Introduction

I believe that the vast majority of the issues identified in your review would be overcome if it was mandatory for a developer to engage a strata manager as soon as the planning permit is issued. We can work with the developer on the by-laws, unit entitlements and lot boundaries as well as setting up ready for the creation of the body corporate.

When I was an insurance broker, I found it extremely difficult to arrange the required and appropriate insurance for bodies corporate – very few owners understood anything about strata, and many were unaware that they were a part of a body corporate. When I explained it to them, they felt misled by their builder/real estate agent and distrustful of me. Fear of the unknown created angst and stress for them.

We set up our business to work with developers to set them up correctly from the outset – we felt that by specialising in new developments we could have the greatest impact on the market with the resources available to us. Our streamlined processes allow us to manage our portfolio efficiently and effectively, and we never have disputes because people buy in knowing what their rights and obligations are, and they know to come to us with issues rather than to let them fester into a dispute.

Most of my answers are written to justify making it mandatory for developers to engage a strata manager for all new developments. We see some set up by lawyers however lawyers are not involved in the day to day running of a body corporate, and so can't always prepare for the future. People engage professionals to manage our finances, our legal requirements, our financial planning requirements and so on.

The strata title industry is complex, with the potential for devastating consequences, both financially and emotionally, when it is not done properly. It is logical that professionals be engaged to set bodies corporate up and manage them rather than leaving it to a developer who usually lacks the desire, experience and expertise to reinvent the wheel.

We believe in preempting issues rather than dealing with them after the fact, and setting things up properly from the outset has been very effective in achieving this.

Sometimes it is difficult to get developers/land surveyors on board with what we recommend, so it would be good if it became a requirement of the Act. Our developers are repeat customers which indicates to us that they see value in what we do and that it takes the burden off them to deal with this aspect of development. Our portfolio runs like clockwork, and our retention rate is very high which tells us that our processes are effective.

2.1 Area One

Strata Management - I believe this is the time to set things up for the body corporate and I believe it should be compulsory that a developer engages a strata manager (initially as a consultant, then as a manager when the body corporate is created) for the long-term benefit of the body corporate and the Recorder of Titles. If done well, this prevents disputes down the track.

It is my understanding that in some parts of Queensland, Councils require developers to engage a strata manager before approval is given, to set up ready for the body corporate. I believe that this should be mandatory – we can't address all of the issues that arise due to the existing inactive/unmanaged bodies corporate, but we can ensure all new bodies corporate operate effectively.

This is my approach in Tasmania. I work with developers from the time the planning permit is issued through to the issue of title. During this time, I undertake the following, so that everything is set up ready for settlement:

1. Preparation of tailored by laws which can be provided to purchasers who buy off the plan. This gives purchaser an understanding of how strata titles work. This step may not be necessary if the model by-laws were updated ie to allow for conducting business electronically and allowing for pets without body corporate approval as the market demands among other things. At this point, we prepare a draft budget to give purchasers an idea of the costs associated, which ensures that they will be able to afford them.
2. Arrangement of Strata Insurance when certificates of occupancy are issued. Cover under contract works insurance usually ceases at practical completion and some insurers deem that to have occurred when certificates of occupancy are issued. At this point, I believe it should be mandatory that developers obtain an insurance valuation from a qualified insurance valuer to ensure that the development is insured for its full reinstatement value. In my experience, developers underestimate the costs involved in reinstating in the event of a total loss claim, and developments are underinsured (and therefore in contravention of the Act).
3. Convening the first AGM whilst the developer is sole member of the body corporate. This allows us to adopt a budget for reasonably foreseeable expenses, elect a chairperson, treasurer, secretary and engage a strata manager. Levies are apportioned between developer and purchaser and paid in full for the first year. Purchasers then buy in knowing what it is in place, what their costs are and have one point of contact for all questions and requirements from day one. Our bodies corporate operated efficiently and effectively, and without conflict.

Staged Development Schemes – developers rarely understand the way unit entitlements work, in particular the apportionment of expenses for the balance lot (lot 100). There should be an inbuilt mechanism to allow the apportionment to be equal between the lots – the balance lot is not included the insurance, and does not incur any additional expense.

2.2 Area Two

In my experience, unit entitlements are often inequitable.

A strata plan should also include

1. area of dwelling and an equitable special unit entitlement for strata insurance where units are different sizes and therefore have different reinstatement values
2. special unit entitlement where units are a different for maintenance of exterior surfaces where lot boundaries are centre of walls, floors and ceilings
3. car park allocation plan which identifies visitor car parks and parks allocated to each lot
4. where exterior surfaces are painted (and especially when they are conjoined), it would be good if it was compulsory to make lot boundaries centre of walls, floors and ceilings but leave land as part of the lot.
5. Where the lot boundaries are centre of walls, floors and ceilings, it should be specified whether doors and windows form part of the lot, common property or are shared.

2.3 Area Three

I believe in keeping things as simple as possible, and I believe owners face the same issues regardless of the number of lots. From a management point of view it would be difficult if different legislative requirements apply to different sized developments.

In my case, I have by-laws drafted for each development, which take into consideration the type of development, planning permit conditions, waste removal and parking conditions etc, as the model by-laws do adequately deal with them.

With regard to 2 lot developments, these are inherently problematic as there is an automatic deadlock if there is a disagreement. The only solution that I can see is compulsory management where the strata manager has casting vote. The strata manager is a neutral party, and can draw on their experience dealing with the same type of issues across their portfolio.

2.4 Area Four

I agree with a management statement, which I believe should be modelled on the Queensland community management statement. I would like to see compulsory strata management, with contact details of the strata manager engaged by the developer. I do not agree with compulsory committees, especially committees with decision making power for the following reasons

- Committee members will rarely have the expertise to manage a body corporate, or to understand or comply with the implications of the Act, the strata plan or the planning permit.
- In Tasmania, very few people understand strata titles in general and with lack of experience, may not be able to foresee the outcomes of decisions they make
- Committee members who are owners/occupiers have an inherent vested interest in every decision they make whether they are conscious of it or not. In my view, every owner should have a say in every decision made.

I believe there should be monetary sanctions for non-compliance, and that the funds go into the administration fund. There is a huge problem in Tasmania with bodies corporate having no money.

2.5 Area Five – Unit entitlements

The Act stipulates that unit entitlements should be fair and equitable, however I believe it should be more prescriptive in how to achieve it.

In my experience, unit entitlements are often inequitable.

1. Staged Development Schemes – developers rarely understand the way unit entitlements work, in particular the apportionment of expenses for the balance lot (lot 100). There should be an inbuilt mechanism to allow the apportionment to be equal between the lots – the balance lot is not included the insurance, and does not incur any additional expense.
2. There should be an equitable special unit entitlement for strata insurance where units are different sizes and therefore have different reinstatement values. It should be mandatory for the developer to engage a qualified **insurance** valuer to quantify the sum insured and apportion it for each lot. I have seen this dine using the capital valuations, however this is a market valuation and irrelevant to the sum insured.
3. A special unit entitlement where units are a different for maintenance of exterior surfaces where lot boundaries are centre of walls, floors and ceilings

2.6 Area Six – Common property

I think it should be defined in one section rather than two, and should include

- Shared driveways
- Shared letterboxes
- Landscaping in shared areas
- perimeter boundary fencing
- service infrastructure with a plan which shows what is shared and what services the lot. Any service infrastructure that solely services the lot should not be common property regardless of where it is.
- exterior surfaces including roofs for conjoined units or units with painted surfaces.
- I also think it should be compulsory to have a sinking fund, and to engage a professional to prepare a capital maintenance forecast to set an accurate target for the sinking fund

2.7 Area Seven – Activation of a body corporate

I believe it should be compulsory for the developer to engage a strata manager for every new development, and this should be done when the planning permit is issued. The strata manager should be engaged as a consultant until the body corporate is created, then the developer should appoint the strata manager at the first AGM while they are sole member of the body corporate. Developers rarely have the expertise or experience to understand how a body corporate operates. A strata manager should undertake the following:

1. Preparation of tailored by laws which can be provided to purchasers who buy off the plan. This gives purchaser an understanding of how strata titles work. This step may not be necessary if the model by-laws were updated ie to allow for conducting business electronically and allowing for pets without body corporate approval as the market demands among other things. At this point, we prepare a draft budget to give purchasers an idea of the costs associated, which ensures that they will be able to afford them.
2. Arrangement of Strata Insurance when certificates of occupancy are issued. Cover under contract works insurance usually ceases at practical completion and some insurers deem that to have occurred when certificates of occupancy are issued. At this point, I believe it should be mandatory that developers obtain an insurance valuation from a qualified insurance valuer to ensure that the development is insured for its full reinstatement value. In my experience, developers underestimate the costs involved in reinstating in the event of a total loss claim, and developments are underinsured (and therefore in contravention of the Act).
3. Convening the first AGM whilst the developer is sole member of the body corporate. This allows us to adopt a budget for reasonably foreseeable expenses, elect a chairperson, treasurer, secretary and engage a strata manager. Levies are apportioned between developer and purchaser and paid in full for the first year. Purchasers then buy in knowing what it is in place, what their costs are and have one point of contact for all questions and requirements from day one. Our bodies corporate operated efficiently and effectively, and without conflict.
4. The Act should prescribe the following agenda items
    a. Appointment of strata manage

b. Election of chairperson, secretary, treasurer (I don't believe this should be compulsory if it is compulsory to appoint a strata manager, in which case it wouldn't need to be on the agenda)
c. Details on strata insurance
d. Proposed budget to be reviewed and adopted

All documentation is then provided to the purchasers' solicitors for the settlement of the contracts.

Strata management contracts should contain a termination clause for non-performance so that the body corporate can exit the contract if they are not satisfied that the strata manager is meeting their obligations.

It should be mandatory that details of the body corporate & by-laws or model by-laws be provided to prospective purchasers so they understand that they are buying a strata title unit. We hear of real estate agents who say that there isn't a body corporate, that there is no common property of fees, and that pets are allowed.

For existing inactive bodies corporate, any member should be able to call a special general meeting to activate the body corporate. My interpretation of the Act is that only the secretary can call a valid meeting, so I apply to Recorder to make an order where there isn't a secretary.

I believe there should be monetary sanctions (prescribe penalty units) for non-compliance, to be imposed by the body corporate, and that the funds go into the administration fund. There is a huge problem in Tasmania with bodies corporate having no money.

Area Eight – Meeting procedures

There is no question that in person meetings are preferable, to allow for discussion and for owners to share and build on ideas, however people are time poor, attendance is often low and quorums are not achieved.

We have our by-laws drafted to allow electronic meetings. Not only is this far more efficient for owners, it allows for immediate decision making, and it gives every owner the opportunity to vote on every decision.

Full details of every motion can be delivered with the email, which gives owners enough time to read and understand what it proposed. It also means that owners can have one on one discussion with the manager to ask question that they may not ask in a public forum.

It also means that people will vote how they want to vote without fear of reprisal.

Every vote is recorded, whereas with a show of hands, there is now way or proving how many votes for or against.

Procedure:

- An email is sent to every member of the body corporate with all documentation attached, and with a detailed explanation of each motion (written in the same way it would be spoken).
- A motion should be drafted for a vote to approve/deny or select an option
- Members should be given seven days to reply (in accordance with the notice requirements of an in-person meeting

- A quorum is achieved if replies are received from an owner representing more than half the number of lots
- Emails are to be saved and labelled to show the name and response
- When an owner raises a point or a question which could influence the outcome, that point of question should be circulated and the motion should be restated where appropriate, with a further seven days to respond
- After seven days, an email should be circulated to show the outcome. It should show how many votes were received, how many voted for and how many voted against.
- If a quorum is not achieved, the decision made should be circulated to all owners, and will come into effect after a period of seven days unless there are sufficient objections to have overturned the decision when the vote was conducted.

This process can apply to AGMs, SGMs and for any decisions that need to be made throughout the year. For example, if a lot owner seeks body corporate approval to change the exterior of their lot, a motion can be circulated to all owners with a description of the proposed changes together with images where appropriate. Owners will be given seven days to reply.

2.9 Area Nine – Quorum

Should be members representing a majority of the lots, regardless of the number of lots.

If a quorum is not present, a decision made should be circulated to all owners, and will come into effect after a period of seven days unless there are sufficient objections to have overturned the decision at the meeting (on the basis that seven days' notice is required for meetings).

2.10 Area Ten – Access to and disclosure of body corporate records/information

This is particularly problematic in Tasmania with so many inactive bodies corporate. I often receive calls from real estate agents trying to track down who manages a development (in most cases they are inactive).

By making it mandatory to engage a strata manager, the problems would be solved for new developments. We provide all documentation to real estate agents, lawyers and owners upon request.

We are frequently asked for certificates of currency.

It is usual practice for a strata manager to charge for requisitions – we are liable for the information we provide.

The Act should specifically provide for electronic provision, although I have never had any issues with this.

I believe there should be monetary sanctions (prescribe penalty units) for non-compliance, to be imposed by the body corporate, and that the funds go into the administration fund. There is a huge problem in Tasmania with bodies corporate having no money.

2.11 Area 11 – Roll or register for the body corporate

Mandatory strata management resolves these issues - strata managers have rolls and registers.

I believe there should be monetary sanctions (prescribe penalty units) for non-compliance, to be imposed by the body corporate, and that the funds go into the administration fund. There is a huge problem in Tasmania with bodies corporate having no money.

2.12 Area Twelve – Insurance

Insurance is extremely complex and extremely important. The best way to simply it is to mandate that a body corporate be specifically required to take out a **strata insurance policy** whether there are 2 lots or 200. A strata title unit is usually an owner's most valuable asset and greatest exposure to loss – physical and legal. Strata insurance policies are written to cover the entire development - the lot, the common property and the liability. Some also contain additional benefits such as office bearer's liability (office bearers may be held legally liable for mistakes), personal accident/voluntary workers cover, fidelity guarantee (ie theft by member of the body corporate), government audit costs, legal defence costs and appeal costs.

One policy is far more economical that numerous standalone policies (economies of scale), and one policy ensures that the entire development is fully insured with no gaps in cover.

The risk of standalone policies is that some insurers don't cover common property, some don't cover bodies corporate. If there is a claim that relates to common property and there are two or more insurers, how are the costs apportioned between them? Who decides which builder does the work? What if an owner is uninsured and cannot afford to pay in the event of a common property claim?

I believe it should be prohibited to insure a lot individually.

A monetary penalty should apply for non-compliance.

It should be a legal requirement that the body corporate engages a qualified insurance valuer to set the sum insured, and that the sum insured be indexed every year. No-one else is qualified to determine what the reinstatement cost in the event of a total loss claim would be, including developers. In our experience, the sum insured set by developers is inadequate and usually based on the cost to build on a clear site without the additional costs associated with dealing with lot owners, the body corporate, insurers, assessors, updated council regulations etc. Many people think that the market value of their unit is relevant to the sum insured, which is incorrect. The market value has absolutely no bearing on the sum insured. Underinsurance is a huge problem - it is widely known that most Australians are underinsured.

I believe this should all be legislated – owners change, and opinions change. More importantly, very few owners are equipped to understand the complexity of insurance, nor how it relates to the strata plan.

In my view, it should be mandatory for bodies corporate and strata managers to use an insurance broker – owners are not experienced or qualified to make decisions about such a complex policy. A broker can make recommendations and is liable to the body corporate for the advice given. They also act on behalf of the body corporate in the event of a claim.

Strata managers are not permitted to give general advice. Therefore, if they are authorised representatives of multiple insurers, they are not permitted to give advice on which policy is most appropriate. IN my view, the body corporate is not equipped to make that decision either.

I have been a broker for 25 years and I am still learning new things – every situation is different and in the event of a claim, there is not a black and white answer. It is a matter of applying the policy to the different situations that arise, interpreting the wording, applying the Insurance Contracts Act, and applying the strata plan.

I believe there should be monetary sanctions (prescribe penalty units) for non-compliance, to be imposed by the body corporate, and that the funds go into the administration fund. There is a huge problem in Tasmania with bodies corporate having no money.

2.13 Area Thirteen – Dispute Resolution

Avoiding disputes in the first place should be the ultimate goal. A strata manager is a neutral third party, usually with extensive experience in the problems that manifest in a body corporate and how they have been successfully resolved in the past. By setting up bodies corporate with the developer prior to sale, and by have a tailored more comprehensive set of by-laws, our purchasers buy into the development with an understanding of their rights an obligations. They also know that they can come to us with issues before they become a problem, and in nearly every case the issue is resolved with a friendly email.

Generally speaking, people do not like conflict, and have difficulty in raising issues with their neighbours. Without the option of raising it with a strata manager, they put up with it, and put up with until they can't bear it anymore and then they attack. This type of conflict is far more difficult to resolve.

A strata manager usually knows what is fair and reasonable. In my experience, early every motion put to my clients is unanimously approved.

Involvement of another owner in a dispute is fraught with danger too. They are inherently biased to their own experience and needs which may influence their approach to the situation, and may take sides rather than remain neutral. Dispute resolution requires learned skills and neutrality, attributes that not all owners have.

2.14 Area Fourteen – Strata Managers

Strata managers should at least be required to be a member of an association which has a Code of Conduct. From what I understand, all Tasmanian managers are members of Strata Community Australia, and we use their standard contract.

I am in favour of strata managers being regulated and licensed, especially if it is possible to make it compulsory for developers to engage one.

2.15 Area Fifteen – Keeping of animals

In my experience, many real estate agents advertise strata units as pet friendly despite the model by-laws which are usually in place.

Our tailored by-laws allow two domestic pets, with strict rules around management of them. We believe it is important for people to be able to have pets for the significant mental health benefits associated with pet ownership. In the higher density developments, it is a requirement that they be kept on a leash whenever they are on the common property – including cats.

We rarely have issues with pets, and on the two occasions that we have, a friendly email to the owner resolved them.

I believe that the model by-laws should be amended to allow two domestic pets, so that the body corporate has the option of changing it if required.

I believe there should be monetary sanctions (prescribe penalty units) for non-compliance, to be imposed by the body corporate, and that the funds go into the administration fund. There is a huge problem in Tasmania with bodies corporate having no money.

2.16 Area Sixteen – Future Maintenance Schedules

I believe it should be mandatory to have a future capital maintenance forecast prepared by a quantity surveyor or a builder who specialises in preparation of them, and I believe it should be compulsory to have a sinking fund to build up the funds to meet the expected expenses. We are recommending this to every body corporate that we manage, and most agree to having them done. They are inexpensive and comprehensive.

I believe there should be monetary sanctions (prescribe penalty units) for non-compliance, to be imposed by the body corporate, and that the funds go into the administration fund. There is a huge problem in Tasmania with bodies corporate having no money.

2.17 Area Seventeen – Funds established for various purposes

I believe an admin & sinking fund be a requirement for every strata development regardless of the number of lots.

I can't see a problem with the current requirements of the Act in relation to the administration fund for recurrent expenditure.

I believe it should be mandatory to have a future capital maintenance forecast prepared by a quantity surveyor or a builder who specialises in preparation of them, and I believe it should be compulsory to have a sinking fund to build up the funds to meet the expected expenses. We are recommending this to everybody corporate that we manage, and most agree to having them done. They are inexpensive and comprehensive.

I believe that it should be a requirement that the fund be broken down in accordance with the capital maintenance forecast.

I believe there should be monetary sanctions for non-compliance, and that the funds go into the administration fund. There is a huge problem in Tasmania with bodies corporate having no money.

2.18 Area Eighteen – Compliance and Enforcement

One of the functions of a strata manager is to enforce by-laws, and in our experience, this can nearly always be done with one or two emails.

Parking breaches are the most prevalent for us, and a monetary penalty for non-compliance would be very helpful.

I believe there should be monetary sanctions (prescribe penalty units) for non-compliance, to be imposed by the body corporate, and that the funds go into the administration fund. There is a huge problem in Tasmania with bodies corporate having no money.