

COMMUNITY TITLED ACCOMMODATION USED FOR VISITOR PURPOSES IN QUEENSLAND



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SUSTAINABLE
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CONTENTS

SUMMARY	V
CHAPTER 1 PROJECT ORIGINS	1
Objectives Of This Scoping Report	1
Scoping Report Methodology And Timelines	1
CHAPTER 2 SETTING THE CONTEXT	2
CHAPTER 3 DEFINING THE COMMUNITY TITLED COMPLEX IN THE TOURISM CONTEXT	4
Location (In Order Of Importance):	5
Typical Layout And Building Components	5
Room Facilities	5
Management Aspects	6
CHAPTER 4 MARKET TRENDS EMERGING IN QUEENSLAND	7
Some Industry Trends	10
CHAPTER 5 KEY STAKEHOLDER IDENTIFICATION	12
The Developer	13
Major Financial Institutions	14
Resident Owners	14
Investor Owners	14
Resident Unit Managers	15
Long-Term Tenants	16
Short-Term Tenants	16
Body Corporate Committee	16
Tourism Wholesalers (Travel Companies)	16
Building Maintenance Sub-Contractors	17
Building Surveyors And Property Valuers	17
Real Estate Agents	17
Body Corporate Service Providers	18
CHAPTER 6 KEY TOURISM ISSUES EMERGING FROM STAKEHOLDER REVIEW	19
Satisfaction And Image	19
Demand And Supply Issues	19
Impacts On Host Community	19
Marketing And Management Issues	20
Long-Term Sustainability of Condominium Complexes	20
Major Advantages of Condominium Complexes	20
CHAPTER 7 CONCLUSIONS	21
Core Gaps And Research Priorities In The Short Term	21
Longer Term Research Opportunities	21
Project 1: Assessing Trends in Australia's Tourist Accommodation Sector	21
Project 2: Investigation of Accommodation Related Contingency Factors and Visitor Satisfaction	21
Project 3: Document Issues Arising in Connection with the Corporate Governance of Condominium Complexes	21
Project 4: Analysis of Current Legislative Frameworks Pertaining to the Management of Strata-Titled Condominiums in Australia.	22
Project 5: Development of a Tourism Accommodation Management Legislative Module for Condominium Complexes	22
Project 6: Exploratory Research into Sinking Fund Management in Condominiums	22
Project 7: Investigate the Need for an Accredited Training Programme for Resident Unit Managers	22
APPENDIX A: An Agency Theory Perspective On The Owner / Manager Relationship In Tourism-Based Condominiums	23
APPENDIX B: Community Titles Reforms In Queensland: A Regulatory Panacea For Commercial, Residential And Tourism Stakeholders	33

APPENDIX C: Visitor Satisfaction With Holiday Accommodation: A Review	42
REFERENCES	45
AUTHORS	47

List of Figures

Figure 1: Number of accommodation establishments operating in Queensland at the end of each March quarter (based on ABS 8635.3 series data)	9
Figure 2: Overall number of serviced rooms or apartments available for short-term holiday letting in Queensland at the end of the March Quarter (based on ABS 8635.3 series data)	9
Figure 3: Annual totals of guest nights reported at the end of each calendar year in Queensland (based on ABS 8635.3 series data)	10

List of Tables

Table 1: Value of commenced or completed residential buildings (\$m)	7
Table 2: Key players involved in condominium development and management	12

Summary

Tourism and economic boom periods in Queensland have seen the construction of a large number of community titled (condominium) complexes in regions widely recognised for their significance as tourist destinations. Many of these developments now occupy highly desirable sites, a factor that underlines their potential to significantly affect the character, amenity tone, taste and physical appearance of a tourism destination as well as the lifestyle and perceptions by the community of 'tourism'.

Nowadays, condominiums represent the most important type of tourist accommodation in many destinations along the Queensland coast – if not in terms of bed spaces provided, then certainly in terms of land use (e.g. space on the beachfront) and investment. This type of accommodation is now recognised as a key aspect of Queensland's tourism product, and an important way in which capital is attracted from small, medium sized and larger investors. Over the past five to ten years, classic distinctions between 'hotels' and 'tourism apartment complexes' are no longer immediately apparent.

Growth in the community titled sector has also been fuelled by changes in the aspirations of residential owners and an increase in privately held investment funds. Prior to the 1990s most Australians chose houses as their 'castle.' That trend is rapidly shifting to unit accommodation¹. At the same time compulsory superannuation funds, and investors seeking independence for their retirement, have poured billions of dollars into the supply side of unit accommodation (see Table 1).

As a result, the economic, environmental, social and political significance of community titles schemes is on the rise. This has culminated in important changes to the laws governing community titles schemes in both Queensland and New South Wales². In 2002, the Western Australian Government commissioned a Ministerial Taskforce charged with the 'Investigation of the impact of combining tourist and permanent residential accommodation and the impact of strata titling of tourist accommodation.'

In Queensland, recent amendments to the *Body Corporate and Community Management Act (Qld) 1997* were designed to maintain the flexibility and balance of rights between stakeholders with an interest in community titles³. Attached to this report is an appendix outlining key legal issues pertaining to community title legislation in Queensland (Appendix A). Also attached is a review of the nature of the governance relationships existing between resident unit managers, investor unit owners and resident unit owners (Appendix B).

The reforms to Queensland community titles legislation should partially resolve some of the concerns of unit-owners⁴. The reforms signify that owners now have a greater capacity to review, manage and terminate contracts that would have otherwise been little more than over-priced encumbrances. At the same time, the Act ensures that service providers and managers are still protected by a requirement that body corporate's act reasonably in conducting reviews and terminations.

Given the reported comments of the Minister and the stated objectives of the Act, it would seem that there is a need to explore the desirability and scope for a new regulation module to enhance tourism in Queensland. Such a regulation module may also present an opportunity to relieve some of the incompatibility that exists as a consequence of the different priorities between the different types of unit owners. This report identifies some 13-stakeholder groups, each of whom play a key role in the dynamics of the industry. They include:

Resident Owner Perspective

A resident owner gains no financial advantage from the success of the resident manager's sub-letting performance. They may even desire that the complex has a low occupancy level and therefore derive satisfaction from a resident manager proving to be ineffective with respect to sub-letting activities. The resident owner may be more narrowly interested in the resident manager's performance with respect to efficiently and effectively completing his caretaking responsibilities (i.e. maintenance and cleaning of the condominium building and grounds.)

The Investor Owner Perspective

The investor owner is primarily interested in the occupancy levels achieved in unit sub-letting, the prices charged for sub-letting, keeping costs to a minimum and securing a capital gain once the unit is sold.

¹ ABS, Time Series Spreadsheets 8750.0 and 8750.3 Building Activity (Australia and Queensland respectively), December 2002.

² For an example of the controversy see 'Strata Title Difficulties' broadcasted on Radio National's *Life Matters* on 10 February 2003. The program summary is available at <http://www.abc.net.au/rn/talks/lm/stories/s779285.htm> (accessed on 1 May 2003). The original broadcast featured an interview with Sydney solicitor Stephen Goddard, who was formerly the chair for the Regis Towers body corporate.

³ *Body Corporate and Community Management and Other Legislation Amendment Bill 2002*.

⁴ S. Lappeman, 'Unit Wrongs Righted: New laws give owners power to sack bad managers,' *Gold Coast Bulletin*, 4 December 2002, 8.

The Resident Manager Perspective

In most cases, resident managers buy the rights to manage a complex and derive most of their return in the form of sub-letting commissions for renting units assigned to the holiday letting pool. In theory, sub-letting rights can be withdrawn by individual investor owners at any time and transferred to an outside real estate agent at short notice. A simple voting majority of the unit holders can elect to terminate the building service contract in the event of the caretaking performance being deemed unsatisfactory.

The Body Corporate's Perspective

Overseeing the resident unit manager's performance, setting and administering an operational budget and setting and raising levies for a sinking fund, established for the purpose of periodic major building maintenance expenditure.

The Customer / Guest Perspective

In light of the significance of condominium tourist accommodation, relative to the volume of research conducted into hotel management, there is a startling paucity of research concerned with condominium management or the significance of community title accommodation as a factor affecting tourist satisfaction. Appendix C presents a working paper entitled 'Visitor Satisfaction with Holiday Accommodation: A Review'

There is another perspective that needs consideration – that of the resident population. These are the ratepayers and taxpayers who exercise their right to vote in Local and State Government elections. From Coolangatta to Port Douglas, strata titled tourist accommodation has become a feature of these post-modern destinations, which have also seen strong resident growth patterns drawn by the attractions and lifestyle, offered. Given the relatively rapid rise in the resident populations of Queensland's key coastal tourism destinations over the past few decades, these have become places people choose to live in, and by doing so have a tendency to embrace and endorse attitudes towards development that has shaped the particular destination.

The section on emerging market trends in Queensland draws on statistical data compiled by the Australian Bureau of Statistics and provided in reports published as the Queensland Tourist Accommodation series (ABS no. 8635.3). These reports and the data contained in them are not comprehensive: they only cover a subset of the accommodation sector which is determined by definitions used for self-contained apartment complexes and they are restricted to arbitrarily set size criteria. Despite these shortcomings, these data currently represent the only official coherent information relating to trends in the Australian condominium sector. Accordingly, trends in the tourism sector are difficult to evaluate.

However, the most important trends with regard to Queensland condominium development relates to the actual guest nights reported for each calendar year. Even though apartments in complexes with less than 15 units were deleted in the data series assessed, the clear trend is the number of guest nights recorded for condominium complexes continuing to increase, now exceeding those in motels and moving closer to the number of guest nights recorded for hotels. Other industry developments include the recent formation of publicly listed companies that purchase management rights for several holiday apartment buildings.

The significance of community titled accommodation from a tourism perspective underlines the need for appropriately designed research to inform tourism strategic decision-making.

This report also provides some comment on the contemporary European experience with condominium complexes in key tourism destinations and concludes with a description of several planned research initiatives relating to community titled complexes.

Chapter 1

Project Origins

Objectives of this Scoping Report

To prepare a report which:

- a. identifies the key stakeholders from the public and private sectors who have an interest in community title condominium schemes,
- b. subsequent to key stakeholder feedback, addresses the key issues emerging for the tourism industry in relation to community titled complexes,
- c. identifies core gaps and research priorities in the short term,
- d. recommends longer-term research opportunities.

Scoping Report Methodology and Timelines

Stage 1	Mobilisation Identification of key stakeholders. Data gathering.	Weeks 1 and 2
Stage 2	Identification of key issues through Interviews with key stakeholders. Past research activity. Literature search.	Weeks 3 through to 5
Stage 3	Analysis and interpretation	Week 6
Stage 4	Project update To client (Tourism Queensland)	
Stage 5	Report development	Week 7
Stage 6	DRAFT report	End of week 7
Stage 7	Final report presentation	End of week 8

Chapter 2

Setting the Context

Tourism and economic boom periods in Queensland have seen the construction of a large number of condominium complexes in regions widely recognised for their significance as tourist destinations. Many of these developments now occupy highly desirable sites, a factor that underlines their potential to significantly affect the tone and physical appearance of a tourism destination. Today, strata titled complexes or condominiums represent the most important type of tourist accommodation in many destinations along the coast – if not in terms of bed spaces provided, then certainly in terms of land use (e.g. space on the beachfront) and investment. This type of accommodation must therefore be recognised as a key aspect of Queensland's tourism product, and an important way in which capital is attracted from small, medium and larger investors.

As an example, the current Gold Coast condominium scenario raises several significant management and long term planning issues. From a management perspective, it appears pertinent to question whether an appropriate governance structure has been established for condominiums located in tourist areas. We can also question whether an accredited training programme for resident unit managers may be warranted. From a long-term perspective one can question:

- Is there a link between building age, maintenance standards, body corporate management schemes and visitor satisfaction?
- What are the factors restraining the conduct of major refurbishments or replacement of aging condominium complexes?
- What can be done in regard to body corporate and investment management in the tourism context to minimise the possibility of areas of the Gold Coast assuming a ghetto image?

Condominium complexes are usually large physical structures that have some specific characteristics in relation to ageing. 'Ageing' from a tourist's perspective means:

- Smaller and lower quality facilities (pool, tennis courts, etc.);
- Limited range of recreational facilities;
- Absence of a 'modern' style (e.g., no contemporary 'theme', or architectural highlight that is sufficiently noteworthy to have photo or 'word of mouth' value upon a holiday-maker's return);
- A greater plot ratio, i.e., higher residential densities due to often relaxed (or generally lacking) planning conditions;
- Higher operating expenditures and interruptions for maintenance and repairs.

If not substantially refurbished or replaced, the market attractiveness of condominiums can only be maintained by offering lower-priced accommodation. This can result in a spiralling effect whereby there is a reduced cash flow, which, in turn, reduces the chances of funding necessary refurbishments. This spiralling effect signifies the potential of aging buildings becoming a sink for low-budget visitors or tenants whose lower purchasing propensity will adversely impact on the local economy. The reduction of prices triggered by insufficiently maintained aging complexes puts pressure on other accommodation providers to cut prices and reduce profit margins, thereby reducing their ability to upgrade their product. This situation, often referred to as 'profitless volume', has been detrimental for many coastal resorts along the Spanish Mediterranean Coastline.

The ability to use a condominium complex for tourist accommodation appears to be significantly affected by the complex's size. It is helpful to think of three distinct complex sizes: small, medium and large.

For smaller complexes of up to 25 apartments it appears that if the body corporate, the resident manager, or both decide to set up a holiday letting pool of units, then this is only viable if most apartments are in the holiday letting pool.

In small complexes there appears to be greater potential for conflict between long-term residents and short-term (holiday) residents. In the smaller common property space associated with small complexes, the sometimes boisterous behaviour of a few tourists can have a significant on a large proportion of the complex's residents. If a change to a tourism accommodation focus is sought, the complexes are typically retrofitted with facilities such as air conditioning and Internet access. While their small size does not inhibit such upgrading of facilities, it can be a prohibitive factor with respect to large common property facility upgrades, e.g., the installation of pools, spas, etc. For newer complexes, operating costs would prevent a small building from providing a large range of recreational and other facilities, as these have to be supported through body corporate fees collected from a relatively small number of apartment owners and would be excessive on a per capita basis. Accordingly, a competitive tourist edge for units in small complexes can only be achieved through the provision of extras attached to units rather than the common property. Such extras would have to be financed by each unit owner independently from other unit owners.

Although the range of facilities available in medium sized complexes (between 25 and 60 units) tends to be greater than in small complexes, it appears this is not mirrored by an increase in the relative number of apartments assigned to the complex's holiday letting pool. The larger size of these complexes will provide more space to better facilitate the coexistence of short-term and long-term residential uses. For holiday lettings to be a viable proposition for the resident manager, at least 65% of the units will need to be assigned to the holiday letting pool. Overall though, the numbers of holiday units per complex are probably still too low to attract managers or companies that have a particular interest in seeking a specialised tourism focus.

In large complexes comprising more than 60 apartments, there appears to be a greater potential to adopt a specific tourism focus. This stems from the more extensive common facilities available to residents and the marketing economies that can be achieved by the resident manager. Data collected in this investigation suggest that these larger complexes are likely to attract resident managers that have a background in tourism and see holiday letting as the principal type of building use. Unfortunately though, a number of resident managers for complexes in this category refused to comment on whether holiday bookings provided a major source of their income.

Chapter 3

Defining the Community Titled Complex in the Tourism Context

One of the major problems with condominiums in the tourism context is that they can cover a wide range of accommodation types and mixed uses. As a result, these complexes have been largely either ignored, overlooked or accidentally excluded in the research literature. This section tries to provide a definition and characterisation for community titled tourism complexes (also referred to as ‘condominiums’).

Condominiums are part of what has traditionally been called the ‘holiday home’ market or ‘holiday home’ category in many tourist accommodation surveys. Based on brochures collected from relevant tourism agencies at the 2003 Internationale Tourismus Börse in Berlin, for most destinations in Europe and other parts of the World, the condominium sector of the tourist accommodation market can be broadly defined as offering accommodation in privately owned properties that offer largely self-service facilities for short-term stays, i.e. for travellers whose principal place of residence is in another location. There are three primary types of holiday home accommodation:

1. A single detached dwelling fully owned by one owner or single party, erected on one or sometimes several lots without any links to a community lot/title.
2. Holiday villages of multiple dwelling units sharing a community title, the whole complex being privately owned by a single owner or a syndicate.
3. Strata-titled multiple dwelling units sharing a community title, privately owned by up to as many different owners as there are lots in the scheme.

Categories 1 and 2 are common in Europe and other parts of the developed world. Single detached dwellings form the bulk of the traditional British holiday home market in the UK, Gites in France, Fincas in Spain, summerhouses in Scandinavia, or even traditional Bessos in Japan. Most of these holiday homes are located in isolated spots somewhere in the countryside offering a tranquil or scenic environment. Holiday villages owned by a single owner or a syndicate can be found in popular seaside locations, particularly in Northern Europe, e.g. The Netherlands, Belgium and Denmark.

The last category, i.e. larger strata-titled complexes, can be subdivided into at least three further subcategories:

- i. detached villas, duplexes or townhouses combined in a holiday complex;
- ii. low rise apartment complexes (2-3 storeys) from 4,6,8 units per building to ~ 100 units or more in a large complex; and
- iii. high rise apartment complexes of usually 8 or more storeys and comprising many units (can be up to 500 or more units).⁵

All three subclasses of strata-titled holiday accommodation can be found in Australia, particularly in more mature destinations along the eastern seaboard, e.g. the Sunshine and Gold Coasts, Cairns and Northern New South Wales. In some of these areas, they constitute the most rapidly growing segment of the tourist accommodation market (see section 3 of this report). These same three subclasses of strata-titled buildings also provide accommodation for long-term tenants, often resulting in a mix of residential and tourism uses of the same complex. In theory, this tourism use versus residential use can range from a one to one hundred per cent mix in a single building. At the high and low end of this spectrum it is relatively easy to determine whether the building should be viewed as a tourism complex, and therefore whether it should be of interest to tourism or destination managers. Although there are no strict ‘tourism’ criteria for the middle part of this tourism/residential spectrum, previous research undertaken by the authors identified a number of aspects of strata-titled apartment complexes that resulted in a greater focus on tourism use, i.e. the majority of apartments being used for short-term (holiday) stays only. This research was based on interviews with resident managers, property managers of major resort management companies (Quest, Outrigger) and a survey of 114 complexes between Byron Bay and Noosa. According to this research, the following aspects and components were considered typical for, or were supportive of, a greater focus on holiday lettings for a strata-titled resort with 50-100 units:

⁵ Note: terrace buildings fit between ii) and iii).

Location (in order of importance):

- Close proximity to ocean beaches (preferably walking distance without having to cross a busy road),
- Walking distance to a tavern (which can operate as a café or small restaurant/bistro), alternatively a café, pizzeria etc., or even an al fresco/bistro restaurant
- Walking distance to convenience store, shops.

Typical Layout and Building Components

Mandatory

- One single major and impressive entry point leading to reception area;
- One secure (preferably undercover) car parking space per unit, if possible clearly marked or separated for permanent and short-term visitors;
- Reception area organised to accommodate tour desk (with internet access if not provided in rooms/apartments) and linked to housekeeping room and maintenance room;
- A large heated pool (shallow in some parts for smaller children) with associated hot spa section;
- Lush green landscaping providing several shaded or partly shaded areas for safe rests during the course of the day;
- One 80 m² or larger meeting/board room for informal meetings;
- Gym or workout facilities;
- Games room.

Optional

- Additional entry/exit point for already registered guests desirable;
- Food and drink vending machines;
- Tennis court (preferably flood lit);
- Sauna;
- Golf driving nets (particularly for international tourists from SE Asia).

Room Facilities

Mandatory

- Separate reverse cycle air conditioning (individual units per apartment that can be shut down if not in use);
- Fully equipped kitchen (stove, oven, ducted vent, microwave, dishwasher, fridge, freezer, toaster, kettle, functional crockery and cutlery (e.g. sharp knives, bottle openers, etc.);
- Laundry (washing machine, dryer and sink);
- Complete furniture (lounge suite, dining table and chairs, main bedroom: at least 1 queen size bed, additional bedrooms: 2 single beds/room, 1 radio/alarm clock/bedroom);
- Television set with cable TV (if available in district);
- Ensuite (large vanity basin, mirror, air vent) plus second shower, toilet for > 1 bedroom apartments;
- Bed linen and towels;
- Built-in wardrobes in each bedroom plus extra cupboard for cleaning equipment;
- Functional fly/mosquito screens for each window and all doors open to the outside (depending on resort location);
- Balcony with drying facilities for beach towel/bathers and balcony furniture (at least two seats or chairs, etc.) – with a view, but largely protected from the view of others;
- Separate light fittings for kitchen, dining, lounge, balcony areas, bedroom lights with dimmers;
- Telephone (and internet access for upmarket resorts).

Optional

- Logic key (swipe card) entry with central power switch;
- Gas stove (if gas is available);
- Moving partitions;
- Video or DVD player;

- Board and card games;
- Spa baths.

Management Aspects

- Management rights that are set up to provide incentives for resident managers or managing companies to increase their income by renting out holiday apartments;
- Appointment of resident managers with a background in tourism or marketing.

The criteria listed above should be viewed as indicative and not comprehensive. It should also be noted that some holiday apartments are always fully serviced (regular room cleaning and bed preparation, etc.), and others are partly serviced (room cleaning only), or services are optional or cannot be provided at all. These operational aspects of tourism condominiums have also placed considerable impediments on obtaining accurate long-term data for this type of tourist accommodation (next section).

Chapter 4

Market Trends Emerging in Queensland

This section draws on statistical data compiled by the Australian Bureau of Statistics and provided in reports published as the Queensland Tourist Accommodation series (ABS no. 8635.3). These reports and the data contained in them are not comprehensive: they only cover a subset of the accommodation sector which is determined by definitions used for self-contained apartment complexes and they are restricted to arbitrarily set size criteria. Despite these shortcomings, these data currently represent the only official coherent information relating to trends in the Australian condominium sector.

Table 1 provides a general overview of recent housing trends in Australia and Queensland. Over the past fifteen years, the proportion of strata-titled developments (flats, home units, townhouses, villa units, terrace houses, semi-detached houses, and maisonettes) has been increasing relative to the total number of completed residential buildings.

Trends in the *tourism* sector are more difficult to evaluate. First and foremost, the ABS 8635.3 series only includes those holiday apartments that are 'serviced', i.e. units with full cooking facilities, refrigerator, bath/shower, toilets, bed linen and availability of full services (daily cleaning and bed making) through on-site management arrangements. When first collected in 1988, the survey included all complexes that offered five or more apartments/units for short-term rental of a minimum of one night. Since the March quarter of 1998, the ABS has changed its survey procedure by excluding all building complexes (hotels, motels, apartments, etc.) with less than 15 serviced apartments or serviced rooms.

Table 1: Value of commenced or completed residential buildings (\$m)⁶

Year	Australia			Queensland		
	Houses	Other ⁷	% Other	Houses	Other ⁸	% Other
1983-84				1079	242	22.4
1984-85				1088	230	21.1
1985-86				1099	207	18.8
1986-87	4559	1070	23.5	934	204	21.8
1987-88	5553	1342	24.2	1456	523	35.9
1988-89	6968	2030	29.1	2203	1093	49.6
1989-90	8378	2632	31.4	1950	718	36.8
1990-91	7461	2215	29.7	2018	571	28.3
1991-92	8951	2619	29.3	2431	577	23.7
1992-93	9605	3346	34.8	2924	904	30.9
1993-94	10607	4061	38.3	3189	1228	38.5
1994-95	9958	4948	49.7	2938	1252	42.6
1995-96	8767	3708	42.3	2331	787	33.8
1996-97	9263	3749	40.5	2365	792	33.5
1997-98	11190	4550	40.7	2675	985	36.8
1998-99	11927	4625	38.8	2322	927	39.9
1999-00	15116	6322	41.8	3034	967	31.9
2000-01	10520	5100	48.5	1877	914	48.7
2001-02	15003	6726	44.8	3282	1163	35.4

⁶ Data taken from ABS, Time Series Spreadsheets 8750.0 and 8750.3 Building Activity (Australia and Queensland respectively), December 2002.

⁷ 'Other' = flats, home units, townhouses, villa units, terrace houses, semi-detached houses, and maisonettes. NOTE: not all of them would be subject to strata title, but most could be.

⁸ 'Other' = flats, home units, townhouses, villa units, terrace houses, semi-detached houses, and maisonettes. NOTE: not all of them would be subject to strata title, but most could be.

As can be seen in Figure 1 to Figure 3 these changes had a considerable effect on the long-term data collection for the Queensland accommodation industry. Since 1997, a considerable number of businesses are no longer monitored, particularly in the condominium and motel sectors. Before 1998, the strongest growth in the number of establishments was observed for condominiums, and the same trend emerged for the years from 1998 onwards (Figure 1). The number of larger motels, on the other hand, is in decline and only a few hotels with more than 15 serviced rooms were added over the past five years. Observations of building activities on the Gold Coast indicate that holiday condominium complexes are replacing smaller motels, along the beach strip.

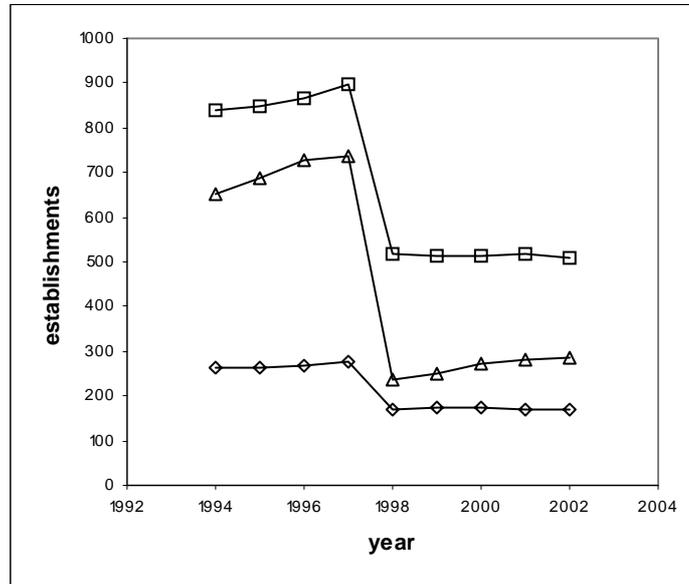
This change in ABS data collection procedure significantly altered the ranking of accommodation types. Prior to 1998, the largest number of guest rooms was provided in motels. Rooms or units in hotels and apartment complexes were about equal (particularly when actual bed spaces are considered, i.e. 3.2 beds/serviced room and 3.8 beds/apartment – according to averages reported in the ABS 8635.3 series 1994-1997). Since 1998, it appears that with respect to rooms or units, hotels dominate Queensland's accommodation sector. Irrespective of these changes in ranking, accommodation space in condominium complexes has been the fastest growing sub-sector – apart from figures for 2002 when all accommodation types showed negative growth (this may be due to a change in the areas appraised in the ABS survey from December 2001 onwards).

The most important trends with regard to condominium development relates to the actual guest nights reported for each calendar year in Queensland (taken at the end of December). Even though apartments in complexes with less than 15 units were no longer included in the survey, the number of guest nights recorded for condominium complexes continued to increase, now exceeding those in motels and moving closer to the number of guest nights recorded for hotels (Figure 3). For the Queensland accommodation industry, these trends clearly demonstrate the increasing importance of condominium holiday apartments. There are, however, a number of factors that should be taken into account when reflecting on these data. Reporting the number of guest nights for apartments is not always straightforward:

- In many cases, families staying in an apartment might be visited by friends who are 'sleeping over', i.e. they use a spare bed or couch and are not reported to the manager;
- Some groups might hire an apartment without reporting all members to the manager to save on accommodation expenditure;
- During the early years of the ABS survey, use of manual booking systems was widespread. These systems only report whether a unit was rented, they do not provide data on the number of people. Accordingly, the number of guest nights for a complex might have been understated;
- Over the last 4 to 5 years, the user-friendliness of electronic booking systems used for condominium complexes has improved. More managers are trained on these systems (particularly for larger complexes) and, consequently, electronic book-keeping has increased which in turn has improved the accuracy of reported of actual guest nights
- It was not clear from the ABS survey reports whether strata-titled rooms, one-bedroom apartments or dual key apartments in hotels were reported as serviced rooms or apartments. It is noteworthy that dual key apartments can be converted from a serviced room to a two-bedroom apartment virtually with the stroke of a key on the accommodation provider's room management system.

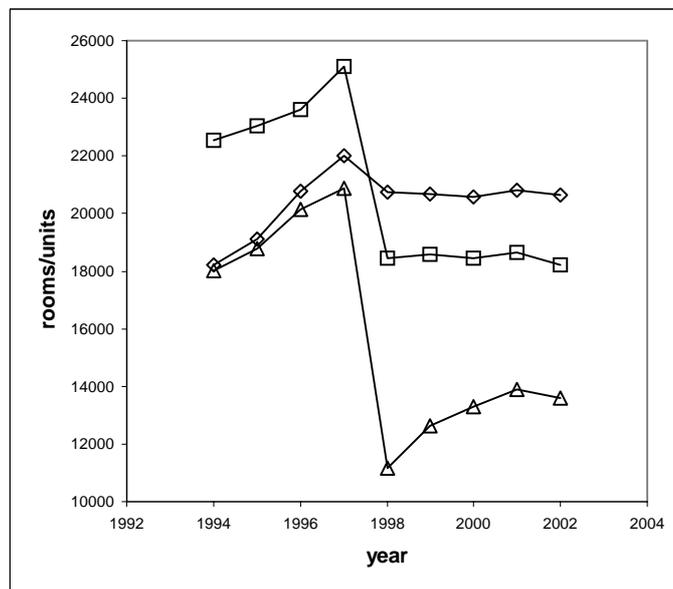
Despite this rapid and apparently continuing condominium growth, the overall takings from condominium accommodation remain low at an average of \$ 43.8 per guest night, compared to \$72.5 per guest night for hotel accommodation and \$46.7 per guest night for a stay at a motel (prices calculated for 2002 from figures released for the December quarter 2002, ABS 8635.3 series data).

Figure 1: Number of accommodation establishments operating in Queensland at the end of each March quarter (based on ABS 8635.3 series data)



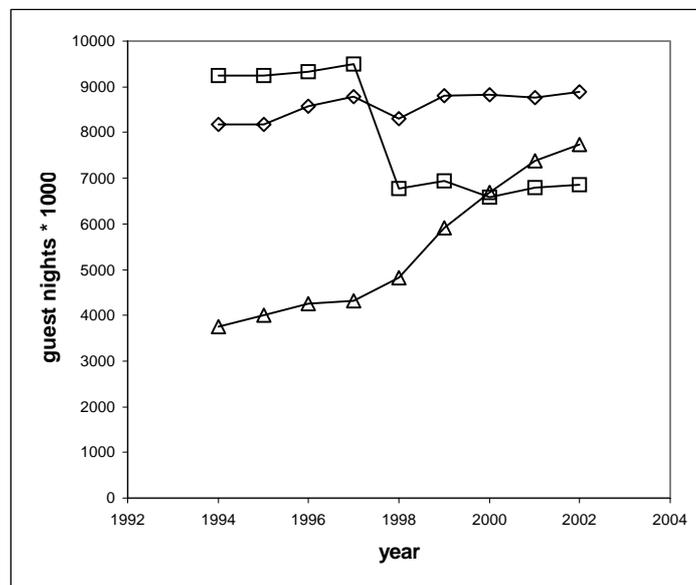
NOTE: ◇ = hotels, □ = motels and guesthouses, Δ = self contained apartments

Figure 2: Overall number of serviced rooms or apartments available for short-term holiday letting in Queensland at the end of the March Quarter (based on ABS 8635.3 series data)



NOTE: ◇ = hotels, □ = motels and guesthouses, Δ = self contained apartments

Figure 3: Annual totals of guest nights reported at the end of each calendar year in Queensland (based on ABS 8635.3 series data)



NOTE: ♦ = hotels, □ = motels and guesthouses, Δ = self contained apartments

Some Industry Trends

Over the past five to ten years, classic distinctions between ‘hotels’ and ‘tourism apartment complexes’ are no longer immediately apparent. Large national and international companies have formed that specialise in operating condominium complexes in a range of locations, most with a hotel-type front end service, i.e. a major reception desk, extended room services and a recognised brand name. ‘QUEST Apartments’ and ‘OUTRIGGER’ are prominent examples of such companies. Commonly, these companies hold lease agreements with all, or at least the majority of, apartment owners in a building managed under their brand. These lease agreements also include aspects of management of the common property and therefore render the appointment of a resident manager holding management rights redundant. Other scenarios exist where management rights were initially created, but have been sold to a manager holding a franchise agreement with the principal management company, e.g. ‘QUEST’. Even under this scenario, usually all apartments in the building are managed under the franchise contract.

Accommodation in strata-title apartments or units is nowadays also provided as a niche product through the upmarket eco-resort or top class ‘hotel’ sector, e.g. the ‘Couran Cove Resort’ on South Stradbroke Island, and the Royal Pines resort and the ‘Palazzo Versace Hotel’ on the Gold Coast. Further, some property developers have bought buildings that have traditionally been operated as hotels, and modified them into community titled complexes (see recent announcements made by the Sunland Group) for sale to other property investors.

Other industry developments include the recent formation of publicly listed companies that purchase management rights for several holiday apartment buildings. The most prominent examples with a strong footprint in Queensland are ‘S8 Limited’ and ‘Breakfree Resorts Pty Ltd’. Apart from some links on its website to properties that it manages, S8 Limited does not actively directly engage in the marketing of holiday accommodation packages. Its main focus concerns the acquisition and operation of management rights, which until recently was supported by ownership in ‘Dave Allen Real Estate’, which has been owned since July 2003 by ‘Onsite Direct’. ‘S8 Limited’, however, is linked to Australian Apartments and Resorts which undertakes trade distribution for S8 properties and many others. Similarly, ‘Breakfree Resorts’ is also linked to its holiday package wholesaler, ‘Breakfree Holidays Pty Ltd’ and markets its buildings under its Breakfree brand, which in turn is also offered under franchise agreements to holders of management rights outside the company. At the time of writing, ‘S8 Limited’ had initiated a takeover bid to acquire a major shareholding in ‘Breakfree’. A new joint venture company between Breakfree and major Gold Coast development company, Sunland, has been set up to acquire the management and letting rights to Sunland’s deluxe 403 room Legends Beachside Resort in central Surfers Paradise for \$10.4 million. (AFR 19.7.03)

Other players with a developing interest in the holiday apartment sector are timeshare companies, most notably those with a long history and experience in US markets e.g. Interval International, Marriott, RCI,

Trendwest. Interval International and RCI are examples of corporations that focus on ‘exchanges’, whereas Marriott and Trendwest are examples of corporations that develop, sell and manage resort operations. The giant Accor Group has entered the timeshare (vacation ownership) market in a substantial way, using Interval International for their outside group exchanges. A further recent trend is the establishment of real estate companies that specialise in providing services to resident managers in order to ‘protect the Letting Pools of Onsite Managers by selling investor owned property to new investors and returning the management to the onsite manager’ (Quoted from ‘Onsite Direct’ website <http://www.onsitedirect.net/#>).

Chapter 5

Key Stakeholder Identification

The large physical size of many modern strata-titled condominium complexes located in tourist areas, the complexity of their ownership, their significance to tourism as well as management issues arising have resulted in a complex web of interactions of stakeholders with an interest in condominiums. This section overviews the composition of this complex web and considers the nature of each stakeholder’s interaction with property owned through community title. Table 2 provides an overview of the key condominium stakeholders and an outline of the nature of each stakeholder’s condominium involvement. The nature of the condominium interest has become apparent following the conduct of interviews with interested parties and also an analysis of the legal framework applying under the BCCM Act.

Table 2: Key players involved in condominium development and management

Key player	Nature of condominium related role and condominium related activities undertaken
Property developers	Designer of complex First owner of units Initiator of contracts relating to: resident manager rights and responsibilities, the body corporate committee constitution, sinking and operating fund fee levels, etc.
Major financial institutions (e.g., banks)	Provider of loans to developers Provider of loans to unit owners Provider of loans to purchasers of management rights.
Resident Unit Owners	Use apartments as principal place of residence Observe the resident manager’s building maintenance performance Decide about principal matters of body corporate operations through votes cast at annual general meeting (AGM) Contribute to building’s sinking and operating funds
Investor (non-resident) unit owners (can include property trusts, investment fund managers with property portfolios, etc.)	Own apartments as an investment and delegate day-to-day management of their assets to the resident manager or a real estate agent Decide about principal matters of body corporate operations through votes cast at annual general meeting (AGM) Contribute to building’s sinking and operating funds
Resident managers or companies holding management rights	Own the resident manager’s unit and therefore have the power to vote at body corporate AGM Hold maintenance contract for the common property Can outsource aspects of property maintenance to specialised sub-contractors Act as a (limited) letting agent for investor owners (holiday and long-term) Can engage in marketing of units in the holiday letting pool (includes contracts with wholesalers) Can be empowered by owners to vote on their behalf at the AGM (proxy votes) Can be empowered to manage body corporate accounts Can provide advice (including quotes) to the body corporate committee about the type and level of maintenance work required for common property
Long-term tenants	Pay rent to investor owner Interested in good maintenance of facilities
Short-term residents (tourists)	Book and pay for accommodation through the resident unit manager Interested in quality of tourist experience provided
Body corporate committee (elected set of owners)	Holds control over operation of body corporate by making decisions on ‘non-restricted’ issues

Key player	Nature of condominium related role and condominium related activities undertaken
Tourism wholesalers (travel companies)	Market and sell accommodation nights for units placed in the holiday letting pool.
Sub-contractors providing specialised building maintenance and repair services	Provide maintenance services through the resident unit manager acting as agent for owners. Service apartments (cleaning, linen cleaning)
Building surveyors, property valuers	Determine the value of new and existing units and buildings
Real estate agents (and solicitors)	Facilitate sales of apartments (off-the-plan and existing) Facilitate sales of management rights Act as letting agent for investor owners with apartments in the long-term letting and holiday letting pool
Body corporate service providers	Assist first owner (developer) in drafting body corporate constitution, interest schedule(s), and contribution scheme(s) Advise body corporate committee on statutory matters Can be appointed as a manager acting on behalf of the body corporate committee Provides administrative services to body corporate committees (e.g. compilation of financial statements, organisation of meetings such as AGM, etc.)

The Developer

There are many companies that specialise in community title property development. The initial purchase of a property and subsequent construction of a new complex requires considerable investment in capital and expertise. A property developer's main motivation concerns maximising the gain between the prices paid to purchase land and develop a complex and the revenue earned by selling the individual units and the resident manager rights to the complex's first resident manager. Most developments, including condominiums, are of such size that developers depend on external capital funding, most usually provided as loans from major financial institutions.

Developers represent the initial owner of a condominium complex and, as a result are responsible for setting up the first community management scheme, sinking fund and operating fund contribution levels, and contractual arrangements for management rights. Developers frequently will draw on the consulting expertise of specialist body corporate service companies, in connection with these matters. As the first owner of a building, the developer also collaborates extensively with real estate agents when selling apartments, retail space (if provided) and management rights. A special working relationship between these two parties exists for large, multi-storey condominium complexes. Financing the construction of these large and expensive structures requires selling a certain proportion of apartments or units 'off-the-plan', i.e. before they are built. Again, real estate agents can be instrumental in achieving these initial sales. This initial capital flow can be critical to the developer securing further loan funding to finance the complex's completion.

It should be noted that comments made in interviews conducted suggest a widely held perception that developers set initial sinking fund contribution fees at unsustainably low levels. The incentive for developers to do this stems from their interest in marketing the units. This marketing effort is also frequently supplemented by developer guarantees of a certain minimum percentage rental return in the first three years of unit ownership. This appears to represent a relatively successful marketing ploy, however in many cases it actually provides the unit owner with little over the long term. By guaranteeing a rental income for the first few years of ownership the developer stands to gain all of a potentially inflated price resulting from the guarantee. The new owner will only benefit from the guaranteed income for a small portion of the unit's life, and a purchaser should not be duped into paying a price for the unit that assumes that the guaranteed income will be sustainable over the long term.

A further potential area where a potential purchaser of a new unit needs to tread warily when purchasing a new unit concerns the resident manager rights contract established by the developer. It appears reasonable to suggest that the majority of potential unit purchasers are more interested in the physical aspects of their unit and the common area of the complex than they are in the specifics of the resident manager contract established by the developer. Because most potential new owners do not scrutinise the resident manager contract, there is a potential for the owner to draft the resident manager contract in a manner that confers inordinate privileges and protection to the resident manager. The incentive to do this is the additional income that the developer can earn from the initial purchaser of the resident manager rights.

Another key stage in the development of a new condominium complex concerns gaining appropriate planning and building approvals. Local government authorities (LGAs) usually grant approvals. In turn, LGAs have the power to relax planning provisions, and request contributions from the developer for financing general infrastructure service, e.g. upgrades of access roads, car parking on the street, water mains, etc. Excessive demands by local authorities can force developers to withdraw the project and, likewise, all the short and long term benefits deriving from it (e.g. jobs, revenue from rates, economic multiplier flow on effects of money spent by visitors, etc). On the other hand, too many concessions made to a developer may stimulate the construction of buildings in the short-term, but it may also lead to shortfalls in public infrastructure, and a tarnished destination image with negative long-term implications arising. Accordingly, a common ground has to be found between LGAs and developers in order that the economically motivated short-term interests of the developer can be reconciled with the short and long term interests of the LGA.

The main professional body representing the interests of Australian property developers is the *Property Council of Australia* (also pertinent is the *Unit Development Institute of Australia*).

Major Financial Institutions

Australian financial institutions such as banks and credit unions have considerable interest in stimulating building activity and, also, tourism development. The interest rate and loan covenants prescribed by a bank seeking to finance property developments determine how accessible capital will be for property developers. Banking and investment guidelines also dictate how many units must be sold 'off-the-plan' before property developers will extend further funds for the construction phase of a new building. Such guidelines vary in accordance with perceived levels of risk with respect to factors such as the type and location of the development, and the economic climate pertaining at the time of the development. There appears to be a widely held view that developments intended solely for tourism purposes are considered of lower value per square metre of floor space than flexible use purpose developments (i.e. tourism and residential). In light of this, more restrictive loan covenants are likely to be in force when the potential use of a building is restricted.

In addition to making loans to developers, financial institutions also provide loans to the purchasers of units. In many cases the bank lending to the developer negotiates a position that gives it privileged access to the first purchasers of units. Also, financial institutions extend loans to the purchasers of condominium management rights, using the resident manager's unit as security. As a relationship with a developer can provide a financial institution with considerable long-term loan related business over the lifetime of a building, there would appear to be a significant incentive for the lending institutions to court the business of property developers.

Resident Owners

Resident owners use their units as their principal place of residence. A resident owner gains no financial advantage from the success of the resident manager's sub-letting performance. In fact, many resident owners might desire that the condominium complex has a low occupancy level, and therefore derive satisfaction from a resident manager proving to be ineffective with respect to sub-letting activities. With respect to their relationship with resident managers, resident owners can be expected to be primarily interested in a resident manager's performance with regard to efficiently and effectively completing the care-taking responsibilities contracted for (i.e., maintenance and cleaning of the condominium complex and grounds). As resident owners are in closer physical contact with a condominium complex than investor owners, the former can be expected to take a greater interest in the aesthetic appearance of the complex than the latter.

The main professional body representing the interests of Queensland condominium resident owners is the *Unity Owners of Queensland*.

Investor Owners

Investor owners are primarily interested in seeking maximum economic gain from owning a unit. This gain is achieved by managing the balancing act between attempting to maximise the sub-letting occupancy level of a unit with maximising the rate charged when sub-letting (i.e., maximising the unit's rental yield), minimising the cost associated with maintaining the unit, and seeking the maximum capital gain upon sale of the unit. As a result, investor owners can be expected to be primarily interested in the resident manager's sub-letting performance.

In the tourism condominium context, the resident unit manager awards revenue from investment (i.e. rent collected from holiday lettings) to the individual owner of the apartment that has been sublet, it is not pooled across the owners who have units in the sub-letting pool. This particular dynamic lies in stark contrast to the generally applied corporate model where returns on investment are awarded as a percentage of the business's overall earnings, weighted in accordance with the proportion of the whole business (i.e., one or more shares)

owned by the investor. Because investor owners interests can conflict with the interest of resident owners, a power struggle can result with regard to who has representation on a body corporate committee.

The main professional bodies representing the interests of Queensland condominium investor owners are the *Unity Owners of Queensland* and the *Property owners of Queensland*.

Resident Unit Managers

Day-to-day maintenance of larger buildings requires the appointment of a special caretaker. This person is primarily responsible for maintaining the complex's good technical working order and upkeep of the common property, which usually includes gardens, pools, hallways, undercover car parks, walkways, stairways, etc. Tourism condominiums with a number of units in the short-term letting pool also require an onsite resident manager with a limited letting agent's license for renting out apartments to holiday makers. In Queensland, in many cases, these two functions are covered under a single management rights contract. As already noted, these contracts are generally set up by the building's first owner (the developer) on behalf of the body corporate, and can be purchased by individuals or companies with the necessary qualifications.

A resident manager can earn a return on his investment in the management rights from three main sources:

1. from any capital gain earned upon sale of the management rights,
2. from commission's earned through sub-letting (holiday or long-term stays) investor owner units,
3. from remuneration earned in connection with general building service and maintenance functions performed.

It is particularly apparent with respect to his or her function as a letting agent that the resident manager's interests are closely aligned with the tourism role of a complex. This is because higher occupancy rates result in higher returns for the manager. As a result, management rights for a building with a large number of apartments in the letting pool are usually of higher value than those for a physically similar complex with only a few holiday units.

In some cases, resident managers and unit owners negotiate contracts with a major travel agency or tourism wholesaler to have their building included in holiday packages and tours. Although this adds another tier of costs (i.e. the wholesaler's commission), these contracts represent one of the few direct links into another sector of the tourism industry. Another link for some large complexes exists between resident managers and local tour operators. The latter either pay a fee for displaying their brochures on the resident manager's tour desk, or a commission for tour bookings organised by the resident manager. A third direct link between core tourism activities and condominium management sometimes exists, as some resident managers become a member of a local tourism bureau. This can result in the tourism bureau lobbying for the tourism interests of resident managers and aid the marketing of tourist accommodation in the building.

As mentioned earlier, several companies have specialised in managing strata-titled complexes by purchasing a number of management rights for such buildings. In essence, their roles and linkages are similar to those described for individual resident managers. One notable difference, however, is that in most cases a person employed, rather than a person with a direct sense of ownership for the building's management, manages day-to-day operations. This can have positive and negative implications. Companies with an interest in strata-titled management would only employ managers with the necessary qualifications and practical experiences. On the other hand, good and highly motivated staff might want to move on and purchase their own management rights. A rapid staff turnover can mitigate from efforts to promote relationship marketing with return visitors. A second notable difference concerns the greater marketing economies of scale that can be achieved if the same company manages a group of complexes. A comparison can be drawn between this situation and large branded companies managing a chain of hotels (e.g. the Sheraton and Hyatt groups), even though these companies do not own the hotels (GUILDING, 2003).

The development of management rights held by companies that employ managers fundamentally alters the concept of management rights ownership. The rationale for management rights ownership relates to the economical incentive, sense of ownership and commitment that the rights might inculcate in the resident manager. As a result, owners of management rights may well be prepared to work long and hard hours in an effort to increase the value of their investment. In this way, the interests of the manager and the building's owners (especially investor owners) are, in theory, closely aligned: a resident manager interested in improving the value of his/her management rights through a good performance as a letting agent and caretaker will provide benefits to investor owners.

The relative merit of this incentive aspect of management rights depends largely on the interests, knowledge and experience of members of the body corporate committee. In theory, the body corporate committee could monitor the building manager's performance directly and provide incentives for ensuring his/her desired level of input under a contract subject to annual renewal. In practice, body corporate committee board members frequently live interstate, have other work commitments, or are retired and seeking 'the quiet life'. In such cases,

a resident manager who is highly motivated as a result of resident manager rights ownership would appear to be desirable.

The different perspectives of the two owner types appear to have a major bearing on the relationship between a resident unit manager and an individual owner. Because both the investor owners and the resident unit managers derive a substantial portion of their investment returns from letting out apartments to holidaymakers, their goals appear to be relatively well aligned. The goals of the resident unit manager and resident owners can be characterised more by divergence than convergence, however. In some cases this goal incongruity can result in resident owners sensing an antagonistic manner from the resident unit manager. This antagonism appears to result from resident unit managers earning no letting agency income from the resident owner units. In fact, such an antagonistic attitude might be motivated by a desire to cause a resident owner to sell his unit, with the result that the unit might fall into the hands of a new investor owner and the resident unit manager's income would have the potential to increase as a result of the expansion achieved in the sub-letting holiday pool.

The main professional body representing the interests of Queensland resident unit managers is the *Queensland Resident Accommodation Managers Association (QRAMA)*.

Long-Term Tenants

Resident unit managers can be expected to be supportive of those long-term tenants that they have placed in units, as they will earn a commission on the rent generated. They are less likely to have good relations with those long-term tenants from whom they earn no commission, however. Long-term tenants may feel some animosity to tourists as the way some tourists treat the complex may fail to adequately recognise the well being of other residents. This is because short-term holiday letting tenants are not inhibited by any concern over a long-term relationship with fellow residents is a complex.

Short-Term Tenants

Short-term tenants can be expected to be relatively resource hungry residents as they will have a relatively high propensity to ask questions of the resident unit manager, and make significant use of common facilities, e.g., swimming pools, due to the high leisure time they have at their disposal. It has just been noted that short-term tenants can be expected to have a lower propensity to conduct themselves in a manner that recognises a need to maintain a healthy long-term relationship with other residents. For an extreme example, consider the behaviour of some schoolies during 'schoolie week'.

Body Corporate Committee

The body corporate committee is elected by the unit owners to represent their interests. The resident unit manager is accountable to the body corporate committee. As already noted, because investor owners interests can conflict with the interest of resident owners, a power struggle can result with regard to who has representation on a body corporate committee.

Most of the work as a body corporate committee member is voluntary, and involves regular input on decisions about 'restricted issues' (BCCM s. 99-101). Under such legal and administrative arrangements there are, in most cases, little or no incentives for members of the body corporate committee to take on a more active role. This can detract from the extent to which the body corporate closely supervises the resident manager's performance and other matters affecting the building. This problem has been recognised with s. 119 of the BCCM, which allows a body corporate to authorise a body corporate manager to exercise some or all of the powers of an executive member of the body corporate committee. With an appointed body corporate manager, body corporates could operate using short-term contracts rather than management rights to fulfil their letting and property maintenance obligations – thereby gaining more direct control over the resident manager's performance. Such models of more direct control are already common in European tourism condominiums.

The main professional body providing information to Queensland body corporate committee members is the *Community Title Institute of Queensland*.

Tourism Wholesalers (Travel Companies)

These companies represent a significant player in the tourism industry. They derive their revenue from commissions when selling package holidays, holiday travel or accommodation. Apart from a range of niche products, the majority of tours or packages are still aimed at the mass tourism market where 'value for money' is a key factor. Accordingly, wholesalers are interested in securing competitively priced deals. Recent events such as the September 11 terrorist attack and the SARS outbreak have heightened the pressure to offer flexible commissions. In short, the higher the percentage commission, on a still competitive product, the better for the wholesaler. During boom times, profits will be high. During slow periods profit margins can be dropped to

secure volume with a more competitive price for the end product. Ultimately, volume is critical for most tourism wholesalers, as it provides a powerful bargaining position when negotiating a price with individual operators. As a result, wholesalers can exert considerable pressure on a destination or even a whole region.

One of the best examples of the negative consequence of such pressure is evident in Spain's Costa Brava. Price wars between wholesalers forced accommodation providers to lower their prices and cut their profit margins, which in turn affected their ability to maintain their facilities in a competitive manner. The resulting downward spiral of price-cutting resulted in reduced service levels and the general denigration of several destinations on Spain's Mediterranean coast (Priestley & Mundet, 1998; Valenzuela, 1998). On the Gold Coast, it has been found that the commission on tourist apartments can be as high as 45% of the price paid by the consumer.

The short-term focus of most wholesalers is apparent when we recognise that most have no particular long-term interest in a building, type of accommodation or destination. If they can secure a better deal elsewhere, or if a building no longer provides a competitive product, they simply move on.

Building Maintenance Sub-Contractors

Many components in a modern condominium complex are sufficiently complex to warrant the provision of repair and maintenance services by specialists, e.g. lifts, pools, automatic doors and air conditioning systems. Other service tasks can be less complex, however economies of scale result in them being widely outsourced (e.g. lawn mowing, landscape maintenance and linen cleaning). This signifies that large condominium complexes can provide work for a significant number of small and medium sized maintenance service companies. The key player in facilitating this link between the tourism industry and its host community is again the resident manager.

Building Surveyors and Property Valuers

Members of these professions provide advice to lending institutions and potential purchasers of condominium units. Their interpretation of building codes, market developments, rules for depreciation under the Australian tax legislation etc., aid the determination of a unit's value. Such determination also takes into account any limitations or restrictions pertaining to a particular apartment. If any of these restrictions (covenants, body corporate by laws or conditions on planning approvals) only allow tourism use, then valuations will be lower than a comparable unit that can be used flexibly as either a tourism apartment or a unit for long-term residence. In other terms, a building surveyor's interpretation of rules pertaining to tourism use can influence whether an apartment of the same layout and construction costs can be sold at a relatively high or low price.

Real Estate Agents

Holders of a real estate dealer's license under the *Property Agents and Motor Dealers Act 2000 Qld* are primarily involved in the sale of property for a commission that is generally paid by the property vendor as a certain percentage of the negotiated sale price. Therefore, real estate agents are motivated to seek a high volume of property sales at high prices. From a real estate agent's perspective, it is irrelevant whether the investment strategy of a new owner is consistent with the long-term management strategy of a building. Accordingly, apart from pointing out the rental possibilities associated with a property, real estate agents have minimal incentive to be concerned with tourism industry issues.

As indicated above, some prominent players in this industry become involved in the initial sale of condominium units, i.e., 'off-the plan' and also newly constructed units. Since new apartments are usually of higher value, sales commissions are also higher. This has resulted in some strong relationships between real estate agents and property developers. The interests of both parties can, however, be characterised as short-term as they are both primarily focused on whether the type of product planned or developed will find a buyer, irrespective of whether the development is in the long-term interest of the local tourism industry.

Some real estate agents also act as letting agents for short-term (holiday) lettings and therefore represent direct competitors to resident managers. As a result, these agents may develop an interest in how buildings are managed and positioned in the tourism context.

It is probable that real estate agents with the greatest influence on condominium management are those that mediate the sale of management rights. This is because of the key role played by a resident manager. Despite this key role, there is little reason to expect that the prime interest of a real estate agent is the completion of a sale rather than ensuring a purchaser of resident manager rights is an appropriately qualified individual.

The main professional body representing the interests of Queensland real estate agents is the *Real Estate Institute of Queensland*.

Body Corporate Service Providers

Body corporate and community management has become a complex legal and administrative matter. As a result, a number of specialist consultancy firms have developed over the last 20 years providing services to body corporates and their committees, developers and any other party with an interest in body corporate management. Consultants in these firms have developed expertise in drafting community management schemes for new buildings, advising existing body corporate committees on legal and administrative matters, compiling required documentation for body corporate AGMs and other body corporate matters. These firms also provide body corporate management services that include administering the collection of sinking and operational fund levies, setting operational budgets, the design of sub-contractor contract specifications, the conduct of maintenance reviews, insurance matters, etc.

The main professional body representing the interests of Queensland body corporate service providers is the *Body Corporate Managers Institute of Queensland*.

The nature of the interests held by thirteen different parties that have an involvement in condominium complexes has been outlined. It should be noted that other parties with a more indirect interest in condominium complexes could also be cited. For instance, local councils that grant building permits and state governments that assume a tourism promotion responsibility can be seen to have an interest in condominium complexes. Despite this, it is believed that the foregoing discussion provides a relatively comprehensive checklist of the particular interests held by the main stakeholders with an interest in condominium complexes.

Chapter 6

Key Tourism Issues Emerging From Stakeholder Review

Satisfaction and Image

In tourism it is difficult to understate the importance of image. Dissatisfaction with any dimension of a travel experience has been demonstrated to substantially affect overall satisfaction. Thus, the image of a whole destination suffers if visitors are dissatisfied with their accommodation. The tourism literature suggests that visitor satisfaction is a function of pre-consumption expectations and post-consumption evaluations. A guest is likely to be satisfied if the accommodation meets or exceeds their expectations. A recent study of visitor satisfaction amongst domestic visitors to the Gold Coast found that although overall satisfaction with accommodation was fairly high, it did not meet expectations. Dissatisfaction with apartment style accommodation related to concerns about value for money, service levels and the communication styles of service providers (Sparks, 2002). A key issue in the provision of condominium style accommodation is the lack of mechanisms to ensure conformity to a standard. Therefore repeat visitors and those who have been referred to a property may be disappointed if allocated to a lower standard unit. Further, visitors who are travelling as part of a group have the opportunity to compare a range of rooms, and concerns about value for money may emerge when comparisons are made between rooms of different quality.

A modern, clean and spacious appearance is integral to a competitive position in the national and international tourist accommodation market. Therefore, condominium complexes need to be upgraded on a regular basis. Upgrades should be of a specific standard, particularly in major tourism nodes (i.e., where most apartments in a building are in the letting pool). Currently body corporate and taxation legislation focuses largely on maintenance, not upgrading.

For maturing destinations, a large number of condominium complexes dominate the image of the destination (in all aspects: overall appearance, reputation, views from accommodation units, streetscape, etc.). This has significant implications for destination image management as even visitors who may not choose to stay in a condominium complex will have their holiday experience affected by the frequently large and imposing condominium structures.

Demand and Supply Issues

The construction of condominium complexes is often driven by real estate speculation rather than tourism demand. This can often result in oversupply towards the end of a real estate boom, thereby putting pressure on other accommodation sectors.

In the past, condominium complexes have largely been dependent on the somewhat limited domestic market (only 20 million people living in Australia). This signifies that the sector is vulnerable to developments such as Australians seeking more international travel as a result of perceived improvements in international travel security. Either increasing the incidence of return visits or, making inroads in the international market can achieve growth in the provision of tourist accommodation in the condominium sector.

Like other forms of tourist accommodation, there can be protracted periods of excess capacity followed by periods of operating at full capacity. This signifies that in many complexes, only 50% capacity of relevant infrastructure services (water, sewage, etc.) is required for most of the year, i.e., it is only during peak holiday times (Christmas, Easter) that these service facilities have to work at full capacity.

Impacts on Host Community

Modern town planning principles emphasise consolidation of particular types of buildings in designated areas. In the case of condominium complexes, however, such urban planning is undermined, as there is currently no certainty that a complex in a prime tourist location will be used predominantly for tourism purposes. Many condominium complexes located near the centre of a tourism hub of activity have a relatively high proportion of resident owners. This issue is problematical, as any attempt to use covenants or town planning restrictions to limit the use of a condominium complex to a particular purpose will be strongly resisted by the property's owners as it will carry adverse implications for the property's value. This is because a restrictive covenant placed on a building signifies a degree of lost flexibility.

As already noted, there can be divergent expectations between the interests of tourists (short term residents) and the interests of long term residents regarding use of facilities (e.g. pools, tennis courts), noise, night time activities, etc. Too many restrictions placed on residents will lessen the holiday experience of tourists; too much laissez-faire can generate problems for the long-term residents.

With respect to the volume of employment provided by a condominium complex, Warnken (2002) found that a condominium complex employs on average 1 person per 14 beds (this includes real estate agents, building maintenance contractors). Hotels, however, average 1 person employed for every three beds. Therefore, the employment benefits for the host community are relatively low for a condominium complex relative to a hotel.

Marketing and Management Issues

Management rights for a condominium complex can be acquired irrespective of whether the buyer has any qualification or experience in the tourist accommodation industry. It appears many individuals purchase resident managers with an ill-conceived notion of what is involved in effectively marketing tourist-based accommodation.

Resident managers have often little or no control over the interior (status of furniture, appliances, wall paint, etc.) of apartments in the holiday letting pool. This can lead to inconsistencies of their product and problems with building a reputation through word-of-mouth.

Of the many parties that have been described as having a stakeholder interest in condominiums, few would regard themselves as involved in the tourist industry and very few have specific training or expertise in the tourism and travel sector. This signifies a dilution of focus on tourism relevant management aspects.

Long-Term Sustainability of Condominium Complexes

The multi-ownership structure, high residential density, exhaustion of maximum plot ratios and/or height standards, and lack of foresight in planning all represent significant obstacles to the replacement or redevelopment of aging buildings.

If not substantially refurbished or replaced, the market attractiveness of condominiums can only be maintained by offering lower-priced accommodation. This can result in a downward spiralling effect whereby there is a reduced cash flow, which, in turn, reduces the chances of funding necessary refurbishments. This spiralling effect signifies the potential of aging buildings becoming a sink for low-budget visitors or tenants whose lower purchasing propensity will adversely impact on the local economy.

Major Advantages of Condominium Complexes

Tourist apartments offer flexibility as they can be converted to long-term residential units at times of low tourism demand.

Condominiums represent a valuable form of investment for many Australians. It is estimated there are around 23,000 tourism condominium units in Queensland with an average value of around AUS\$ 250,000. This signifies an overall investment of around AUS\$ 5.7 billion. Clearly condominiums appear to be favourably viewed by a substantial proportion of the Australian investing community.

Condominiums appear to be particularly appealing to families and the longer stay market. Research that appraises whether the availability of condominium style accommodation in a destination increases yield by promoting longer stays would be welcome.

From Tourism Queensland's perspective, some of the key issues include:

- ascertaining the tourism policy/legislation issues which TQ can take forward to another level
- investigating the tourism training issues/mechanisms re resident managers
- understanding the impact of the aging room stock on the visitor experience

Chapter 7

Conclusions

Core Gaps and Research Priorities in the Short Term

In light of the significance of condominium tourist accommodation, relative to the volume of research conducted into hotel management, there is a startling paucity of research concerned with condominium management.

In the short-term greater appreciation of the Australian legislative context is required. It is important that a study be conducted that benchmarks Queensland condominium legislative provisions to those applying in other states. This analysis is a necessary preliminary to the development of a potential tourism specific regulation module.

Longer Term Research Opportunities

This section outlines a proposed series of related research projects concerned with tourism and management issues arising in connection with strata-titled condominium complexes in Australian tourist centres. Seven research projects are outlined. The fifth project, which concerns the development of proposed legislation tailored to address specific issues arising in condominiums located in tourist centres, can be seen as representing a synthesis of much of the research agenda.

Project 1: Assessing Trends in Australia's Tourist Accommodation Sector

Principal Investigators: Jan Warnken & Liz Fredline

Aim: to highlight long-term trends, determine the relative importance of strata-titled condominium complexes and identify data gaps and problems with definitions for the tourist accommodation sector. Analysis of this data will provide important contextual information for the overall research project concerned with issues surrounding strata-title complexes as a vehicle for providing tourism accommodation.

Research method: This research module will involve the compilation of data from the Australian Bureau of Statistics (ABS), Tourism Queensland, NSW Tourism Board as well as other sources (including local government authorities). The research will document trends in the number and type of establishments, beds, employment, occupancy rates etc., for hotels, motels, condominiums, and caravan parks in significant Australian tourist locations (Gold Coast, Sunshine Coast, Brisbane, Cairns, Whitsundays, Tweed, Byron, Coffs Harbour, etc.). This phase of the study will primarily involve desktop analysis of extant databases.

Project 2: Investigation of Accommodation Related Contingency Factors and Visitor Satisfaction

Principal Investigators: Liz Fredline & Chris Guilding

Aim: to investigate the relationship between visitor satisfaction and accommodation-related factors (building age, size, location, layout, level of refurbishment, governance structure, etc.).

Research method: Two research phases are envisaged. Initially a series of case studies will be undertaken in hotels, motels and condominiums. Following this, a survey of tourists (differentiated on domestic and international basis) on the Gold Coast, Sunshine Coast and in Cairns will be conducted. Data analysis will control for factors such as expectation levels resulting from the nature of marketing promotion undertaken.

Project 3: Document Issues Arising in Connection with the Corporate Governance of Condominium Complexes

Principal Investigators: Chris Guilding, Allan Ardill & Jan Warnken

Aim: In light of the relative novelty of the corporate governance model applied in strata-titled condominium projects, an appraisal of management issues arising will be undertaken. The aim is to appraise the management and adequacy of sinking fund levies as well as the nature of agency conflicts between unit owners, corporate body managers, resident unit managers and complex developers. The agency relationships arising in strata-titled complexes are both novel and relatively complex. No prior research exploring corporate governance issues arising in strata-title complexes has been discovered in the literature.

Research method: A case study investigation of the management of a typical strata-titled complex offering short-term rental tourist accommodation will be undertaken. Following this, a semi-structured interview schedule will be developed as the basis for conducting interviews with representatives of the key agents involved in a strata-titled condominium complex (unit owners, corporate body managers, resident unit managers and complex developers).

Project 4: Analysis of Current Legislative Frameworks Pertaining to the Management of Strata-Titled Condominiums in Australia.

Principal Investigators: Allan Ardill & Jan Warnken

Aim: to document current federal and state legislation pertaining to the establishment and management of condominium complexes. As part of this study, differentials in tax-induced investment incentives between hotels and condominiums will also be appraised.

Research method: A review of relevant provisions outlined in state and federal legislation will be undertaken.

Project 5: Development of a Tourism Accommodation Management Legislative Module for Condominium Complexes

Principal Investigators: All participating researchers

Aim: to integrate the findings of Projects 1-4 by developing a proposed *Tourism Regulation Module* to be included in body corporate management legislation. This module will be designed specifically to address management issues arising in complexes that are predominantly oriented towards providing tourism accommodation as well as tourism issues arising in those regions where condominiums represent a significant proportion of tourism accommodation.

Research method: compilation of findings from Projects 1-4 and consultation with key tourism industry stakeholders, relevant government departments and the different parties involved in strata-titled condominium complexes will be undertaken.

Project 6: Exploratory Research into Sinking Fund Management in Condominiums

Broad objective: To appraise the nature of, and issues related to, sinking fund management in strata titled complexes located in tourist regions.

Research Method:

Phase 1: Conduct semi-structured interviews with representatives of large condominium body corporates (link data collected to size, age, resident/non-resident mix).

Phase 2: Meet with resident managers and owners in 10 complexes to gauge alternative perspective of sinking fund administration arrangements.

Project 7: Investigate the Need for an Accredited Training Programme for Resident Unit Managers

Principal Investigators: Chris Guilding and Jan Warnken

Aim: to determine the need for the development of an accredited training programme for resident unit managers.

Research method: conduct exploratory interviews with resident managers (both with limited and extensive experience), QRAMA officials, individuals with extensive body corporate committee experience and body corporate service providers.

APPENDIX A: An Agency Theory Perspective on the Owner / Manager Relationship in Tourism-Based Condominiums

Chris Guilding, Jan Warnken, Allan Ardill and Liz Fredline

Abstract

This paper draws on field study data to provide an examination of the condominium owner / manager relationship in the Australian tourism context. Although there has been considerable growth in tourism accommodation owned through strata-title, no research examining the somewhat idiosyncratic relationship between unit owners and resident managers has been found in the literature. The idiosyncratic nature of the relationship underlines its significance as a context in which to apply the agency theoretical model. As Australian condominium resident unit managers provide letting and caretaker services for condominium unit owners, it appears the relationship can be justifiably viewed as a principal-agent exchange (Mills, 1990).

The study specifically focuses on strata title condominiums located in major tourism regions. This sub-sector of the condominium management industry was chosen for study because it exhibits several key attributes distinguishing it from the non-tourist based condominium sector. For example, two different parties represent the principal (resident owners and investor owners), also a significant proportion of a resident manager's work relates to the management of short-term holiday unit letting. In light of the particular agency relationship dynamics arising in large tourist-based condominium governance, several suggestions concerning the legal environment of the industry are provided.

Introduction

The last quarter of a century has seen major growth in the provision of condominium unit tourist accommodation. While one tends to think first of hotels when conceiving of tourist accommodation, this is becoming an out-dated notion as condominiums now represent the primary form of tourist accommodation in many resorts such as Australia's Gold Coast (Warnken, 2002; Warnken, Russell & Faulkner, 2003). In light of the significance of condominium tourist accommodation, relative to the volume of research conducted into hotel management, there is a startling paucity of research concerned with condominium management. The study reported herein was conducted in light of this apparent gap in the literature.

The study draws on the agency theory framework to provide insights into the idiosyncratic nature of condominium governance and also the conflicts that can arise between a condominium complex's unit owners and its resident manager. This appraisal is conducted in the context of condominiums located in tourist regions. In tourist region condominiums there are two main types of unit owner: resident owners and investor owners that sub-let their units to short-term stay holidaymakers. Tourist region condominiums carry the additional dynamic of a broadened resident manager responsibility due to the provision of a short-term letting management service.

The validity of drawing on the agency theory framework in connection with condominium operations becomes evident when comparing the nature of a hotel's operational and logistical operations with those of a tourist-based condominium. Data for this study has been collected from parties involved with large condominiums located, in the main, close to Australia's Gold Coast. This area represents an archetypal tourist centre with a high density of high-rise buildings located adjacent to a commercially developed beachfront. For some time it has been widely acknowledged to represent Australia's premier tourist destination (Russell & Faulkner, 1999). Condominiums in tourist regions can be compared to hotels due to the provision of a reservation management and room cleaning service. From an operational perspective, the primary difference between a tourist based condominium and a hotel is the fact that condominiums generally provide no or minimal food and beverage services other than self-catering facilities.⁹ A hotel represents a commercial setting where the conventional owner / manager relationship that has been the primary subject of agency research can be readily applied. Similarly, the conventional workings of a condominium complex signifies an agency relationship where the wealth seeking objectives of unit owners have to be reconciled with the wealth seeking objectives of a resident manager. As will be noted below, however, the governance arrangement typically implemented in Australian condominiums departs radically from the generally applied owner / manager governance structure evident in most Western commercial organisations.

The remainder of the paper is organised as follows. The next section overviews the agency theory model and the nature of research conducted within the agency theory tradition. Following this, the particular nature of agency relationships, apparent in the context of condominium management, is outlined. The qualitative data

⁹ A particular aspect of the provision of a short-term stay condominium unit may in fact give rise to more complex labour management implications than is the case for hotel guest management. As condominiums provide self-catering facilities, it is to be expected that in many cases the time taken to clean a unit following a guest's departure will be greater than the time taken to clean a hotel room following a hotel guest's departure. The provision of self-catering facilities also carries implications for maintenance and control of self-catering infrastructure.

collection research methods applied and also findings made in connection with the specific issues arising in this relationship are then presented. The paper concludes with a summary of the main findings and a discussion of the practical implications arising from the study.

Agency Theory

Agency theory concerns exchanges where one party, the principal (typically represented by the owner(s) of a business), delegates work to a second party, the agent (typically represented by a manager or some other employee of the business owned by the principal). It attempts to draw out contractual problems that can arise as a result of agents acting opportunistically when their interests depart from those of the principal (Berle & Means, 1962; Jensen & Meckling, 1976). These problems are exacerbated where information asymmetry favouring the agent exists.¹⁰

Agency theory has been a popular conceptual framework for researchers interested in conflicts of interest, incentive problems and also mechanisms for managing incentive problems (Eisenhardt, 1989; Bohren, 1998; Lambert, 2001).¹¹ Identification of an organisational setting where there is a potential for conflicting interests between one or more parties is a fundamental precept of agency theory modelling. Lambert (2001) notes four typical reasons for agent-principal conflict arising. These are: (i) there is a potential for effort aversion by the agent (eg. a manager may well experience a desire to not apply an optimal effort when completing his/her work), (ii) the agent can use his work situation as an opportunity to divert resources towards his own personal benefit, (iii) there can be differential time horizons i.e., while an owner may see their involvement in the agency relationship in the context of ten or more years, the agent might have little concern with the long-term implications of his actions as he does not expect to be in the relationship over the long-term, (iv) there may be different attitudes to risk held by the principal and the agent.

Two streams of research drawing on agency theory can be identified. Jensen (1983) refers to these as the positivist and the principal-agent streams. Research conducted within the positivist tradition has tended to identify and describe principal-agent relationships where conflicting interests are evident and to comment on governance mechanisms implemented to police the self-interested agent. Eisenhardt (1989) sees several key studies falling within this research tradition. These include Jensen and Meckling's (1976) work concerned with corporate ownership structures, Fama and Jensen's (1983) focus on the board of directors' role and senior executive opportunism, and studies concerned with somewhat controversial practices such as golden parachutes and corporate raiding (eg. Jensen, 1984; Jensen & Roebuck, 1983). Principal-agent researchers are more concerned with the development of a general agency model. Studies characteristic of this second research tradition tend to be based on theoretical deduction and mathematical proof. As this study concerns the application of agency theory to a particular organisational context, it relates most closely to the positivist agency research tradition.¹²

Agency theorists refer to two costs that a principal can incur when attempting to manage an agent who has the benefit of asymmetric information: (1) costs of monitoring and (2) costs of metering (Williamson, 1985; Sharma, 1997). Monitoring costs are incurred when the principal attempts to monitor an agent's behaviour. If an agent is observed to be acting in ways that conflict with the spirit of the relationship (ways that are detrimental to the interests of the principal), the principal can impose sanctions on the agent. If it is costly to monitor the agent's actions, a principal may choose to focus on metering the outcomes of the agent's actions. For example, a widely used outcome based contract is evident when workers are reimbursed on a piece-rate basis. A key distinction between the behaviour monitoring approach and the outcome metering approach is that the latter results in risk being transferred from principals to agents. When outputs are measured, the agent is exposed to the risk of uncontrollable factors (e.g., random machine break-down, faulty raw materials, changing competitive environment), affecting the appraised performance. It is a fundamental tenet of agency theory that the costs of monitoring and metering incurred by the principal should not outweigh the principal's derived benefit from appraising the agent's performance. Despite actions that a principal can take to influence the performance of an agent, research has shown the degree to which principals can be at the mercy of agents (Bazerman, Neale, Valley, Zajac & Kim, 1992; Kesner, Shapiro & Sharma, 1994).

The agency model has been applied in a range of transactional settings concerned with a variety of issues (e.g., vertical integration [Walker & Weber, 1984], executive compensation [Baker, Jensen & Murphy, 1988], tender offers [Cotter & Zenner, 1994]). It has also been used in a variety of disciplinary contexts (e.g., accounting [Demski & Feltham, 1978], marketing [Basu, Lal, Srinivasan & Staelin, 1985] and organisational behaviour [Eisenhardt, 1988]). As the relationships that researchers have appraised from an agency perspective are broad, following the lead of Sharma (1997), the particular agency issues of interest in this study will be

¹⁰ Information asymmetry arises when one party has access to information that the second party cannot access.

¹¹ See Kakabadse and Kakabadse (2001), La Porta, Lopez-de-Silanes and Shleifer (1999), Letza and Smallman (2001), Stoney and Winstanley (2001) and Zingales (2000) for some recent critiques of this literature.

¹² Unlike most studies in this research tradition, however, this study does not focus on the shareholder / manager relationship in a corporation.

appraised in the context of the owner-manager agency relationship, which has dominated agency research (Eisenhardt, 1989; Walsh & Seward, 1990).

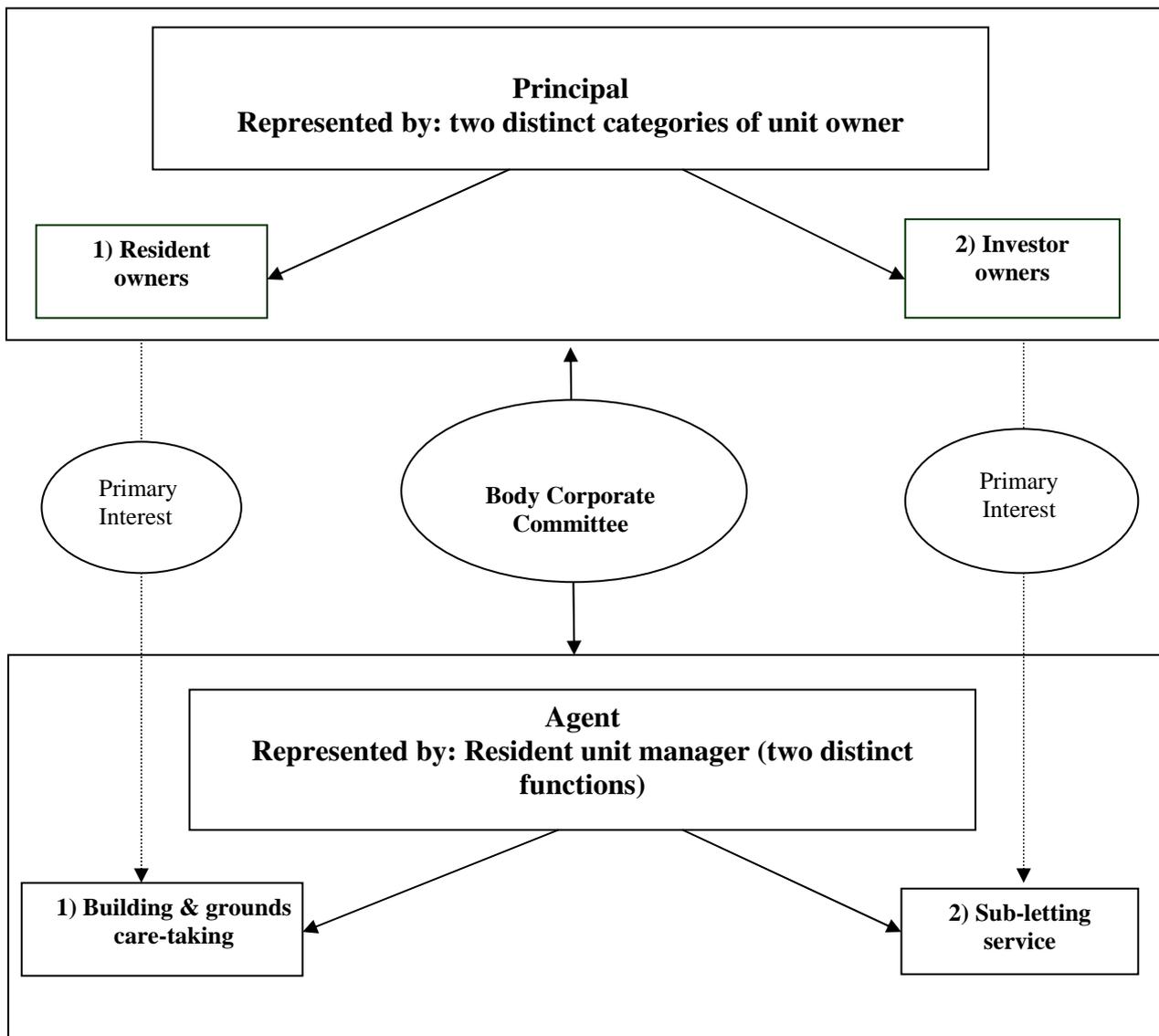
The Ownership / Management Structure of Queensland Condominiums

Agency theory would appear to represent a particularly pertinent framework to draw upon when considering incentive issues arising in the context of condominium management. Eisenhardt notes:

‘(T)he domain of agency theory is relationships that mirror the basic agency structure of a principal and an agent who are engaged in co-operative behaviour, but have differing goals and attitudes toward risk’ (1989: 59).

It would certainly appear that the nature of the condominium owner / manager relationship is one exemplifying two parties engaged in a scenario representing a highly co-operative venture. In addition to the factors normally present in the archetypal principal / agent relationship of the corporate world, two further factors highlighting a heightened need for co-operation are present in the condominium unit-owner / manager relationship. Firstly, with respect to condominium resident owners, the additional dynamic of proximity of domicile between the principal and agent is also evident. This is because in Australia, the manager usually owns and resides in the designated resident manager unit within the condominium complex. This signifies that the condominium owner / manager relationship moves well beyond the confines of a working relationship restricted to normal business hours. Secondly, the financial implications at stake for both the principal and agent would appear to be heightened in most condominium owner-manager relationships. In the vast majority of corporate owner / manager relationships most owners have a relatively small proportion of personal wealth at stake in any particular corporate enterprise due to the common investment strategy of investment portfolio diversification. Also, most employees make no financial investment in their job (although loss of job may well carry fundamentally significant financial implications for many employees). Compare this with the owner / manager situation in a condominium complex. Purchase of a condominium unit represents a significant investment that in many cases will constitute the bulk of an individual’s personal wealth, particularly where the investor intends to occupy the purchased apartment. Also, in Australia, condominium managers buy the rights to manage a building as well as title to the resident manager’s unit. This model was developed in an attempt to increase the resident manager’s general interest in the building thereby improving his/her overall motivation to act effectively as caretaker. Some recent sales of condominium resident manager rights in large Australian complexes have commanded prices in excess of a million dollars. As a result, it is evident that the financial stakes of the two parties involved in a condominium owner / manager relationship are considerably greater than is the case in the context of the conventional corporate owner / manager relationship.

The nature of the unit-owner / resident manager relationship is depicted in the following figure. Mediating the relationship between owners and the resident manager is a body corporate committee that is elected by the unit owners. The role of the body corporate committee parallels the role of a board of directors in a corporation as it serves the interest of the principal (i.e., the owners) in managing the agents (i.e., managers in a corporation and the resident manager in a condominium). The figure highlights the two distinct unit owner categories mentioned earlier: resident owners and investor owners. This distinction between unit owner types is significant, and its practical implications will be elaborated upon in the paper’s ‘findings’ section.



One distinguishing facet of the interest of resident owners and investor owners is evident from this figure. An investor owner can be expected to be primarily interested in the resident manager's sub-letting performance. A resident owner, however, gains no financial advantage from the success of the resident manager's sub-letting performance. Many resident owners might actually desire that the condominium complex has a low occupancy level and therefore derive satisfaction from a resident manager proving to be ineffective with respect to sub-letting activities. The resident owner can be expected to be more narrowly interested in the resident manager's performance with respect to efficiently and effectively completing his care-taking responsibilities (i.e., maintenance and cleaning of the condominium building and grounds).

The body corporate committee's activities include overseeing a resident unit manager's performance, setting and administering an operational budget and setting and raising levies for a sinking fund established for the purpose of periodic major building maintenance expenditure.

As already noted, in most parts of Australia the resident unit manager buys the rights to manage the building. Management right holders in a tourism complex usually derive most of their return in the form of sub-letting commissions for renting units assigned to the holiday letting pool. In theory, sub-letting rights can be withdrawn by individual investor owners at any time and transferred to an outside real estate agent at short notice. Further, should the resident unit manager's performance with respect to his building care-taking performance be deemed unsatisfactory, a simple voting majority of unit owners can elect to terminate his building service contract.

Research Method

The empirical data collection method employed comprised two distinct phases. Initially, the research team hosted a panel discussion of parties interested in condominium ownership and management. The purpose of this initial data collection phase was to strengthen the research team's appreciation of ownership, governance and

operational management issues arising in large condominium complexes located in tourist regions. The discussion took place in the context of a two and a half hour working lunch hosted in a Gold Coast hotel seminar room. Panel discussants were informed of the research team's interest in condominium development and management in tourist regions. To provide greatest scope for the invited panellists to influence the research team's agenda, the meeting was conducted in a relatively unstructured manner with all participants being encouraged to raise issues they felt pertinent to an academic inquiry of the industry. The panel comprised the following interested parties:

- A representative of the Queensland Resident Accommodation Managers Association,
- A representative of the Body Corporate Managers Institute of Queensland,
- Real estate agents with a specialism in the sale of condominium strata title units,
- A representative of the hotel / tourism accommodation management industry.

The second stage of empirical data collection involved a slightly more focussed interview approach. Two group interview sessions were held with three representatives of the Queensland Unit Owners Association. In addition, two interviews were held with a freelance consultant who provides specialist advice in connection with condominium management and ownership (this individual has more than twenty years of experience in the industry). All these interviews were audio taped and ran in total for more than ten hours. This research approach was taken because some of the issues addressed appeared relatively sensitive. In the course of conducting the interviews, considerable rapport developed between members of the research team and the interviewees. It is believed this rapport has facilitated greater appreciation of some of the key issues confronting the industry as the interviewees became noticeably more candid as the interviews progressed. Despite this, on a couple of occasions the interviewees requested that the tape recorder be turned off for portions of the meetings. It should also be noted that the research team's appreciation of key issues in the condominium unit owner / manager agency relationship has been further informed by numerous casual conversations conducted with past and present condominium unit owners and other parties involved in condominiums (e.g., property developers and sub-contractors providing condominium maintenance services).

Results and Discussion

In this section observations pertinent to providing insights into the particular nature of the condominium unit owner / resident manager relationship are presented. Initially the ways in which the condominium unit owner / resident manager relationship departs from the archetypal corporate owner / manager agency relationship are described. Following this, Lambert's (2001) four point classification of typical factors accounting for principal / agent conflict is drawn upon to provide a framework facilitating further appreciation of the problematical nature of the condominium unit owner / manager relationship. Following the lead provided by several interviewees, when talking of 'Resident Unit Managers' the acronym 'RUM' will be used.

The Idiosyncratic Nature of the Condominium Unit Owner / Resident Manager Agency Relationship

In conventional agency theory modelling the principal / agent relationship is conceived of in terms of two parties where each party comprises a set of relatively homogeneous agents with uniform self-maximising interests. As already discussed and highlighted in Figure 1, this does not appear to be the case in tourism-based condominium management, however, as the principal is represented by two distinct groups with substantially different interests in regard to the role of the RUM. This view of principals as a heterogeneous group with competing interests highlights a significant departure from the conventional agency model. Despite this departure, in Australian legislation pertaining to condominium management there appears to be limited acknowledgement of the potential for conflict between resident and investor owners.

The different perspectives of the two owner types appear to have a major bearing on the relationship between an RUM and an individual owner. Because both the investor owners and the RUM derive a substantial portion of their investment returns from letting out apartments to holidaymakers, their goals appear to be relatively well aligned. The goals of the RUM and resident owners can be characterised more by divergence than convergence, however. In some cases this goal incongruity can result in resident owners sensing an antagonistic manner from the RUM. This antagonism appears to result from RUM's earning no letting agency income from the resident owner units. One interviewee commented:

'We've got friends who own a unit and we go up there a bit and the first time we walked in the manager there was really nice to us. Then he realised where we were going and now he treats us like dirt because he's getting no money. Our friends don't rent their unit out. They're not on the rent file, so he's not interested, and honestly it's terrible.'

Such behaviour, particularly if extended to tourists using apartments hired out by an outside (i.e. real estate) agent, could provide a serious impediment to word-of-mouth promotion which is one of the most critical marketing instruments in the tourism sector.

Berle and Means (1967) distinction between active and passive roles of the principal appears pertinent to a consideration of the differing interests of resident and investor owners. With respect to the execution of the

RUM's caretaker role, resident owners are likely to be the much more active party. This is because the cost of monitoring the performance of the caretaker role will be much less for the resident owner. Due to proximity of domicile, a resident owner will be readily able to see the nature and outcome of the RUM's care-taking effort. Further, as the resident owner's quality of life will be directly affected by the standard of the RUM's care-taking service provided, it is to be expected that resident owners will have a greater propensity to complain should the care-taking performance fall below what is deemed acceptable. Investor owners can also suffer from a decline in a RUM's care-taking performance due to the adverse implications for sub-letting occupancy levels. This link between sub-letting performance and care-taking performance is unlikely to be apparent to most investor owners due to the range of parameters affecting occupancy levels, e.g., a general decline or stagnation in a region's visitor numbers. As a result, relative to resident owners, investor owners are more passively engaged with the aesthetic impact of a RUM's care-taking performance. As already noted, investor owners will directly experience the results of a RUM's poor sub-letting efforts and (where these are clearly evident) are often forced to actively find a solution to this problem. By comparison, resident owners are likely to remain passive in regard to issues that have no, or even positive, effects on their personal welfare.

This inconsistency of the interests of resident and investor owners raises the potential of a power struggle in terms of representation on the body corporate committee. As indicated earlier, members of the sub-letting pool of owners can, by a simple voting majority, serve a nine months notice to terminate the RUM's sub-letting contract under current Queensland legislation. As, in most large tourism condominium complexes, income earned from sub-letting constitutes the vast bulk of the RUM's total income, termination of the sub-letting contract signifies a greatly diminished incentive for the RUM to remain in the building and continue to undertake caretaker duties. If, however, the RUM elects to remain in the building and continue to undertake care-taking services, a somewhat unworkable situation arises with respect to the sub-letting function. This is because the RUM's property ownership includes the office space dedicated to the sub-letting management function. If this scenario arises, it can be difficult for investor owners to arrange effective management of the sub-letting function. As a result, if the RUM appears likely to resist leaving the building following a termination of sub-letting rights, the investor owners may be reluctant to invoke their right to terminate a sub-letting contract and try to attract long-term tenants or sell their apartment and move their investment outside the tourism industry. Both scenarios signify a withdrawal of resources from the tourism industry.

A second idiosyncratic aspect of the condominium owner / resident manager agency relationship concerns the degree to which investor owners can be seen to be in direct competition with one another. In the tourism condominium context, revenue from investment (i.e. rent collected from holiday lettings) is not pooled across all relevant apartments but awarded by the RUM, the agent, to the individual owner who owns the particular apartment that has been sublet. This particular dynamic lies in stark contrast to most other corporate ownership structures where returns on investment are awarded as a percentage of the business's overall earnings, weighted in accordance with the number of shares held by the investor. This direct involvement of the agent, the RUM, in the allocation of returns earned opens up the possibility of collusion between a particular investor owner and the RUM, i.e. one individual principal and the agent. An investor owner might be motivated to offer a RUM inducements in order to increase the occupancy rate of his or her unit. While comments made by interviewees suggest this potential is significant, two factors may curtail a RUM's propensity to unevenly allocate rental bookings across the sub-letting pool:

- As a result of a poor sub-letting performance, an investor owner might sell their unit and the purchaser of the unit might withdraw it from the letting pool.
- As a result of poor sub-letting performance, an investor owner might withdraw his unit from the letting pool. The incidence of this outcome is likely to be limited by the fact that the investor owner would have to either move into the unit, or personally manage its letting.

More importantly though, the influence wielded by the RUM in the allocation of investor returns provides him/her with considerable power that can be exploited to secure proxy votes from interstate owner investors. As noted earlier, in Queensland a RUM becomes owner of a unit (typically on the ground floor) under a conventional management rights agreement. Ownership of a unit confers the right to attend and vote at unit owners' meetings. Many investor owners live inter-state, however, and it is therefore not easy for them to attend owners' meetings. In many aspects of the day-to-day management of holiday units, the RUM is the first point of contact for the owner investor and therefore frequently becomes a key source of information. As it is in the interests of investor owners to maintain a positive relationship with a RUM (as their primary point of contact and key arbiter in the allocation of returns), it is common for investor owners to assign their proxy voting rights over to the RUM. The propensity of RUM's to control considerable investor owner voting rights at owner meetings underlines a fundamentally significant factor that can contribute to a schism between resident and investor owners. It also highlights a fundamental breakdown in accountability. The RUM is accountable to the body corporate committee as the elected representatives of the owners, yet the RUM can have considerable influence with respect to who is elected to the body corporate committee, and ultimately how the entire building is operated. Practically all interviewees concurred that assignment of proxies to RUM's is not uncommon and that it can contribute to a gradual deterioration of the building due to a loss of RUM accountability.

Potential for Effort Aversion by the RUM (moral hazard)

Moral hazard can arise when owners and the RUM have different interests and the owners cannot determine whether the RUM has acted appropriately. On several occasions representatives referred to owner apathy. As no recompense is earned for services provided as a member of a body corporate committee, many owners may feel reluctant to becoming involved in closely monitoring the care-taking performance of a RUM. From field data collected, it appears many owners feel considerable reluctance to initiate any sanctioning of a RUM. When referring to this reluctance one interviewee commented:

‘Owners go weak at the knees when it comes to admonishing a resident manager’.

The propensity for owner apathy appears to be greatest in large buildings where owners might well feel that the amount of personal benefit they can derive from an improved RUM service is insufficient to justify exertion of personal effort. For a given increase in a RUM’s effort, a unit owner in a 100-unit complex would only derive 1% of the benefit resulting from the greater RUM effort. In a 20-unit complex, however, a unit owner would derive 5% of the benefit resulting from an improved RUM performance. Smaller complexes would also appear to have a greater potential to develop an ‘esprit de corps’ amongst the owners, as opposed to a ‘number in the crowd’ culture that can be expected to develop in a large condominium complex with a diffuse ownership. Unit owner apathy was an issue repeatedly referred to in the interviews. The following quotes typify comments made:

‘We’ve got our AGM coming up in a week or so and one of the owners rang me and said ‘I see there’s two quotes here. How can we be sure that the work needs to be carried out?’ I said that I can assure you we wouldn’t be carrying out \$30,000 worth of work on a building that didn’t need to be carried out. All you need do is go up there and have a look at the building and you’ll see what it needs. I said how long since you’ve been there? He lives here in Brisbane. Its only 1 hour and 10 minutes to the Sunshine Coast and they never go there’.

‘Some of the unit owners aren’t even interested in having a look at a budget.... We are lucky to get a quorum. Last year we had to ring someone and get them to fax their proxy so that we could have a quorum for our AGM. We’ve got 30 units.... We only need to have eight people’.

‘We’ve got a situation here where there’s one or two resident owners who know about this crap. The rest of them are ignorant and apathetic members of the mushroom club who are part of the diffuse ownership of the building. You can’t get them to collaboratively agree on anything’.

The potential for a sub-standard performance with respect to the RUM’s sub-letting activities would appear to be constrained by the commission received by the RUM for sub-letting revenue earned. If, however, a RUM’s sub-letting performance is widely perceived to be deficient, each investor owner may feel disinclined to discuss the matter with the RUM. This is because a complaint might damage the investor owner’s relationship with the RUM and result in a decline in the investor owner’s share of the sub-letting pool’s occupancy levels.

One of the interviewees traced a problem of loosely drafted RUM contracts to a financial incentive for condominium complex developers. In addition to selling off the units, the developer also sells off the RUM management rights. Obviously a potential buyer of management rights is willing to pay more if the contractual rights are drafted in a manner that provides a degree of autonomy and protection to the RUM. With respect to developers he commented:

‘He creates the care-taking letting agent contracts, which are done on extremely favourable terms. They are weak, wishy-washy contracts, non-performance based. You could drive a truck through the things and it wouldn’t matter. You’d never catch the guy out and sue him for negligence, or breach of duties, or whatever’.

For a developer considering designing a condominium’s management rights contract in a manner that caters to the interest of the RUM, it appears that the upside in additional revenue from selling the management rights at an inflated price is greater than the downside of reduced unit marketability. This may be because many purchasers of new units do not carefully consider the particular resident management contract applying to their complex.

In addition to moral hazard, the agency theory literature also refers to adverse selection, which concerns an agent’s ability to misrepresent their ability prior to securing a job. As no approval of owners is required prior to a RUM purchasing condominium management rights, this particular facet of the agency model does not appear pertinent to the condominium management context.

Agent’s Diversion of Resources in a Self-Interested Manner

Moral hazard problems arise when one party in an agency relationship takes an action that is damaging to the second party. The action is motivated by the first party’s self-interest and the fact that the second party has insufficient information to detect the action. A widely acknowledged form of moral hazard that might well be significant in condominium management concerns the possibility of a RUM accepting a payment from a building service sub-contractor in return for granting a particular building service sub-contract. The frequency with which this type of ‘back-hander’ activity was referred to in connection with RUM’s suggests it is not an isolated occurrence. It should be noted, however, that the owner of a small electrical servicing business commented on a particular factor constraining the incidence of sub-contracting ‘back-handers’. He felt that many RUM’s were loathe to receive back-handers because if the contract with the sub-contractor has to be terminated

due to poor quality service, the sub-contractor may well inform the owners of the RUM's unscrupulous behaviour.

A second example of moral hazard concerns the possibility of a RUM not recording a short-term rental of a unit and failing to make the appropriate reimbursement to the unit's owner. Alternatively, a RUM may report the sub-letting of a unit, but at a rate that is below the actual amount charged to the sub-letting tenant.

A third example of moral hazard concerns the possibility of a RUM over-stating the cost of maintaining or housekeeping a room following the departure of a sub-letting guest and keeping the difference between the cost recorded to the unit owner and the actual cost remitted to the sub-contractor providing the service. One owner had a specific complaint about the amount charged by a RUM following a family holiday in his own unit:

'It cost us \$183 to clean our unit and to change the sheets on the three beds. We took blow-up beds for the extra kids and visitors, our own linen for the extra beds, our own towels etc. I can assure that the (gives his name) family are not untidy and we left the unit quite clean and ready for the benches to be cleaned and the floors to be cleaned. We had everything put away in the kitchen. \$183 to clean – now that's a scam. That's where the resident managers in holiday letting can make real dough'.

Differential Owner / RUM Time Horizons

If an RUM is planning to sell his management rights in the short-term, principal-agent time horizon asymmetry will result. This is because the RUM can be expected to have a shorter time perspective on his condominium involvement than the time horizon held by most unit owners. When taking a short-term perspective on his condominium involvement, the RUM can be expected to become particularly focussed on taking actions that will increase the marketability of the condominium's management rights. As the value of management rights are primarily determined by the sub-letting commission received by the RUM, it would seem likely that the RUM would become highly focussed on increasing sub-letting occupancy as well as accommodation rates charged. This potential highlights a further example of goal incongruity between the RUM and resident unit owners. Efforts to increase sub-letting occupancy levels may well come at the expense of a RUM's attendance to his care-taking responsibilities. This is because the RUM will become increasingly less concerned by the ability of owners to sanction him or any negative relationships that might result from a poor care-taking performance due to his planned termination of involvement with the condominium in the short-term. As it has already been noted that resident owners are most interested in a RUM's care-taking performance, the scenario of a RUM with a short time perspective on his condominium involvement represents a further particular example of a RUM's interests not being well aligned to the interests of resident owners.

The case of an owner planning to sell their unit does not appear to raise as great a potential for owner-manager misalignment of interests.¹³ Nevertheless, the particular scenario of a condominium complex suffering from poor physical maintenance due to inadequate sinking fund levies raised from owners appears worthy of consideration. In this scenario, there may be a high propensity for a downward spiralling effect with respect to building maintenance. An increasing proportion of owners can be expected to want to sell their units as they become aware of the decline in the building's physical condition and the inadequacy of the condominium's accumulated sinking fund to rectify the deterioration (i.e., an increasing proportion will assume a short-term perspective on the condominium). Somewhat ironically, this increased tendency for a short-term perspective will be occurring at a time that long-term oriented actions are required to reverse the building's physical decline. The potential for a downward spiral effect being invoked becomes evident when it is recognised that owners seeking to sell their units will strongly resist any proposed increase in the sinking fund levy, as this will adversely affect the marketability of their units. An increasing proportion of owners resisting an increase in sinking fund levies will accelerate a building's deterioration, which will result in still further owners seeking to sell their units. The possibility of this downward spiral scenario arising underlines the importance of maintaining an accumulated sinking fund at a level that avoids the need for significant short-term increases in a condominium's sinking fund levies.

Differential in Owner / RUM Attitudes to Risk

A major dimension of agency theory research concerns a principal / agent differential in attitude to risk. Agents are generally viewed as more adverse to risk due to the fact that they cannot diversify their employment. A principal (shareholder), can achieve a diversified portfolio of investments, however, and is therefore seen to be more risk neutral. A parallel to the company equity owner / company manager differential in attitudes to risk would appear to be presented in a muted form in the context of the condominium owner / manager agency relationship.

It was noted earlier that when a principal appraises an agent's performance by metering outcomes rather than monitoring behaviour, risk associated with satisfactory completion of the task in question is assigned to the agent. Investor owners can be seen to be heavily reliant on the metering outcomes dimension of control, as many will reside at a distance from the condominium that precludes the possibility of monitoring a RUM's behaviour.

¹³ When planning to sell a unit, an investor owner would experience a heightened incentive to offer inducements to the RUM to increase the unit's sub-letting occupancy rate as this will have a positive impact on the unit's value as an investment property.

As the investor owner's use of outcome controls signifies heightened risk assumed by the RUM, with respect to a RUM's sub-letting activities, a degree of risk congruency between the RUM and investor owners is apparent. Some monitoring of a RUM's behaviour can be conducted by resident owners due to the proximity of their domicile to the RUM's place of work. Care taken in conducting property maintenance work and also the nature of a RUM's interactions with a building's residents (both owners and sub-letting tenants) represent particular facets of a RUM's behaviour that will be readily observable for resident owners. As some RUM's can be expected to resent this relatively intrusive form of control, this dimension of a resident owner's control might well place a further strain on the resident owner / RUM relationship. Despite this, it appears likely that the majority of resident owners will base their views of a RUM's performance on the degree to which the building is maintained in a clean and well-ordered manner at a reasonable cost (i.e., outcome metering).

Similar to the company manager situation, the RUM's position represents a job that cannot be diversified. Further, by buying condominium management rights, the resident manager can be seen as exposed to significant downside vulnerability should the condominium's letting performance decline relative to the conventional employee situation where no 'job purchase' is made. For this reason, the RUM can be seen to have more at stake than an employee in a more conventional principal / agent relationship. Nevertheless, due to the absolute size of the investment required to become the owner of a condominium unit, the vast majority of condominium owners will not be able to achieve the same degree of investment diversification as that attainable by most shareholders of corporations.

Despite the parallels that can be drawn between the risk differential evident in the shareholder / manager corporate relationship and the condominium owner / RUM relationship, it appears the scope for a RUM's attitude to risk affecting a condominium's management is relatively small. Once built, the nature of a condominium's business is highly defined. Unlike corporations, it cannot move in and out of business activities with differing risk profiles. Apart from fairly isolated decision making issues such as whether to employ a provocative advertising campaign that is designed to garner 'shock attention', there appears little that a RUM can do to that would have a fundamental impact on a condominium's risk profile. Consistent with this view, no empirical observations highlighting management issues resulting from a differential in owner / RUM attitude to risk have been noted.

Conclusion and Discussion

The condominium unit owner / resident manager relationship exhibits many characteristics of the traditional business owner / manager relationship widely commented upon in prior agency theory studies. In the tourism context, however, several factors arise that distinguish the condominium unit owner / resident manager relationship from the conventional agency model. These factors include:

1. The principal (i.e., owners) does not comprise a homogeneous group with the same interests but two distinct groups (resident owners and investor owners) with divergent interests.
2. Income generated from investment in holiday apartments is not pooled and then allocated based on proportionate owner interests held in the building. The resident manager, through his/her sub-letting role, determines the allocation of investment returns. This highlights the extent to which investor owner relationships can be characterised as occurring in a competitive context.
3. There appears to be considerable potential for agent moral hazard due to the incentive for developers to formulate condominium management rights contracts that favour the interest of the agent (manager) and a self-motivated disincentive for individual investor owners to take any actions that might adversely affect their relationship with a manager.

The significance of the subject matter of this study becomes apparent when it is recognised that, in Australia, there are 35,000 holiday apartments in condominium complexes with more than 15 apartments in the holiday letting pool (Australian Bureau of Statistics, 2002). In the majority of cases a RUM manages these holiday units. Assuming an average value of AUS \$250,000 per unit, this represents an overall investment of AUS \$8.75 billion in the tourism accommodation sector. Due to Australian income tax provisions, which provide a tax deduction for expenditure related to investment properties, most units are owned by individuals. In the 2001/2002 financial year, this investment generated AUS \$932 million in rental income (i.e., about one fifth of total accommodation sector earnings).

Investment ownership of condominium apartment units constitutes a large part of the building industry in most tourism destinations. In Australia, the majority of financial institutions that finance condominium complex developments require 25-50% of the apartments to be sold off the plan (i.e. prior to building commencement) before releasing the capital required to complete the major building works. Without investor owners who plan to use their apartments for holiday lettings, the number of potential buyers would be substantially lower and initial 'off the plan' sales would take much longer to reach the required quota. Furthermore, holiday apartments are often purchased as a means to diversify investment portfolios for retirement funds. Appropriate governance of condominium complexes is therefore not only a tourism management issue; it also carries more general socio-economic implications.

In light of the issue raised in this study the following recommendations appear worthy of consideration.

1. One significant problem uncovered in this study appears to be the possibility of the RUM sub-letting units but not reporting the accommodation sale to the owner and therefore fraudulently retaining the accommodation rental received. A provision that could be implemented to lessen the potential of this activity occurring could be to recommend that in large tourist-based condominium complexes, investor owners hire an auditing agent to conduct periodic random reviews of the units occupied on a particular night. To facilitate this control the RUM would have to be required to maintain an up-to-date register of unit reservations, and this register should be recorded in a form that enables any investor owner real-time access. Such a system of control would also carry the added advantage of unit owners being able to check the occupancy levels of their unit with the occupancy levels of other units in the letting pool.
2. Inequitable allocation of sub-letting occupancy might be a significant factor restraining investment in tourism infrastructure. If an investor owner feels that a RUM is not managing the allocation of sub-letting equitably through the sub-letting pool, they will experience a reduced incentive to up-grade their unit. The main financial incentive for refurbishing an investment unit is the increased revenue generated due to the unit's improved standing relative to other units in the sub-letting pool. As a consequence, if an investor has a concern as to whether refurbishment will result in sufficient increased revenue, the likelihood of refurbishment occurring will be diminished. If this is a widespread phenomenon, the quality of accommodation provided to tourists will suffer. Because of this, so long as investor owners meet certain standards with respect to the quality of their unit's refurbishment and presentation, they should be entitled to an equitable proportion of the sub-letting occupancy sold by resident managers. A review of whether sub-letting has been distributed equitably across the letting pool should be facilitated by the resident manager making available a record of all sub-lettings made in the complex to any interested owner.
3. Differences in the interests of resident owners and investment owners that have been highlighted in this paper may be sufficient to warrant legislation for the development of new strata title management modules restricted to particular owner types. For example, investment owner complexes could be distinguished from resident owner complexes. Such an innovation would circumvent governance problems resulting from conflicting interests of the two distinct owner categories. This distinction would facilitate local government zoning areas for investor owner complexes or owner occupied complexes. Development of particular condominiums solely focused on the provision of tourist accommodation may facilitate the design of common-use tourism focused facilities and also enable a tourism focused building to gain economies of scale in its sub-letting promotional and operating activities.

Due to the divide that can result between investor and resident owners when a RUM controls the body corporate proxy voting rights of many investor owners, RUM's should not be entitled to attend or vote at body corporate owners' meetings. Such an amendment would rectify a fundamental loss of RUM accountability, which results from RUMs' enjoying considerable influence on who represents owners on the body corporate committee.

Appendix B: Community Titles Reforms in Queensland: A Regulatory Panacea for Commercial, Residential and Tourism Stakeholders

By Allan Ardill, Liz Fredline, Chris Guilding & Jan Warnken.¹⁴

Abstract

The economic, environmental, social and political significance of community titles schemes is on the rise culminating in important changes to the laws governing community titles schemes in Queensland. Recent amendments to the *Body Corporate and Community Management Act 1997* (Qld) were designed to maintain the flexibility and balance of rights between stakeholders with an interest in community titles. This paper outlines the community titles legislation following the recent changes. The paper will also examine some of the new measures designed to balance the interests of the original developer and subsequent lot owners, those of different types of lot-owners, and those between the body corporate and service contractors. The paper also briefly considers the need for the development of a new *Regulation Module* to specifically enhance tourism.

Introduction

Prior to the 1990s most Australians chose houses as their ‘Castle.’ That trend is rapidly shifting to unit accommodation.¹⁵ Similarly, the resort or condominium has replaced the motel or hotel sector as the preferred form of tourism accommodation.¹⁶ At the same time compulsory superannuation funds, and investors seeking independence for their retirement, have poured billions of dollars into the supply side of unit accommodation (see **Error! Reference source not found.**). Consequently, the economic, environmental, social and political significance of community titles schemes is on the rise culminating in important changes to the laws governing community titles schemes in both New South Wales and Queensland.¹⁷

Recent amendments to the *Body Corporate and Community Management Act 1997* (Qld) were designed to maintain the flexibility and balance of rights between stakeholders with an interest in community titles.¹⁸ This paper outlines the community titles legislation following the recent changes. The paper will also examine some of the new measures designed to balance the interests of the original developer and subsequent lot owners, those of different types of lot-owners, and those between the body corporate and service contractors. The paper also briefly considers the need for the development of a new *Regulation Module* to specifically enhance tourism.

Community Title Legislation

Community Titles Schemes

Collective ownership of buildings or complexes is legally possible using a wide variety of legal arrangements, for example, covenants, home unit corporations and tenancy in common. On the whole, these arrangements have not survived the test of time¹⁹ and today the preferred arrangement is by way of a community titles scheme (elsewhere known as ‘strata title’).²⁰ Community titles schemes are the creation of statutes and have evolved from the first strata titles legislation enacted by Victoria in the *Transfer of Lands (Stratum Estates) Act 1960* (Vic). In Queensland, the *Body Corporate and Community Management Act 1997* (Qld), (*BCCM*), provides for the ownership of a single ‘unit’ (called ‘lot’ in the *BCCM*) in a building or complex, together with a legal arrangement providing for the governance of relations between lot-owners and granting them a corporate interest in the management of common property.

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¹⁵ ABS, Time Series Spreadsheets 8750.0 and 8750.3 Building Activity (Australia and Queensland respectively), December 2002.

¹⁶ ABS, Time Series Spreadsheet 8635.0 Tourist Accommodation (Australia), December 2002.

¹⁷ For an example of the controversy see ‘Strata Title Difficulties’ broadcasted on Radio National’s *Life Matters* on 10 February 2003. The program summary is available at <http://www.abc.net.au/rn/talks/lm/stories/s779285.htm> (accessed on 1 May 2003). The original broadcast featured an interview with Sydney solicitor Stephen Goddard, who was formerly the chair for the Regis Towers body corporate.

¹⁸ *Body Corporate and Community Management and Other Legislation Amendment Bill 2002*.

¹⁹ Over time there have been shifts in accommodation preferences from units to town houses, single story to multi-story complexes, and shifts from single use to multi-use complexes. The range of possible uses of lots can vary in one building from residential, to leased residential, to tourism and holiday letting, through to commercial. Complexity of physical design and variation in use has driven the shift to community title statutory regimes.

²⁰ ‘Strata title’ does not adequately reflect the potential range of physical structures that may comprise a building or complex. ‘Strata’ tends to suggest that the building or complex will be defined according to vertical levels.

A 'community titles scheme' is defined under section 10 of the *BCCM* as freehold land subject to a single 'community management statement' recorded by the Registrar of Titles where the land comprises of two or more lots and contains common property not part of those lots.²¹

The 'community management statement' (CMS) is the constitution for the body corporate and it must comply with the requirements of section 66 of the *BCCM* and the appropriate Regulation Module for that scheme.

- Under s. 66 of the *BCCM* the CMS must:
- Contain the identifying name for the scheme;
- Identify the name of the body corporate;
- State the unique identifying number for the scheme;
- Identify the regulation module applying to the scheme;
- Include a contribution schedule and an interest schedule;
- Identify the lots included in the scheme;
- Specify the common property for the scheme;
- Identify the lots affected, or proposed to be affected, by a statutory easement, and state the type of statutory easement;
- Specify by-laws unless the default by-laws in Schedule 4 are nominated;
- Specify any future stages to be developed whereby a lot is made into a subsidiary scheme (viz: a layered scheme in accord with s. 18 *BCCM*); and
- Include anything that the regulation module applying to the scheme says it must include, and may include anything that the regulation module applying to the scheme says it may include.

The CMS is critically important because it distributes power and requires responsibility on the part of individual lot-owners to contribute toward the costs associated with the complex. It also presumes lot-owners will participate in the governance of the scheme through the body corporate. In practice, few lot-owners actually participate and their motivation or views may not be representative of the majority of lot-owners.²²

The original owner (developer)²³ is responsible for devising and registering a community management statement (s. 53 *BCCM*). Otherwise, in the case of pre-1997 complexes, the body corporate is empowered under the *BCCM* to adopt a new community management statement.²⁴ A CMS may only be registered under the *Land Title Act 1994* (Qld) (s. 115L) if it has the consent of the relevant local authority (Local Government Council).²⁵

Contribution Schedules

The *BCCM* presumes that individual lot-owners will contribute to outgoings on an equal basis and where this is not the case the CMS must declare why the contributions are unequal along with the applicable contribution number: sections 66(1) (c) and 66(1) (d) (i) of the *BCCM*. The *Act* draws a distinction between an interest schedule and the contribution schedule: sections 46 and 47 of the *BCCM*. The contribution schedule provides the basis for calculating: (a) the lot owner's share of amounts levied by the body corporate unless otherwise specified by the *Act*, and (b) the value of the lot owner's vote for voting on an ordinary resolution (s. 47 *BCCM*). While the interest schedule specifies: (a) the lot owner's share of common property; and (b) the lot owner's interest in the scheme upon termination; and (c) the basis for the calculation of land tax, rates or levies payable directly by the lot-owner. The *Act* expressly prohibits the inclusion of any charges or contributions that are capable of being billed or charged directly to individual lot-owners or occupiers (e.g. lot specific energy charges): section 47(4) of the *BCCM*.

Statutory Corporations

Section 32 of the *BCCM* confers body corporate status on community titles schemes while expressly precluding the operation of the *Corporations Law*. This means that a body corporate established under the *BCCM* is not subject to the *Corporations Law*, and instead, is only empowered to the extent of the *BCCM* and the relevant Regulation Module.²⁶ However, the following similarities exist:

²¹ 'Community Management Statement' is defined in section 12 of the *BCCM*.

²² Based on interviews with stakeholders, in particular the service contractors' association (Q.R.A.M.A.).

²³ The person who owns the lot(s) immediately prior to the creation of a community titles scheme is called the 'original owner'. This person is typically the developer. See section 13 of the *BCCM*.

²⁴ See generally Part 6 and sections 24,25 & 27 of the *BCCM*.

²⁵ See sections 59,60 & 61 *BCCM*.

²⁶ *Humphries v The Proprietors 'Surfers Palms North' Group Titles Plan 1995* (1993-94) 179 CLR 597. In *Humphries* the High Court held that a management agreement between a body corporate, constituted under the *Building Units and Group Titles Act 1980* (NSW), and its manager whereby the corporate assumed an obligation to pay its manager out of corporate funds in return, amongst other things, for the manager's undertaking to provide a letting service for individual proprietors, was invalid in the absence of an authorising by-law. The High Court found that there was nothing in the *Building Units and Group Titles Act 1980* that should be regarded as permitting expenditure from a body corporate's fund on services to benefit individual proprietors, and instead, the only source of authority for such action would be through a body corporate's by-laws. Similarly in *Birstar v Ocean Breeze* [1996] QCA 110, the

- A Body Corporate under the *BCCM* has a separate legal identity and can sue and be sued.²⁷
- The owners of lots, like shareholders, are members of the body corporate, and this extends to the members rights according to the relevant Regulation Module.²⁸

The original owner or developer, like the promoter of a company, owes various duties to the body corporate.²⁹

Like corporations, a body corporate can engage agents or employees to provide it with services.³⁰

Bodies corporate established under the *BCCM* are statutory corporations for the purposes of legal doctrine and principle.³¹ Therefore ordinary principles of statutory interpretation will be used to determine the scope and distribution of power.

Regulation Modules

‘Regulation Modules’ are clusters of *Regulations* that apply to particular types of community titles schemes depending on the nature of the building and its occupants. Section 21 of the *BCCM* currently provides for Regulation Modules that specify in considerable detail the corporate governance rules policies and procedures.³²

There are currently four modules:

- **Standard Regulation Module** (A generic module suitable for most situations which acts as the default module where none is expressly stipulated in the Community Management Statement or the scheme predated the current legislative regime).
- **Accommodation Module** (This module is appropriate where the majority of the lots are used for residential, letting or leasing purposes: s3 *BCCM (Accommodation Module) Regulation 1997*).
- **Commercial Module Regulation** (This module is used where the lots are for mainly commercial purposes. A commercial lot is a lot used for commercial or industrial purposes and is not an accommodation lot: s. 3 *BCCM (Commercial Module) Regulation 1997*).
- **Small Schemes Module Regulation** (This module is restricted to buildings where (a) the scheme is a basic scheme; (b) there is no letting agent for the scheme; and (c) there are no more than 6 lots included in the scheme: s. 3 *BCCM (Small Schemes Module) Regulation 1997*).

A particular Regulation Module will apply because (1) it is a module stated to apply to that scheme, and (2) no other module applies, and regardless of the community management statement (s. 21 *BCCM*). Still, considerable flexibility applies in practice as to which particular Regulation Module will apply to a scheme. It is possible for a single building or complex to have more than one Regulation Module applying to it because the *Act* provides scope for the inclusion of layers of schemes (each with its own Regulation Module) within one overall physical complex (s. 21(6) *BCCM*). However, each individual scheme can only have one type of Module applying to it at any point in time (s. 21(5) *BCCM*).

Management Structures

Chapter 3 of the *BCCM* sets out the rules for the management structures of community titles schemes. Even though s. 97 expressly prohibits a body corporate from delegating its powers, the corporate governance of community titles schemes can occur through three organs, namely: (1) The **body corporate** itself through decisions of general meetings; (2) **Committees** of the body corporate; and (3) if appointed, through a body corporate **manager**.

Body Corporate

Division 1 of Chapter 3 deals with the general powers and responsibilities of a body corporate. Under section 94 of the *BCCM* it is the responsibility of the body corporate to:

- administer common property and body corporate assets for the benefit of the owners of the lots included in the scheme; and

Court held that the powers of a body corporate, as a statutory entity constituted according to statute, will by definition have powers ‘limited in accordance with the indications given by the statute itself’ per Pincus JA and Thomas J. However, see ASIC Policy Statement 140 stating that ‘promoters’ and ‘operators’ of ‘serviced strata units’ will have obligations under the *Corporations Law* in certain situations.

²⁷ Section 33(2), but see also s. 36 of the *BCCM*, which gives the body corporate the power to sue and be sued in relation to common property.

²⁸ Section 31 of the *BCCM*.

²⁹ For example, s. 112 of the *BCCM* imposes a duty on the original owner to contract ‘in the best interests’ of the body corporate.

³⁰ See section 95 and generally ss 112 to 135 of the *BCCM*.

³¹ *Humphries v The Proprietors ‘Surfers Palms North’ Group Titles Plan 1995 (1993-94) 179 CLR 597*.

³² However, the type of Regulation Module that applies to a building will normally be a decision for the original owner (or developer) who lodges the community management statement with the local authority and the Registrar of Titles. For pre-1997 buildings, unless the body corporate decides otherwise, they will assume the Standard Regulation Module. Anecdotal evidence – based on a series of interviews and meetings with industry stakeholders - suggests that many buildings are subject to an inappropriate Regulation Module often based on the self-interest of active body corporate constituents.

- enforce the CMS and by-laws together with any other function necessary under the Act.

In performing these functions, the *Act* requires the body corporate to act reasonably (s. 94(2) *BCCM*). The body corporate has ‘all the powers necessary for carrying out its functions’: section 95 of the *BCCM*.³³ However, the body corporate cannot carry on a business other than to the extent necessary to satisfy its responsibilities under section 96. The *Act* gives examples of business activities prohibited by section 96 which include businesses such as a letting agent, tour operator, restaurant, real estate agent, or land trader.

Decision-making of the body corporate can occur through general meetings, provided the meetings are convened and conducted in accord with the relevant Regulation Module: s. 104 *BCCM*.

Committees

All four Regulation Modules require the creation of a ‘committee’ in accord with section 98 of the *Act* which states that *Division 2* of the *BCCM* will apply to any committee for the body corporate if such a committee is required under a regulation module. *Division 2* of the *BCCM* provides for the composition, election, powers and procedures of committees by empowering the provisions contained in the relevant Regulation Module.³⁴ This effectively means that a decision of a duly elected and constituted committee acting *intra vires* will be treated as a decision of the body, provided the decision was not a decision on a ‘restricted issue.’³⁵ Each Regulation Module stipulates what will be regarded as a ‘restricted issue’ for the purposes of committees.³⁶ In general, restricted issues are matters where the general meeting is deemed to be the appropriate decision-making body typically on matters that vary rights and financial responsibilities, and where an ordinary or special resolution would be needed to effect that change.

Managers

Under section 119 the committee of a body corporate may authorise a body corporate manager to ‘exercise some or all of the powers (‘**authorised powers**’) of an executive member of the committee. This delegation must be authorised by a special resolution³⁷ without the use of proxies and must be for a term of less than 12 months. Once duly authorised, the body corporate cannot prevent or interfere with the performance or exercise of the authorised powers unless the powers are revoked in writing by the body corporate.³⁸ The specific details of the authorisation will vary according to the regulation Module involved and the terms of the authorisation.³⁹ Basically, the *Act* authorises a manager to undertake the tasks of individual committee members rather than to undertake the powers and functions of the committee as a whole thereby ensuring that the manager does not replace or supersede the committee.

The *Act* also provides scope for the original owner and committees to authorise service contractors and letting agents to provide services. Sections 112 to 135 apply generally to govern the authorisation, review, renewal or removal of body corporate managers, service contractors and letting agents.⁴⁰

Governance Amendments

Background to the Amendments

The *BCCM* is meant to strike a balance between the developer and future owners of individual lots. The *Act* is designed to be flexible and was introduced on the premise that because it was an innovative regime it would require future legislative revisions.⁴¹ The first such revision was completed in 2002 and resulted in amendments that took effect from 4 March 2003.⁴²

The government department with responsibility for the *BCCM* – the Department of Natural Resources and Mines - undertook an extensive process of consultation. According to the Minister the consultation process revealed:

The issues that have generated most discussion relate to management rights – where a resident manager provides care-taking services for a scheme and acts as a letting agent for owners who wish to use that service. A

³³ Section 95 of the *BCCM* provides ‘examples’ of this broad power including: (a) the capacity to contract; (b) the power to own and deal with property; and (c) the capacity to employ.

³⁴ See sections 99 – 101 of the *BCCM*.

³⁵ Per section 100 of the *BCCM*, read in conjunction with the relevant Regulation Module.

³⁶ E.g. section 15 Small Schemes Regulation Module; section 26 Standard Regulation Module; section 24 Accommodation Regulation Module; and section 15 Commercial Regulation Module.

³⁷ A special resolution requires two thirds of those actually voting to vote in favour of the resolution: s. 106(3)(a)(ii) of the *BCCM*.

³⁸ Section 119 (3) & (4) of the *BCCM*.

³⁹ Section 122 of the *BCCM*.

⁴⁰ They will be numbered from 112 to 149 when the remaining provisions of the *Body Corporate and Community Management and Other Legislation Amendment Act 2003* are proclaimed.

⁴¹ The minister responsible for the recent amendments made this clear during his second reading speech: ‘The *BCCM Act* was passed in 1997, establishing a more flexible framework than had previously existed for community titles schemes. Because of the legislation’s complexity, the government of the day committed to review the act to ensure its objectives were being achieved.’ Per S. Robertson, *Hansard (Qld)*, 3 December 2002, 12:45 p.m., page 5225.

⁴² The *Act* has been reprinted so that many section numbers have also been changed.

scheme's success, and the success of related investments, relies on a strong working relationship between the resident manager, the body corporate and individual owners. Unfortunately this does not always happen. With two distinct owner types – those who live in their properties, and those who use them as investments – tensions can arise because of their different priorities, especially if one group feels the resident manager is concentrating on the needs of the other. Investor owners can feel disillusioned if their returns do not meet their expectations, especially if they are paying an increasing amount for resident management services. Bodies corporate can feel trapped in long-term agreements that fail to meet their needs. This bill seeks to bring balance to the management rights issue, proposing new codes of conduct to govern the activities of letting agents and service contractors like resident managers.⁴³

Each of the issues raised in this passage will be considered below as will the specific legislative amendments aimed at alleviating the problems.

Balancing the Interests of the Original Developer and Subsequent Lot Owners?

Consultation revealed a perception among unit-owners and other stakeholders that the balance was tilted in favour of original owners (developers). The reason for this is that previously the *Act* was silent on the duty owed by the developer to the body corporate while empowering the developer to enter into contracts on the body corporate's behalf. Typically, a developer could sell service rights and thereby encumber the future owners with a long-term management rights or other service contract. The Minister commented:

Bodies corporate can feel trapped in long-term agreements that fail to meet their needs. This bill seeks to bring balance to the management rights issue, proposing new codes of conduct to govern the activities of letting agents and service contractors like resident managers.⁴⁴

The Bill amended the *Act* in three important ways to balance the relationship between developer and the body corporate by:

1. requiring the developer to act in the best interests of the body corporate when contracting with service providers,⁴⁵
2. introducing new codes of conduct for service providers,⁴⁶ and
3. empowering the body corporate to review and terminate service contracts.⁴⁷

Of these changes, the second and third will be considered in the next section on the relationship between service providers and lot owners, and the first will be discussed here.

The *Act* allows for management and service contracts to run for 25 years under the Accommodation Module and for a maximum of 10 years under the Standard Module thereby binding future owners of lots. Any contracts that were perpetually renewable will be terminated on the 13 July 2022 irrespective of the governing Regulation Module.⁴⁸ Before the changes, there was very little to compel the developer to consider the long-term impact of management and service contracts. The 2002 amendments changed this by requiring in section 112(2) that:

The original owner must exercise reasonable skill, care and diligence and act in the best interests of the body corporate, as constituted after the original owner control period ends, in ensuring each of the following:

1. the terms of the engagement or authorisation achieve a fair and reasonable balance between the interests of—
 - a. the contracted party; and
 - b. the body corporate as constituted after the original owner control period ends;
2. the terms are appropriate for the scheme;
3. the powers able to be exercised, and functions required to be performed, by the contracted party under the engagement or authorisation—
 - a. are appropriate for the scheme; and
 - b. do not adversely affect the body corporate's ability to carry out its functions.

Maximum penalty—300 penalty units (currently \$22,500).

Significantly, the developer is still able to profit from the initial sale of management rights or other service arrangements: s. 113(2) *BCCM*. This may be contrasted with the fiduciary duty owed by a promoter to a corporation. Notwithstanding the analogous relationship between the promoter of a corporation who establishes its legal structure and who may contract on its behalf, and the developer of a community titles scheme, it is unclear whether the latter will owe any duty in equity (a fiduciary duty) to the body corporate. In part this is because the High Court has made it clear that a fiduciary duty attaches to a particular relationship based on the

⁴³ S. Robertson, *Hansard (Qld)*, 3 December 2002, 12:45 p.m., page 5225.

⁴⁴ S. Robertson, *Hansard (Qld)*, 3 December 2002, 12:45 p.m., page 5225.

⁴⁵ Section 112(2) of the *BCCM*.

⁴⁶ Section 118 and Schedules 2 & 3 of the *BCCM*.

⁴⁷ See Schedule 6 of the *BCCM*. The relevant provisions have not yet been proclaimed into force and consequently were not included in the reprint of 4 March 2003. Instead they are contained in Schedule 6, and once proclaimed they will appear as ss 136 to 144 of the *BCCM*.

⁴⁸ Section 344(4)(d) of the *BCCM* limits the operation of original contracts to 25 years from 13 July 1997 (e.g. until 13 July 2022).

nature of that relationship rather than whether it falls into a particular category.⁴⁹ It is also partly because the courts will be reluctant to impose a fiduciary duty where the parties are perceived to have entered a commercial arrangement at arm's length (eg. developer selling to potential lot-owners).⁵⁰ Two further matters may militate away from the prospect of any fiduciary duty. First, the developer of a community titles scheme may risk considerably more personal capital than the promoter of an ordinary corporation, and the relationship therefore is fundamentally different to the relationship that a promoter has to potential investors of a corporation,⁵¹ though, this is by no means clear. Second, the relationship between a developer and future lot-owners is regulated by statute, which may determine the scope of their relationship.⁵²

On the other hand, in *Breen v Williams*, Gaudron and McHugh JJ held:

In this country, fiduciary obligations arise because a person has come under an obligation to act in another's interests. As a result, equity imposes on the fiduciary proscriptive obligations – not to obtain any unauthorised benefit from the relationship and not to be in a position of conflict.⁵³

Given that the original owner is required under s. 112 to 'exercise reasonable skill, care and diligence and act in the best interests of the body corporate' this may fit within the ambit of 'an obligation to act in another's interests'. But whether or not this creates sufficient ascendancy (or lot-owner dependency) or a duty of loyalty on the part of the original owner would need to be determined according to the specific circumstances of a particular case and the nature of any alleged breach.⁵⁴

A factor that should influence the legal characterisation of the relationship between original owner and subsequent owners is the fact that many unit-owners are not investor owners, but are, people purchasing their primary residence. To this extent it is arguable that the original owner is in a position of ascendancy with respect to resident owners and is less likely to be in a position of ascendancy in relation to an investor-owner, although this distinction becomes hazy where the unit concerned is the secondary residence or 'holiday home.'

A Balance Between Service Providers and Lot Owners?

Regardless of whether the body corporate received contracts governing services, problems could arise because the body corporate was 'stuck' with a long-term arrangement for the provision of services that it was dissatisfied with. According to the Minister:

Under the legislation, bodies corporate will have the power to terminate resident managers and letting agents who breach their code of conduct and make them sell or transfer their management rights.⁵⁵

The amendments addressing this problem included:

1. requiring the developer to act in the best interests of the body corporate when contracting with service providers,⁵⁶
2. introducing new codes of conduct for service providers,⁵⁷ and
3. empowering the body corporate to terminate such contracts.⁵⁸

The first measure was considered above and now it is necessary to examine the second and third measures. Section 118 of the *Act* states that the Code of Conduct in Schedule 2 of the *BCCM* applies to body corporate managers and to care-taking service contractors in the performance of their functions. Letting agents are dealt with separately in a code contained in Schedule 3 of the *BCCM* and are subject to the *Property Agents and Motor Dealers Act 2000*, which inter alia, governs the relationship a letting agent has with owners using that agent's services.

Under the Code in Schedule 2, managers and service providers are required to have an understanding ('good working knowledge') of both the *Act* and the Code as they concern their functions. In addition, managers and service providers must act with the following in the performance of their functions:

- Honesty, fairness and professionalism
- Skill, care and diligence
- Act in the body corporate's best interests

⁴⁹ Even then, where the relationship is fundamentally fiduciary, a court may not find that the specific grievance necessarily involved a breach of any fiduciary duty because fiduciary duties may only attach to certain parts of the relationship. See, e.g. *Breen v Williams* (1996) 186 CLR 71, per Brennan CJ at 82.

⁵⁰ See *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41, especially at 99-100 per Mason J.

⁵¹ In other words, the original owner (or developer) is not a recognised category of fiduciary.

⁵² Per Dodds DCJ at paragraph 15 in *Body Corporate for Noosa on the Beach CTS 6417 v Hollis Partners Pty Ltd* [2002] QDC 86 (9 May 2002); and *Humphries v Proprietors 'Surfers Palms North' Group Titles Plan 1955* (1994) 179 CLR 597.

⁵³ *Breen v Williams* (1996) 186 CLR 71, at 113.

⁵⁴ *Pilmer v The Dukes Group Ltd (in liquidation)* [2001] HCA 31, per McHugh, Gummow, Hayne & Callinan JJ at paragraphs 75 – 79.

⁵⁵ S. Robertson MP, 'Government Reforms Queensland's Body Corporate Laws,' *Ministerial Media Statements*, 3 December 2002, accessed at [www.http://statements.cabinet.qld.gov.au/cgi-bin/display-statement.pl?id=9979&db=media](http://statements.cabinet.qld.gov.au/cgi-bin/display-statement.pl?id=9979&db=media) on 17 February 2003.

⁵⁶ Section 112(2) of the *BCCM*.

⁵⁷ Section 118 and Schedules 2 & 3 of the *BCCM*.

⁵⁸ see Schedule 6 of the *BCCM*. The relevant provisions have not yet been proclaimed into force and consequently were not included in the reprint of 4 March 2003. Instead they are contained in Schedule 6, and once proclaimed they will appear as ss 136 to 149 of the *BCCM*.

- Keep the body corporate informed of developments
- Ensure employees comply with the *Act* and code
- Goods and services must be supplied at competitive prices
- The body corporate manager must keep records

Importantly, the body corporate is empowered under the Code to require the manager to produce evidence that they have kept records in accordance with the Act and its regulations. However, whether or not this will allow access to these records remains to be seen. It may be possible to compel a manager to disclose information under the general law of agency, provided an agency relationship can be established in the circumstances. It may be that the amendments should have gone further in the interests of openness and accountability to provide access while at the same time restricting access where it may constitute a nuisance.

The Code in Schedule 2 places the following restrictions on managers and service providers. A manager or service contractor must not:

- engage in fraudulent or misleading conduct in performing their duties.
- engage in unconscionable conduct in performing the person's functions.
- accept an engagement for another community titles scheme if doing so places their duty or interests for the first scheme in conflict with their duty or interests for the other scheme.

The Code will apply to all managers and service contractors regardless of the specific terms of their contracts.⁵⁹ Also, the *Act* was amended to allow the terms of contracts to be reviewed. Prior to these amendments the *Act* only provided for a review of the remuneration under a service contract.⁶⁰ Now sections 130 to 135 allow for the revision of the duties contained in service contracts.⁶¹

A separate Code of Conduct applies to letting agents, along with the introduction of new measures contained in Chapter 3, Part 2, Division 8.⁶² Under the Code in Schedule 3, letting agents are required to avoid:

- any unconscionable conduct,
- causing any nuisances, and
- fraudulent and misleading conduct.

Letting agents have the following positive obligations under the Code:

- They must act honestly, fairly and professionally in conducting their agency.
- They must exercise reasonable skill, care and diligence in conducting their agency.
- They must, as far as practicable, act in the best interests of the body corporate and individual lot owners.
- They must take reasonable steps to ensure any of their employees comply with the *Act* and Code.
- They must take reasonable steps to ensure goods and services are obtained or supplied at competitive prices.

In addition to the Code, the recent amendments to the *Act* included a new Division 8, which among other things, provides for the compulsory transfer of a letting agent's management rights. According to the Explanatory Notes these measures were considered necessary because of the crucial position a letting agent occupies, particularly in a holiday oriented complex, and because lot-owners had little or no capacity to review or alter the terms of such long-term arrangements where they were dissatisfied with the service.⁶³ Often the roles of letting agent, management, and services will be combined so s. 137 deems any other provisions purporting to deal with a combined role void to the extent they are inconsistent with the provisions in Division 8.

There are two possible grounds for the transfer of management rights. Under section 138 a transfer can be forced where: (1) the letting agent failed to comply with a code contravention notice; or (2) the body corporate reasonably believes the letting agent, after being given the notice, contravened a provision of the code of conduct for either letting agents or body corporate managers and care-taking service contractors. The body corporate must issue a contravention notice before it can vote on a transfer resolution.⁶⁴ It need only issue one such contravention notice and it can then resolve to transfer the rights under s. 138 whether or not a subsequent alleged contravention involves the same matter referred to in the contravention notice. A resolution forcing the transfer of management rights must be by majority resolution decided by secret ballot and conducted according to the relevant regulation module.⁶⁵

⁵⁹ Section 118 of the *BCCM*, subsections (2),(3) & (4).

⁶⁰ See section 129 of the *BCCM*.

⁶¹ See Division 7 of Chapter 3, Part 2 of the *BCCM*.

⁶² The new measures are presently annexed to the *Act* in Schedule 6.

⁶³ Explanatory Notes to the *Body Corporate and Community Management and Other Legislation Amendment Bill 2002*, pages 8 – 11.

⁶⁴ Section 139 of the *BCCM*.

⁶⁵ Section 140 of the *BCCM*. A 'majority motion' means that more than 50% of those entitled to vote actually vote in favour of the resolution: s. 107.

Once such a resolution has been passed, a letting agent must transfer their management rights to a person or entity of their choice, other than to an associate, subject to the approval of the body corporate.⁶⁶ In exercising their approval, the body corporate must act reasonably and may only consider the character, financial standing, competence, qualifications and experience of the candidate.⁶⁷ The rights must be transferred within 11 months where the body corporate chooses to vary the existing contract but any changes must be completed within the defined time frame or otherwise within 9 months if the terms are not varied.⁶⁸ The variation in time allows the body corporate the opportunity to vary the nature of the contract to be transferred.⁶⁹

A Balance Between Different Types of Lot Owners (residents or investors)?

Queensland has over 250,000 unit owners.⁷⁰ Unfortunately there are no accurate figures available to differentiate between the various types of unit-owners (whether they are investors or residents or something in between). Recall that according to the Minister, the consultation process leading up to the *Bill*⁷¹ revealed that:

With two distinct owner types – those who live in their properties, and those who use them as investments – tensions can arise because of their different priorities, especially if one group feels the resident manager is concentrating on the needs of the other. Investor owners can feel disillusioned if their returns do not meet their expectations, especially if they are paying an increasing amount for resident management services.⁷²

To the extent that the problem is a consequence of ‘different priorities’ in relation to management services, the amendments described above do have the capacity to maintain a balance between the two types of unit-owners. Whether or not they do in fact reconcile interests remains to be seen. However, the relationship between the two groups raises a very important governance issue that remains to be addressed – that is the question of whether there should be a ‘Tourism Regulation Module.’

Tourism

At present there are four regulation modules none of which was specifically designed with the tourism industry in mind.⁷³ Instead the Accommodation Regulation Module is thought to provide a suitable generic framework for tourism, and both short and long-term residential leasing. There are indications that the government would be prepared to pursue the development of a Tourism Module, however time constraints rendered it impractical to include one in the recent round of amendments. It is also unclear whether financial institutions and developers would respond to the new opportunities that might be presented by a regulation module of this kind. What is clear is that many of the buildings in Queensland, built during the building booms from the 1960s to the 1980s, are in what may be described as a ‘stagnation phase’ of their life cycles.⁷⁴ This raises the question of what should follow?

Section 4 of the *BCCM* states the secondary objectives of the *Act*. Among these secondary objectives are:

- to promote economic development by establishing sufficiently flexible administrative and management arrangements for community titles schemes; and
- to provide a legislative framework accommodating future trends in community titling.

Indeed the Minister noted the importance of the relationship between tourism and the Community Titles legislation during his second reading speech.⁷⁵ The minister said:

The unit and apartment sector of the real estate market is becoming increasingly important to Queensland. More and more Queenslanders are choosing unit living to suit their lifestyles. Many people both from within Australia and overseas, are choosing commercial or accommodation units as investment properties. And **the continued growth of tourism in our state relies on the accommodation being available – much of it in community titles schemes. To meet these needs, Queensland needs an effective legislative framework** for the successful operation of community titles schemes and bodies corporate.⁷⁶

Therefore it would be prudent for the relevant stakeholders to seize the initiative and firstly demonstrate the desirability of a tourism specific module, and secondly, to set out the content of such a regulation module.⁷⁷

⁶⁶ Section 141 of the *BCCM*.

⁶⁷ Section 141(2) of the *BCCM*.

⁶⁸ See the joint operation of ss. 141 and 147. Section 143 provides a set of procedures should the transfer fail to take place within the time frame required by s 141.

⁶⁹ The selling process cannot commence until the contract conditions that will be offered to the incoming contractor are finalized – hence the time variation.

⁷⁰ S. Robertson MP, ‘Government Reforms Queensland’s Body Corporate Laws,’ *Ministerial Media Statements*, 3 December 2002, accessed at [www.http://statements.cabinet.qld.gov.au/cgi-bin/display-statement.pl?id=9979&db=media](http://statements.cabinet.qld.gov.au/cgi-bin/display-statement.pl?id=9979&db=media) on 17 February 2003.

⁷¹ *Body Corporate and Community Management and Other Legislation Amendment Bill 2002*.

⁷² S. Robertson, *Hansard (Qld)*, 3 December 2002, 12:45 p.m., page 5225.

⁷³ In other words none of the modules was specifically designed to cater for the use of units for short-term tourist letting.

⁷⁴ G. Priestley and L. Mundet, ‘The Post-Stagnation Phase of the Resort Cycle’ (1998) 25 *Annals of Tourism Research* 85.

⁷⁵ S. Robertson, *Hansard (Qld)*, 3 December 2002, 12:45 p.m., page 5225.

⁷⁶ S. Robertson, *Hansard (Qld)*, 3 December 2002, 12:45 p.m., page 5225 (emphasis added).

⁷⁷ QRAMA has indicated support for this initiative since the existing Regulation Modules define committee procedures but do not address objectives.

Without pre-empting the outcome of such deliberations it would seem appropriate that a suitable governance structure for a tourist module would:

- Privilege investment ownership over residential ownership
- Promote tourism or holiday letting over other forms of letting
- Provide for greater management autonomy
- Require shorter depreciation schedules, and for regular infrastructure upgrades
- Require stricter maintenance standards
- Provide for the imposition of tourism industry quality standards
- Enable local councils to influence the development of tourism precincts.

The list above is not exhaustive but a starting point for research and discussion. Clearly, there is a need for considerable research in this area given the importance of community titles schemes to the Queensland economy and way of life.

Conclusions

The recent reforms to Queensland community titles legislation should go a long way to resolving some of the concerns of unit-owners, and were welcomed by unit-owners associations and by the association of service contractors (QRAMA).⁷⁸ They shift the balance between the original owner and subsequent owners so that owners have a greater capacity to review, manage and terminate contracts that would have otherwise been little more than over-priced encumbrances. At the same time, the *Act* ensures that service providers and managers are still protected by a requirement that body corporates act reasonably in conducting reviews and terminations. The actual success of the reforms can only be determined over time.

Given the reported comments of the Minister and the stated objectives of the *Act*, it would seem that there is a need to explore the desirability and scope for a new regulation module to enhance tourism in Queensland. Such a regulation module may also present a novel opportunity to relieve some of the incompatibility that exists as a consequence of the different priorities between the different types of groups owning units.

⁷⁸ S. Lappeman, 'Unit Wrongs Righted: New laws give owners power to sack bad managers,' *Gold Coast Bulletin*, 4 December 2002, 8.

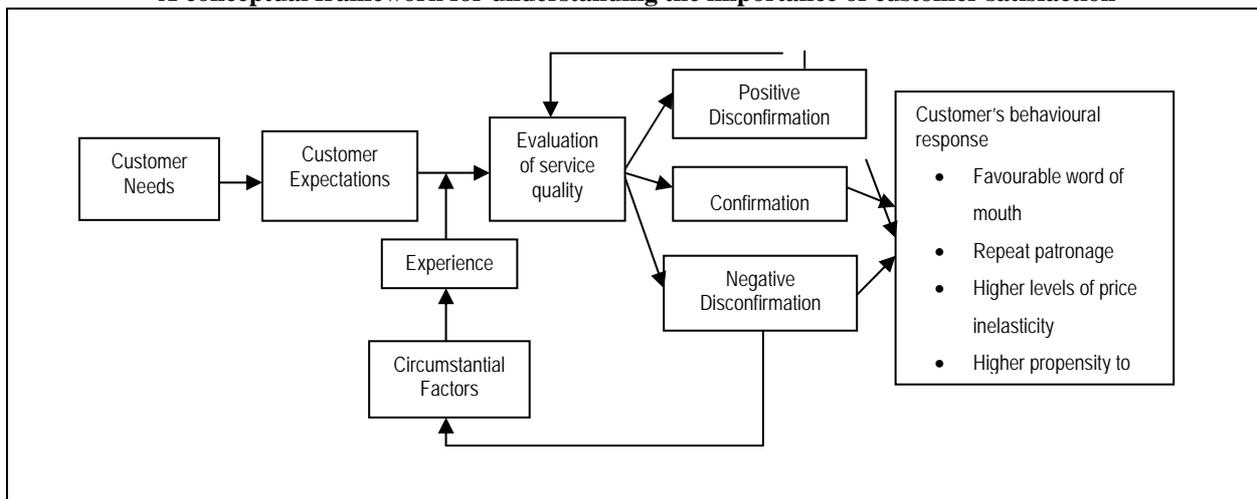
Appendix C: Visitor Satisfaction with Holiday Accommodation: A Review

It is logical to assume that, all other things being equal, products which more fully satisfy the needs and wants of customers will be more highly sought, and the laws of supply and demand should therefore dictate that a higher price could be charged. Additionally, satisfied customers will contribute to higher levels of patronage through their own repeat purchase of a product and through favourable word of mouth promotion (Hueng, 2000). It has also been suggested that satisfied customers may exhibit reduced price elasticity, and all of these behavioural responses contribute to a generally expectation that higher levels of satisfaction should, in theory, be associated with higher levels of profitability.

Thus, organisations, which are interested in maximising profitability, should be interested in a more thorough understanding of the bases for customer satisfaction. At the destination level, destination marketing organisations, who's brief is to help a range of organisations to sell their products, should also be interested in the dimensions of service most likely to maximise satisfaction.

While there is no specific English language literature examining visitor satisfaction with condominium or apartment style accommodation, insight can be drawn from a number of studies which have investigated satisfaction with other forms of accommodation, or visitor satisfaction with the tourism and hospitality services more generally.

A conceptual framework for understanding the importance of customer satisfaction



Relevant Theory

One of the most common conceptual frameworks used in assessing satisfaction in a tourism context is the disconfirmation paradigm (Oliver, 1981; Hill, 1986). This theory builds on previous work, which acknowledges that satisfaction is positively related to perceptions of adequate performance mediated by prior expectations. Thus, when perceptions of performance meet expectations, then confirmation has occurred and satisfaction would be expected. If performance exceeds expectations, the positive disconfirmation is said to have occurred, and this should result in higher levels of satisfaction. However, if perceived performance fails to meet expectations, this is referred to as negative disconfirmation and dissatisfaction is the expected outcome. The evaluation then feeds back to effect expectation for future consumption.

A concept that is highly interrelated to satisfaction is the evaluation of service quality, which has been defined in terms of meeting or exceeding a customer's expectations (Ekinici & Riley, 1998). Parasuraman, Zeithaml, and Berry (1985) developed and refined a scale known as SERVQUAL for investigating a range of dimensions of service quality. This scale, and modifications to it, has been extensively tested in a variety of service situations.

It is argued that satisfaction in service delivery in the tourism and hospitality context can be divided into two components (Choi & Chu, 2001). Firstly, there is satisfaction with the more tangible aspects of what is delivered; that is, a meal, a flight, or a hotel room. Secondly, there is satisfaction with the way it is delivered, which generally equate to qualities in the service provider such as politeness, reliability, and friendliness.

Satisfaction with Accommodation Offerings

There has been substantial debate in the literature about the most appropriate methods for measuring satisfaction in a service dominated context such as the provision of accommodation (Yuksel & Rimmington, 1998). Methods

used vary from somewhat simplistic techniques, which are often criticised for their naivety, to highly complex models. It is beyond the scope of this review to definitively resolve this debate; rather the aim is to present the findings of previous research and to identify an effective yet parsimonious measure for the proposed study. There have been several studies, which have specifically investigated tourist's satisfaction with the various attributes of accommodation (typically mid-range to luxury hotels). Many of these have looked at specific market segments (notably the business market and also the Chinese market). While no studies have specifically looked at condominium style accommodation, some general insights can be drawn.

One of the most common objectives of these studies is to identify underlying dimensions in a range of accommodation attributes. Typically, multi-item scales are developed and then factor analysed to summarise the dimensions. The relationship between satisfaction with specific dimensions and overall satisfaction is then investigated using multiple regression, in an effort to identify which aspects of quality are most important for ensuring guest satisfaction. As shown in the Table 1, two studies in Hong Kong found that service quality was the most important predictor of overall satisfaction. However, despite apparent similarities in the results of these studies, the dimensionality uncovered through the use of exploratory factor analysis is not stable because attributes have loaded somewhat differently in each case demonstrating a threat to the validity and reliability of the scales.

In a somewhat more sophisticated study, Heide, Gronhaug and Enset (1999) investigated satisfaction with the tangible and intangible aspects of the services provided in three hotel departments; reception, housekeeping, and food and beverage. They defined these dimensions a priori and used factor analysis in a confirmatory manner, thus demonstrating convergent and divergent validity. The results suggest that tangible aspects of the housekeeping department such as the comfort of the room and amenities available were the most important predictor of overall satisfaction. However, intangible aspects of reception were also seen as being very important including the willingness and ability of the receptionist to provide service and the speed and accuracy of the service provided. Despite the different methods used, these results are highly consistent with those observed by Choi and Chu (2001).

Comparison of two visitor satisfaction studies

Authors	Heung (2000)	Choi and Chu (2001)
Population	Chinese Visitors to Hong Kong	All visitors to Hong Kong
Dimensions identified	1. Service Quality and Value 2. Food and Beverage 3. Augmented Product 4. Reliability 5. Core Product 6. Supplementary services 7. Value Added services 8. Convenience	1. Staff Service Quality 2. Room Quality 3. General Amenities 4. Business Services 5. Value 6. Security 7. IDD facilities
Most Important dimensions	Service Quality and Value Augmented product	Staff Service Qualities Room Qualities

Using a more qualitative approach, Johns, Lee-Ross and Ingram (1997) asked hotel customers about the attributes of the accommodation which contributed to their overall satisfaction and dissatisfaction with the experience. Tangible aspects of the service encounter were mentioned more frequently, but intangible aspects appeared to provide a better discrimination in levels of satisfaction.

Using path analysis, Oh (1999) was able to test a more complex theoretical model of satisfaction by introducing the concepts of actual price and perceived value for money. These were found to be significantly related to levels of satisfaction and subsequently to influence intention to repurchase and to communicate favourable word of mouth about the property. Similarly, Callan and Bowman (2000) found perceived value for money to be the most important attribute in hotel selection.

Danaher and Mattsson (1994) tested a far more complex model that suggests that guests react to service delivery on different value dimensions (emotional, practical and logical), and that satisfaction is determined jointly by these reactions. Further complexity is introduced with regard to the recency of the encounter, with more recent encounters being suggested as having a greater influence on overall satisfaction. The complexity of this model made it difficult to operationalise and the empirical test was impeded by a small sample size. However, there was some support for the contribution of the value dimensions to the greater explanation of satisfaction.

In conclusion, a range of methods have been utilised in the attempt to better understand the bases of customer satisfaction with accommodation offerings. A range of important dimensions have been identified and,

in many studies in the hotel context, service quality and room amenities have been found to be key in determining overall satisfaction. However, the extent to which this would hold with regard to condominium style accommodation is untested. Issues such as perceived value for money should also be included in any empirical test because this may well be a feature, which distinguishes between hotels and condominiums.

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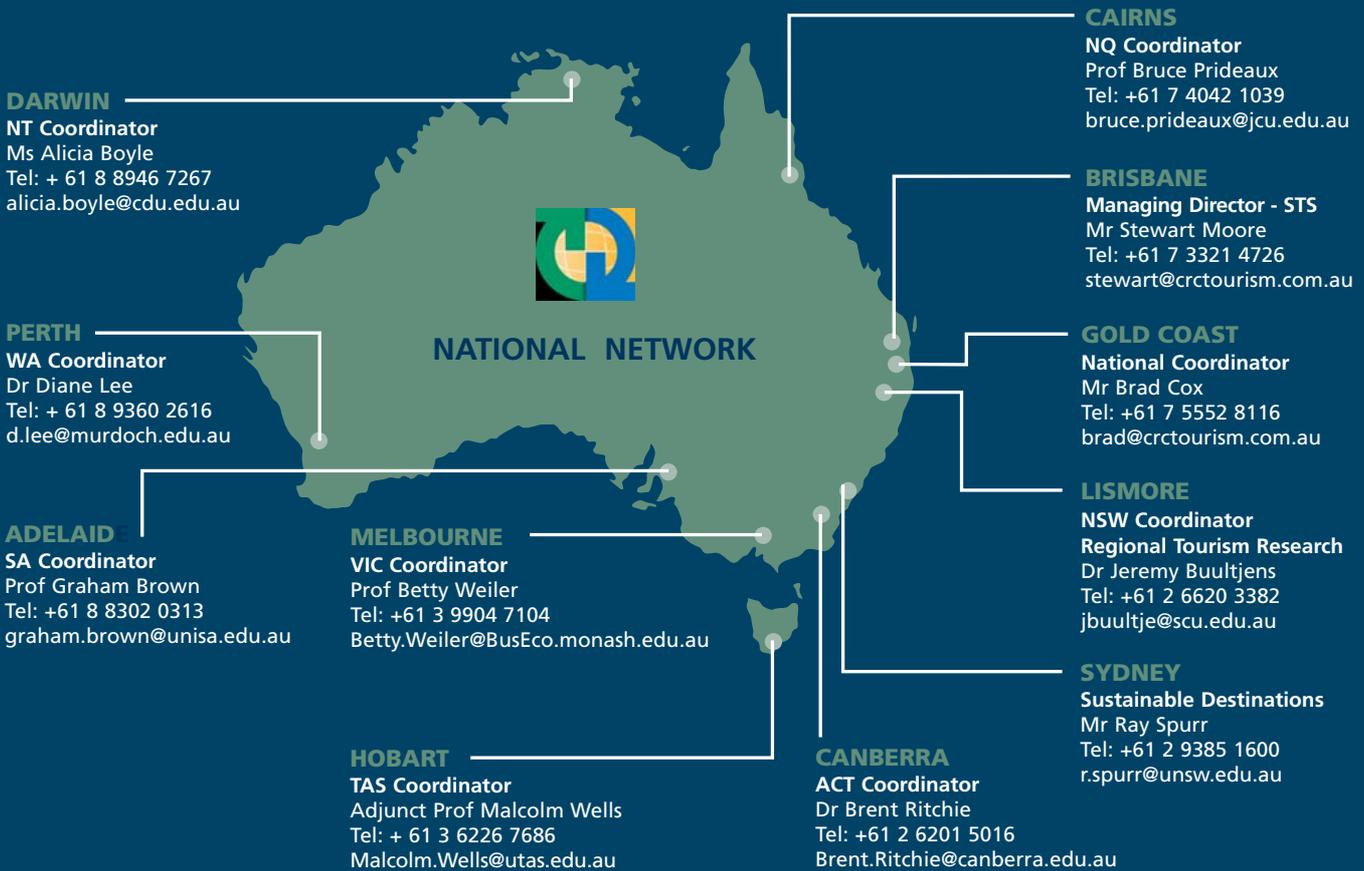
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