

BUILD IT BETTER, SAYS REPORT

Clayton Utz

Although the main focus of the NSW Parliament's recent inquiry into building standards was on the residential sector, its report also affects the commercial sector, particularly developers of large strata title buildings. Some of the issues affecting commercial developers are looked at below.

DISCLOSURE AND STRATA DEVELOPMENT

Most media attention has been on the horror stories of apartment blocks in which you can hear the neighbours if they breathe loudly. The need to bring sound and fire ratings up to date is already being looked at by the Australian Building Codes Board. Once the building's up, developers would no longer be able to sell the on-site management rights during the initial period as easily as they presently can. The report recommends that any management contract must be registered in the by-laws of the strata scheme. The contract must also be reviewed regularly and be renewable for a maximum of five years. If there are links between the developer and the management company, these must be disclosed to the buyers.

Greater disclosure would also be required of any links between the developer and contractors, and of the competitive tendering processes used. There would also be other disclosure requirements. Information would be attached to the sales contract about planning requirements and the buyer's position, such as mortgagees' priority voting rights, estimated strata fees backed up by a draft budget, and their legal rights relating to building defects and home warranty insurance.

Finally, the report proposes different regulation for large strata projects. Because these mega-developments deal with millions of dollars in levies and property, a stronger system of corporate governance might be needed to

protect the assets and manage the finances of the owners' corporation.

I DON'T THINK IT WILL COLLAPSE ...

Currently, the Principal Certifying Authority is appointed by the builder or developer, who pays for the service and then passes the cost onto the buyer.

There is a potential conflict of interest in this; if the PCA wants repeat business, he or she might be tempted to certify a construction when corners have been cut. While the legislation does already recognise this, the report suggests further safeguards, in particular that the appointment be made by the property owner, not the builder. If the owner is a developer, the proposed Home Building Compliance Commission will look for close relationships as part of the certifier auditing process.

The role of a PCA, once appointed, should also change. The report says that although they will increase construction costs, there should be mandatory inspections at certain critical stages, which as a minimum would be:

- prior to placing a footing
- on completion of the framework
- prior to placing a reinforced concrete structure
- on completion of waterproofing work; and
- on completion of building work.

LINKS IN A PAPER CHAIN

Since it is unclear under the present law whether an occupation certificate is needed before a Strata Subdivision Certificate can be issued, the report suggests making it clear that no subdivision into strata title can occur without an occupation certificate.

That's not the only suggested reform to occupation and other certificates. At the moment, a construction certificate can be issued if it complies with the design

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and specifications in the development consent, relevant Building Code of Australia requirements, and development consent conditions. Currently, a completed development that is not inconsistent with the development consent can still be certified.

The leeway that this gives for modifications is quite large. This should be defined better, says the report, by making it clear that only insignificant changes will be not inconsistent with the development consent. Anything that is significant will need to go back to the council.

Finally, the three main stages of a development should be linked to each other. An occupation certificate at the moment just means that you can move into the building without worrying if it will fall on top of you in the middle of the night. It doesn't link back to the development consent or the construction certificate. In order to improve the quality of the building and reduce disputes, the report suggests making the occupation certificate require that the development is generally consistent with the development consent and construction certificate.

NEW POWERS TO CONTROL THE SITE

Councils should have greater power to issue stop work orders, according to the report. This recommendation would mean that stop work orders could be issued not only where the activity is a life threatening hazard or a threat to public health and safety, but also where work fails to comply with the relevant development consent or when a relevant consent does not exist. This would be quicker than going to the Land and Environment Court for an injunction, and would be more effective than the current fines for breach of a development consent, which are so small as not to be a deterrent for developers of large projects. Increasing fines for non-compliance with requirements

such as annual fire safety statements should also be considered by the Government.

EXTENDING BUILDERS' LICENSING

Two types of further regulation that have been suggested by submissions:

- extending the licensing system to include builders in the commercial sector
- licensing to include other building practitioners, such as architects, engineers, draftspersons, and building surveyors.

Various industry representatives have been involved in the NSW Working Group, which has been looking at accreditation for residential and commercial builders; it is expected to give its recommendations to the Government next January, with an implementation target of July 2004.

Against that background, the Inquiry has limited itself to recommending that the Government look closely at whether there is a need for greater regulatory control of building standards in the non-residential building sector.

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