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Queensland Management Rights Assignment Guide
昆士蘭管理權轉讓指南

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CHAPTER 3 第3章

03

The Body Corporate's Perspective

業主法人團體的角度

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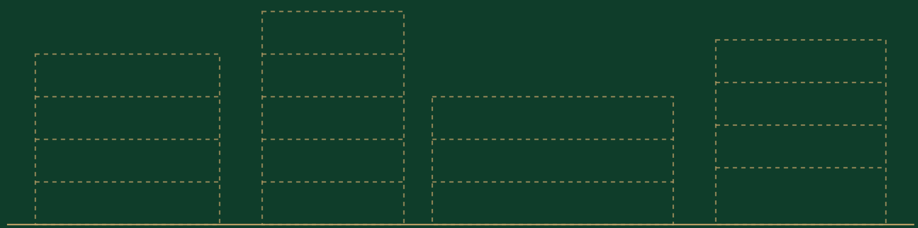

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白宗翰是Bugden Allen Group Legal合夥人。他專注於分層及社區產權發展、複雜及混合用途產權架構、項目重組、業主法人團體治理及管理權，並為發展商、業主法人團體、駐場管理人、融資機構、投資者及海外參與者處理交易、治理及爭議事宜。

Kevin is an honours law graduate of the University of Queensland and a member of the Australian College of Strata Lawyers, the Urban Development Institute of Australia (Queensland) and Strata Community Association (Queensland). He acts on both sides of the management rights relationship, which is the reason this guide is written from three perspectives rather than one.

白宗翰以榮譽成績畢業於昆士蘭大學法律系，並為澳洲分層產權律師學院、澳洲城市發展學會（昆士蘭）及昆士蘭分層社區協會成員。他同時代表管理權關係的雙方，這也是本指南以三個角度而非單一角度撰寫的原因。

PRACTICE	FIRM	MEMBERSHIPS
Strata & community title development 分層及社區產權發展	Bugden Allen Group Legal 合夥人	ACSL · UDIA (Qld) · SCA (Qld) 專業學會成員

Reader note

讀者須知

IMPORTANT 重要提示

This guide is general educational information, not legal, financial, tax or investment advice. Outcomes in a management rights transaction turn on the actual caretaking agreement, letting authorisation, community management statement, applicable regulation module and current law. Obtain independent Queensland legal advice before signing a contract, granting or withholding approval, waiving a condition, or settling.

本指南僅提供一般教育資訊，並非法律、財務、稅務或投資意見。管理權交易的法律結果，取決於實際的看管合約、出租代理授權、社區管理聲明、適用規管模組及現行法律。在簽署合約、給予或拒絕批准、豁免條件或完成交割前，應取得獨立的昆士蘭法律意見。

Terminology follows the statute. The Body Corporate and Community Management Act 1997 (Qld) speaks of a "service contractor" and a "letting agent"; the market speaks of a "caretaker", an "onsite manager" or a "resident manager". Where the legal consequence depends on the statutory category, this guide uses the statutory word. Traditional Chinese terms follow the standard Australian strata glossary; where a translation differs from the English text, the English text governs.

本指南術語以法例為準。《1997年業主法人團體及社區管理法》（昆士蘭）使用「服務承辦商」及「出租代理」，市場則慣稱「看管人」、「駐場經理」或「駐場管理人」。凡法律後果取決於法定分類者，本指南一律採用法定用語。繁體中文詞彙依據澳洲分層產權標準詞彙表；如譯文與英文有異，概以英文為準。

Editorial method

編寫方法

Each subject first identifies the legal structure, then explains how it operates in practice, then states the consequence for the party whose perspective is under discussion. Chapters 1 and 2 establish the framework common to all three parties. Chapters 3, 4 and 5 take the body corporate, the seller and the buyer in turn. Chapter 6 addresses what happens when an assignment fails.

每個主題先確認法律架構，再說明其實際運作，最後指出對所討論一方的後果。第1章及第2章建立三方共通的法律框架；第3、4、5章分別處理業主法人團體、賣方及買方；第6章處理轉讓失敗時的情況。

Legislation current to 6 August 2026.

法例資料截至2026年8月6日。

CHAPTER 3 · 第3章

03

The Body Corporate's Perspective

業主法人團體的角度

A committee asked to approve an assignment is usually being asked to decide something it has never decided before, on a timetable set by someone else, with commercial pressure applied by parties who are not its members. The discipline that protects the committee is simple: decide the question the module asks, on evidence, and record the reasoning.

獲要求批准轉讓的委員會，通常正就其從未處理過的事項作出決定，時間表由他人設定，商業壓力則來自並非其成員的各方。保障委員會的原則其實簡單：按模組所提出的問題作決定、依據證據、並記錄理由。

3.1

What the committee is deciding, and what it is not

委員會所決定與不決定的事項

The committee is deciding whether this proposed transferee should be permitted to step into an agreement that already binds the body corporate. It is not deciding whether the agreement was a good bargain, whether the remuneration is too high, or whether the scheme would be better served by a different model. Those are real questions, but they are not answered by refusing an assignment.

委員會所決定的，是應否容許該擬承讓人承接一份已對業主法人團體具約束力的合約。委員會並非在決定該合約是否划算、報酬是否過高，或該社區產權項目採用其他模式是否更佳。這些都是真實的問題，但拒絕轉讓並不能解答這些問題。

I put it to committees this way. If the incumbent manager were performing the agreement adequately and had no intention of selling, would the committee have any present right to reopen the terms? If the answer is no, the arrival of a buyer does not create one.

我向委員會提出的問題是：若現任管理人正妥善履行合約且無意出售，委員會現時有否任何權利重開條款？若答案是否定的，買方的出現亦不會創造這項權利。

> PRACTICAL EFFECT 實務效果
>
> An assignment is an opportunity to assess a person. It is not an opportunity to renegotiate a contract that the body corporate is already bound by.
>
> 轉讓是評估「人」的機會，而非重新談判業主法人團體已受其約束的合約的機會。

3.2

Building the information request

擬定資料要求

The thirty-day period begins when the body corporate holds the information reasonably necessary to make the decision. Accordingly, the first substantive act is to define what that information is. A single, complete, early request is more defensible than a series of partial ones, and it is far more likely to produce a decision the body corporate can stand behind.

由於三十日期限自業主法人團體掌握作出決定所合理需要的資料時起算，首項實質工作便是界定該等資料的範圍。一次過、完整、及早提出的要求，比多次零碎索取更具說服力，亦更有可能促成業主法人團體足以堅守的決定。

The standard industry assignment questionnaire circulating in the market is a sound starting point. It is a starting point rather than a template: a scheme with a resort letting operation, a heritage building or a substantial plant inventory needs questions the standard document does not ask.

由昆士蘭分層社區協會、昆士蘭業主法團網絡及澳洲駐場住宿經理協會聯合編製的行業問卷，是穩妥的起點，但僅屬起點：設有度假式出租業務、歷史建築或大量機電設備的社區產權項目，所需查問的事項超出標準文件的範圍。

- Identity and structure of the transferee, and of every related person.
- Evidence of financial standing, including the funding structure for the purchase.
- Licence status under the Property Occupations Act 2014, and the licensee's identity.
- Relevant experience, qualifications and completed or scheduled training.
- Who will physically reside on site and perform the caretaking duties.
- Any matter the engagement or authorisation itself specifies.

- 承讓人及每名關連人士的身分及架構。
- 財務狀況證明，包括購買資金的安排。
- 《2014年物業職業法》下的牌照狀況，以及持牌人身分。
- 相關經驗、資格，以及已完成或已安排的培訓。
- 實際駐場居住及執行看管職責者為何人。
- 聘任合約或授權本身指明的任何事項。

3.3

The interview

面談

An interview is not a statutory requirement, and it is nearly always worth holding. The criteria concern character, competence and capacity to perform, and those are assessed better in conversation than on paper. The interview should be conducted by the committee, minuted, and directed to the statutory criteria rather than to the commercial terms of the sale.

面談並非法定要求，但幾乎必然值得進行。法定考慮因素涉及品格、能力及履約能力，透過對話比單憑文件更能評估。面談應由委員會進行、作成會議紀錄，並針對法定考慮因素，而非買賣的商業條款。

Two questions are worth asking in every case. First, who will be on site at seven in the morning when a pump fails. Second, what the transferee understands its duties to be, in its own words, without reference to the schedule. The answers reveal more about deliverability than any financial statement.

有兩個問題每次均值得提出。其一，泵機在清晨七時故障時，何人會在現場；其二，承讓人以自己的說法，理解其職責為何，而不參照職責清單。這些答案比任何財務報表更能反映履約能力。

3.4

Conditions that hold and conditions that do not

可成立與不可成立的批准條件

The module authorises one condition expressly: a deed of covenant to comply with the terms of the engagement or authorisation. Conditions that secure compliance with the existing agreement — evidence of the licence before completion, confirmation of the on-site resident, delivery of the executed deed — are consistent with that power.

模組明文授權的條件只有一項：簽立契諾契據以承諾遵守聘任合約或授權的條款。凡確保現有合約得以遵守的條件——於完成前提供牌照證明、確認駐場人員、交付已簽立契據——均與該項權力相符。

Conditions that alter the bargain do not survive scrutiny. Requiring the transferee to accept a shorter term, to surrender an option, to pay a contribution to the sinking fund, or to agree to duties not in the schedule, is an amendment dressed as a condition. It is beyond committee power, it engages the prohibition on receiving consideration for approval, and it supplies the transferee with a ready-made application for adjudication.

凡改變原有交易安排的條件均難以成立。要求承讓人接受較短年期、放棄選擇權、向償債基金注資，或同意職責清單以外的職責，均屬以條件之名行修訂之實。此舉超越委員會權限，觸及不得因批准而收取代價的禁令，並為承讓人提供現成的裁決申請理由。

CONDITION 條件	ORDINARILY AVAILABLE 一般可行	REASON 理由
Deed of covenant to comply with existing terms 承諾遵守現有條款的契諾契據	Yes 可行	Expressly authorised 模組明文授權
Evidence of licence before completion 完成前提供牌照證明	Yes 可行	Goes to capacity to perform 關乎履約能力
Reimbursement of the body corporate's reasonable expenses 補償業主法人團體的合理開支	Yes 可行	Expressly permitted 明文准許
Reduction of the remaining term 削減餘下年期	No 不可行	Amendment, not a condition 屬修訂而非條件
Payment to the body corporate calculated on the sale price 按成交價向業主法人團體付款	No 不可行	Prohibited consideration 屬被禁止的代價
New duties not in the agreement 合約以外的新職責	No 不可行	Requires a general meeting 須經業主大會決定

3.5

Conflict, disclosure and the record

利益衝突、披露及記錄

Committee voting members are bound by the code of conduct in Schedule 1A of the Act. A member who is negotiating with the seller for the purchase, who has a family connection to either party, or who has an unresolved personal grievance with the incumbent, should disclose it and consider abstaining. The cost of a disclosed abstention is nil. The cost of an undisclosed interest surfacing in an adjudication is the decision itself.

委員會有表決權的成員受該法附表1A的行為守則約束。凡正與賣方洽購、與任何一方有親屬關係，或與現任管理人存有未了個人恩怨的成員，均應予以披露並考慮避席。已披露而避席的代價為零；未披露的利益在裁決中被揭發，代價則是該項決定本身。

The minutes should record the information received, the date it was complete, the criteria considered, the substance of the interview, and the reasons for the decision. A body corporate that refuses without recorded reasons will be defending the refusal on reconstruction rather than on contemporaneous evidence.

會議紀錄應載明所收到的資料、資料齊備的日期、所考慮的因素、面談的內容要點，以及作出決定的理由。業主法人團體如未記錄理由即予拒絕，日後只能以事後重塑而非同期證據為該拒絕辯護。

3.6

Refusing, and refusing defensibly

拒絕批准及其可辯護性

A body corporate is entitled to refuse. What it is not entitled to do is refuse unreasonably. A refusal grounded in an identified statutory criterion, supported by evidence and communicated with reasons, is defensible. A refusal grounded in a general preference for a different manager, in dissatisfaction with the terms of the agreement, or in the committee's view that the price is too high, is not.

業主法人團體有權拒絕批准，但無權無理拒絕。凡以已指明的法定考慮因素為依據、有證據支持並附具理由通知的拒絕，均具可辯護性；若拒絕的理由是一般性地希望換人、不滿合約條款，或委員會認為成交價過高，則否。

Where the concern is capacity rather than character, a conditional approval will often serve the scheme better than a refusal. Approval conditional on the deed, on evidence of licensing and on confirmation of the on-site resident addresses most realistic concerns without exposing the body corporate to a dispute it is likely to lose.

若關注點在於能力而非品格，附條件批准往往比拒絕更符合該社區產權項目的利益。以簽立契據、提供牌照證明及確認駐場人員為條件的批准，足以處理大部分實際關注，而不致令業主法人團體陷入很可能敗訴的爭議。

> **PRACTICAL EFFECT 實務效果**
>
> The question is not whether the committee would have chosen this person. It is whether a reasonable body corporate, applying the statutory criteria to the evidence, could withhold approval.
>
> 問題不在於委員會會否選擇此人，而在於一個合理的業主法人團體，按法定考慮因素衡量證據後，是否可以拒絕批准。

3.7

Where the body corporate's real leverage lies

業主法人團體真正的籌碼所在

Committees frequently over-estimate their leverage at assignment and under-estimate it elsewhere. The assignment decision is narrow and reviewable. The performance regime is not: the codes of conduct in Schedules 2 and 3 form part of the engagement and authorisation, and a documented failure to perform can be addressed by a remedial action notice and, if unremedied, by termination approved at a general meeting.

委員會往往高估自己在轉讓階段的籌碼，卻低估在其他方面的籌碼。轉讓決定範圍狹窄且可被覆核；履約制度則不然：附表2及附表3的行為守則構成聘任合約及授權的一部分，凡有記錄的履約失當，均可透過補救行動通知處理，若未獲補救，更可經業主大會批准而終止。

A body corporate that wants better performance should be building a performance record throughout the term, not attempting to extract concessions in the four weeks in which it happens to hold an approval application. The former is durable and lawful. The latter is neither.

希望改善服務水平的業主法人團體，應在整個合約期內建立履約記錄，而非在偶然持有批准申請的四星期內試圖爭取讓步。前者持久且合法，後者兩者皆非。

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Principal sources: Body Corporate and Community Management Act 1997 (Qld); Body Corporate and Community Management (Standard Module) Regulation 2020; Body Corporate and Community Management (Accommodation Module) Regulation 2020; Property Occupations Act 2014 (Qld); Atlantis West [2024] QBCCMCmr 340.

主要資料來源：《1997年業主法人團體及社區管理法》（昆士蘭）；《2020年業主法人團體及社區管理（標準規管模組）規例》；《2020年業主法人團體及社區管理（住宿規管模組）規例》；《2014年物業職業法》（昆士蘭）；Atlantis West [2024] QBCCMCmr 340。