

Publication Date: July 25, 2017
YSP Podcast Transcript: Episode 071. More tough questions: Strata in Conversation
Sydney Lunch Part 2

Listen to this podcast episode here:

Intro: Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to www.yourstrataproperty.com.au.

Amanda Farmer: Hello and welcome. I'm Amanda Farmer and this is Your Strata Property. This week I am bringing you part two of the Kelly Partners Strata in conversation lunch, held in Sydney's beautiful Aria restaurant in April 2017. If you haven't yet listened to part one, I strongly recommend you head back over and check that out. That's last week's episode, episode 70. Right now we're going to jump straight into the next question that was put to the panel during the lunch. You'll remember that panel included myself, SCA New South Wales president Chris Duggan, and Reena Van Aalst. The transcript, as always, available from yourstrataproperty.com.au/071. Enjoy.

Brett Kelly: So question five, the aim of the new strata defects regime is simple. The quick and efficient repairs of defects, coming into effect mid this year. Basically, it's mandating it, as we understand, an inspection regime by an independent inspector for new high rise strata buildings, paired with a 2% bond put out by developers to cut defects in the building work that have not been rectified up to 2 years. Some have suggested it would be more effective if investors were dedicated instead to identifying and rectifying the defects before the building process are finalised. Well, a bond for 2% of the value of the construction contract, in reality, being sufficient to cover the actual cost of the defect rectification required, will it provide sufficient incentive for developers to return to the site to rectify the defects?

Chris Duggan: Well, there's three parts to your question, Brett, and it's a very complex question. Admittedly, this is not a perfect system, but it is a system that the government is trying to introduce, to move it here, and rectify systemic defects in existing buildings. There are many problems with the system that hasn't even started yet. One being that they actually haven't decided on the format of the report, and they're unlikely to settle that format report in the near future. SCA's working very closely with the government, and it's so very much a work in progress, but I wouldn't be surprised if there's consideration around deferral of commencement of that, but that's more so the government working in the background. Now, there's 3 parts to your question. Who will ultimately pay? Will the consumer? The consumer always pays, whether we like it or not. That's the way the economy works, and it's going to be a pass-through experience by our builders to develop as we want. Will it fix defects? It will go some way to holding some builders more accountable in some circumstances.

Amanda Farmer: That's very lawyerly, lawyerly answer.

Chris Duggan: I know for a fact the builders are already working around cyclical portion contracts. They're getting advice about how to structure things. I mean, these people are smarter than us around the construction process, and anything they can do to limit their liability, they will. Special purpose vehicles will be more prevalent, and this is just going to be a reaction from construction industry. Is 2% enough? Excellent question. Time will tell. I would suggest it isn't.

Amanda Farmer: Yes.

Chris Duggan: The bigger problem is this whole process of identifying systemic defects until we have massive estates, all need to be tied up within an 18 to 24-month period, which is absurd based on how long it takes the defects to be identified. And, the fact that you do not get to come back - notwithstanding the statutes of warranty still apply - you will not run into many buildings so you want to run a defect proceeding case once they've had that bond released. So, in a nutshell, it's a good step forward, in an imperfect case, and why, how many changes back to your subsequent question was, you fix compliance and top that off and slightly hold accountability around it should be the elements of constructions and got that to pretty type of allowances and you will have a much better built building.



Publication Date: July 25, 2017
YSP Podcast Transcript: Episode 071. More tough questions: Strata in Conversation
Sydney Lunch Part 2

Amanda Farmer: Look. What else can I add to that? I think we all know that the problem with building defects is certification and private certification and as soon as that started then our buildings have gone out the window. And this doesn't fix that problem. I also don't think 2% is enough but it's better than nothing. This system isn't perfect but it's better than what we had before.

Chris Duggan: But it is a step forward.

Amanda Farmer: Yes.

Chris Duggan: But I imagine it will evolve significantly over a number of years.

Brett Kelly: So Danny's gone out of the country recently.

Danny: Yes.

Brett Kelly: And this time amongst vying developers and beneficiaries were ... partners who sold 4-unit blocks in a row of 54 million notes with the help of new strata laws. Doubling their estimated values. It's a shock circle sending forward collective sale and renewal, what role can a strata manager and strata lawyer play in helping these owners get this process. And having any interesting stories around collective sales as one on the news the other day then the new 75% rule over the past few minutes.

Chris Duggan: Which is very interesting.

Reena Van Aalst: I think for a strata manager, it's quite a complex piece of legislation that we have to navigate so I think that we should engage with strata lawyers in evaluating the process quite early on to ensure that we are complying, that all our documentations, agendas and our minutes clearly reflect what's required in the legislation. The office of Fair Trading also have advocacy services that have actually been implemented now so the people that are elderly or that have limited income, they can actually have a free service worker that gives them advice. I think for most elderly people who are vulnerable and who may be the ones that are going to hold out on a collective sale perhaps a manager can refer them to the office of Fair Trading. That's pretty much what we can do in that respect. In terms of recent collective processes, there was one actually in Quarry Park so there was 40 odd apartments that we actually were sold double the value, and there were other ones in that area as well because the fact that Quarry Park is near universities and schools, etc. So I think that area is really booming and I think it's a wait and see in the sense I haven't had any alarming experiences with it yet. But I know that one of my schemes has developed part of it directly, but unfortunately, they weren't viable enough to be included in the process that they were looking at for that development.

Amanda Farmer: They'll see that you were talking about Brett in the question that have happened recently. These wouldn't, to my understanding, these wouldn't have happened under the new rule. These big buildings where you've got one-

Reena Van Aalst: This happened beforehand.

Amanda Farmer: Yes. And you've got 100% approval to go ahead because of the process under the new law. We say as lawyers it's probably going to take about 2 years. That would be a quick process depending on the level of dissent you have in the building, but if you'd have to go through that entire process and end up in the Land and Environment Court to get an order - which is the process that's in the Act - that's going to take you probably 2 years. I'm working with a building at the moment - which is a 4-lot scheme - and we have 3 owners on board and one that's not. A communal entitlement so we'll have our 75% and they have engage me to assist them with each step of the way, and I can tell from the very first meeting that we've convened, we've had pushback from the owner that doesn't like it. So he tried to stop the meeting. He tried to say that the meeting is invalid. We've been prepared for that because we know the personality that's involved but that's the kind of situation that we as lawyers and managers are finding themselves in, at least when dealing with these small schemes. And now the issue that I came across and I spoke with Reena about this on the podcast recently. I had a lady who came to me and she's in a commercial building and she said, "My air conditioning has not been working for 3 months and the building will not replace it because they know that it's going to cost about 200 hundred grand to replace it. Because they've had an offer from a developer and they don't want to raise the money or

Publication Date: July 25, 2017

YSP Podcast Transcript: Episode 071. More tough questions: Strata in Conversation
Sydney Lunch Part 2

spend any money because they're now in negotiation for a collective sale and they don't want to." Yes, they've got the 10-year capital works fund plan but they don't want to comply with it and contribute because they think "Well, why are we putting money in when we know down the track, maybe two years, there's going to be a sale." And that's a really interesting issue when it comes to capital works fund planning and contributing money when you know that this is on the horizon.

Chris Duggan: Just something. You're exactly right. There's one in Cronulla have used the catalyst of the new legislation as a means to actually affect the sale. So it's quite interesting. We have one particular case of 160 units on the north shore in what would be considered today medium to prestige development but is currently under-offered because of the obviously, the provided upside that we have to do it. But that would be circa 250 million dollars development that's going to be funded by cash. And it's just interesting. It has really coloured the landscape of what will be happening.

A really interesting question for a managers' perspective and I'll try to add a view to is, obviously my speaking at all, I will be approached by agents who are looking to unlock values and try to capitalise on the upside. And there's a legitimate area where buildings that are beyond their economic life and they need to vacate and pull down. But the, I guess the philosophical question is, in assisting with the termination of the scheme, in effect, you are ending your relationship with that client, we now guarantee that a fee be appointed with a risk of reappointment so there will be some managers who choose to potentially not assist because they find, selfishly, they want to protect that management fee account. But I think liked minds speak progress will keep along and even the threat now with the legislation has been the catalyst for all of the new developments.

Brett Kelly: Excellent. So question 7, "*Section A of the new act is in relation to the 10-year capital works plan, estate and owners corporations is so far as practical to implement the plan, and to engage experts in the development of the plan. Will then your reform mean that owners corporations will now actually raise money to match the TEC's fund plan? Interestingly, there's also a new requirement for the new section in the AML certificate to send out any proposals to fund the 10-year plan. This results in purchasers seeking to receive contracts to remain a value to this "contingent or anticipated expenses."*

Amanda Farmer: Well, deal with the last part first. I don't do much convincing but I've done a little bit of it in the past life. And when somebody decided that they are buying a beautiful new strata unit. They are buying that unit and it doesn't matter what the 109 said. It doesn't matter what the strata books and records say. It doesn't matter if the capital works fund is funded and if there's litigation pending and everybody hates each other. That's okay I've got a great view and they're going to let me keep my dog. So I can't say purchasers are trying to back out because of an issue in the documents. It just doesn't happen. As for the requirement to contribute, we now have these lovely little words as far as practicable. So there's your out, lawyers and managers. I don't see too much changing. We are saying to lot owners when it suits us, when we are arguing the case for the contribution, "Oh yes, you must now! There's been a change and you must now contribute." It doesn't say that. It doesn't say you must contribute. As far as practicable, they're all sorts of reasons why it might not be practicable for the contribution to be made. So, my personal view, I don't see too much changing in that regard. I don't think it is the big stick that it's made out to be.

Reena Van Aalst: I agree with Amanda. Totally. The other provisions that say you may engage in professional ins. So if you may engage in professional, that means it really, you may not. Anyone can decide that you don't really want to raise X amount of dollars. But unfortunately, I think that's pretty much the status quo effect of the new Act.

Chris Duggan: What one might think that a fairly descriptive legislation can be very narrow. And so I think it's a good step forward because it compelled all of those corporations to effectively have to opt out. Whereas before, it was being seen very much as a line and we view that line as quite, it's not really enforceable. Again, it's progress. It's not perfect but there are situations where adherence to a strict schedule. It's not going to be practical. So I think we need to have that grounding to be able to properly manage schemes. Be cognizant of people's cash flow over the long term. And as long as you're being practical in having the discussion, I think it's a good step forward.

Brett Kelly: Excellent. Question 8, "Airbnb, Tinder, Grindr...never a dull moment." Whatever, one of those. "Airbnb recently played its trump card straight into the hand of New South Wales Strata owners with a proposal to give strata bodies a couch for some short stays. Sounds like a win-win. But you can have a situation where the tenant or the ghost host is subletting your apartment

Publication Date: July 25, 2017

YSP Podcast Transcript: Episode 071. More tough questions: Strata in Conversation
Sydney Lunch Part 2

killing, effectively, voiding your owners insurance. Where does the right to quiet enjoyment come into play here? And is Airbnb an unstoppable juggernaut?"

Amanda Farmer: I think Airbnb is an unstoppable juggernaut and I think they are very clever. This new program that they've come up with. What is it called? The Friendly Buildings program. Very clever. They've recognised the problem and they have put a solution on the table. And unfortunately for the resident owners I suppose, they are beating the owners' advocacy groups to the punch because they are getting to the table first.

If you haven't heard about this Friendly Buildings program, it's a system, it's a software where a building can record all of the apartments that are being let on Airbnb. As part of the program, it records who's staying, when they're staying, how much money the owner is making and the building gets a cut of the action. Very clever. That deals with the issue of the complaints about an extra burden on the common property and the facilities, because, "Hey, we're contributing extra. We can cover that cost." It doesn't deal with the impact on peaceful enjoyment. And I am very sympathetic to people who have boarded into residential buildings that have no service departments as far as they can see and are subjected to Airbnb. And I've always said it comes back to a planning issue and it has to be dealt with at a state government level. And our owners' groups, and our local counsels, and our lawyers and our by-laws can only do so much. It has to be a situation with certain buildings suited to and dedicated for short-term letting and service departments and others are purely residential. That's my view.

Chris Duggan: It's an incredibly complex issue. It's a very inviting one. You probably all see it being played at the meeting board recently. And as far as the state government is taking so seriously that they're taking more time to consider all of their solutions on it. And there's no perfect solution here and I do agree that it's become further complicated by the engagement of some of the platforms. And Airbnb seems to have taken up the flag on behalf of all the short-stay platforms. From a manager's perspective, that's the way I'd address the issue. Again, any solution will require the manager in the middle. So some sorts of self-regulatory, self-management platform goes some steps of the way. I think we need to, as an industry, make sure that we properly consider this rather than having a knee-jerk reaction prior to the legislation. Because these are the new-world-order-type regimes, we saw Uber do it, in my opinion, quite poorly. They tried to rally our governments. You see now much more sympathetic and collaborative solutions they put on the table. This has got a long way to run. I think what it's forced us to do as a matter of the city, it forced owners groups and the like to come to the table and the government will, I think, be very conceited and in that regard quite slow in a response to make sure they get it right. And it wouldn't surprise me if we see some sorts of a step approach to these self-regulatory models before they get to a legislative solution.

The one thing that managers need is a prompt, effective intervention mechanism. So whether that platform allows you to cancel people based on poor performance or poor behaviour, it has to be acknowledged that these platforms do have inappropriate users that have inappropriate conduct. But we also need to be cognizant of the fact that we are in a new world economy. A Sydney on the world stage needs to take up that charge.

Reena Van Aalst: I agree with both Amanda and Chris on all events that have been spoken about. I think it would be interesting to see the selling agents actually advertise an apartment and said: "Airbnb, you can Airbnb this apartment." How many people would actually buy that apartment? So I think when you think about being in your own home and looking at it that way, people spent millions of dollars in apartments and they're just being used with lots of parties. And I think you've got to look at it from the neighbours' point of view. As a manager, we have to deal with all of the fallout from clients. So in New York, they actually stopped Airbnb. They banned it. So in a sense, it could be a stoppable juggernaut. It just depends on a balance of regulation and how the managers deal with the actual processes on the whole with Airbnb and the Uber issues as well as the new economy.

Brett Kelly: I heard the homeowners in New York are fairly powerful and complaints are fairly common. And so it's also ageing. People holding power are younger, they'll have less vested interest in householders. So New York is quite interesting in that respect and it's a massive hotel market - which is interesting.

Chris Duggan: From a manager's perspective, we don't really have a dog in the fight so it's quite interesting to watch this plays out. And it's very interesting because there are clients that are very much on one side of it and the new world economy is on the

Publication Date: July 25, 2017

**YSP Podcast Transcript: Episode 071. More tough questions: Strata in Conversation
Sydney Lunch Part 2**

other. We want a solution, particularly from an industry perspective, we want a collaborative solution that gives us tools to be able to enforce whatever mechanism we can and potentially balance the outcome because there'll be plenty of people who want to capitalise value on their property. But there's also, what we can't have is these people commercialising these platforms and being landlords specifically to run rentals out of Airbnb. And there've been talks through the platform that you restrict and can restrict investment properties to certain knots so that they become uncommercial before being put on the platform. What it will then require is all of the other platforms to take these up like your stays and anything else. So when you cut off one head, you'll get something else that pops up. So you can't pick on one particular business. And that's why the whole share platform thing needs to be dealt with really extensively upfront - which may take time.

Brett Kelly: Well, ladies and gentlemen, we are at the end of the formal questions but we do have microphones and we'll run them around to take any questions from the audience. Any questions down there?

John: I'm just wondering how much fun strata managers have been having lately explaining the key financial information statements to their owners and agents? How's that going?

Reena Van Aalst: I haven't had any problems with my clients. Maybe a little more-

Amanda Farmer: Because they don't write them.

Reena Van Aalst: They are probably used to seeing a lot more information anyway. So I mean I still send out both full financials and not sending both.

Amanda Farmer: Yes.

Reena Van Aalst: Exactly! I think the more you mention it to people the more answers I'll have beforehand. So to me, I haven't had any problems at all. I don't know about others but, anyone else?

Chris Duggan: John, I think one of the most important things is to recognise that the strata management statements are very broad and there'll be schemes out there who will be receiving this information for the first time. And there are those who have had quite a bit of practice and provide more information than required. But again, these things are steps in the right direction in terms of owners being better informed, more transparency. It's like the insurance commission correction. The disclosure now is to normalise and we've seen that people are aware that they can find out what the government is undertaking around Australia or changes being implemented abroad. So these things will be normalised over time.

Amanda Farmer: Joel is one of my guests on an upcoming episode of the podcast. We had a lovely chat. A rambling chat I'd say that I think my editor is losing a bit of sleep over at the moment trying to cut it back to its required 25 minutes.

Brett Kelly: He's a boring man.

Amanda Farmer: He had a lot to contribute. And we covered this issue about statement and key financial information. And the issue I think from a legal perspective with this is that the statement of key financial information is to be circulated with the agenda for the annual general meeting. The financial statements don't have to be attached to the agenda of the annual general meeting. However, you must have a motion to approve the financial statements. So clearly, owners are being asked to vote about something that they haven't necessarily seen: the financial statement because we've had this bright idea that we won't overburden them, our poor owners who may not understand numbers. And we won't give them a statement of key financial information but we'll still ask them to approve the financial statements- which is kind of weird. And good managers like Reena, like Chris are saying look we are just circulating those financial statements anyway because we recognise that our owners have to resolve a motion approving them so we better have sent them out.

Chris Duggan: Brett, while you're trying to come out with these crew slips, I just want to touch very quickly. For any of those

Publication Date: July 25, 2017

**YSP Podcast Transcript: Episode 071. More tough questions: Strata in Conversation
Sydney Lunch Part 2**

people who have done a new scheme under the new legislation, who knows significant changes in term of the way the first 8 years have changed differing information required, a new introduction of the initial maintenance schedule - which for those who have dealt with it - is a fairly significant document that is required to be considered. And have input into obviously the initial budget. And in their wisdom, the government said that those corporations obviously don't have to oblige by the maintenance schedule. However, it can be used against them in proceedings where there's a defect that could have been readily maintained. So that is from a manager's perspective the robustness about how, if you're asked to develop an initial maintenance schedule, I'd suggest that you need to probably look at that pretty quickly.

That will be a big issue and the concern I have is when owners corporation is caught up by that in the future, they may look back at their managing agents who they've asked - in good faith - to assist in putting that together, about how you put that together and what liabilities attached to putting that together. Just make sure you all consider how you do that, whether you do that at all, and what information you receive from the builders and develop a proper way through.

Amanda Farmer: And that concludes this special 2-part episode bringing you the exclusive audio from the sold-out Kelly Partners Strata in conversation lunch held in Sydney in April 2017. Thank you once again to Kelly Partners for inviting me, Chris and Reena to be your special guests at this lunch and for supporting the publication of these special podcast episodes. And thank you for listening! Catch you next time.

Outro: Thank you for listening to Your Strata Property. The podcast which consistently delivers to property owners reliable and accurate information about their Strata property. You can access all the information below this episode by the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comments section - which Amanda will answer in her upcoming episodes. How can Amanda help you today?



The podcast for property owners looking for reliable, accurate and bite-sized information. from an experienced and authoritative source.