

**QUEENSLAND'S
COMMUNITY TITLES
LEGISLATION**

**A
MODEL FOR PAPUA NEW GUINEA'S
URBAN DEVELOPMENT**

BRIAN J. MENNIS



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**Model for Papua New Guinea's
Urban Development ?**

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Abstract:

Last year, Queensland enacted the Body Corporate and Community Management Act. This Act replaced, to a large extent, the old Building Units and Group Titles Act, which was enacted in 1980, and which had definitely reached its use-by date. The new Act (BCCM) provides for community living in several different forms, which are then managed by a body corporate structure. Developments may be of town house type development, high rise units, rural acreage, suburban allotments, either singly or in mixture. There is provision for developments that have a principal body corporate, with several subsidiary bodies corporate, leading to utmost flexibility in the management of community living.

In the Papua New Guinea context, this type of development is mainly confined to the major urban centres, but the general principles could be applied to any number of developments outside these centres.

Front page background photograph: The Anzac Square Building, sold recently by the Queensland Government to Forrester Parker, a private property developer. The building is now being developed into units for commercial and residential purposes using the provisions of the Body Corporate and Community Management Act and the Land Title Act. The Anzac Square Building has had a long historical association with the office of the Registrar of Titles in Queensland, this being the location of his office for over 50 years.

Body Corporate and Community Management Act:

In July 1998, the Body Corporate and Community Management Act (BCCM) became Queensland Law, and is now the legislation that governs community living in Queensland. It replaced the old Building Units and Group Titles Act, which had governed community living in Queensland since it was enacted in 1980. There was an earlier attempt to replace the 1980 Act, the Building Units and Group Titles Bill 1994, but, although this passed parliament, it was never proclaimed.

The old Act (BUGTA80), while adequate for what it was doing at the time, became more and more restrictive in what developments could be carried out under its provisions. I was in Port Moresby soon after it came into force, and we were at that time experiencing a spate of town house developments. The then Queensland Deputy Surveyor General, John Cridland, (who, incidentally, was attending the 1982 Survey Congress) told me about this Act, and sent copies of the Act and Regulations up to me. When I read them, I found them very difficult to follow. As I resigned soon after to come back to Queensland, nothing further happened with these.

With the BCCM commenced, a lot of the old restrictive baggage inherent in BUGTA80 was swept away, and it was now possible for almost any development to be accommodated under its provisions.

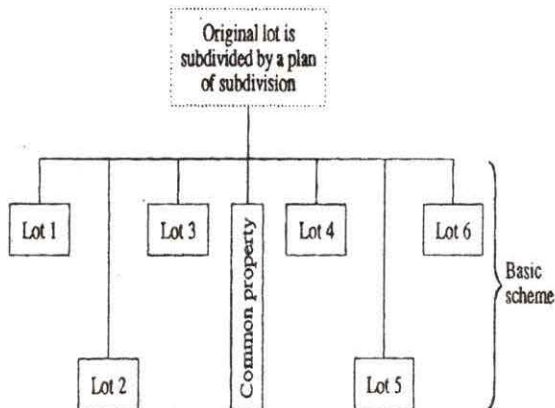
Community Living:

When we talk about Community Living in Papua New Guinea, we usually envisage a village type situation. There are land rights, usually based on clans, but sometimes on individual rights. Usually, these rights allow a house to be built, or a garden to be prepared, or a cash crop to be planted. Obviously in Queensland, we do not have villages in the PNG sense.

What then is Community Living, Queensland style?

It is a means of allowing a group of people to live together in the one scheme, where each person has a freehold title to his lot, and where the group as a whole is responsible for the maintenance of the common property and the buildings and services within the scheme. That sounds very similar to a PNG village situation.

PART 1—EXAMPLE OF BASIC SCHEME



It is not restricted to land, but can, and more often than not does, extend to lots contained within a building. A term that you may have heard mentioned in this context is “strata titles”, and this is exactly the same thing, but with a different name.

If you take a block of units in, say, Port Moresby, produce a survey plan showing each of the units within that building, and then sell off each of these units to individual owners,

who may be the occupier, or an investor, you will see exactly the same style of development as we have in Queensland. Another example is the numerous “town house” developments that dot PNG’s urban landscape.

In actual fact, these types of development are very simple ones, and the legislation allows for far more complex developments to be dealt with. More of that later.

Common Property:

Common Property is that part of the original land that is not taken up by lots. In a building, all services are, by definition in the Act, in common property, even though they run through a lot. As the boundary of a lot is the centre of a wall, the outside half of a wall of a building is common property, and therefore the responsibility of the Body Corporate to maintain.

Rights and Responsibilities of Owners:

One of the major items in the BCCM is rights and responsibilities of the owners of the lots within the scheme.

The “rights” include:

- A share of the proceeds if the scheme is terminated;
- Rights to use the common property, which is anything other than a lot;
- Certain defined rights for services and support over other lots;

- the right to vote for the election of the Body Corporate, and on decisions to be made by the Body Corporate; and so on.

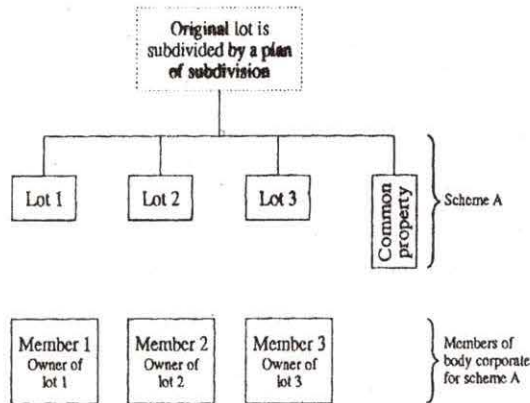
The “responsibilities” include the cost of:

- Maintenance of the buildings and common property;
- Management, if the scheme is large enough to require a Body Corporate Manager;
- Letting of the units, if the scheme consists mainly of units that are rented out; and so on.

Each individual owner is charged an annual fee by the body corporate to cover the costs of all these in proportion to the contribution schedule, which is part of the details in the Community Management Statement.

Body Corporate:

PART 7—MANAGEMENT STRUCTURE FOR BASIC SCHEME



The Body Corporate is a committee elected by the owners of the various lots within the scheme to oversee, or to carry out themselves, all of the management of the land and buildings contained within the scheme.

To do this work, the Body Corporate has the power to charge each lot owner a certain amount each year, the Body Corporate levy, to cover the costs of maintenance, replacement of assets, and so on.

The Body Corporate may give management rights to Body Corporate Manager, who will then carry out all the day to day management of the Scheme.

Management Rights:

Management rights in some of the large developments are, in themselves, quite valuable, and are traded freely for what appear to be quite large sums. When a scheme is first set up, the developer is able to trade the initial management rights and, of course, this adds to his cash

flow on the project. The BCCM has put somewhat of a dent into what used to be a very restricted and lucrative trade on management rights, but they are still quite valuable.

What types of developments are possible:

The BCCM is very flexible and the following are some of the developments that it allows:

- small scale town house style development;
- small scale strata unit development, ie 6 units in probably 2 or 3 stories (we term these six packs);
- major town house development over many stages;
- subdivision of high rise buildings, and or staged developments of multi tower buildings;
- subdivision of existing or new buildings into various precincts for different uses by using volumetric subdivision.

In fact, over the last several months, I have seen projects that range over those noted above right on up to community developments that will have up to 5000 lots when completed.

Community Management Statement:

Under pinning all these is the Community Management Statement, which:

- details the land that is contained within a scheme, the Scheme Land;
- creates the scheme;
- sets up the Body Corporate;
- sets out the by-laws for the scheme; and
- details any future development that is envisaged for future stages in the scheme.

In effect, the Community Management Statement is the “master document” that sets up the management and operation of the Scheme and is what makes the whole system of Community Titles work.

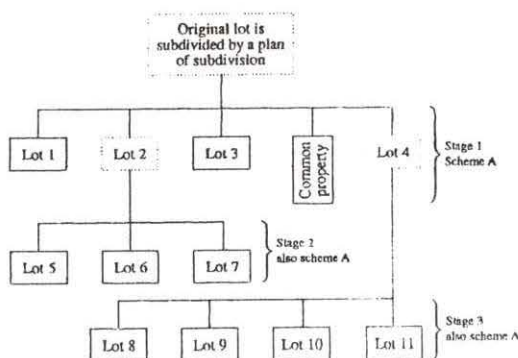
Regulation Modules:

Early on in the development of the legislation, it was realised that large schemes needed to be managed differently from small schemes, residential schemes differently from industrial schemes, and hotel schemes differently from commercial schemes, and so on. To cater for all the different requirements of each of these types of schemes, a concept of Regulation Modules was introduced. An example of the major differences in each of the models is the method of giving notice for meetings of the Body Corporate, how these meetings are held etc. For a Small Scheme Module, the requirements are very simple, where as for a Standard Module they are fairly rigorous.

Currently Regulation Modules are available for Standard, Accommodation, Commercial and Small Schemes. Other modules are currently in development, and others could be developed as may be required. One of the items that must be specified in the CMS is the particular Regulation Module that is to be adopted for the scheme.

Staging Developments:

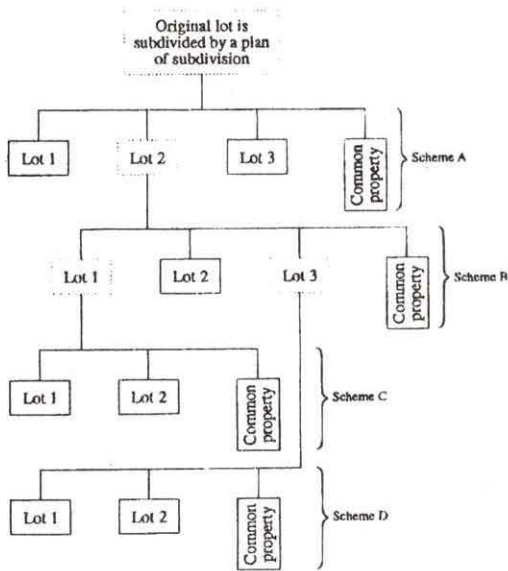
PART 4—EXAMPLE OF PROGRESSIVE SUBDIVISION FOR CREATING MORE LOTS IN A SCHEME



One of the biggest changes that was introduced in the BCCM was the ability to easily stage Community Titles developments. Schemes may be staged such that all stages remain in the one scheme, under the one Body Corporate, or they may be set up so that each stage becomes a Subsidiary Scheme, with its own CMS and its own Body Corporate.

Of course, subsidiary schemes do not have to be part of a staged scheme, they can be set up and dealt with at the same time as the rest of the scheme is set up. Having the ability to set up subsidiary schemes under the Principal Body Corporate has the advantage of allowing different classes of owners manage their own affairs. For example, you could set up a development that has a housing component, a commercial component, and say a hotel component. The owners in each of the separate scheme is not

PART 3—EXAMPLE OF MORE COMPLEX LAYERED ARRANGEMENT OF SCHEMES



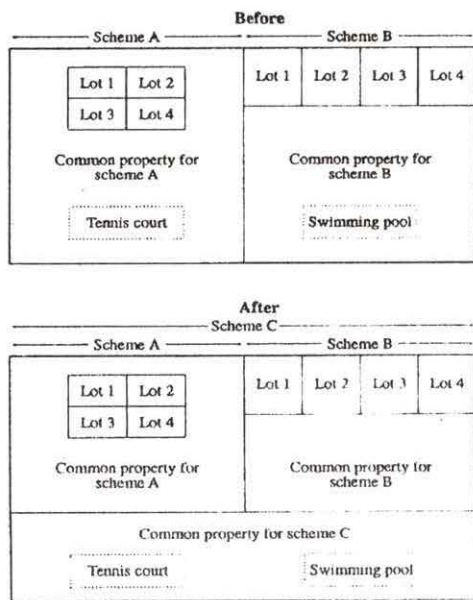
interested in the same things as those in others. So, having subsidiary schemes allows them to concentrate on what they are most interested in their own scheme.

Termination of a Scheme:

When a scheme is no longer required, it is “terminated”. Each owner of a lot within the scheme is given a share in the single lot that is created on termination, in proportion to his interest as specified in the interest schedule in the Community Management Statement.

Amalgamation of Schemes:

PART 6—EXAMPLE OF CREATING LAYERED ARRANGEMENT OF SCHEMES BY COMBINING SCHEMES



The legislation is flexible enough so that if separate schemes are side by side, it is possible to amalgamate these into one scheme merely by documentation. No survey work is required, and the documents do all the work.

Dispute Resolution:

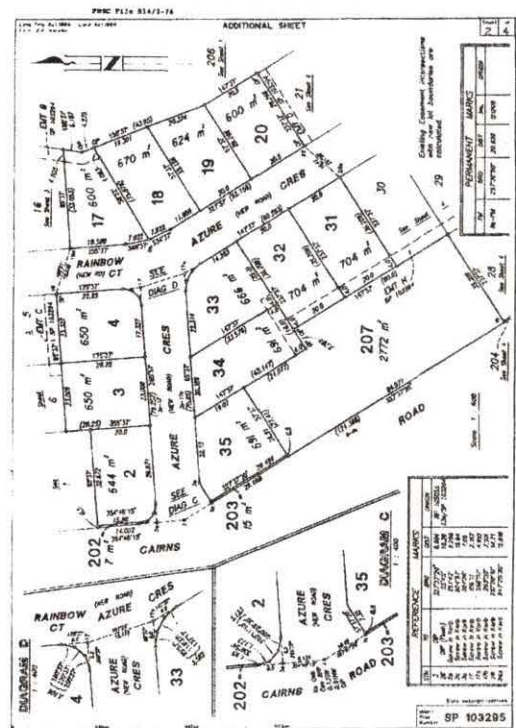
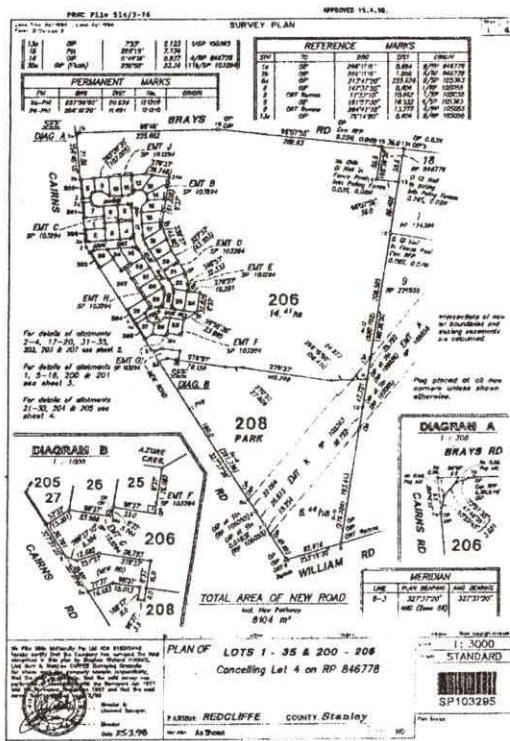
As with a village situation in Papua New Guinea, disputes can arise over various matters, some serious, but as well over some that are so minor as to be hardly worth worrying about. The Act sets out a dispute resolution mechanism to take care of these. The first step is to the Body Corporate Commissioner, who will recommend various ways

to resolve the dispute. These include adjudication, mediation or specialist mediation. If either party does not like the outcome, the matter may go to the District Court for resolution.

Registration of Titles:

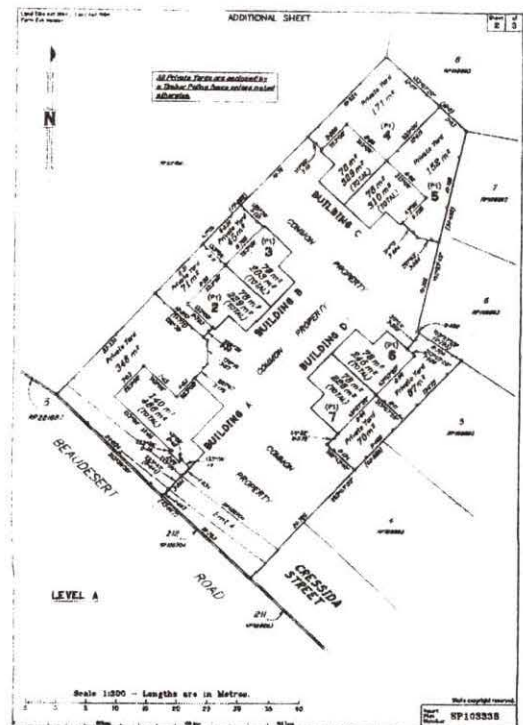
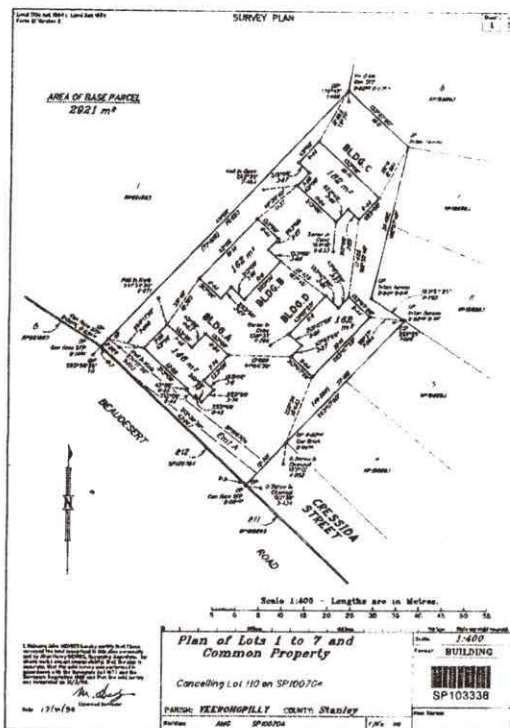
Essentially the BCCM really deals only with the setting up management structure for each scheme. All matters dealing with titling, survey plans, etc etc are a matter for the Land Title Act. As both Acts are administered by the Registrar of Titles, these Acts, as may be imagined, are fairly closely dovetailed in their operation.

The Land Title Act is, as its name suggests, the Act that governs Queensland's Land Registration system. In this act, apart from the usual registration requirements, three formats of plans are specified:



Illustrated above is the first and second sheets of a Standard Format Plan. There are actually 4 sheets to this plan.

Standard Format Plan: A standard format plan deals with the definition of parcels that are unlimited in height and depth, ie from the centre of the earth to the stars. In effect, this is the "ordinary" type of survey plan that has been used for years in all jurisdictions.

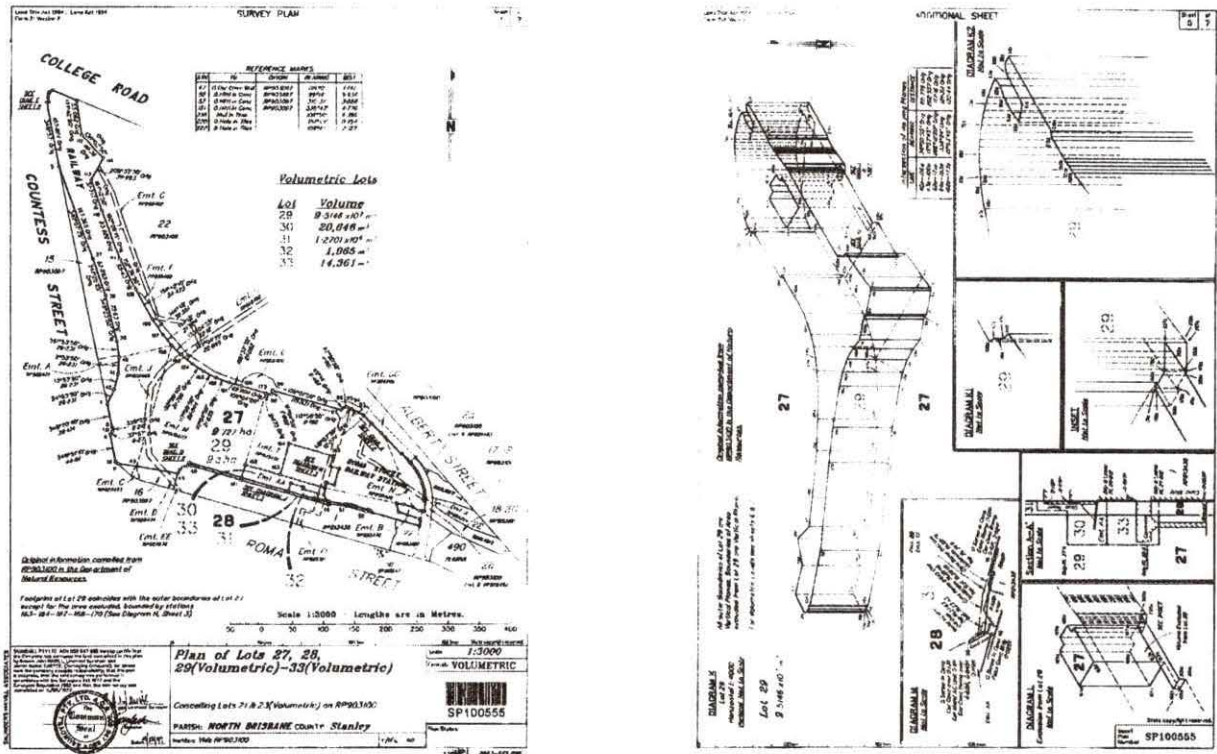


Illustrated above is the first and second sheets of a Building Format Plan. There are actually 3 sheets to this plan.

Building Format Plan: A building format plan deals with the definition of parcels that are bounded by floors, walls and ceilings. While the forgoing is essentially a correct statement, there are some exceptions to allow for more flexibility. For example, part lots that are associated with other parts of the same lot which is in a building and bounded by floors, walls and ceilings can have boundaries that are defined by bearings and distances instead of by floors, walls and ceilings.

Volumetric Format Plan: A volumetric format plan deals with the definition of parcels that are bounded in all dimensions ie, a parcel could be defined as a cube. Until comparatively recently, it was difficult to issue titles for parcels of land other than the old fashioned standard unlimited lot. With the inclusion of volumetric format plans in the Land Title Act, there is virtually no limit to the shape of a parcel that can be defined.

Legal practice in Queensland, and elsewhere in Australia, is now to write legislation that is fairly broad brush, covering only the main aspects of what the legislation is to do. The old



Illustrated above is the first and fifth sheets of a Volumetric Format Plan. There are actually 14 sheets to this plan.

system of regulations has also been greatly simplified and these are now also fairly short. What gives guidance to the operational aspects of the Act is a system of Administrative Directions.

The Land Title Act is no exception, and it gives the Registrar of Titles the power to make Directions. This power is embodied in a document entitled **The Registrar of Titles Directions for the Preparation of Plans.**

These **Directions** lay out in some detail how a plan is to be prepared in each of the three formats. Because standard format plans are nothing new, it is the building and volumetric format plans that get most of the attention. It has been said that they are perhaps too detailed. However, as it is a new system, it is better to err on the side of too much detail, rather than too little.

Because these **Directions** are only "administrative" to change them requires nothing more than a decision of the Registrar of Titles, and due notice to the survey profession. And in fact, at the time of writing this paper, version 2 is the operative version, and version 3 hopefully will be released before I actually deliver this paper. It would have been an almost impossible task to

get even regulations changed quickly enough to take account of the changes in practice that are usually found to be necessary when a completely new system is introduced.

One question that possibly you, as surveyors, may be thinking, is why is the Registrar of Titles putting out Directions on survey practice. In Queensland we do not have a person with the title of Surveyor General, and the Department has virtually devolved control of survey matters to the Surveyors Board, which has a majority of private members. In any case, Queensland's Survey Act does not have a provision which gives the Departmental Officer, who, in the past would have been Surveyor General, power to make Directions. Therefore, for the Registrar to have certainty of operation, he must make these "survey" type Directions himself.

Is the foregoing of any use to Papua New Guinea?

The sub title for this paper is "A Model for Papua New Guinea's Urban Development". This was qualified by a question mark. Whether the information provided in this paper is likely to be considered of relevance to Papua New Guinea is a matter for you, the Surveyors of this country, to decide for yourself. However, if you need any assistance in introducing such a system, you need only to ask. I am quite sure that the Registrar of Titles, the Department of Natural Resources and the Queensland Government would only be too happy to give whatever assistance was possible.