

## **AN EARLY WAY OUT OF RIDGE OWNERSHIP?** **PROPERTY RESEARCH PAPER NO 4 (OF A SERIES OF 5 )**

### **Introduction**

- The overall Ownership of the Ridge comprises more than 1,000 individual titles. Consequently, effecting any structural change by consensus will be complex. The Unit Titles Act contains two provisions for the **cancellation** of the Unit Development, both of which necessitate substantial owner agreement and will take considerable time and costs to implement.
- **Selling** a Timeshare Week Title for the Ridge is currently proving to be difficult and non-rewarding. Potential buyers usually offer no financial consideration and require the vendor to cover the transfer costs of around **\$1000**.
- **The OSG** has received many suggestions from owners wanting to "sell one or several Units" and let those who want to exit now to do so. This was also a common comment received in the recent OSG Owners Survey. Whilst it is not possible to simply "sell" Units as such ( that requires the cancellation of the whole Unit Plan) the OSG have decided to explore an idea that may achieve just that in a different way, without involving the uncertainty, time and expense of cancellation.
- This paper explores the concept of converting certain **Timeshare Units** into **Non-Timeshare Units**, colloquially referred to as **Private Units** at the Ridge. The purpose of the Paper is to establish a framework for evaluating this concept and to gauge the level of interest among owners. If sufficient initial support results, the OSG will initiate a comprehensive assessment, involving legal opinions.
- An understanding of the existing Title Structure at the Ridge will be crucial in reading this paper. Paper 1 in this series refers.

### **1. The Value Scenario**

- Each Timeshare Chalet has fifty-one titles. Based on recent sales the effective market value of a Timeshare Chalet is 51x-\$1000 or - **\$51,000**.
- Conversely, there are reports that **Non-Timeshare Chalets** at the Ridge have sold for as much as **\$1,000,000**. Since Timeshare and Non-Timeshare Chalets share physical similarities, it is reasonable to conclude that the underlying real estate value of a Timeshare Chalet would be like that of Non-Timeshare Chalets if the differences between the two were removed. Theoretically at least, the change in value could be **\$1,051,000**.
- There will of course be costs to convert, but the upside potentially remains significant. The more Chalets/Units that convert should reduce the per Unit cost.

## 2. How do Timeshare and Non-Timeshare Units differ?

On the Unit Plan for the Ridge, **UP 20743**, all Chalets that have been built ( i.e. excluding the two future development Units):

- are Principal Units
- are not labelled as Timeshare, Private, Non-Timeshare
- are shown in the same manner
- have the same Title type that is stratum in freehold.
- have the same legal status.
- have the same treatment in survey terms

Critical consequence:

From a Unit Titles Act perspective, every chalet is a principal unit.

There is no such thing as a “timeshare unit” or a “private unit”/”non-timeshare unit” on the unit plan. The Unit Titles Act 2010 (UTA) does not define “timeshare” as a separate form of unit. Instead, time sharing exists as a contractual overlay on top of standard unit titles, typically involving:

- Multiple registered titles ( ie fifty-one, one per week and one spare for maintenance).
- A Timeshare Lease that in summary allocates one week’s use per annum to each of the fifty-one owners.
- A Pooling Deed entered into by some owners .

Accordingly, whether a unit is a “timeshare unit” is determined by the existence and enforceability of those arrangements, not by the Act itself.

## 3. Merger of leasehold interests

Under general property law (which the UTA does not displace):

- Where the same legal person becomes both lessor and lessee, the lease merges and is extinguished.
- This applies regardless of whether the lease was originally registered or unregistered. In the case of the Ridge, they are registered and Composite ROT recording both the Stratum Title and the Leasehold Interests have been issued.

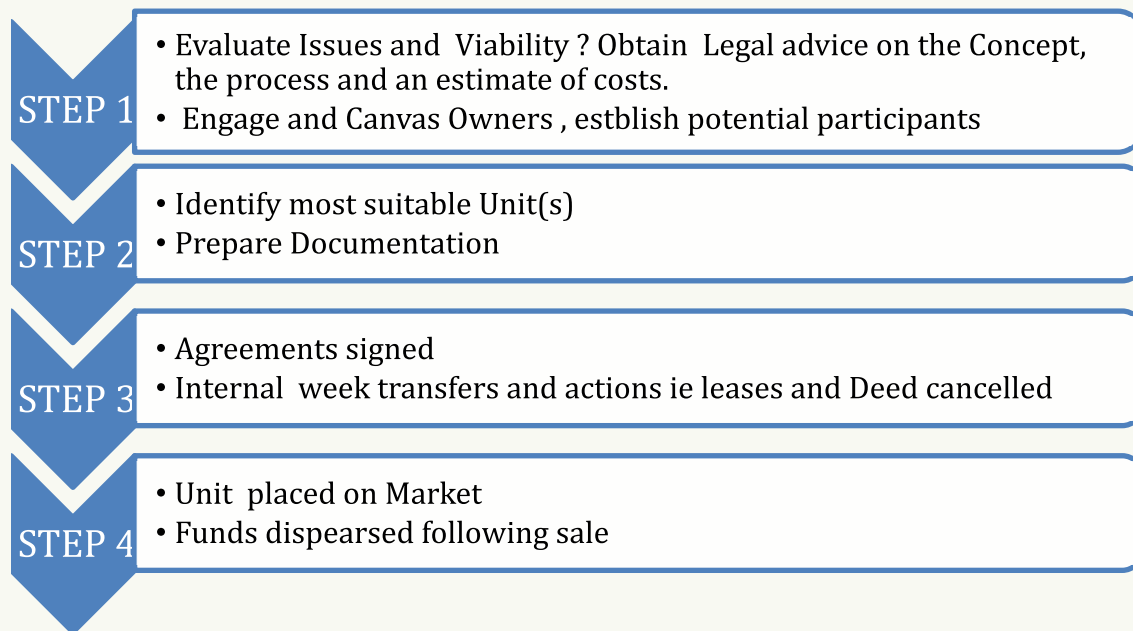
The UTA does not preserve or deem the continuation of leases that have ceased to have legal effect.

**Therefore:**

**If one owner acquires all 51 composite titles associated with a principal unit, any time share leases collapse by operation of law.**

#### 4. The General Concept .

- Each Timeshare Unit has fifty-one owners; each has a Composite Record of Title (ROT) issued to them. Each ROT records the Timeshare Leases where the fifty-one owners of each Unit lease one week of sole usage annually to each of the owners. In addition, many owners have signed Pooling Deeds to establish Floating Weeks.
- Importantly this concept does not impact on the potential to complete any of the other changes suggested for The Ridge. It may well assist as there will be less people to reach agreement between.
- Critically, to optimise chances of success, the concept works within the existing Unit Title, Timeshare Lease and Pooling Agreement Structure, and minimises the need for third-party involvement and approvals.
- To match the ownership structure of a Non-Timeshare Unit, all fifty-one **ROT** would need to be aggregated into a single ownership, be that a Company formed for the purpose or a Nominee Owner. The **Timeshare Leases** are all cancelled at that point along with **Pooling Deeds**. The process to cancel the leases is straight forward as the lessor and the lessee would be the same. The process to cancel the pooling deed pooling needs further evaluation as the Deed involves all parties who have entered into it.
- It is unlikely that all fifty-one owners of a particular unit will wish to exit ownership. In which case a further step is needed, whereby continuing and exiting owners exchange titles. Obtaining agreement from continuing owners, particularly if they have **Fixed** weeks may present challenges. All Units might not therefore be suitable for conversion.
- A potential issue could arise at BCC level in that the levies charged for Non-Timeshare and Timeshare Units are different. However, the unit(s) converting would no longer use or require the Timeshare Services detailed in the Timeshare Lease and levies should be set based on actual costs and one type should not be subsidising the other.
- A process for the assessment and subsequent actions follows on the next page:



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### 3. Things to be considered.

Note. This section is included as a reality check, not to identify reasons not to attempt it. These need to be balanced against the two pluses, which are the potential increase in return and the ability to do something with weeks that are currently effectively untradeable.

- The obvious one, the challenge of getting an absolute minimum of fifty-one parties to agree to and to sign documentation. Worst case scenario is one hundred and two owners but could be nearer fifty-one with careful Chalet selection.
- Chalets with Mascot Finance Ltd, “Gone no address” and Foreign National owners (unless they choose to exit) would need identification as these might not be suitable .
- If more owners wanted to participate than availability of suitable Chalets.
- Any potential Financial Market Authority issues.
- Potential BCC concerns or involvement required.
- Weeks owned/held by Classic related entities.
- Costs to implement.
- Mechanics to implement.

#### **4. Actions / Conclusion**

- The OSG is inviting Owners who are interested in contributing to a working group to undertake Step 1.
  - Depending on the conclusions and findings in Step 1 it is anticipated the working party would then oversee Steps 2-4.
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**Disclaimer: Although this paper aims to present accurate and reliable information, the OSG does not guarantee complete accuracy or completeness. Readers are encouraged to independently verify critical information.**