№15 NOVEMBER 2014

StrataVoice

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A win for builders, yet another blow for owners

Density is not a dirty word

Building Defects - What Rights Do Strata Owners Have?

Saving big bucks is easy in your apartment building

Storm Clouds Gather for Owners Corporations

House price growth weakens - but Sydney still strong

Proxy Farming in Strata

ABN lift consultants

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A NEW VOICE FOR STRATA LIVING
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Building Defects - What Rights Do Strata Owners Have?

Karen Stiles, Executive Officer, Owners Corporation Network of Australia

In the March 2014 issue of Strata Voice, I outlined proposed reforms to the strata Schemes Management Act and the Home Building Act.

After more than two years of consultation the Owners Corporation Network (OCN) was quietly confident the government would deliver good public policy.

Sadly, in November 2013 we lost the Fair Trading Minister championing these changes, and who nurtured unprecedented dialogue between industry and the community. The energy sector's gain is strata owners' huge loss.

The new Minister was in office until April 2014, when another Ministerial reshuffle brought a third Minister to office.

The strata landscape changed dramatically.

The 2014 reforms forced through parliament despite concerns raised by the opposition, Greens and independent members removed almost all owners' rights to require shoddy building work to be rectified. The government's intention to reduce unnecessary litigation will be met, not by requiring the construction industry to improve its practices, but by muzzling innocent home owners.

The 2014 Regulations do nothing to stem the loss of owners' rights. Despite unanimous agreement of all stakeholders that the two endemic (and hugely difficult and expensive to fix) defects, waterproofing and fire safety equipment, would be specified as Major Defects, the government is unwilling to do so.

To add insult to injury, the definition of Major Defect is so onerous – it must cause the building to be uninhabitable or destroyed – that thousands of legitimate claims will be wiped out overnight. Leaving innocent owners with a legal, financial and emotional nightmare.

This will take place, retrospectively, on 1 December 2014 unless the government changes the proposed commencement date.

While all of this is happening with unseemly haste, the government has put the positive strata reforms, including the 2 year defects inspection and 2% defects bond, on the backburner until after the March 2015 election.

The promise of shifting the focus from litigation to speedy defect rectification has not eventuated. Instead, the government has delivered a windfall to shoddy builders, and in so doing done a major disservice to the good builders who are often undercut by cost and quality cutters.

With 3.2 million Australians now living in strata, and a further 1 million owners predicted to move to this form of housing over the next 10 years, the construction industry is booming.

This is a disaster of major proportions in the making.

It's time the NSW Government stopped favouring political donors and showed genuine interest in protecting owners from shoddy building practices. By doing so they will help to sustain the growth of the industry into the future.

Right now, I could not in all conscience recommend buying into a new building.

Measures in the Bill	**Winners / Losers**
Date of completion for strata schemes (section 3C)	Strata owners will now be able to identify when their warranty periods expire and how long they have to resolve issues before commencing litigation. The construction industry will have more opportunity to resolve matters prior to litigation as strata plans will no longer be forced to commence proceedings as early as possible to minimise time limit risks. The community generally will benefit from the reduction in the Tribunal's and the Courts' workload due to more strata plan defect issues resolving prior to litigation.
Raising the contract value threshold for the full contract consumer disclosure requirements (instead of the small jobs contract requirements) from $5,000 to $20,000. New maximum deposit and progress payment requirements.	The contract value threshold changes benefits builders to the potential detriment of consumers of residential building works worth less than $20,000. OCN accepts that this change is reasonable. The increase in the maximum deposit benefits builders to the potential detriment of consumers. OCN accepts that this change is reasonable. The new progress payment requirements should generally benefit all stakeholders.
Clarifying that the statutory warranties apply to subcontractors	This simply highlights the existing legal position under the HBA which is probably not as widely appreciated by subcontractors as it should be.
Owners duty to mitigate in relation to the statutory warranties (section 18BA)	The requirement that builders and developers be notified of defects within 6 months of becoming apparent goes further than the common law and may become a new defence for dodgy builders. The requirement that owners must not unreasonably refuse a person access for the purpose of repairs arguably goes further than the common law.
Major defects definition (section 18E)	Consumers are very substantial losers under this proposal and owners will have to meet substantial costs to repair many defects themselves. This protects the construction industry from responsibility for shoddy work and will increase the prevalence of building defects. This change is retrospective.

Defences (section 18F)	Builders and developers are very substantial winners particularly given the ease in which the proposal for a new defence and the subtle change to the existing s18F defence can be exploited by contract structuring. Consumers are very substantial losers. Defect disputes will be more complex, more costly, take more time, and involve more cost order risks due to the need to join more parties. Further, consumers will have no redress when a section 18F defence applies but the consumer has no cause of action, or is already out of time against the person who gave the relevant instructions, or that person is entitled to a proportionate liability discount, or is simply insolvent and uninsured. Other construction professions such as architects, engineers and project managers are substantial losers. The finger will be pointed at them more regularly and they will be drawn into a substantially greater number of defect disputes than they presently are. Courts' workload will be greatly increased as relatively simple disputes about the extent of the defects become complex multi-party and multi cause of action liability disputes.
Numerous amendments tinkering with contractor licencing requirements.	These give the government a greater ability to 'weed out' bad performing builders and builders with a history of obvious phoenix company behaviour, which will benefit consumers. However, little change will result if the government does not properly resource their application and enforcement. Good builders will benefit as these provision will hopefully restrict competition from the corner cutting builders that undercut them.
Rectification by original builder the preferred outcome of proceedings (section 48MA)	OCN supports a new focus on repairs based resolutions if owners are provided with appropriate protections against the repairs turning out to be further shoddy work by the original builder. That requires amendments to the Bill so that builders and home warranty insurers are accountable for the adequacy of an original builder's repairs and it is subject to a reasonable right of refusal. Without those amendments, OCN strongly objects to this provision which will simply be a tool to reduce builders' and developers' liabilities at the expense of consumers. Without such amendments, the construction industry will substantially gain to the detriment of consumers. Owners will be forced to give up their warranty rights in return for the original builder carrying out repairs without being responsible for the adequacy of the repairs and with the owners also losing any realistic possibility of claiming upon the insurance after the faulty repairs fail due to the 10 year long stop on HWI claims against private insurers.
Extending the original HWI to cover repairs carried out by original builders (section 92).	This provision extends the original HWI to cover repairs carried out by an original builder. That is presented as a substantial benefit to consumers, but will be a false comfort in the usual event where the repairs are carried out towards the end of, or more often, after the end of the warranty period. Unless the date of completion for repairs is extended, or the 10 year longstop for claiming upon private insurance policies (s103BC) is removed or clarified so that it does not apply to failed repairs, the timeline for repairs carried out 6 years after completion will then be: • 6 to 7 years: repairs carried out; • Repairs begin to fail at a later time; • Owner tries to sue the builder a second time for the failed repairs; • Even if the Court agrees to not require further repair attempts by the original builder, the owner may need to proceed to judgment; • (Possibly deal with any appeals by the builder (each typically takes a year to be finalised); • (Depending on when the insurance policy was issued) Wait for the builder to not pay, then issue a demand, then commence and complete bankruptcy or wind-up proceedings; • all before the owner can claim upon the HWI. Even if the repairs fail before the 10 year long stop has expired, all of the above will not be completed before the 10 year long stop runs out leaving the owner with no HWI rights despite the owner reasonableness in allowing the original claim to be resolved by the original builder carrying out repairs. The timeline is of course even more impossible for owners if the Court requires further repairs by the original builder in the second proceedings seeking justice for the failed repairs. With other proposed amendments, this provision can be a very positive reform for owners, removing a traditional point of resistance to providing access to a builder to carry out repairs. Without those amendments, this provision will merely be a tool to force owners into trading their warranty rights for repairs by the original builder without appropriate protection against repair adequacy issues.
Register of insurance particulars	This assists consumers in identifying forged HWI certificates before purchasing a dwelling. However, it does not address the more prevalent problem of a valid certificate of insurance being issued for work to be done by a particular contractor with the work then being done by a different contractor or the insured contractor later fraudulently denying that it did the work, or the defective part of the work, to avoid liability in the hope that the owner (who was not there during construction) cannot prove otherwise. The Bill does not attempt to address that illegal work or fraudulent denial of works carried out issue.

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WFI offers insurance plans for commercial and residential strata complexes. Adding to their existing range of rural, business and home and car insurance, WFI are pleased to provide you with a choice when it comes to such a specialised form of insurance.

WFI took a close look at the needs of strata owners before introducing their insurance plans for commercial and residential strata complexes. Listening to clients and understanding their insurance needs has helped WFI to develop a range of strata insurance products that offer flexibility and choice for strata managers and body corporates.

WFI's strata insurance plans consist of a range of individual policies from which you can choose to meet the requirements of your strata complex. This approach provides flexibility; meaning if your circumstances change and broader insurance cover is required, it is easy for you to integrate additional policies to your plan.

Tailor your strata insurance

Many building owners and managers often fall into the trap of believing that one size fits all when it comes to purchasing strata insurance. The fact is that strata buildings and developments vary enormously and it's important to make a choice that best suits the requirements of your commercial property.

Choosing an insurer with a wide range of policies allows you to select insurance cover that best suits the requirements of your individual strata complex.

The WFI Commercial and Residential Strata Plans each consist of seven different policies covering a wide range of risks that building owners should consider when thinking about their insurance needs:

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- Machinery breakdown
- Electronic equipment
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- Strata council member legal liability

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Saving big bucks is easy in your apartment building

By Nicola Saltman, sustainability professional and freelance writer at The Good Type

There's a lot to love about high-rise living. You don't have to worry about mowing the lawn, fighting for a park, and if you're lucky, you have access to a pool. Better yet, you may even have a view.

There can be a downside however – the hefty strata levies, including rising power bills that shrink your budget each quarter. Wouldn't you like apartment life more if you knew how easy it is to slash big bucks off these running costs?

The opportunity

Up to half of a building's total energy consumption is in common property, with some Owners' Corporations spending over $100,000 for shared power use each year. Think foyer and fire stair lights, car parks, air-conditioning, lifts, pools, and central water heating. With simple and cost-effective energy efficiency upgrades, it's been shown that apartment buildings can cut 30-40% off energy bills.

'Energy is the best kind of strata problem, as it's the only one that can actually save strata money by spending money,' says Christine Byrne of Green Strata, a not-for-profit organisation which helps apartment owners improve sustainability in their buildings:

Making your block energy efficient also helps to protect you from future electricity price rises and adds value to your property. Buildings with lower running costs do enjoy higher returns on rent and sale. Plus, they tick the green box in having less environmental impact.

So, where are the quick big wins?

Lighting

Fast to implement with payback periods as short as 6 months, changing lights to low-energy alternatives is a 'no-brainer'. Carpark lighting alone can account for up to 50% of power use.

At Epica building in Chatswood over 500 fluorescent tubes were replaced with LED tubes in the carpark and fire stairs. Quality LEDs can use up to 90% less energy than standard fittings, and last much longer. The bill savings offset the initial cost within two years, with $50k extra in maintenance savings from not having to change the lights as often, happily explains Gerry Chia, Secretary of Epica's Executive Committee.

You may also be eligible for upfront discounts for lighting projects via State-based government incentive programs, such as the NSW Energy Savings Scheme.

Carpark ventilation

Another easy get is in carpark ventilation equipment, says Ethan Burns, Director of Sustainability Now consultancy, who has worked with over 300 strata buildings to identify and capture savings opportunities. He's noticed many carpark fans are either run 24/7, or operate on timers that don't accurately reflect when fans are needed. By installing carbon monoxide monitoring in the carpark and regulating the speed of the fans for ventilation, buildings can save big, with costs paid off in a few years.

Switching off

Aside from carpark fans, other equipment is often left on unnecessarily without anyone realising it. This was the case for Capella building in Kensington, until a Sustainability Now audit revealed a constant load coming from the pool, redundant water heaters in the basement plus lighting – even for long periods of disuse.

Installing a push-button for lights in garbage rooms, LED sensor lighting in the fire stairs and by switching off the pool and water heating has helped cut 35% off their annual $100k power bill. Alongside lighting retrofits, the total capital outlay to the Owners Corporation was $50k, 'but', says Capella resident and Executive Committee Treasurer Deborah Chowns, 'each year we've made $30-40k in savings, so we're now reaping the benefits.'

Electricity prices

Easy wins can be a simple phone call away to your energy provider - you may actually be paying more for electricity than you need to. According to Gareth Huxham, Director of Energy Smart Strata consultancy, 'a big issue for apartment blocks can be in not optimising electricity retail rates, meters and tariffs'. Sites that consume between 100MWh and 160MWh electricity each year can now access large market contracts and achieve greater cost savings. Smaller buildings can also shop around suppliers to get the best deal.

Antias building in Pyrmont Sydney, for example, is saving around 20% on power bills since Huxham ran an energy tender for them. Some strata managers, like Bright and Duggan Strata Professionals, also run auction processes to get the best pricing for owners.

So, where to start?

Byrne says the first step is to understand your energy bills, what you are paying, and where the energy is being used in the building. You can organise a professional energy audit that can identify the opportunities, as well as provide costings and payback information to work out the most cost-effective projects.

'Consultants are tailoring information for different clients at the right price point', says Byrne, so it needn't cost more than 3-5% of the building energy bill. Some consultants will also help source and evaluate suppliers' quotes for projects, which is handy if in-house time and experience is limited. Strata managers may offer a value-add service in facilitating these processes too.

There are also free online tools and information to help you do a basic walk-through audit with which to seek quotes from suppliers, such as Smart Blocks (www.smartblocks.com.au). Smart Blocks is an award-winning national initiative set up to help apartment owners and their managers make energy savings in common property. Already over 460 buildings have joined in the last 18 months, with 230 projects underway.

Making decisions

As you may well know, getting Executive Committees or Owners' Corporations to agree on spending money when it's not an emergency can be a huge headache. That's why having a strong business case is your secret weapon. An expert report with a compelling cost argument can be worth its weight in gold, suggests Chowns from Capella building after getting projects over the line without opposition, off the back of Sustainability Now's professional analysis: 'When you start talking significant savings, you get people on board'

'A well-articulated independent report can also help to prioritise initiatives for owners to determine where to best spend money initially, and what to budget for in the longer term', says Chris Duggan of Bright and Duggan Strata Professionals. Tackling the low-hanging fruit first, like lighting, can be a sure-fire way to show great results to decision-makers and convince them to consider throwing funds at larger projects next time.

To help guide strata owners and managers through this often-complex governance process, Smart Blocks provides online access to tools and templates, such as business cases, letters and resolutions. Smart Blocks also encourages collaboration with your fellow unit-owners. 'It's important to try not to do it alone; invite people to join you', says Sarah Johnson, National Coordinator.

After all, having good neighbours has got to be another highlight of apartment living.

Find out more

- Green Strata for info and case studies - www.greenstrata.com.au
- Smart Blocks initiative - www.smartblocks.com.au
- Sustainability Now - www.sustainabilitynow.com.au
- Energy Smart Strata – www.energysmartstrata.com.au

Note to Strata Managers: Smart Blocks is starting to develop a framework with strata companies. To register interest, email info@stratabocks.com.au.

REDUCING ENERGY WASTE MEANS BIG ENERGY SAVINGS

By David Howard of Partners Energy Management.

Rising energy prices are just one aspect of high energy costs. Prices only highlight the problem, with the real issue being energy waste. In Strata buildings there are many areas where poor or old technology, ineffective equipment and a drop off in maintenance programs result in significant energy waste. If this waste is reduced then the Strata's energy bills will be reduced significantly. Tariffs and buying prices are an issue but not nearly as important as getting the best out of the energy we purchase

Winners in reducing energy waste in Strata buildings are:

- Modern LED lights with control devices such as motion and daylight sensors
- Efficient technologies for heating water for both domestic use and swimming pools
- Efficient car park lighting and ventilation
- Effective control of hot water, lifts and air conditioning systems
- Energy monitoring devices to better manage an energy reduction program
- Efficient pumps and motors

Government studies demonstrate energy savings of between 15% to 35% are achievable through simple upgrades and energy savings of 48% could be easily achieved with a payback of 2 years". (NSW Government Energy Smart Strata Program). These published outcomes clearly demonstrate the effectiveness of an Energy Audit and an Energy Savings Plan. Energy buying price will always form part of such a plan but will only create a small saving relative to realising other opportunities. In particular large savings can be made in underground car parks where lighting and ventilation can account for up to 40% of the electricity costs.

When seeking advice on energy efficiency it is important to ensure the consultant is unbiased and independent and can give you a plan that covers all cost effective options and a timeline that fits the budget. Another important factor when choosing a business to deal with is that they have a record of effective communication with Strata Managers and Owner Corporations/Body Corporates. The information needs to be easily understood to ensure informed decisions can be made by all parties.

Partners Energy, an energy consulting company, has vast experience with reducing energy bills at strata sites of various sizes across Australia. By working with account managers and strata owners Partners Energy has saved strata groups tens of thousands of dollars.

Partners Energy offers independent, effective solutions to the problem of high energy costs and as experienced Electrical Engineers practicing in the field for over 40 years we guarantee our results. Contact us on (02) 66286528 or visit our website at www.partnersenergy.com.au

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Andrew Harris - Chairperson
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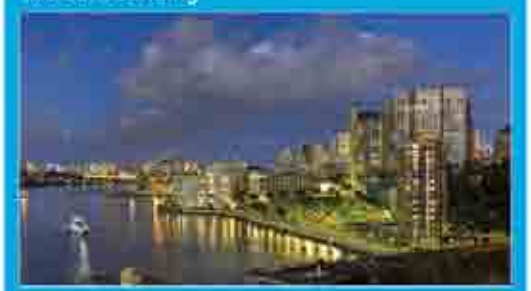

Walsh Bay Apartments

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A win for builders, yet another blow for owners

By Amanda Farmer, Director, Lawyers Chambers on Riley

The High Court has found that there is no duty of care owed by a builder to an owners corporation in respect of pure economic loss flowing from latent defects in construction work: Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 [2014] HCA 36 (8 October 2014).

The building in question was a mix of retail, restaurant, residential and serviced apartments, constructed pursuant to a contract made in 1997 between Brookfield Multiplex ("Builder") and Chelsea Apartments ("Developer"). The building was completed in 1999.

The Owners Corporation sued the builder in 2008 in negligence, seeking the cost of rectifying alleged defects in the building.

The part of the dispute which related to the residential section of the building was settled between the parties early on. The Owners Corporation continued to press its claim in relation to the serviced apartments.

In 2012, the Supreme Court dismissed the Owners Corporation's claim, holding that it was not appropriate for a judge at trial level to impose the novel duty of care which the Owners Corporation was seeking.

In September 2013, the NSW Court of Appeal unanimously allowed the Owners Corporation's appeal, finding that the Builder's duty of care to the Developer extended to the Owners Corporation as agent for the lot owners, who were found to be in a "vulnerable" position. The Court of Appeal confined the duty to loss resulting from latent defects which were structural, dangerous or made the serviced apartments uninhabitable. Our summary of that case is here.

Yesterday, in a unanimous decision, the High Court overturned the NSW Court of Appeal's decision, upholding the Builder's appeal.

In the particular circumstances of this case, the High Court came to its conclusions because:-

the Owners Corporation was claiming for pure economic loss only. That is to say, the defects which the Owners Corporation identified in the common property were not alleged to have caused any damage to person or property. Rather, it was claimed that the ultimate purchasers of the lots had failed to get "value for money" from the Developer.

In cases of pure economic loss, the plaintiff must prove that it suffered from some form of "vulnerability" – which can include that it was "reliant" or "dependent" upon the defendant. In this case, the Owners Corporation was not able to prove the necessary vulnerability, because:

(a) the Builder and the Developer made contracts for the construction of the building and, later, the Developer and the subsequent lot owners made contracts for the sale of the lots. The contracts contained provisions regulating the quality of what was to be received in return for payment of the price. The way in which those contracts were drafted denied any vulnerability.

(b) a distinction was drawn between "consumers" who purchase residential units and are granted protection under the Home Building Act and more sophisticated "investors" who purchase commercial properties such as serviced apartments. Greater protection is afforded to the consumer than the investor.

(c) the Owners Corporation could not have relied or depended upon the Builder, because the Owners Corporation did not exist at the time the work was being carried out. It only came into existence upon registration of the strata plan, which occurred after completion of the work. That is also a reason why it cannot be said to have suffered any real 'loss'. The Owners Corporation acquired the common property without any outlay on its part, and the common property will always be worth more than the cost of repair.

Whilst specific to its own facts, this case narrows again the avenues for owners corporations – particularly in non-residential buildings – to seek redress and compensation for defective building work. In delivering his part of the judgment, Justice Gageler noted: "If legal protection is now to be extended, it is best done by legislative extension of… statutory forms of protection." It is a pity that in NSW, the legislature is currently doing the exact opposite, at least when it comes to residential buildings. See our summary of the proposed Home Building Act amendments here.

Proxy Farming in Strata

Posted by Michael Pobi on Sep 25, 2014 in Papers

What is Proxy Farming?

Proxy farming, also known as proxy harvesting or stacking votes, is a process where one or more owners in a scheme (the proxy farmer(s)) tell other owners in the scheme that their proxy form is required to either support a particular cause, whether that be to vote in favour of a motion or vote against it. The proxy farmer then submits the signed proxies to the chairperson of the owners corporation (i.e. the stack of proxy votes) which in turn grants the chairperson the kind of powers that the strata legislation never intended.

It has been said that proxy farming kills the democratic process in strata schemes by giving one or more owners dominant control over the meeting and decision making process. Sounds unfair right? Depends which side of the fence you sit. Given that proxy farming is a frequent occurrence, many meetings turn ugly due to proxy farming and can result in distrust and disconnection between owners in a scheme.

Can I Stop Proxy Farming Within My Scheme?

Unfortunately proxy farming is not banned under NSW strata legislation. However, there are some things that lot owners can do to challenge proxy farming in their scheme.

1. Check to ensure that the proxy farmer's proxy forms are completed correctly, signed and dated. Too often, owners who appoint a proxy forget to sign the proxy form. This invalidates the proxy.

2. The proxy form must be given to the secretary of the owners corporation prior to or at the commencement of the general meeting, unless the building is a "large scheme" (more than 100 lots) where the proxy must be given to the secretary at least 24 hours prior to the commencement of the general meeting.

3. The proxy form must state whether or not the person acting as a proxy can vote on all matters or only certain matters.

4. The proxy form must state how the person acting as the proxy should vote on a motion for the appointment or continuation in office of a strata managing agent.

5. If the lot owner granting the proxy to the proxy farmer is not financial, the proxy's vote does not count. Therefore, try to find out via the strata managing agent the financial status of the owner granting the proxy before the meeting commences to see if their vote counts.

Conclusion

Proxy farming in New South Wales is thriving and will continue to do so for some time until the NSW strata legislation bans it.

If you think you may be the subject of proxy farming and need legal advice, please contact us on (02) 8710 3430.

Please note that the information contained in this article is not legal advice and should not be relied upon as such. You should obtain legal advice before you take any action or otherwise rely upon the contents of this article.

- See more at: http://www.pobilawyers.com.au/proxy-farming-strata/#sthash.6qHBHpMb.dpuf

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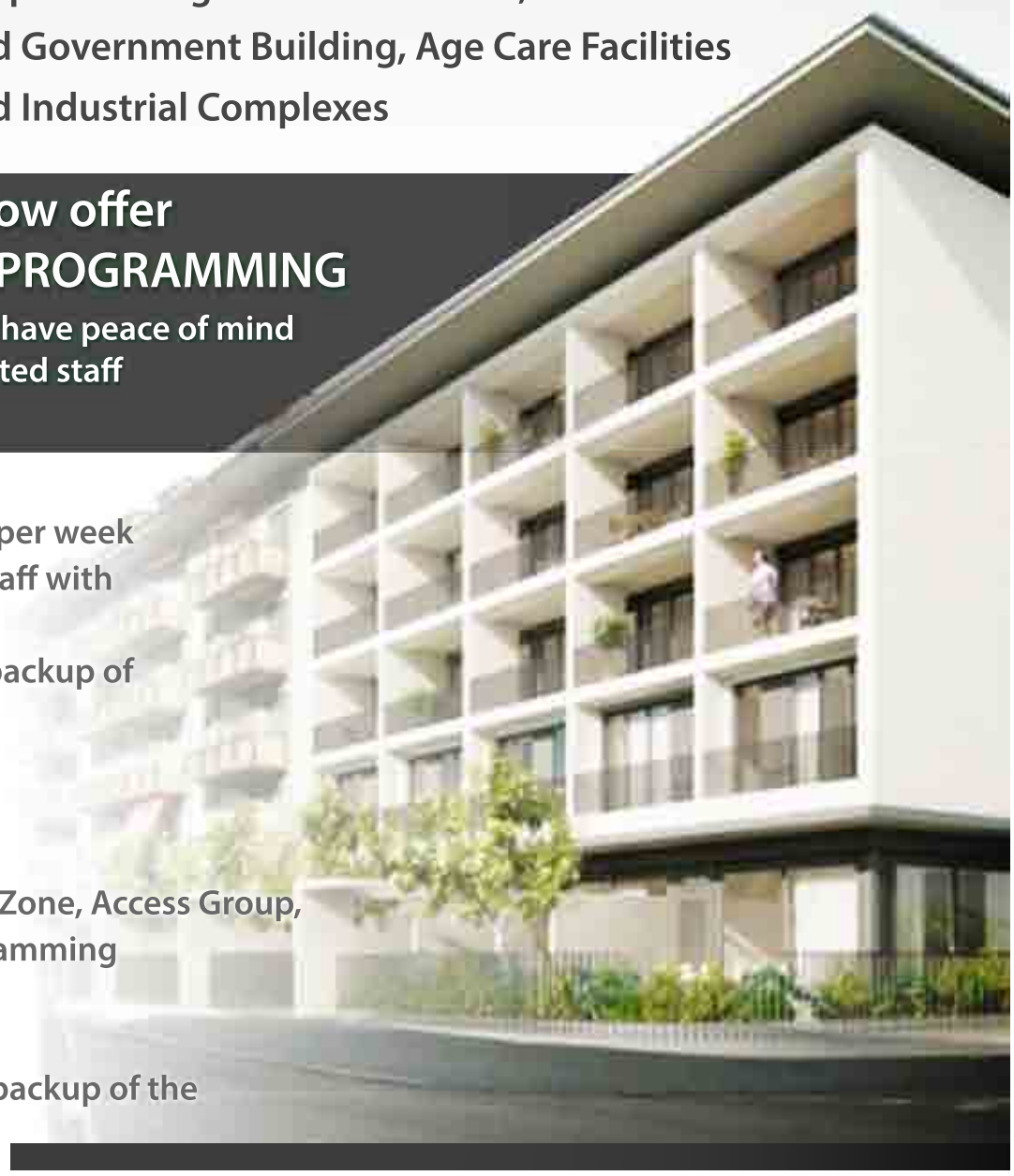

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Density is not a dirty word

By Robin Mellon, Chief Operating Officer, Green Building Council of Australia

Density shouldn't be a dirty word.

For many Australians, the mere mention of 'the d word' evokes forests of high-rise apartment buildings, crowded trains and congested streets.

But they forget that density can also mean museums and art galleries, café culture and festivals, diverse dining options and efficient transport systems. Density can also generate employment, wealth and investment.

In The New Geography of Jobs, economist Enrico Moretti argues that density of workers attracts business investment, or as former Mayor of New York, Michael Bloomberg says, "talent attracts capital far more effectively and consistently than capital attracts talent."

While increasing density can support economic, environmental and spatial drivers – saving money, resources and space – it doesn't have to be at the cost of Australia's highly-prized quality of life.

Ask any Australian to make a list of the cities they find most attractive and aesthetically appealing, and I'll wager European cities such as Paris, Rome, Milan and Barcelona will be there. These cities are dense – and pride themselves on their density.

Despite a population density of 21,000 people per square kilometre (compared with Sydney's 2,000 people), Paris is unrelentingly elegant, and Parisians and visitors delight in the walkable, winding streets lined with ground-level boutiques and cafes, peppered with tranquil gardens and public places.

Interestingly, a recent investigation by the Paris Urban Planning Agency has found that the perception of density in Paris varies depending on the neighbourhood's urban amenity. In fact, some neighbourhoods perceived as too dense are often less so than inner-city neighbourhoods that are much lauded for their quality of life.

The study found that neither human density (the number of inhabitants per square kilometre) nor the amount of built surface area (the floor to area ratio) was the factor that swayed perception. Instead, it was a combination of urban quality and coherence. Neighbourhoods that had a high level of urban amenity – including restaurants and cafes, transport and leisure options and green spaces – were perceived as less dense, even if they were more so than places with less amenity. The key is the skilful balance of function, social and architectural diversity.

In his presentation at Green Cities in March, MIT's Kent Larson showed the audience repeated images of global cities that arose in concentric rings of density around a town centre, market or water source – with a 500 metre radius being as far as people wanted to walk carrying water. The density of these older cities, built long before the car, was dictated by how far people could travel on foot or by horse. This made these places eminently walkable.

Walk Score measures the distance to amenities such as restaurants, shops and public transport, and rates the 'walkability' of your location (and incidentally, Walk Score is being used as a tool to help project teams measure walkability in the new Green Star – Design & As Built rating tool.)

Paris scores a perfect 'walk score' of 100 – and so does Milan. Rome and Barcelona are not far behind, with walk scores of 98. In comparison, the top American city for walking is New York, with a score of 88. Sydney – Australia's most walkable city – scores just 63, but is a long way ahead of Darwin (45), Hobart (44) and Canberra (40). These cities are considered car-dependent, with most errands requiring a car.

So if the word density is a dirty word, perhaps it's time to replace it with 'walkable'? This would mean reimagining our cities as places in which people can walk to work, pick up fresh produce on the way home from a farmers' market, drop in their shoes to be repaired, stop in at their local café and enjoy the pleasures of both lingering and bustling. None of these pleasures can be found at a big box retailer or sitting in traffic.

In Australia, a nation that sees itself as one boundless plain, the prejudice against density runs deep. We have justified urban sprawl on the basis that there will always be plenty of land to develop. That may be true, but it doesn't mean we're creating places that are good for people.

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- **Mark Rutherford** Director
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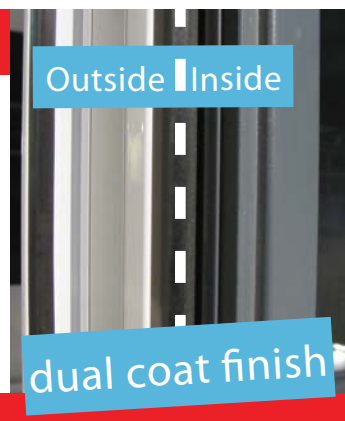

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OurBodyCorp Improves Communication

By Rainer Jozeps, Director, OurBodyCorp Pty Ltd

My wife and I purchased a townhouse in a newly constructed block of four, and being self-starters we called our own Strata meeting with the other new owners to get things moving. As CEO's of major cultural institutions, we knew how Board meetings and managing budgets worked, and a Strata meeting seemed much the same, so it wasn't difficult.

And so OurBodyCorp, one of Australia's few online portals for self-managed Owners' Corporations was begun.

For the lay person the Strata industry is heavily burdened with industry-speak; Owners' Corporation, Strata Group, Executive, Schemes and Lots, and on it goes. But in fact, notwithstanding the legal nuances that spiral into administrative complexity, the process of managing one's Strata is relatively simple: owners meet to discuss how best to manage their property according to a budget they set and adhere to.

And as with all good management processes, if there's agreement about the common goals then caring for the property isn't that hard. And who wouldn't agree that we all want to:

1. Live harmoniously

2. Maintain and enhance our property's value

Yes, people disagree from time to time about how to get there, but that's healthy, so long as people communicate frequently and respectfully; and most often they do.

A key to this is that owners feel part of a community; their community.

Community-building is important if everyone is going to get along. The property everyone lives in is something for all to be proud of. It's important to care for the property as a community, rather than a disparate collection of single unit owners.

It's a bit like a community vegie- patch which brings people together, as all share in the enjoyment of planting, tendering and harvesting. The process of managing becomes as important (and enjoyable) as the spoils it brings.

And this is where some groups of owners fall over when they engage professional Strata managers. The outsourcing of the management of the block can have the accidental effect of outsourcing community-building among owners.

Good Strata companies know this, but all too often we hear owners complain about their paid managers. If there's one thing that does unite owners it's dis-satisfaction with their Strata managers, rather than a collective pride in the care and upkeep of their property.

So what's the secret? Communication, tolerance and respect.

To build a sense of community in our block of townhouses we created OurBodyCorp, an online program to help owners self-manage their Strata or Owners' Corporation. There's a Facebook-style chat room, and owners can upload photos of social occasions or maintenance issues, they set agendas and take minutes, automatically send out Strata Levies and manage finances. We also have an Archive where documents like Bylaws and past Minutes are stored, and we can even put dibs the common barbeque or meeting room using a booking tool.

As the three most important words in real estate are Location Location Location, so it is with Strata management; Communication Communication Communication.

What if I don't want to self-manage, but still want to build a sense of community?

If self-managing isn't a goer, but community-building is, then we have the online portal at www.ourplace.manager.com.au

Here you can chat online, upload photos, record meetings, book a common area and archive documents. Our Place Manager is for building community by communicating and sharing, without the having to manage budgets, and send out levies as required for self-managers.

Both programs, ourbodycorp.com.au and ourplacemanager.com.au have clients all over Australia. Our clients love the ability to share and communicate about the most important physical and personal investment of their lives. Either way they are doing everything possible to live harmoniously with their neighbours, and enhance the value of their property.

For self-managers go to www.ourbodycorp.com.au or ring 1300 687 263.

For community-builders go to www.ourplacemanager.com.au or ring 1300 687 263.

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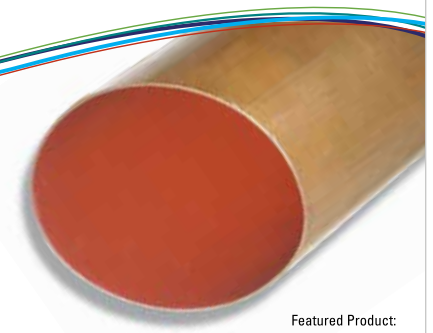

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Storm Clouds Gather for Owners Corporations [NSW version]

Christopher Kerin & James Qian, Kerin Benson Lawyers

On 8 October 2014, the High Court handed down its decision in Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 & Anor [2014] HCA 36 which has serious implications for apartment owners in New South Wales.

The case involved a long-running dispute between the appellant builder, Brookfield, and the respondent owners corporation with respect to building defects in the common property of a commercial building, being The Mantra Chatswood Hotel, a serviced apartment business.

The Court adopted the case-by-case approach prescribed by previous judgments in this area and held that the builder did not, in these circumstances, owe the owners corporation a duty of care to exercise reasonable care in the construction of the building to avoid causing the owners corporation economic loss resulting from latent defects in the common property.

There were two questions that the Court answered in coming to its ruling: firstly, whether the builder owed a duty of care to the developer and, secondly, whether the builder owed a duty of care to the owners corporation independently of any duty of care to the developer.

With regards to the first question, the Court held that the developer, who originally contracted with the builder, sufficiently protected itself and was not 'vulnerable' to the builder's conduct in the legal sense (vulnerability being a legal requirement for a duty of care to exist).

The Court pointed out that the contract between the builder and the developer contained numerous stringent clauses holding the builder accountable for building defects. It stated that, to supplement the contractual provisions with a duty of care towards the developer would inappropriately alter the allocation of risk effected by the parties' contract. Therefore, there was no duty of care. And, if no duty of care was owed to the developer, it would be difficult to argue that a duty of care should flow to a subsequent owners corporation as a subsequent owner. That is, the subsequent owner should not hold greater rights than the original owner, being the developer.

In relation to the second question, the Court held that the builder did not owe a duty of care to the owners corporation independently of its obligations to the developer. As the owners corporation did not exist at the time the defective work was carried out, there could not have been any reliance by the owners corporation upon the builder. Furthermore, the Court held that the owners corporation did not suffer any loss because it acquired the common property without any outlay on its part.

Consistent with its case-by-case approach, the Court distinguished this case from the previous case of Bryan v Maloney (1995) 182 CLR 609 where a subsequent owner successfully argued that a builder of a residential house was liable for economic loss arising from building defects. The Court held that the contractual protections provided to the original owner and subsequent purchaser in Bryan v Maloney were far less than those offered in the current case and consequently, a duty of care arose in Bryan v Maloney.

However, the Court also made it clear that it was inappropriate to use the mere nature of the purchase (i.e. whether it was a commercial or residential property) as the decisive factor in determining whether a duty of care exists. Rather, the salient features of the relationship between the builder and the owners corporation, including whether the builder owed the developer a relevant duty of care, must be considered.

The main practical outcome for residential apartment owners is that it will be generally much more difficult for them to succeed when suing builders in negligence for building defects in lot or common property. In particular, owners corporations will need advisors to carefully analyse the contracts relating to the development, construction and conveyance of apartments to determine the precise level of contractual protection afforded to the relevant parties. Indeed, it is fortunate that the Court left it open that such matters must be decided on a case-by-case basis, rather than set out a blanket rule that builders do not ever owe a duty of care to owners corporations.

Finally, owners will now have to rely more heavily on state and territorial government statutory warranty regimes and act rapidly to not fall foul of limitation periods. Unfortunately, these statutory warranty regimes tend to be more limited in scope than negligence. In particular, from 1 December 2014, it is anticipated that the vast majority of new apartment owners in New South Wales suffering lot and common property building defects will effectively only have 2 years to sue due to the latest amendments to the Home Building Act 1989.

Authors: Christopher Kerin & James Qian

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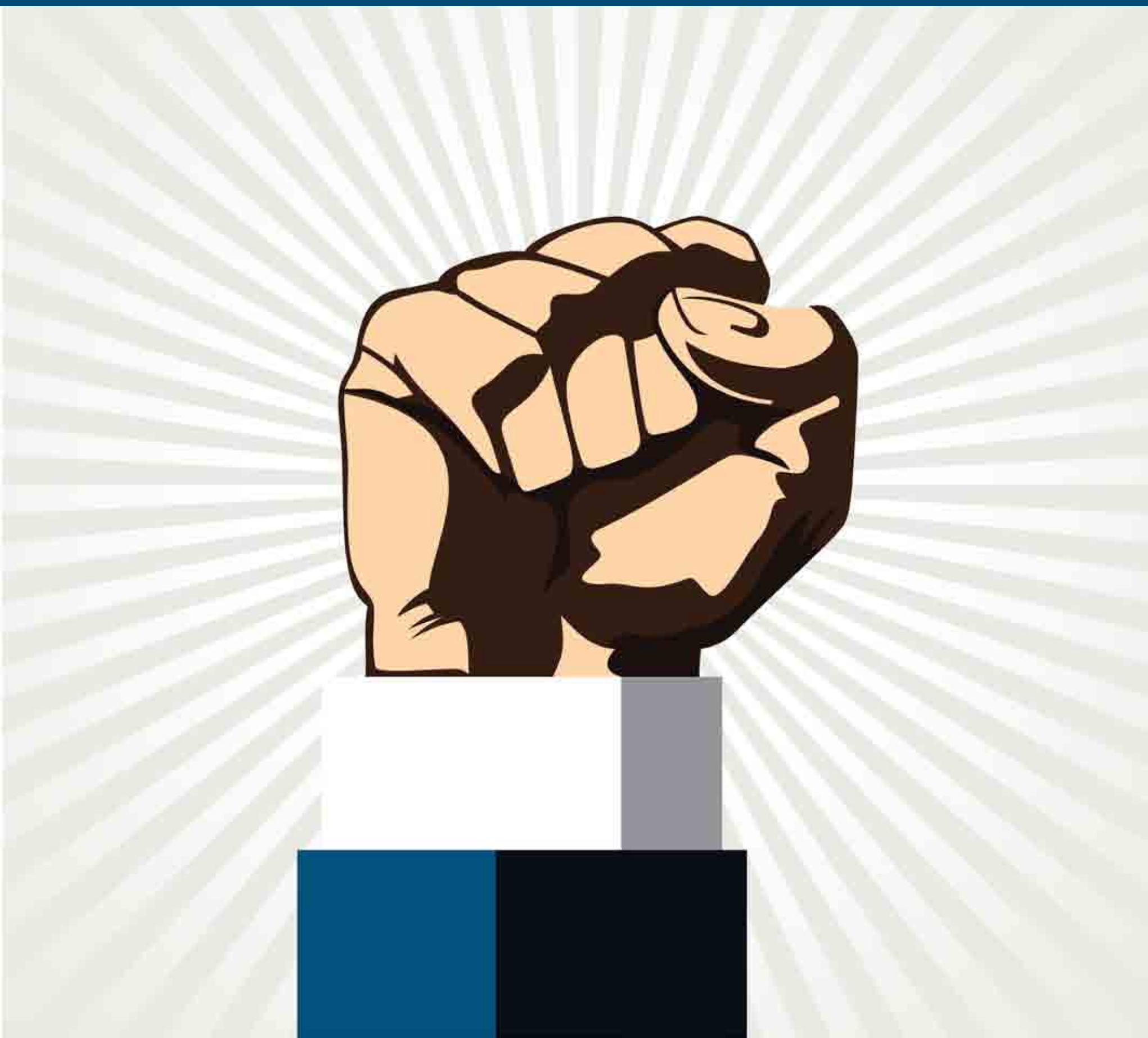

Self-management – the forgotten sector in the strata industry

Mystrata were pleased to get some free PR a few weeks ago when our company was mentioned by leading strata commentator Jimmy Thompson on both The Age and SMH web sites.

The article was about self-management in the strata industry and some of the software tools available these days for self-managed schemes.

We appreciate the plug Jimmy, we really do, but Mystrata does not see ourselves as a software company specifically targeting the self-managed market. Where Jimmy was spot on though was how he described Mystrata as a software company "which straddles the professional manager and DIY markets".

Let me explain…

In Australia, there is approximately 100,000 self-managed schemes (40% of the 250,000 or so). Most of these schemes are typically (but not always) small 2-packs or 4-packs. We estimate the total number of self-managed lots to be around 500,000 in Australia. This is a BIG number. There are similarly high proportions of self-management in other markets around the world such as Canada, South Africa and New Zealand where the average building size is also small.

Until recently, this sector of the strata market has been largely ignored… by the Government, by the professional industry and by technology companies. This is why it is such an exciting opportunity.

As Jimmy points out, there are a few solutions out there for self-managed schemes, but in our view, any software for the self-managed industry needs to be provided and supported by professional managers. I appreciate this may go against the whole principle of "self-management" but most managers will agree with me, self-managed schemes invariably change back to professional management and vice versa. Committees also need support from time to time. Some schemes also like the concept of "joint management" where they carry out some functions and just get their manager to do some of the harder stuff (such as running the accounts). The Government does not have the people, systems or expertise to provide this support, so it makes sense for the professional industry to step in.

Mystrata's cloud-based technology makes all this possible.

Our 'Strataware' system, which is a cloud-based strata management and accounting program, is used by hundreds of professional managers in Australia. The software can be easily configured for self-management whereby the self-managed committee are set up as users for just their building, but the building sits in a professional manager's database, ideally a company located in their area. The day-to-day running of the scheme would be carried out by the self-managed committee who have access to the same powerful tools as managers – credit card gateways, bank interfaces, budgeting tools, meeting tools, accounting modules and more. The scheme also gets a web site and a secure customer portal for all the owners and residents via the 'MyCommunity' platform. This level of functionality would not typically be available in basic self-managed systems.

The Committee can choose to do everything, or perhaps just specific functions such as lot owner communications and meetings. Mystrata licenses the software as we normally do but the professional manager acts as a re-seller, making a margin on the license fee. Managers can offer training on the software and act as first level customer support, both of which would attract an additional fee.

This model creates an additional revenue stream for the managers and by hosting the scheme in a nominated manager's database, if the building ever wanted to change back to full professional management (which invariably happens), the transition is seamless. This model also provides managers with a cost effective way of tapping the market for small schemes that cannot otherwise be profitably managed. It also provides a valuable support resource for small schemes that cannot afford the minimum management fee charged by professional managers.

We know this model is not for everyone but we expect a lot of managers will embrace it.

If you would like to know more about this initiative, please contact our team.

Check out Jimmy Thompson's article below, originally published on the SMH web site on 15 February 2014:

http://smh.domain.com.au/real-estate-news/diy-strata-oversight-goes-online-20140213-32iz7.html

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House price growth weakens - but Sydney still strong

Domain Group House Price Series Quarterly Report

Thursday, 23 October 2014: According to the Domain Group's House Price Report*, Australia's capital city housing markets have generally tracked backwards over the September quarter.

Domain Group data from APM PriceFinder shows the national median house price increased by 1.2 per cent over the quarter for an increase of 9.4 per cent over the year ending September.

Dr Andrew Wilson, Senior Economist, Domain Group, commented; "The national house price result is the lowest quarterly growth rate recorded since March last year and continues to be primarily reliant on the strength of the Sydney market."

Sydney, Melbourne and Darwin were the only capital cities to record an increase in house prices over the September quarter.

"Although house prices in Sydney are not accelerating at the exceptional levels recorded last year, the growth rate has been consistent over 2014," said Dr Wilson. "The Sydney market will continue to lead the pack, however, the clock is now ticking for that market as further signs of moderation are emerging."

After periods of consistent prices growth, Brisbane, Adelaide and Hobart recorded a fall in the median house price over the September quarter.

Dr Wilson continued; "Surprisingly, the Brisbane house price stalled over the September quarter with the median down by 1.3 per cent which is the first negative quarterly result for more than two years.

"Adelaide and Hobart also reversed recent trends of house price growth, recording their first falls in a year."

Over the September quarter, Perth and Canberra saw negative growth in the median house price, recording -1.5 per cent and -1.7 per cent respectively. Meanwhile in Darwin, prices rose sharply by 2.9 per cent.

"Subdued prices growth in Perth was no real surprise as that market has consistently reported waning buyer activity over the past year," said Dr Wilson. "Volatility in Canberra and Darwin is also a continuation of recent market trends."

"Without a sustained revival in economic activity, housing markets will continue to soften, ending the debate about macro-prudential tools or changes to property taxation policy designed to offset local and foreign investor activity."

For further information or to arrange an interview please call: Reservoir Network: 02 9955 8000

Georgie Pickett-Heaps - 0402 633 806 / georgie@reservoirnetwork.com.au

* Report previously known as the APM House Price Series Quarterly Report. For more information go tohttp://domain.com.au/groupdata

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