That the owners corporation were ordered to pay damages for works required to lot property (carpets, cupboards, tiles etc);
- The owners corporation required to pay loss of rent from judgement up until the date works were to be completed;
- Approved a total damages claim of \$234,206.20;
- The owners corporation to pay lot owners costs;
- Liberty to restore the case if works not completed by the required date; and
- Lot owner not to contribute towards owners corporation costs (exempt from levies).

Where does that leave the owners?

It is clear that the Supreme Court of NSW take a strict and harsh line to repairs and maintenance obligations. The practical problem is that all of the cases above are instances where the owners corporation has not done enough (in the Courts eyes) within a reasonable period.

There may be some hope in other cases that are relevant in other states and some that are running in NSW. There are cases in Queensland where the owners corporation (body corporate) have escaped the wrath of the Courts where they have acted quickly and with due diligence.

- In *Klinger v Costa D'ora* (2007 - QLD) it approved *Seiwa* but found that the body corporate could only be in breach once it was "aware" of the defect in the common property.
- In *Braewood Park* (2008 - QLD) it held (in applying *Seiwa*) that inactivity placed the body corporate in breach of duty. This would then suggest that maybe some activity may assist?
- In *Tower Mill Motor Inn* (2008 - QLD) it held (in approving *Seiwa*) that the body corporate should be given the chance to comply with its obligations before orders are made.
- In *Kitchener Place* (2009 - QLD) it held in declining to make order requiring work, that the body corporate should be allowed to comply with its obligations by having work carried out in the normal course of its management.

These arguments are now being used on recent Tribunal and Court cases as arguments that an owners corporation should be allowed to follow due process before orders are made. In *Batiste v SP 4021* (CTTT 2011) the owners corporation successfully argued before an adjudicator that in applying *Seiwa* there were still grounds for orders not to be made where the owners corporation had done everything within its power to comply and arranged for work to be undertaken (relating to window sashes).

What should the owners do?

The simple fact is, owners corporations should act fast when repairs are required. When something falls into disrepair the owners corporation has already breached its obligations so a regular maintenance regime should be in place to identify issues and set out a system of repair/replace or maintenance.

When you compare other sections of the legislation it starts becoming clearer where the Courts and Tribunals are heading. They are looking at what is the function of the owners corporation (to manage and administer the common property for the benefit of all owners), what is its obligations (to repair and maintain the common property) and then how to carry out those obligations (to prepare budgets and estimates of expenditure (section 75) including preparing sinking fund forecasts (section 75A)).

Inside Strata would like to thank Colin Grace of Grace Lawyers for providing this information.

What an owners corporation should consider doing include:

- Ensure procedures to follow up issues are maintained (and recorded)
- Consider maintenance programs not just the sinking fund forecast
- Consider funding options into the future
- Deal with issues/complaints as soon as possible
- Minimise risk where possible

Key Changes for 2011 in Workplace Law

By Joydeep Hor, Managing Principal and Amber Wood, Associate, People + Culture Strategies

Keeping abreast of key changes to your organisation's legal obligations is a simple but effective way to plan for the year ahead and minimise any unwanted legal fallout. A number of important changes to workplace laws have recently been introduced and are outlined below.

Introduction of paid parental leave

From 1 January 2011, employers can choose to "opt in" to the government's paid parental leave (PPL) scheme and may voluntarily administer PPL payments to eligible employees.

On 1 July 2011, the scheme becomes compulsory. Once an eligible employee is approved by the Family Assistance Office (FAO) to receive the payment, the employer will be notified and the FAO will make payment to the employer. The employer must then administer the payment to the employee.

The PPL scheme currently provides for up to 18 weeks' base rate of pay at the National Minimum Wage, which is currently \$570 (before tax) per week. Employers will not be required to make superannuation payments on PPL payments.

To prepare adequately for the scheme, employers should consider their current obligations regarding parental leave including reviewing any parental leave policies, industrial instruments or employment contracts and assessing whether these should be revisited in light of the PPL scheme.

Employers with an existing paid parental leave scheme in place should note that they are obliged to continue paying PPL under their own scheme in addition to the government's scheme where their voluntary scheme is made under an industrial instrument (including an employment contract).

Transition of State Awards to Modern Awards

From 1 February 2011, non-constitutional employers covered by Division 2B State Awards including sole traders, partnerships and other unincorporated entities in New South Wales, Queensland, South Australia and Tasmania will need to comply with the conditions contained within their applicable modern award, including any relevant transitional arrangements.

For most of these employers, this will mean significant changes to minimum pay and conditions. Employers are strongly encouraged to take a proactive approach in reviewing their obligations to ensure that they are compliant and to assist with a smooth transition for any payroll or administrative functions that may be affected.

Changed definition of "Small Business"

From 1 January 2011, a "small business" for unfair dismissal purposes is defined as a business with less than 15 employees calculated on a headcount basis which includes casuals employed on a regular and systematic basis and employees of associated entities. Previously, a business with less than 15 full-time or equivalent employees was classified as a "small business".

This change will impact the ability of some employees to bring an unfair dismissal claim as a 'small business' can dismiss an employee within 12 months without the employee having recourse to unfair dismissal, while other organisations can face unfair dismissal proceedings once an employee has completed a six month minimum employment period.

The changes will also mean some businesses may now be subject to the Small Business Fair Dismissal Code, which small businesses must abide by when dismissing any employees. It is therefore wise for any organisations in doubt to ascertain whether they meet the definition of a 'small business' and review their obligations under the Code.

Amendments to GEERS scheme

The General Employee Entitlements and Redundancy Scheme (GEERS) operates to compensate employees whose employment has been terminated due to the liquidation or bankruptcy of their employer. Previously, employees could claim a maximum of 16 weeks redundancy pay. As of 1 January 2011, eligible employees can now claim redundancy payments in accordance with their entitlements under the relevant legislation, award or employment agreement, to a maximum of four weeks for each year of continuous service. Further, in some circumstances, eligible employees may claim up to three months unpaid wages, as well as annual leave and long service leave entitlements and up to five weeks payment in lieu of notice.

People + Culture Strategies is a specialist workplace law firm advising employers across all industries and works with several Strata Management clients. Further assistance can be provided by contacting PCS on (02) 8094 3100.



When reducing greenhouse emissions saves money

Verge apartments at Wollie Creek had only been built around three years prior to an Executive Committee decision that it was time to do an upgrade. You may think this was a crazy decision but this was no ordinary upgrade and it was designed to save money.

The catalyst for this upgrade was the ever increasing cost of electricity. For Verge apartments this represented a significant proportion of the annual budget – calculated at around 15% of the operating costs.

Verge's strata manager, Marc Gibson from Strata Plus said that in late 2009 the Executive Committee decided to find a way to reduce the electricity consumption and therefore the costs, by installing a voltage reduction unit called the Light Eco System.

"The carpark and fire stairs were the target areas for the upgrade. In a nutshell, the power consumed for the fluorescent lighting, which requires 240 volts to start up, was reduced using this system. The only negative was a slight reduction in light output," Marc said.

For the Executive Committee the decision was a bit of a no brainer. Chair Lynley Thomson said the initial expense of changing to the new Light Eco System involved intensive discussions.

"For the 88 apartments, three commercial shops and a car park, this was not an issue and they welcomed the opportunity to reduce energy consumption and the associated costs."

"We were particularly interested in how the new system would reduce the ever increasing utility costs incurred in our mainly residential building," she said.

"Apart from the cost factor, we take enormous interest in all environmental issues whether lifestyle or commercial and hope that what we have done acts as inspiration to others to take this common sense decision."

The Light Eco System works to reduce the power used by fluorescent lights by putting the lights into economy mode once they have been turned on. This regulates the power drawn by the lights.

"The thing people don't realise about fluorescent lighting is that the power needed to turn the light on is higher than the power needed to maintain the lighting level," Marc explained.

"Light Eco uses an autotransformer to switch from normal to economy usage and after start up this switches to the reduced voltage."

Power savings are potentially 30 percent and other benefits are a reduction in temperature and longer life for the light globes, ballasts and fittings. All of this was very attractive to the Executive Committee making the decision to go for it very easy.

The bottom line of course was very important. Investigations were undertaken and the estimated cost of installing Light Eco was just under \$5,000, which was very attractive considering the annual saving in costs for electricity was around 25 percent each year. For the Executive Committee this meant the system would pay for itself in around four years. Compared to putting this money in a fixed-term deposit at six percent this is a very good return.

"The best thing about undertaking this project was the decision for the Executive Committee was easy and while it was about driving down costs the long-term benefit is the reduction of energy consumption," Marc said.

Developers of new properties take note – there is a drive out there to create living environments that have a reduced carbon footprint. Ultimately good construction that addresses environmental concerns is going to be more attractive to savvy buyers than the bells and whistles offered in new builds at present.

We hope to be hearing more from Verge apartments in future about other changes they have made.



Bill's on target

ISTM Board Member Bill Coles is part of the gold medal winning Australian A Team that used Air Arms EV2 to take out the World Air Rifle Benchrest Postal 2010.

Congratulations to Bill and his team.



Strata by numbers

Data from Lands and Property Information NSW shows a gradual increase each month in the number of strata schemes registered as at 31 January 2011.

The total number of strata lot folios as at 31 January was 707,812

Lot Size	Feb-10	Feb-11	% Growth	% by Size
2	19,377	19,754	1.9%	28.3%
3-5	16,465	16,736	1.6%	23.9%
6-10	15,773	15,938	1.0%	22.8%
11-20	10,586	10,695	1.0%	15.3%
21-50	5,025	5,118	1.9%	7.3%
51-100	1,071	1,101	2.8%	1.6%
101-200	424	431	1.7%	0.6%
201-500	113	117	3.5%	0.2%
>500	6	6	0.0%	0.0%
Total	68,840	69,896	1.5w%	

ISTM contacts

Need some assistance with membership? Want to advertise in *Inside Strata* or have an Education inquiry? Who you gonna call?

Contact Lucy Byers for events, sponsorship, advertising and Strata and Community Living

Ph: 02 8904 0450
Email: Lucy@istm.org.au

Contact Margaret Cameron for all education inquiries

Ph: 02 8904 0450
Email: Margaret@istm.org.au

Contact Jessica Tate for all membership related inquiries including how to join or renew your membership

Ph: 02 8904 0450
Email: Jessica@istm.org.au

You can also contact ISTM's Editor, Jennifer Ross for stories, letters and advertising

Ph: 02 8078 6925
Email: Editor@istm.org.au

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