

Institute of Strata Title Management

A Complete Guide to Working With Building Management Committees

Gary Bugden
www.garybugden.com

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Topics

1. History
2. Stratum subdivisions
3. Shared facilities
4. Legal mechanisms used
5. Strata management statements
6. Building management statements

10 minute break

Topics (continued)

7. Building management committees
8. Managing agents
9. Building managers (caretakers)
10. Committee meetings
11. Insurances

10 minute break

Topics (continued)

12. Non-accounting records

13. Accounting records

14. Financial reporting

15. Dispute resolution

16. The future

Finish

Overseas History

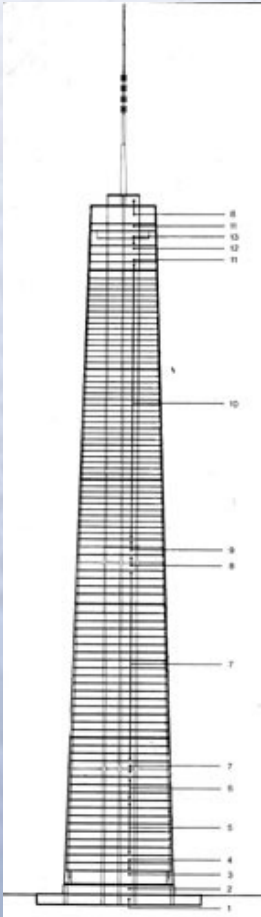
- English common law and airspace
- North American experience
 - Downtown re-developments
 - John Hancock Centre (Chicago)



John Hancock Centre

Chicago USA

- 100 story
- Class A multi-use
- Basement parking
- Retail plaza
- Offices
- Condominium
(levels 42-96)
- Observatory
- Restaurant
- Broadcast studios



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Overseas History

- English common law and airspace
- North American experience
 - Downtown re-developments
 - John Hancock Centre (Chicago)
- Management is regulated by umbrella management agreements

Australian History

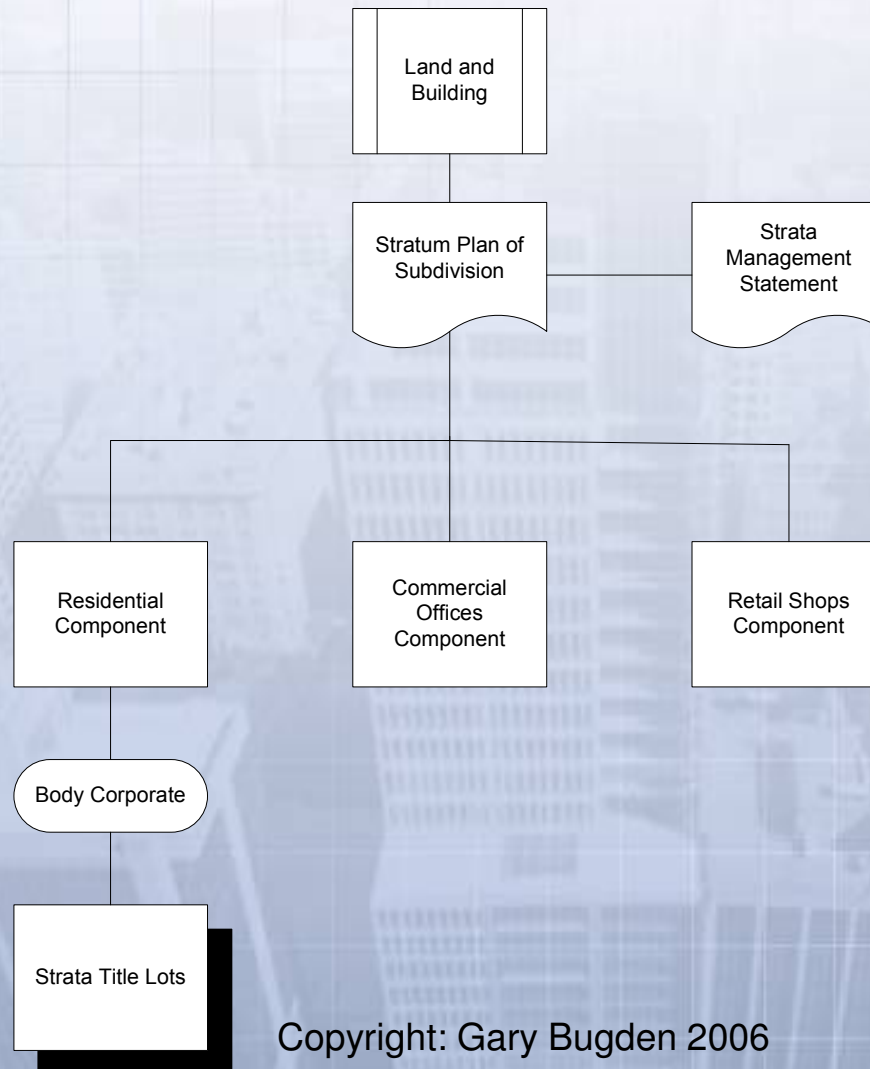
- *Paradise Centre, Surfers Paradise*
 - Registration of Plans (HSP (Nominees) Pty Ltd) Enabling Act 1980
 - Registration of Plans (Stage 2) (HSP (Nominees) Pty Ltd) Enabling Act 1984
- *The Conaught, Liverpool Street, Sydney*
- *Eastgate Gardens, Bondi Junction*
- *Eastpoint, Edgecliff*
- *South Bank, Melbourne*
- *Southbank, Brisbane*
- *King Street Wharf, Darling Harbour*

Stratum Subdivisions

- Also known as “Airspace” and “Volumetric”
- Define boundaries with reference to standard height datum
- Can be used to subdivide a building
- No body corporate involved
- Used to separately define different component use areas
- Allows a component use area to be owned outside a body corporate structure
- A component use area may be strata subdivided

Stratum Subdivision

(With body corporate as a component)



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PLAN FORM 3

To be used in conjunction with Plan Form 2

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

C 0.2 - DENOTES CENTRE 0.2 WIDE WALL
C 0.14 - DENOTES CENTRE 0.14 WIDE WALL

DP1014625

Registered SA 17-T-2000

This is sheet 2 of my plan in 12 sheets
dated 30-5-2008

Surveyor registered under Surveyors Act 1929

This is sheet 2 of the plan of PR
sheets covered by my Certificate No. 93-01-00
of 15-9-80

RLT Bhd
General Manager/Authorized Person

For use where space is insufficient in any panel on Plan Form 2.

CONTINUED FROM SHEET 1

- 22) EASEMENT FOR USE OF GARBAGE COMPACTUS ROOM (W)
- 23) EASEMENT FOR USE OF GARBAGE COMPACTUS ROOM (X)
- 24) EASEMENT FOR USE OF GARBAGE COMPACTUS ROOM (Y)
- 25) EASEMENT FOR SEWER TANK & PUMP. (Z)
- 26) EASEMENT TO PERMIT ENCRANCHING STRUCTURE TO REMAIN (AA)
- 27) EASEMENT FOR SUPPORT (AB)
- 28) EASEMENT FOR INTERCOM EQUIPMENT (AC)
- 29) EASEMENT FOR INTERCOM SERVICE OVER EXISTING LINE OF CABLES (AD)
- 30) RESTRICTION ON USE.
- 31) RESTRICTION ON USE.
- 32) EASEMENT FOR SUPPORT AND SHELTER (AG)
- 33) EASEMENT FOR SUPPORT AND SHELTER (AH)
- 34) EASEMENT FOR SERVICES (AJ)
- 35) EASEMENT FOR SERVICES (AK)
- 36) EASEMENT FOR CARPARKING (AL)
- 37) EASEMENT FOR WATER MAIN 3 WIDE & V&R (AM)
- 38) EASEMENT FOR ACCESS (AN)
- 39) EASEMENT FOR ACCESS OVER PATHWAYS (AP)
- 40) EASEMENT FOR OVERHANGS & STORAGE (AQ)
- 41) EASEMENT FOR ELECTRICITY PURPOSES (AR)
- 42) EASEMENT FOR SUBSTATION VENTILATION (AS)
- 43) POSITIVE COVENANT.
- 44) EASEMENT FOR MAKE UP AIR (AU)
- 45) EASEMENT FOR SUPPORT & SHELTER (AV)
- 46) EASEMENT FOR PUBLIC ACCESS (AW)
- 47) RESTRICTION ON USE.
- 48) RESTRICTION ON USE.
- 49) EASEMENT TO USE PUMP ROOM (BX)
- 50) EASEMENT TO DRAIN WATER OVER EXISTING LINE OF PIPES (BY)
- 51) RESTRICTION ON USE

- (S) EASEMENTS: (FOR SHEETS 2 & 3)
- (A) EASEMENT FOR GREASE APPROPRIATE SERVICE (1)
- (J) EASEMENT FOR ACCESS TO SUBSTATION (2)
- (K) EASEMENT FOR USE OF PLANT ROOM (3)
- (L) EASEMENT FOR ACCESS TO PUMP ROOM (4)
- (M) EASEMENT FOR ACCESS & USE OF LOADING DOCK (5)
- (N) EASEMENT FOR ACCESS & USE OF SWITCH ROOMS (6)
- (O) EASEMENT FOR ACCESS & USE OF SECURITY ROOM (7)
- (P) EASEMENT FOR USE OF CARNISH BAY (8)
- (Q) EASEMENT FOR USE OF GARBAGE COMPACTUS ROOM (9)
- (R) EASEMENT FOR USE OF GARBAGE COMPACTUS ROOM (10)
- (X) EASEMENT FOR USE OF GARBAGE COMPACTUS ROOM (X)
- (Y) EASEMENT FOR USE OF GARBAGE COMPACTUS ROOM (Y)
- (Z) EASEMENT TO PERMIT ENCRANCHING STRUCTURE TO REMAIN (AA)
- (AB) EASEMENT FOR SUPPORT (AB)
- (AC) EASEMENT FOR ACCESS (AM)
- (AD) EASEMENT FOR ACCESS OVER PATHWAYS (AP)
- (AE) RESTRICTION ON USE 31 STLY REFERRED TO AFFECTS WHOLE OF LOTS 44, TO 64 INCLUSIVE
- (AF) EASEMENT FOR SUPPORT & SHELTER (AV)
- (AG) BURDENS THOSE PARTS OF LOTS 52, 54, 55, 56, 58, 60, 62 & 64 LIMITED IN HEIGHT BY PT LOT 50 AS DEFINED ON SHEET 4 & THOSE PARTS OF LOT 50 NOTED BELOW.

NOTE 2
PART (AN) LIMITED IN DEPTH TO RL.0.6 & LIMITED IN HEIGHT BY NOTE 1.

NOTE 3
PART (J) & (AN) LIMITED IN DEPTH TO THE NOTED RAMP & IN HEIGHT TO 4 METRES ABOVE THAT RAMP

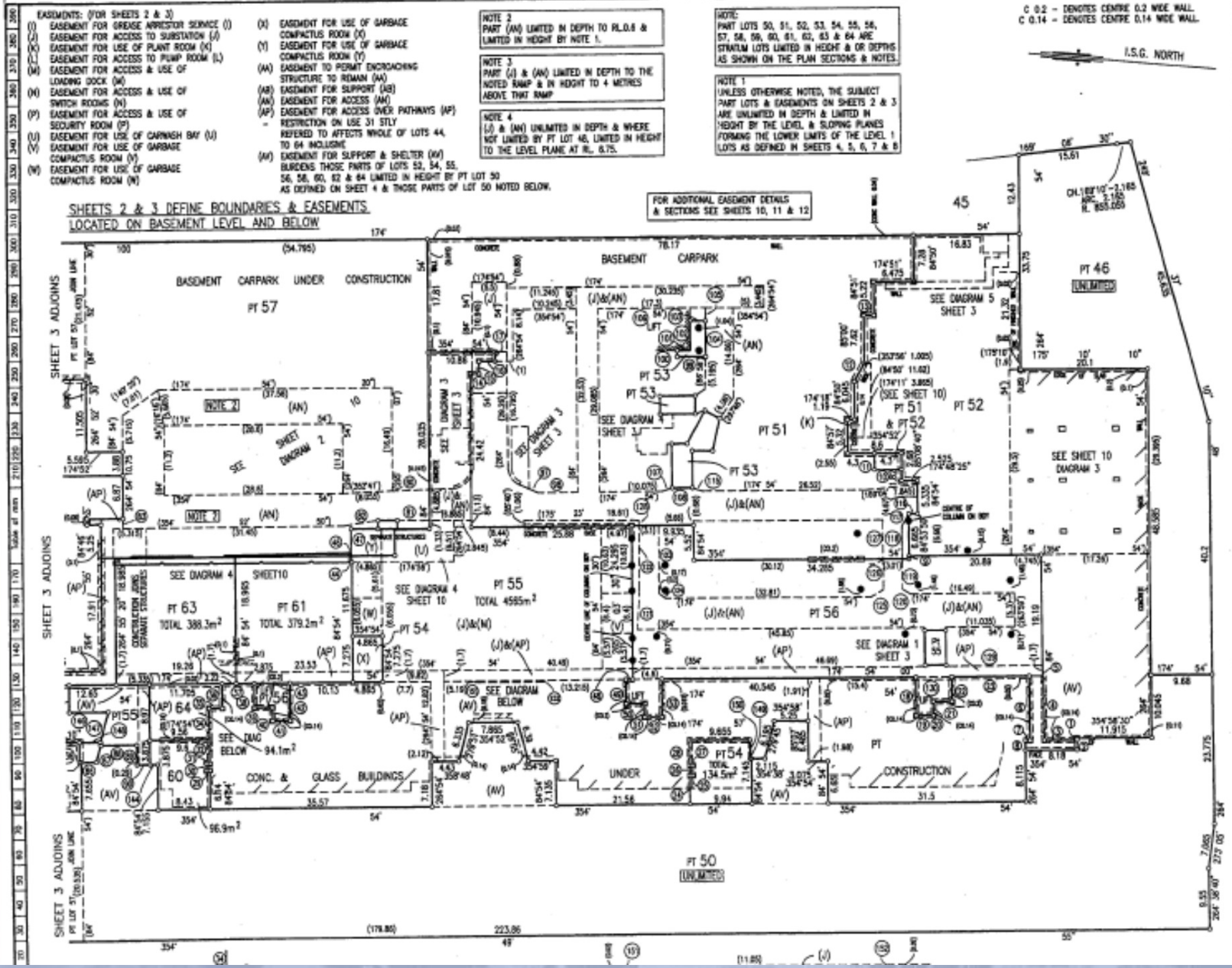
NOTE 4
(L) & (AN) UNLIMITED IN DEPTH & WHERE NOT LIMITED BY PT LOT 46, LIMITED IN HEIGHT TO THE LEVEL PLANE AT RL. 0.75.

NOTE
PART LOTS 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 & 64 ARE STRAIGHT LOTS LIMITED IN HEIGHT OR DEPTH AS SHOWN ON THE PLAN SECTIONS & NOTES.

NOTE 1
UNLESS OTHERWISE NOTED, THE SUBJECT PART LOTS & EASEMENTS ON SHEETS 2 & 3 ARE UNLIMITED IN DEPTH & LIMITED IN HEIGHT BY THE LEVEL & SLOPING PLANES FORMING THE LOWER LIMITS OF THE LEVEL 1 LOTS AS DEFINED IN SHEETS 4, 5, 6, 7 & 8

SHEETS 2 & 3 DEFINE BOUNDARIES & EASEMENTS LOCATED ON BASEMENT LEVEL AND BELOW

FOR ADDITIONAL EASEMENT DETAILS & SECTIONS SEE SHEETS 10, 11 & 12



THIS SHEET DEFINES BOUNDARIES GENERALLY AT LEVEL 1

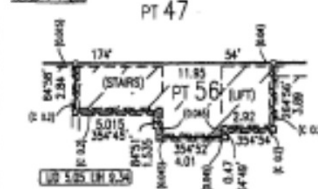
DIAGRAM 1
SCALE 1:200

DIAGRAM 2
SCALE 1:200

DIAGRAM 3
SCALE 1:200

DIAGRAM 4
SCALE 1:200

DIAGRAM 5
NOT TO SCALE



NOTE: PART LOTS 44, 50, 51, 52, 53, 55, 56 & 57 ARE STRIP LOTS LIMITED IN HEIGHT & /OR DEPTH BY THE LEVEL & SLOPING PLANES DEFINED ON THE PLANS, SECTIONS & NOTES.

NOTE: VERTICAL BOUNDARIES GENERALLY 0.1 BELOW TOP OF STRUCTURAL FLOOR SLAB

LEVEL KEY
LH RL - DENOTES PT LOT LIMITED IN DEPTH TO THE NOMINATED LEVEL PLANE
LH HL - DENOTES PT LOT LIMITED IN HEIGHT TO THE NOMINATED LEVEL PLANE
LH - DENOTES PT LOT UNLIMITED IN DEPTH
LH - DENOTES PT LOT UNLIMITED IN HEIGHT
UNLIMITED - DENOTES PT LOT UNLIMITED IN HEIGHT & DEPTH

(F) EASEMENT FOR SUPPORT (F) - LIMITED IN HEIGHT TO THE LEVEL & SLOPING PLANES FORMING THE LOWER LIMITS OF LOTS 47, 48, & 49 AS SHOWN ON SHEETS 6, 7 & 8 AND UNLIMITED IN DEPTH - BURDENING THOSE PARTS OF LOTS 51, 52, 55, 56, 57, 59, 61, 63 & 64 LOCATED BELOW.

EASEMENT CONTINUED:
(L) EASEMENT FOR ACCESS TO SUBSTATION (L)
(AN) EASEMENT TO PERMIT ENCROACHING STRUCTURE TO REMAIN (AN)
(W) EASEMENT FOR SUPPORT & SHELTER (W) - SEE NOTE 2
(AB) EASEMENT FOR SUPPORT (AB)
(AW) EASEMENT FOR PUBLIC ACCESS (AW)
(N) EASEMENT FOR ACCESS (AN)

NOTE 1 (AA) BURDENS PT 57
(AB) BURDENS PT 55
CONSTRUCTION JOINT
PT 47
PT 57
PT 48

DP1014625

Registered: SA VT-T-2000

This is sheet 4 of my plan in 12 sheets dated 30-5-2000

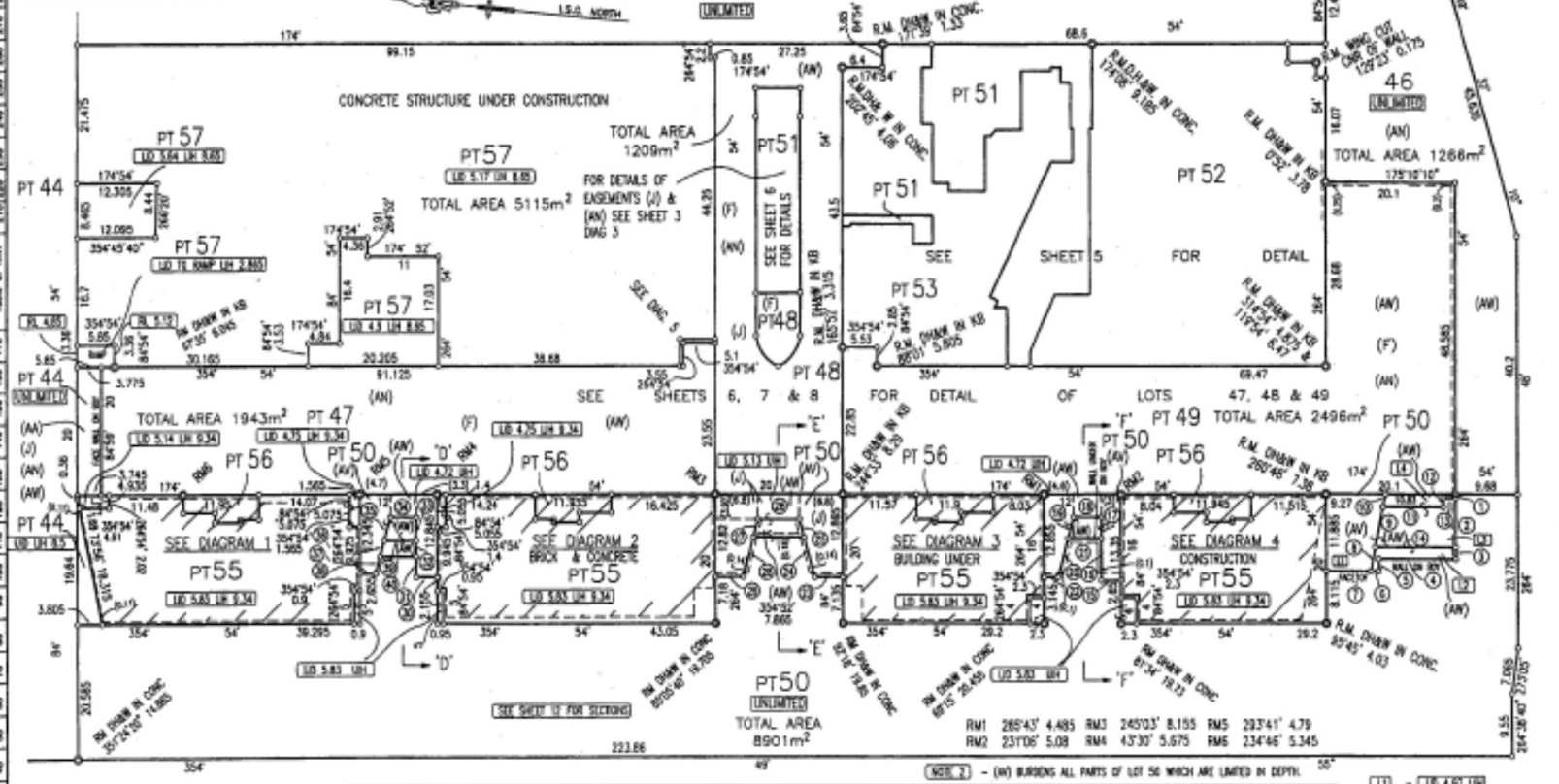
Ray Hunter

Surveyor registered under Surveyors Act 1929

This is sheet 4 of the plan of 42 sheets covered by my Certificate No 52-01-00 13-7-00

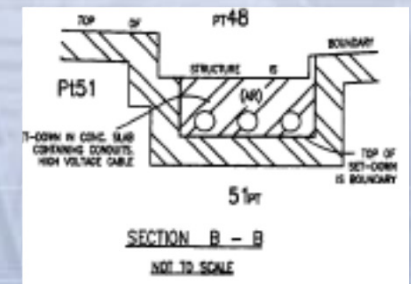
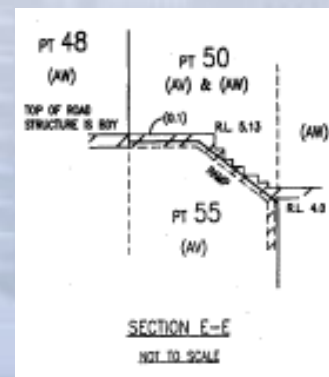
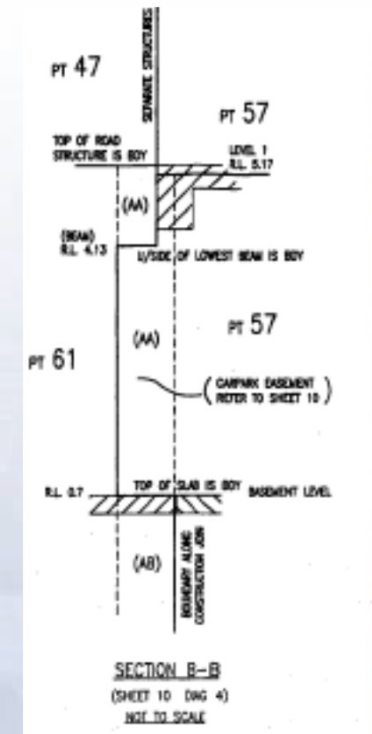
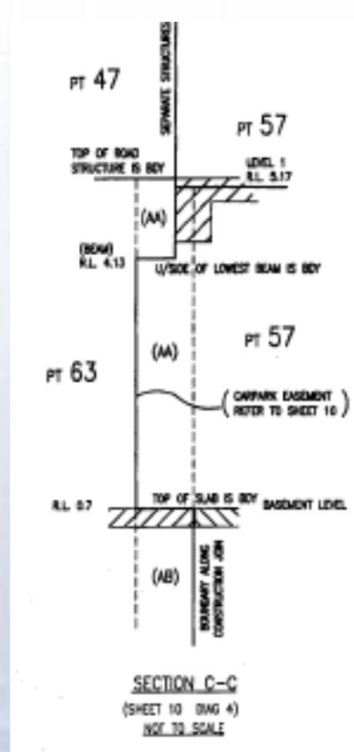
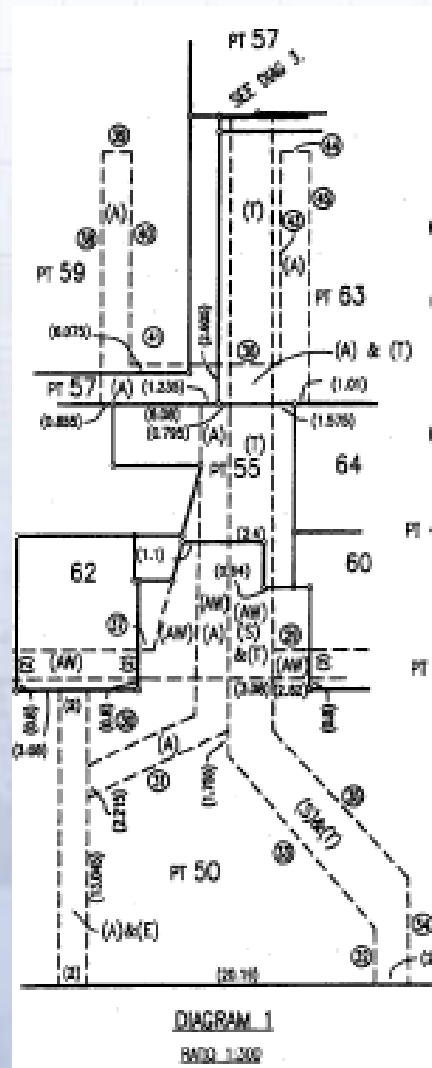
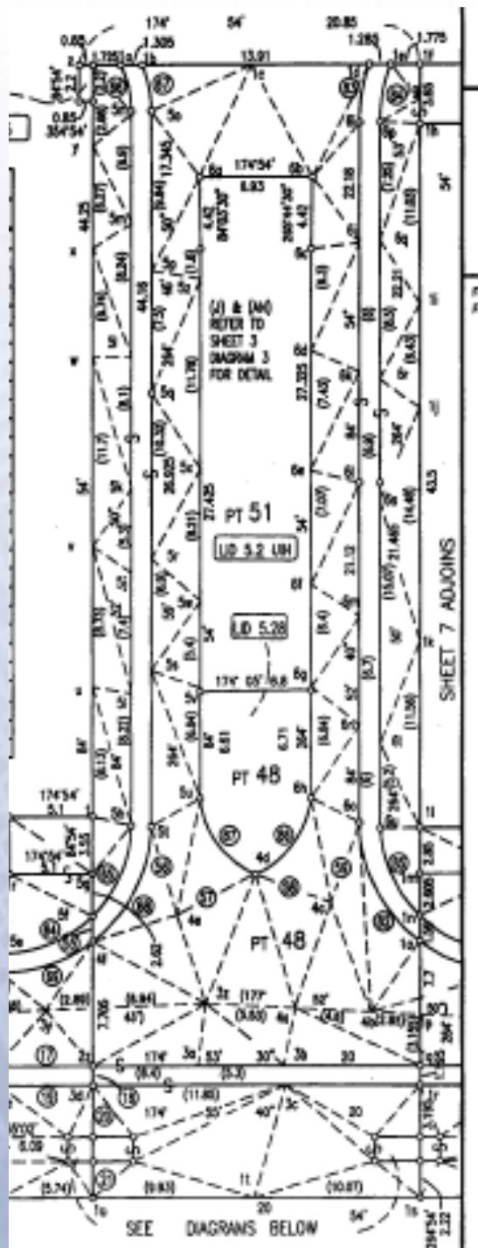
Robert Black

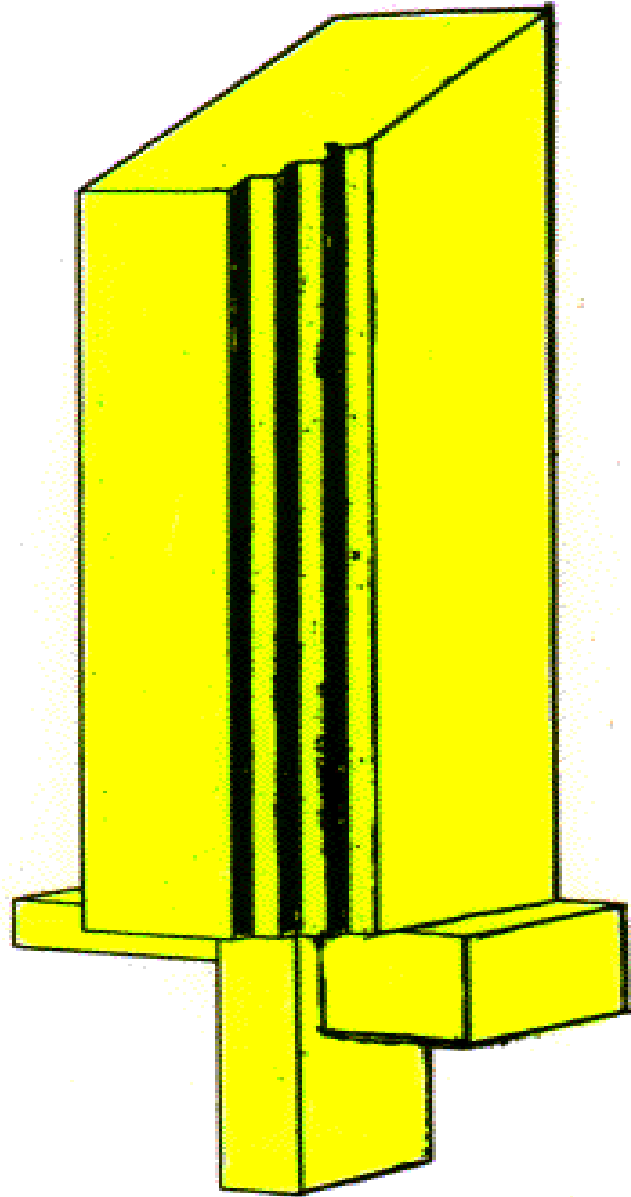
General Manager/Authorised Person



RM1 285'43" 4.485 RM3 245'03" 8.155 RM5 232'41" 4.79
RM2 237'06" 5.038 RM4 43'30" 5.675 RM6 234'46" 5.345

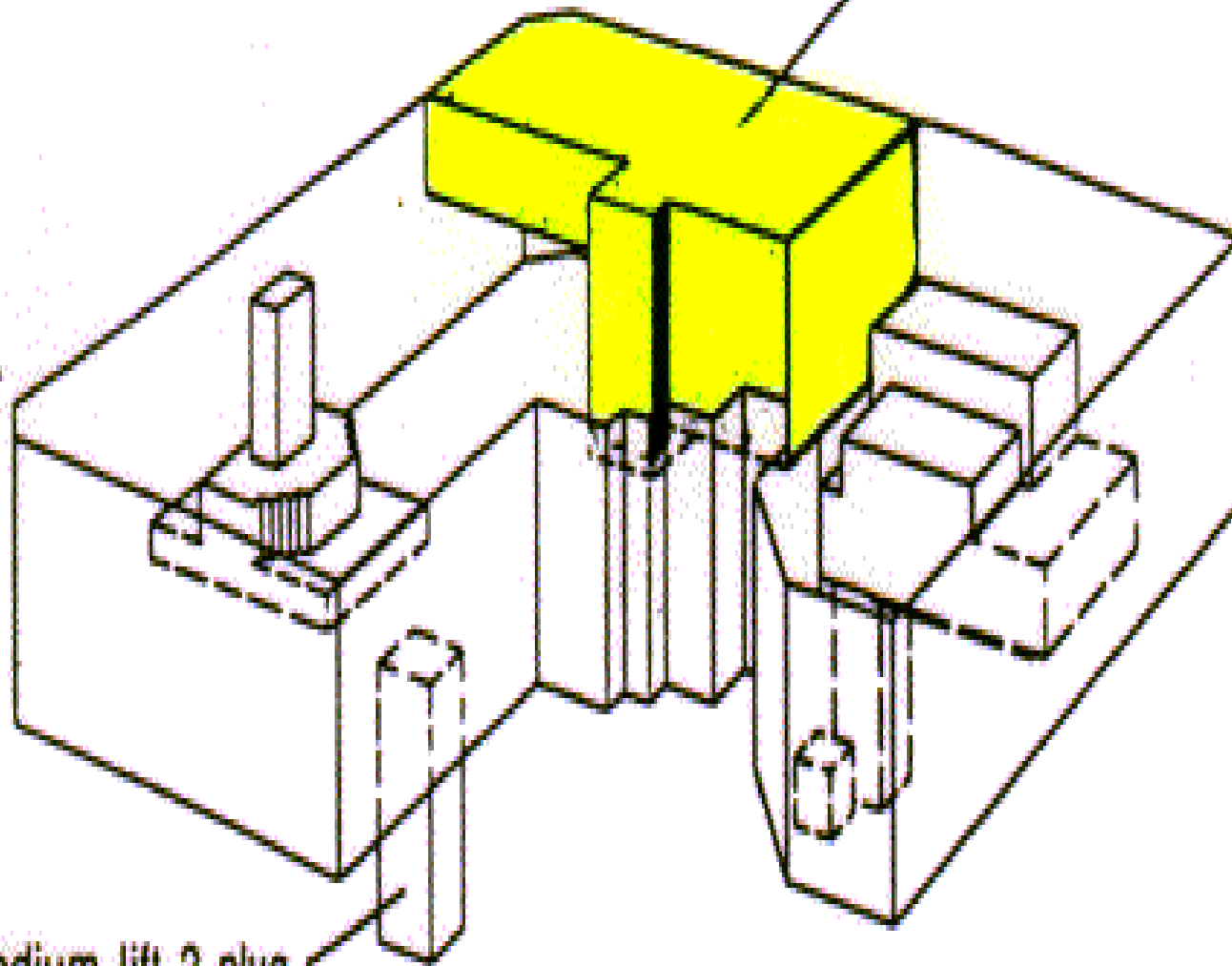
For use where space is insufficient in any panel on Plan Form 2.



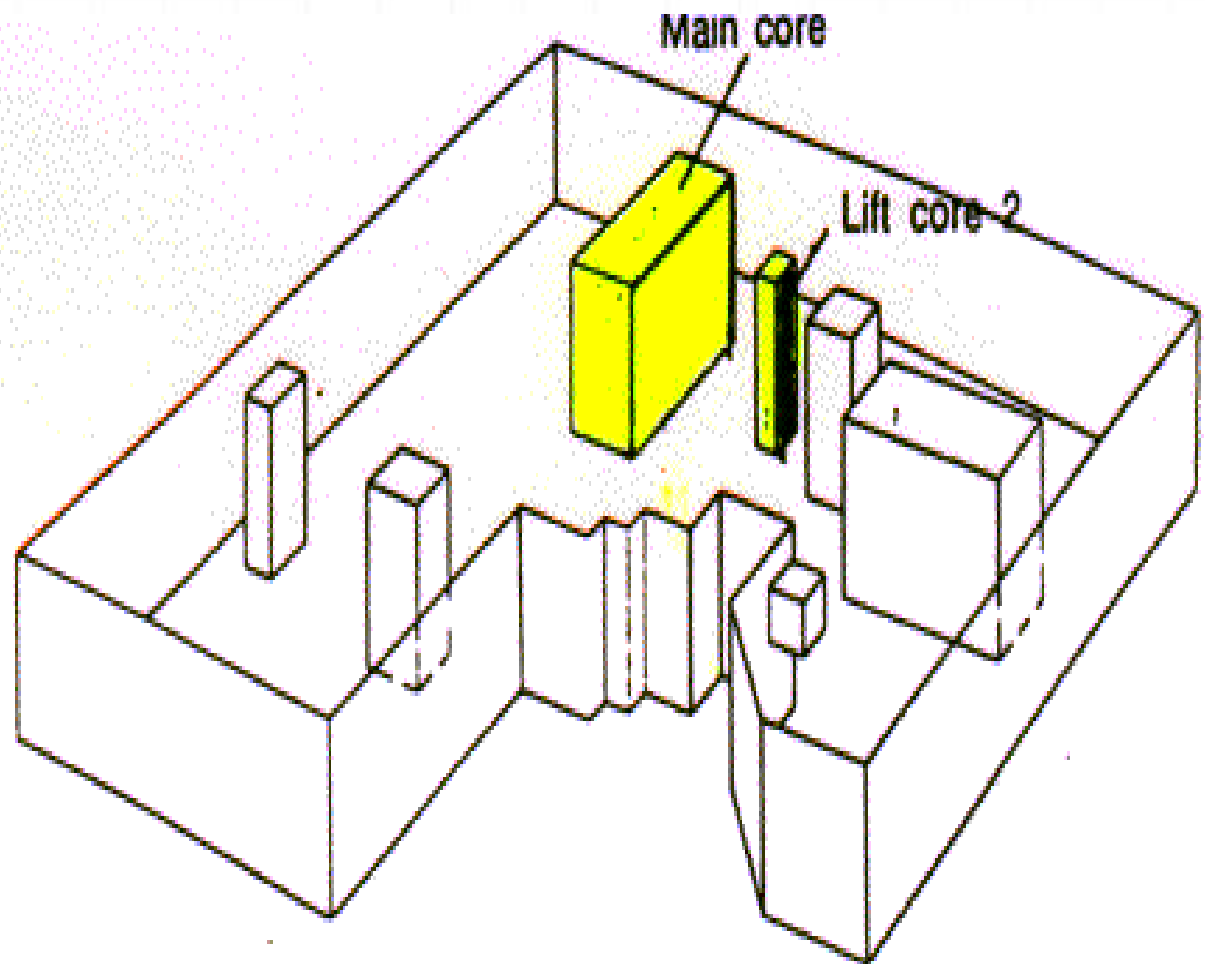


Tower & Plug

Plug Hole in Podium Levels



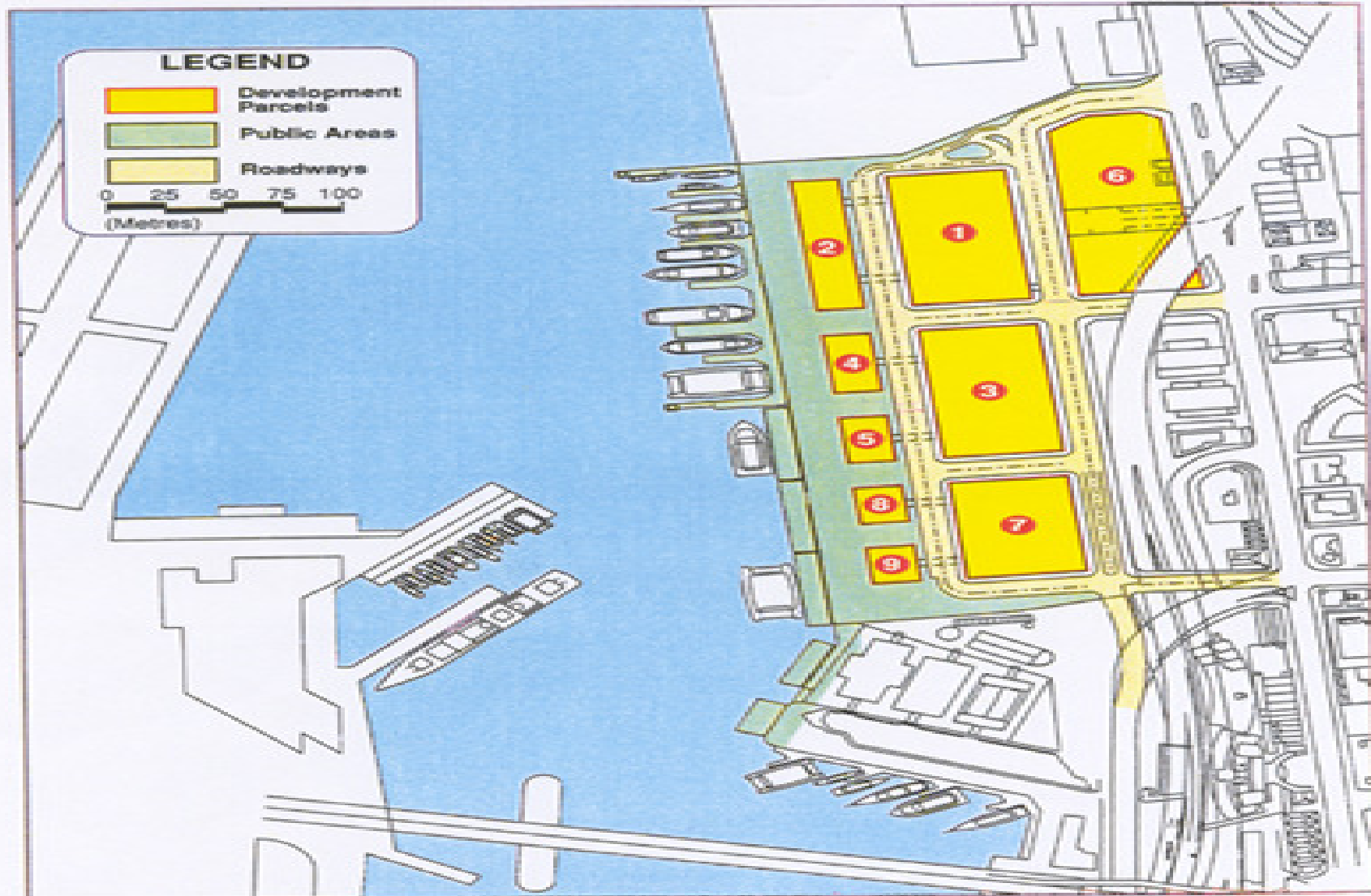
Podium lift 2 plug

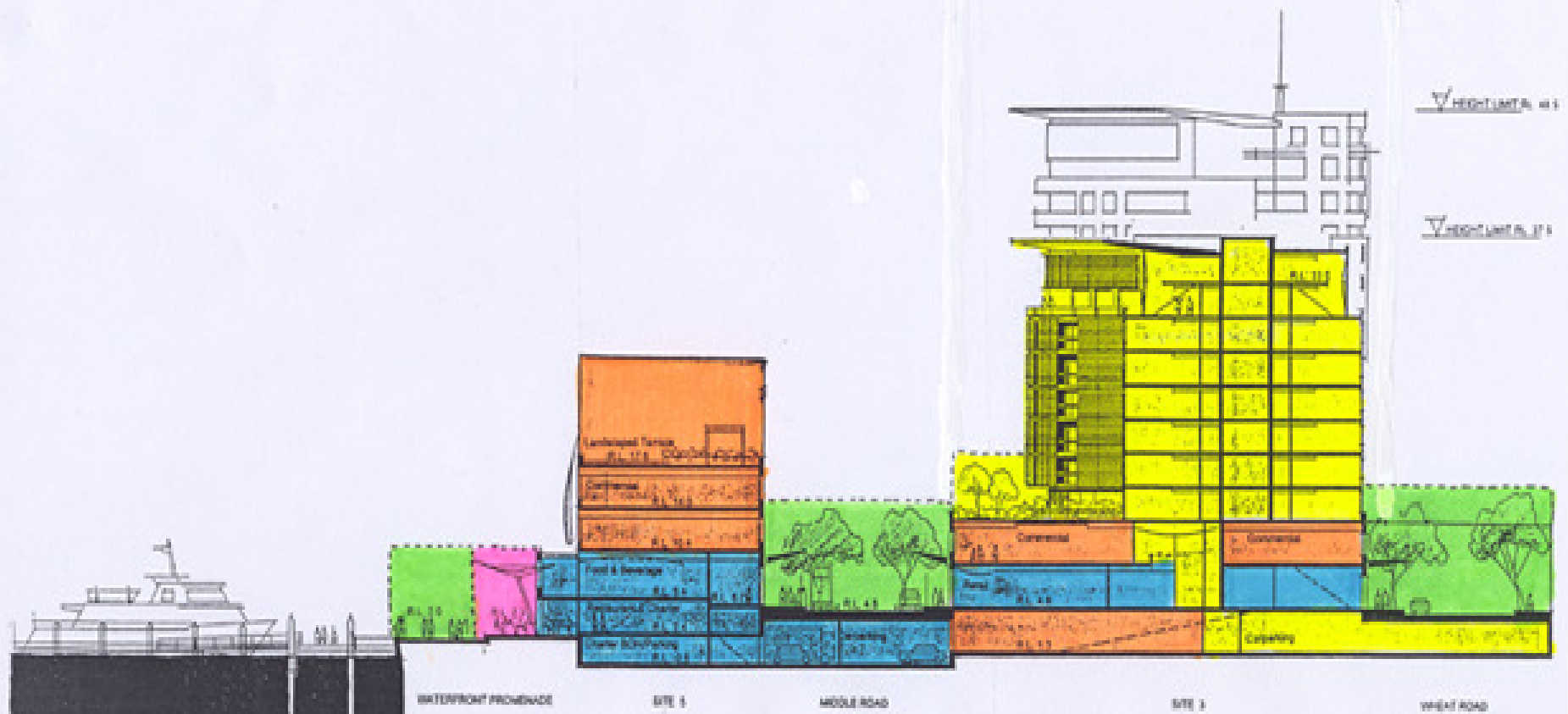


Plug Holes in
Basement Levels

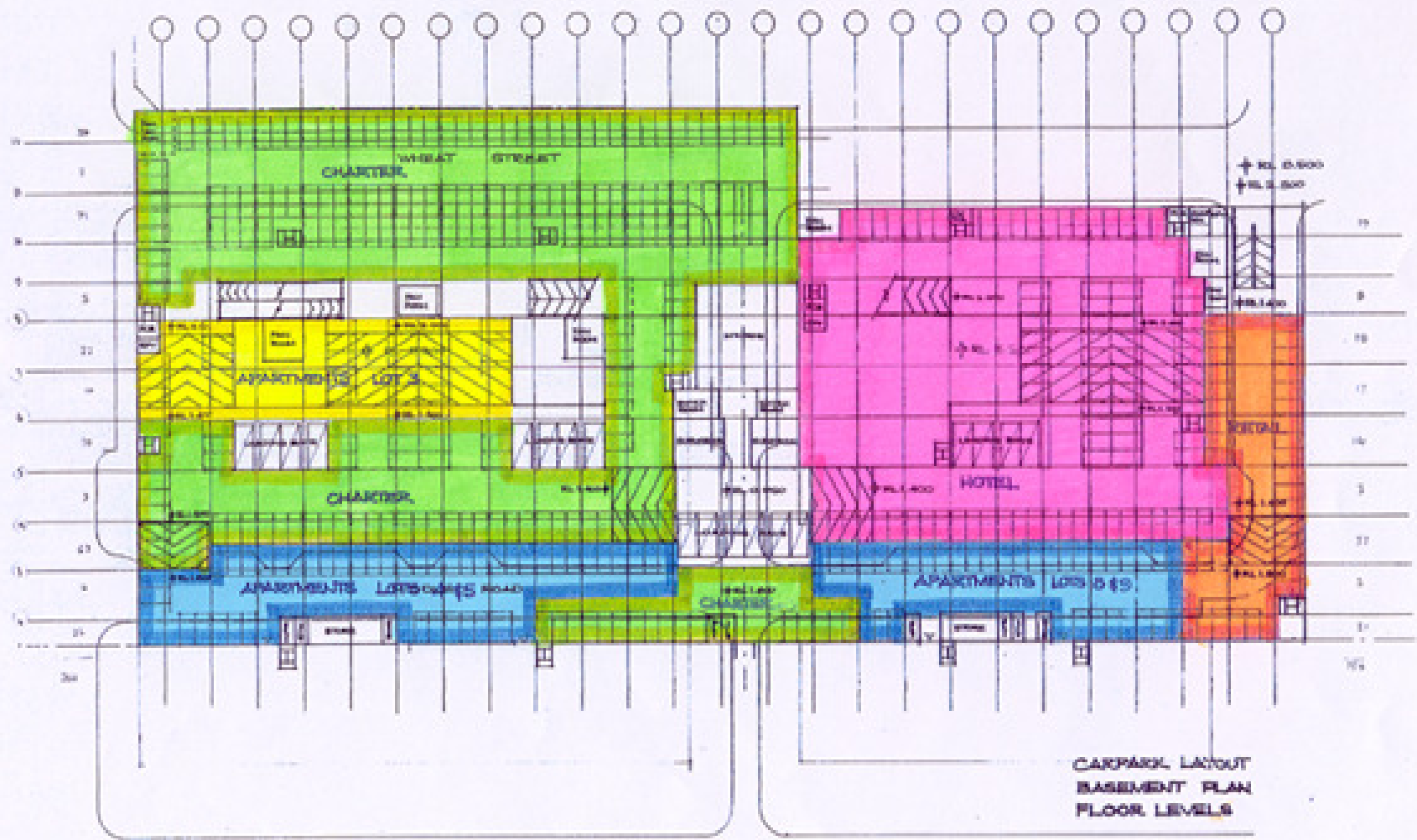
DARLING HARBOUR 9 & 10 Development Parcels

Fig.5





MIDDLE SECTION



Stratum Subdivisions

(Continued)

- Stratum lot + strata plan = stratum parcel
- Then strata management statement usually registered with stratum plan
- Results in shared facilities
- Design used to minimize shared facilities
- Legal mechanisms an alternative to design
- Design solutions preferred to legal solutions

Shared Facilities

- Areas, services, equipment and amenities shared by 2 or more component use areas
- Examples; access ways, stairs, elevators, pumps, exhaust fans, fire sprinkler system
- Must be maintained and costs shared equitably
- Placement is very important
- Listed in schedule to SMS or BMS
- Basis for cost sharing also listed
- Provision for adjustment of list and cost sharing

Sample Cost Sharing Schedule

SCHEDULE 1

List of Shared Facilities and Division of Costs of Shared Facilities.

The permitted uses described in column 5 represents the Member permitted to use each Shared Facility. The percentages in columns 6, 7 and 8 represent the total cost for each Shared Facility that each member must pay.

	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
No	Shared Facility	Description	Location	Permitted Users	Residential	Retail	Commercial
1	Lifts	Lifts in the foyer and extending to levels 4 and 5 of the car park	Area A on plan annexed	Residential, Retail and Commercial	45%	15%	50%
2	Service area and goods lift	Service area and goods lift, comprising loading dock, turning area and lift	Area B on the annexed plan	Retail and Commercial	0%	35%	65%
3	Garbage area	Garbage and recycle receptacle areas, including bins and compactor	Beside the loading dock; area C on the annexed plan	Residential, Retail and Commercial	38%	49%	13%
4	Stair pressure units	Stair pressurization units to for smoke control in the fire escape stairs	At the top of each of the fire escape stairs	Residential, Retail and Commercial	48%	8%	44%
5	Fire sprinkler system	Pipes, heads, pumps and control equipment relating to the fire sprinklers	Throughout the entire building and car parks	Residential, Retail and Commercial	42%	17%	41%

KING STREET WHARF – Schedule 1

23	Gas consumption Shared Facility	Gas used by the Residential Strata Scheme and Single Retail hot water boiler for air conditioning.	Residential Strata Scheme - Basement
24	Lift service (public) Global Cost Item	Public lift providing access from the waterfront level to street level behind the waterfront Parcels in site 8.	Combined Retail - Parcel 8 (external lift)
25	Pest control - loading dock Global Cost Item	<p>Pest control including inspections, treatment and remedial actions in:</p> <p>(a) Loading dock and raised loading area.</p> <p>(b) Accessway.</p> <p>(c) Carwash bay.</p> <p>(d) Corridors.</p>	<p>Combined Retail – Basement loading dock</p> <p>Combined Retail - Basement behind Parcels 4, 5, 8 and 9</p> <p>Combined Retail – Basement loading dock</p> <p>Combined Retail - Basement, between accessway and waterfront, between Precinct 2 carpark and accessway</p>
26a	Pest control - other Shared Facilities and areas Global Cost Item	<p>Pest control including inspections, treatment and remedial actions of all Global Cost Item areas and facilities</p> <p>(a) Carpark entry ramp.</p>	Residential Strata Scheme

KING STREET WHARF – Schedule 2

Sheet 78 of 90 sheets

No.	Shared Facility	Commercial Strata Scheme	Combined Retail	Xerts	Charters 1 - 6	Single Retail	Serviced Apartments	Residential Strata Scheme	Method Of dividing cost
22	Electricity consumption for Parcel 9 shared meter Shared Facility	57%	43%	0%	0%	0%	0%	0%	Calculation based on area served, estimate of time served and equipment rating.
23	Gas consumption Shared Facility	0%	0%	0%	0%	30%	0%	70%	Calculation based on area served, estimate of time served and equipment rating.
24	Lift service (public) Global Cost Item	20%	20%	5%	55%	0%	0%	0%	Distribution based on estimated benefit.
25	Pest control - loading dock Global Cost Item	10%	45%	2%	32%	1%	0%	10%	Distribution based on estimated benefit.
26a	Pest control -other Shared Facilities and areas Global Cost Item	18%	12%	2%	3%	3%	27%	35%	Relative area of each Strata Scheme and Stratum Lot.
26b	Pest control - other Shared Facilities Shared Facility	18%	12%	2%	3%	3%	27%	35%	Relative area of each Strata Scheme and Stratum Lot.
27	Carpark roller shutters Global Cost Item	18%	12%	2%	3%	3%	27%	35%	Relative area of each Strata Scheme and Stratum Lot.
28	MATV system Shared Facility	18%	12%	2%	3%	3%	27%	35%	Relative area of each Strata Scheme and Stratum Lot.
29a	General repairs and maintenance Global Cost Item	22%	23%	5%	9%	5%	10%	26%	Relative proportion of contribution to operating costs.
29b	General repairs and maintenance Shared Facility	22%	23%	5%	9%	5%	10%	26%	Relative proportion of contribution to operating costs.

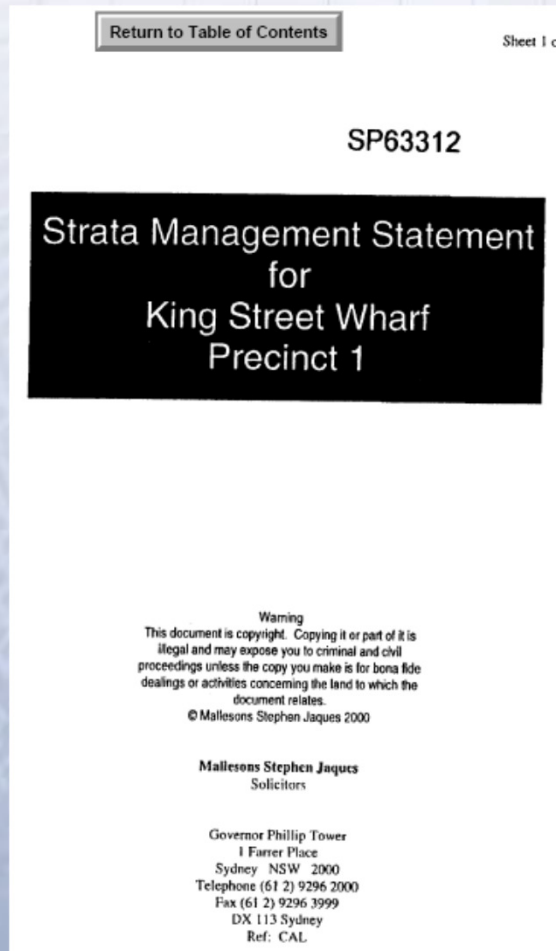
Principal Legal Mechanisms

- Strata management statement
- Building management statement
- Easements
- Covenants
- Umbrella management agreements

Project Structuring Exercise

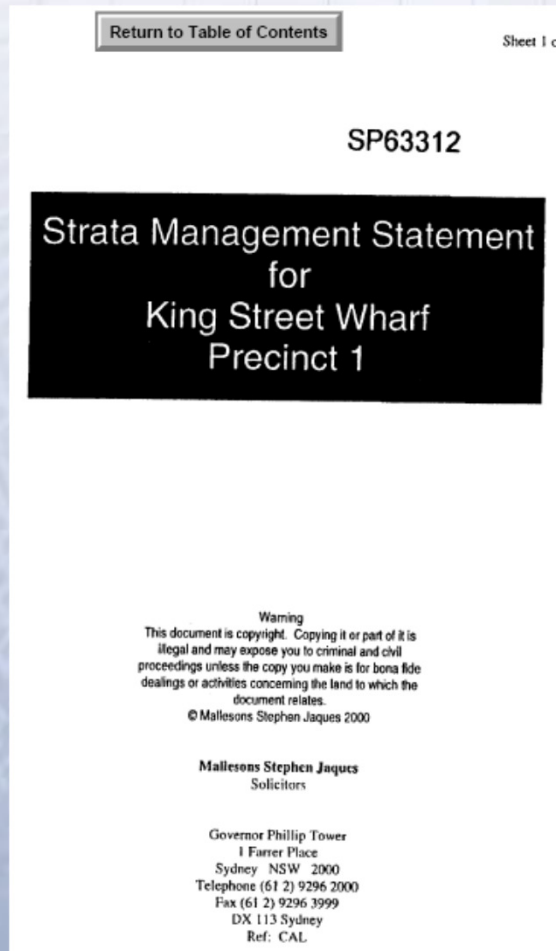
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Strata Management Statements



- Used where a strata plan is to create a stratum parcel
- Regulated by –
 - Strata Schemes (Freehold Development) Act 1973
 - Strata Schemes (Leasehold Development) Act 1986
- Effect as agreement under seal – mutual covenants
 - Body corporate
 - Proprietor, mortgagee in possession or lessee in S/Scheme
 - Owner or mortgagee in possession of other parts
- All agree to carry out obligations & permit others

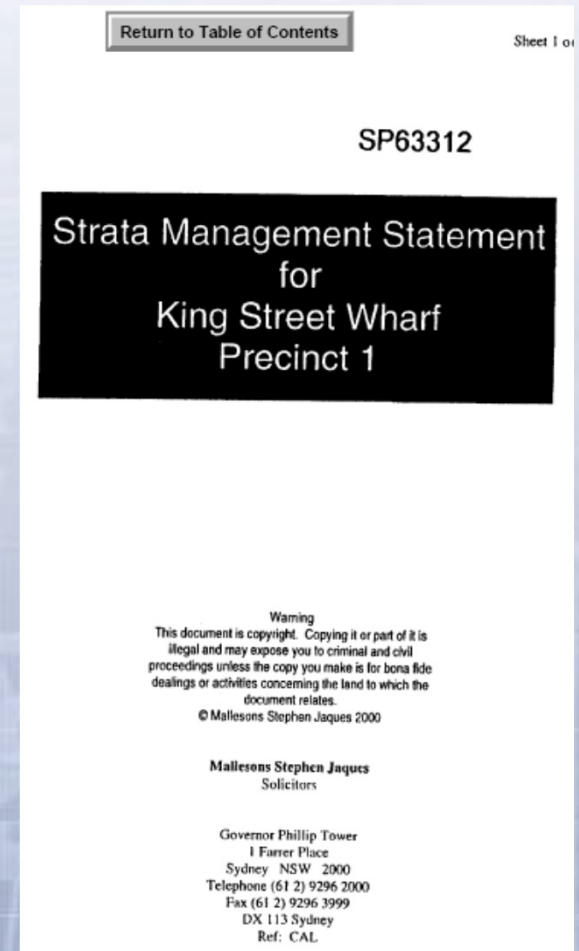
Strata Management Statements



- Must provide for –
 - Building management committee + office bearers
 - Functions of office bearers
 - Settlement of disputes
 - Service of notices and documents
- Land owners + B/C must be members
- B/C has a nominee
- By-law regulates nominee
- Otherwise special resolution

SMS – Optional Matters

- Control, maintenance, etc. of any means of access
- Storage and collection of garbage
- Meetings of BMC (+ minutes)
- Safety & security measures
- Appointing managing agent
- Control of noise
- Regulating trading activities
- Service contracts
- Architectural code
- Other (non conflicting) matters

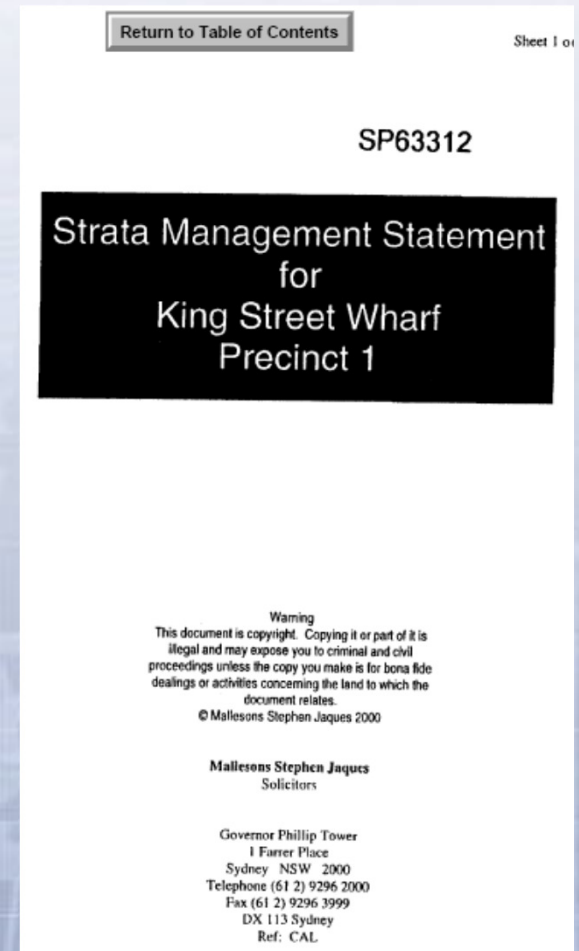


SMS – Implied Provisions

(Unless excluded)

- BMC must meet at least once each year
- Must give 7 days notice to members
- Manner of service of notice (personal, by post or as per Act)
- Decisions by majority vote

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Building Management Statements

- Registration is optional
- Registered with the subdivision or after
- Applies where no strata scheme involved
- Regulated by *Conveyancing Act 1919*
- Can be amended
- Has effect in same way as a SMS
- Covenants involve the same parties

Building Management Statements

(Continued)

- Must be consistent with DA and the law
- Same SMS compulsory provisions apply
- Same SMS implied provisions apply
- May contain the same optional provisions
- Each owner must be a member of the Building Management Committee
- Not intended to sit above a SMS

10 Minute Break

Please return promptly!

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Topics (continued)

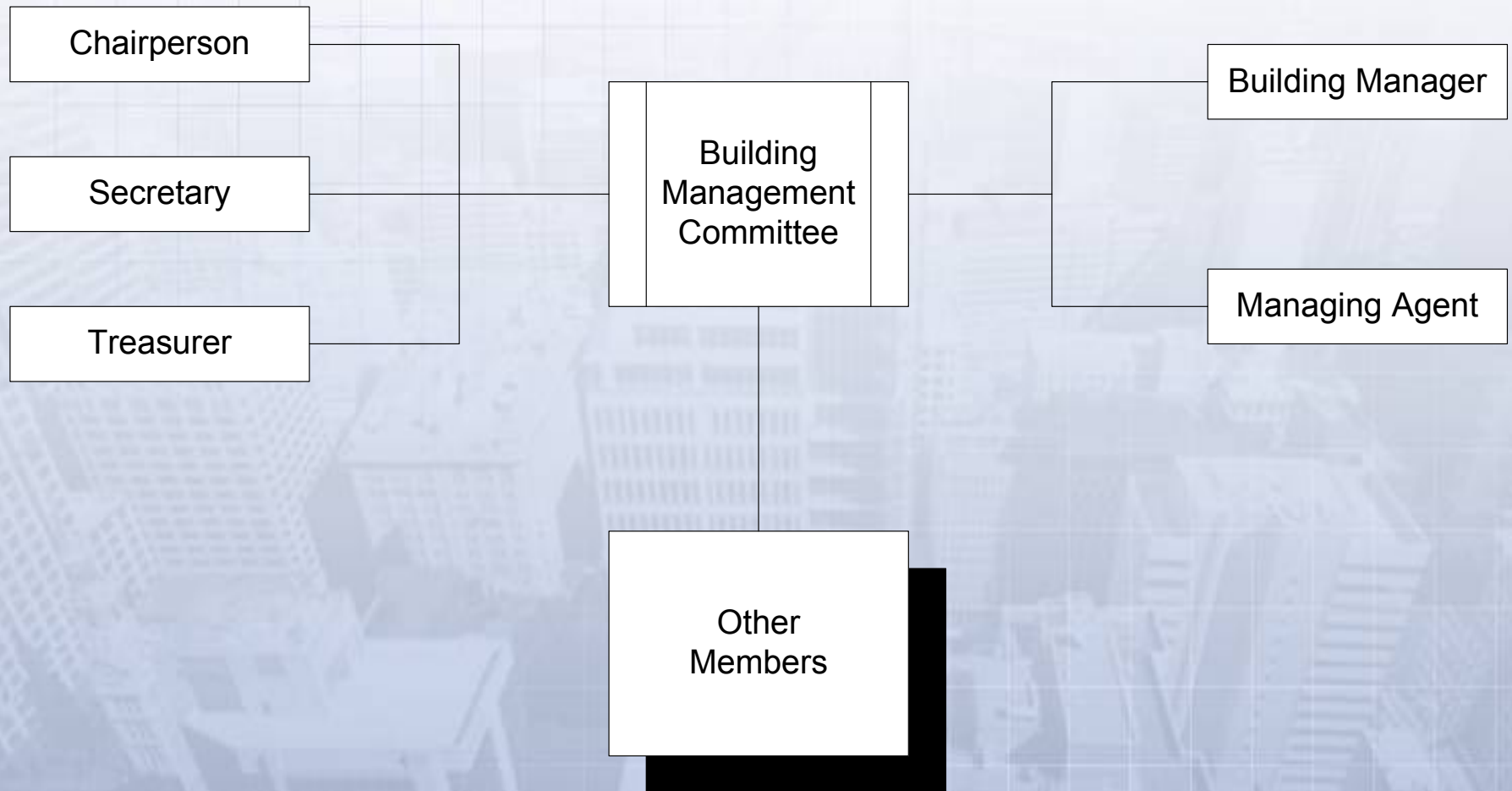
7. Building management committees
8. Managing agents
9. Building managers (caretakers)
10. Committee meetings
11. Insurances

10 minute break

Building Management Committees

- Not a “body corporate” – no legal entity
- Represents the lot owners – their agent
- Body corporate is an “owner”
- Made up of owners or their representatives
- Administers the common facilities
- Enters into contracts on behalf of owners
- Owners jointly and severally liable
- Management and insurances are critical

Common Structure for Building Management Committee



Managing Agent

- BMC empowered to appoint
- Procedure involves –
 - BMC Resolution
 - Written agreement
- Role is determined by the agreement
- Powers determined by the agreement and authorized BMC delegations
- Role is commonly secretarial and record keeping

Managing Agent

(Continued)

- Strata managing agent is logical appointee
- Charges determined by the agreement
- Logical approach is “fee for service”
 - High level of responsibility
 - Difficulty estimating hours involved
 - Number of lots is small and irrelevant
 - “One-off” nature of the task
- ISTM Agreement uses “fee per lot”

ISTM Agreement for BMC's

- Between Agent and all owners
- Novation on change of ownership
- Assumes managing agent acting as a “strata managing agent”
- Assumes principal and agency relationship
- Schedule A and B services need to be carefully checked against the SMS or BMS
- Strata initial period restrictions or term restrictions do not apply

Building Manager

- Appointed like managing agents
- Strata title restrictions do not apply
- Longer term appoints are more common
- Responsible for building operation issues
 - Repairs and maintenance
 - Service contracts
 - Basement management (access, visitors, rubbish, deliveries)
 - Workplace, health and safety
- Must be involved in budgeting and authorizing of payments

Committee Meetings

- Regulated by SMS or BMS
 - Notice requirement
 - Quorum
 - Appointment of alternates
 - Voting
- No general meetings
- Remember the implied provisions
 - One meeting each year
 - 7 days notice and how served
 - Quorum
 - Decisions by majority vote
- Minutes of meetings must be kept

Insurance

- Where strata scheme –
 - s 84 SCM Act
 - Possibly SMS for non-building insurances
- Where no strata scheme –
 - Clause 3 and 4 Schedule 8A *Conveyancing Act 1919*
 - Building is insured using a “damage policy”
 - Other insurance requirements are specified
- These other requirements –
 - Workers compensation
 - Public liability
 - Other occurrence determined by the Committee
 - Voluntary workers

10 Minute Break

Please return promptly!

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Topics (continued)

12. Non-accounting records

13. Accounting records

14. Financial reporting

15. Dispute resolution

16. The future

Finish

Record Keeping

(Excluding Accounting Records)

- **Constituent documents**
 - Subdivision plans
 - SMS or BMS
 - Easements and covenants
- **Owners register**
- **Committee register**
- **Contracts register**
- **Shared facilities register** (including changes)
- **Asset register**
- **Minute book**

**What accounting records
do you think should be kept?**

H
O
W

**Should there be any special
requirements for recording
income and expenditure?**

Accounting Records

- Keep all the normal records
- Chart of accounts is critical
 - For R & M it must mirror shared facilities register (item by item)
 - R & M income and expenditure must be tracked item by item
 - Keep a ledger account for income and expenditure for each R & M item
- Budgeting must take into account item by item surplus or deficiency
- Owner's share of various items must be consolidated in a Contributions Register
- Is a sinking fund needed?

Accounting Records Exercise

- 3 lot stratum subdivision with SMS –
 - Lot 1 – Body corporate
 - Lot 2 – Retail owner
 - Lot 3 – Commercial office owner
- Cost sharing item = Lift maintenance (Item 5)
- Cost sharing arrangements –
 - Lot 1 – 31%
 - Lot 2 – 15%
 - Lot 3 – 54%

Accounting Records Illustrated

Step 1 - Budget

BUILDING MANAGEMENT COMMITTEE BUDGET

Item	Description	Lot 1 %	Lot 1 \$	Lot 2 %	Lot 2 \$	Lot 3 %	Lot 3 \$	Total
1	Fire safety contracts	0.2	867	0.4	1734	0.4	1734	4335
2	Emergency generator	0.3	720	0.2	480	0.5	1200	2400
3	Building manager	0.3	6300	0.2	4200	0.5	10500	21000
4	Cleaning	0.2	2720	0.5	6800	0.3	4080	13600
5	Lift maintenance	0.31	1099.88	0.15	532.2	0.54	1915.92	3548
Totals			11706.88		13746.2		19429.92	44883



Step 2 – Raise Contributions

Contributions Register Lot 1

Date	Description	Debit	Credit	Balance
01-1-06	Contribution raised	\$11706.88		(\$11706.88)
21-1-06	Contribution payment		\$11706.88	0.00

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Accounting Records Illustrated (Continued)

Step 3 – Receipt and Enter in Cash Book

Cash Receipts Book

Date	Description	Item 1	Item 2	Item 3	Item 4	Item 5	Total
21-1-06	Contribution – lot 1	\$ 876.00	\$ 720.00	\$6300.00	\$2720.00	\$1099.88	\$11706.88

Step 4 – Post to Ledger



Ledger Account Item 5 (Lift Maintenance)

Date	Description	Debit	Credit	Balance
21-1-06	Contribution (Lot 1)		\$1099.88	\$1099.88
24-1-06	Contribution (lot 3)		\$1915.92	\$3015.80
02-2-06	Contribution (Lot 2)		\$ 532.20	\$3548.00
08-3-06	Lift service fee	\$3162.00		\$ 386.00

Financial Reporting

- Determined largely by the approach to accounting
- Reporting can be on a cash or accruals basis
- Management accounts should report on an item by item basis

Dispute Resolution

- Process is determined by the SMS or BMS
- Commissioner and Tribunal are not an option for a BMS
- Expert determination or arbitration are the most common
- Legal assistance will normally be required
- Be careful about rushing off to the Commissioner or Tribunal

The Future

- SMS and BMS are unpopular with strata managing agents
- They do not fit the “strata title” mould
- They are critical to preserve the value of non-residential components
- Here to stay & likely to get more complex
- Gear up for them – be on the top of your professional tree
- Good luck!!

Institute of Strata Title Management

A Complete Guide to Working With Building Management Committees

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