

With just 3 minutes available, I will address only my direct interest:

-It's not an island, but the 'onshore' State development, Great Sandy Straits Marina Resort (known as 'Sandy Straits' for short).

On State leasehold land, the property has similar legacy issues to the failed island resort developments.

A principal difference is that Sandy Straits is yet to be abandoned, but inevitably, it will be, given the land tenure –

- a land tenure that was restructured three times over its 10-year development period from a 30-year lease, to a 75-year lease under the Harbours Act, then transferred to a perpetual lease under the Land Act, midway through the 10-year development with nearly half the sub-leases sold:

- the perpetual lease only added to the many issues that already existed,
- but, it did facilitate the sale of 999-year sub-leases, indicated to be “as good as freehold” which we I came to see as a fraud.

Despite the three lease reconstructions, the property remains an administration nightmare with significant design and construction and legal failures. (Over the years a fortune has been spent on legal advices and thousands of volunteer hours wasted by sub-lessees trying to get an honest resolution to the mess).

Attachment 1 lists examples of some of the more egregious issues being:

1. The Defective Seawall Design and Construction.
2. The Wrongly Located Residential Buildings and the too-low ground levels.
3. The Public Boardwalks Condemned after just 15 years use.
4. The Public Access Road Rejected by the Council.
5. PPL Formula.
6. Repair & Maintenance.
7. 75 Year Management Contract.
8. And Clause 19 of the Head Lease – the origin of all our problems.
I have added some further commentary in Attachment 2
9. The fact the Land Value has to be Paid Three Times Over if freehold is granted.
10. The dealings with Lot 2 and the Boardwalk Waterfront Public Access.

In Attachment 3, sets out commentary relating to land rent, which for the years 1993 to 2008 grew at 25%pa and identified for us the 999-year sub-lease fraud.

The failure of governance surrounding many of these issues is astounding.

For well over 15 years, we have sought an equitable structure for all stakeholders to have the land converted to freehold and the residential properties strata-titled.

After all our time lost, and efforts over the years, in March 2020 we reached an informal agreement with the head lessee that leads to resolution we consider is in the interest of all stakeholders; these being the State, the head lessee and the 300 odd sub-lessees.

The head lessee has left resolution to us and our problem is that we are led by a few lay-volunteers without any authority or resources. I personally, in my eightieth year and have burnt-out over the situation, have decided unless this submission leads to resolution, I plan to sell out and leave.

A basic problem is that we know the Department takes the view that all issues behind the head lease have been contracted away and so are not their problem, nor that of the Government. The investment interest, say about \$120m, of the 300 odd sub-lease entities has been abandoned to its fate.

**This will mean the ultimate abandonment of the sub-leases.
So I ask, is this a deliberate State policy intention?**

What is actually required is political direction from Government to require the Department to bring all parties together to set up a freehold structure in terms of our 2020 agreement with the head lessee – the basic matters of this agreement are set out in Attachment 4.

Our estimates provide for management of a conversion process so that the project management costs of the Department could be borne by the sub-lessees as part of the freeholding costs.

My hope in making this submission is that this committee will understand the issues involved and arrange for appropriate commitment by the Department.

This is the only hope for the long-term future of Sandy Straits.

BASIC MATTERS FOR COMMITTEE

Does the committee:

- 1. See failed onshore resort developments as matters for consideration?**
- 2. See a need to resolve, in particular, the situation of Sandy Straits?**
- 3. Have the facility to cause the Department to be directed to undertake the actions proposed in my submission and does the committee expect to do so?**

We also ask the committee to bear in mind it is the 300 odd sub-lessees that have funded the entire State development, including associated public works and infrastructure. It was not the developer (they are long gone) and not the current entity holding the head lease

(Note, there have been 6 such entities to date – FKP Limited, S8 Limited, MFS Limited, Stella Group, Mantra Group and currently Accor SA – at one point the shelf company holding the head lease was registered in the Channel Islands).

Attachment 5 lists some of the benefits granted to the developer at their request, we consider without proper regard to the sub-lessees who funded the development. Benefits which enabled the developer to sell out of the property leaving substantial issues behind and placing the sub-lessees in an invidious position.

ATTACHMENT 1
SIGNIFICANT GSSMR ISSUES - EXAMPLES

The following are some examples of the more major issues affecting the viability of GSSMR:

1. **Seawall Design.** The seawall forming the north boundary of the Harbour has been designed and built twice and is exposed to being required to be rebuilt a third time.
2. **Residential Building.** A major portion of the residential buildings are seriously wrongly located and the whole reclaimed land surface level is probably 1m to 1.5m too low.
3. **Public Boardwalks.** The public boardwalk structure is of such poor design and construction it was condemned and closed after just 15 years use and has been closed for the last 8 years, much to the chagrin of the Council. Also relocated from the Wet Lease to the Dry Lease after all sub-leases sold with the apparent intention to cause the sub-lessees to be responsible for their ownership – see Item 10 below.
4. **Public Access Road.** The internal public access road could not be taken over by the Council because it was not built to Council design standards having no foot path, no side drainage, no stormwater system and insufficient pavement required for a public road.
5. **PPL Formula.** The late imposition of the perpetual lease led to inclusion of a formula for sharing costs that leaves out about 15% of the common area costs across the property.
6. **Repair & Maintenance.** Under the terms of the sub-lessees, we have no responsibility for ongoing repair and maintenance and sinking fund works beyond a documented limit of 5% pa of the annual outgoings when the need is normally in the order of 15% to 20% pa at least. This seems to one factor leading to current unaddressed accumulated building and property liabilities which today probably exceed \$4m across the 183-unit Residential Precinct.
7. **75 Year Management Contract.** One feature of the precinct sub-leases is that they contract the sub-lessees to a 75-year management contract which is substantially at variance to conditions under the Bodies Corporate Act and is an entirely contract structure.
8. **Clause 19.** Most damaging of all was the Departmental abandonment of the provisions of Clause 19 of the head lease which required the agreement in writing of all 300 odd sub-lessees for the transfer (the sale) of the head lease (see extract Attachment 1).
In effect, this clause represented the protection of the sub-lessee's investment (a combined amount of say \$120m) and represented their nominal property rights in that:
 - In reality the developer could only practically exit the development by transfer of the head lease to control of the sub-lessees who occupied the land,
 - It also meant the developer could not depart without addressing any defect issues, which by 2006 we knew were significant (although were to become worse than we then knew).

In the event, at the first sale of the head lease, about 2006, the Minister elected to approve the transfer of the head lease without the written agreement of the sub-lessees, thus abandoning our nominal property rights.
9. **Land Value (to be) Paid Three Times.** Sub-lessees to date have in effect paid the equivalent of the freehold land value at least twice over and due to the transfer of the head lease to control under the Land Act will be faced with paying for the land a third time for conversion to freehold.

The structure of the project meant that the freehold value of the land had to be extracted from the sale of sub-leases to fund the land reclamation and all the public infrastructure associated with the development. The introduction of the 999-year sub-lease ensured equivalent freehold values could be achieved as sub-leases could be sold and taken to be 'as-good-as-freehold'.

The sub-lessees effectively funded the land reclamation, funded the equivalent land value by their sub-lease purchase, but were then also contracted to rent the same land. To date more than \$9m has been paid in State land rent, more than the original and current land value.

Consequent on the transfer of the head lease to control under the Land Act, if the land is to be converted to freehold, as we seek, sub-lessees are faced with paying again the freehold value of the land. The conversion to freehold will mean the sub-lessees will have effectively paid the land value three times over.

It seems unconscionable that the State has placed sub-lessees in such an invidious position to effectively pay the freehold land value three times over. Also, the level of incompetence involved with some of the above significant project delivery issues is astounding.

10. **Lot 2 Relocation.** The GSSMR project comprises two (2) State leases, a "Wet Lease" covering the marina facilities and a "Dry Lease" covering the onshore development. The project was committed with a Lot 2 for public access over a boardwalk included within and attached to the Wet Lease.

After the completion of the 10-year construction period and with all sub-leases sold, the Department facilitated the transfer of Lot 2 from containment within the Wet Lease to the Dry Lease. This meant some confused intention to transfer the ownership responsibilities from the marina to the sub-lessees who occupied the Dry Lease. This was done prior to the Minister granting approval to transfer (sale) of the developer's interests in the Dry Lease.

This situation has resulted in the head lessee seeking to have the sub-lessees bear the costs of reconstruction of this boardwalk and public access which has been rejected by the sub-lessees of the Residential Precinct.

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ATTACHMENT 2

CLAUSE 19

GSSMR HEAD LEASE

Perpetual Lease 209524

Extract:

"19. TRANSFER OR ASSIGNMENT OF LEASE

19.1 The Lessee shall not transfer or assign the demised land without the approval in writing of the Lessor and of every other person having an interest in the demised land first had and obtained. For the purpose of this clause the transfer of controlling interest in the Lessee company shall be deemed to be a transfer or assignment of the demised land."

Comment:

Despite the apparent meaning of the wording of Clause 19, the Department chose to grant approval to the first transfer of the head lease (sale) by the developer FKP Limited to S8 Limited about 2006.

Over subsequent years control of the head lease changed through at least the interests of FKP Limited passing to S8 Limited to MFS Limited to the Stella Group to the Mantra Group to currently Accor SA.

In the view of the sub-lessees, under Clause 19 properly administered, the only practical means by which the developer could depart the project on completion was to handover the lease to control of the sub-lessees under an appropriate structure with the works completed to an acceptable standard as would normally be expected in the development industry. On this basis Clause 19 represents the proper protection of the investment interest of the 300 odd sub-lessees.

The failure of the Department to address the transfer in the terms of Clause 19 has led to untold frustrations and damage to numerous sub-lessees as they bought into the GSSMR development and many have sold out frustrated and disappointed. Ongoing sub-lease sales in the real estate market is no more than passing on a 'poisoned parcel' that will eventually decline to zero value.

A basic problem with the GSSMR lease structure was that there was no documentation that facilitated the practical exit of the developer upon completion of the project. The lease concept assumes the developer intended to stay for the 75-year term, with a peripheral provision (Clause 19) that would seem to force the developer to hand over the lease to the sub-lessees upon the developer's exit should it occur, when it would be a normal expectation of a developer to exit any interest in a project once sold out.

It seems the project proceeded on the basis of the original tendered and accepted 30-year harbour lease assuming a single developer/owner of the development, but then a fundamental change was made before final commitment by adopting off-the-plan selling of units (residential sub-leases) to fund the entire project under a 75-year lease. It is noted the developer issued an ultimatum prior to acceptance of their offer, that they would pull out unless they were granted a 75-year lease – the maximum available under the Harbours Act.

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ATTACHMENT 3

GSSMR Perpetual Lease 209524 LAND VALUE & LAND RENT GROWTH INDICATIVE OUTCOMES

The following three (3) charts seek to show an indicated outcome leading to probable abandonment of the residential sub-leases resulting from increasing land values and land rent growth charges over following years. Three examples are shown for land rent growth rates of 25% pa, 15% pa and 10.25% pa.

The 10.25% pa approximates the outcome for the term of the original 75-year sub-leases. The 25% is about the actual experienced over the 15 years 1993 to 2008 (that is, up to the GFC when local land values collapsed).

Ongoing growth rates can be expected to lead to sub-lease abandonment within the following time frames:

- At 25% pa in about 25 years
- At 15% pa in about 35 years
- At 10.25% pa in about 65 years (say about 75 years, the original term of the sub-leases).

Certainly, once annual levies approach \$100,000 pa (today's dollars), given the existing modest residential units involved, there will be no market interest in the real estate market by the years indicated.

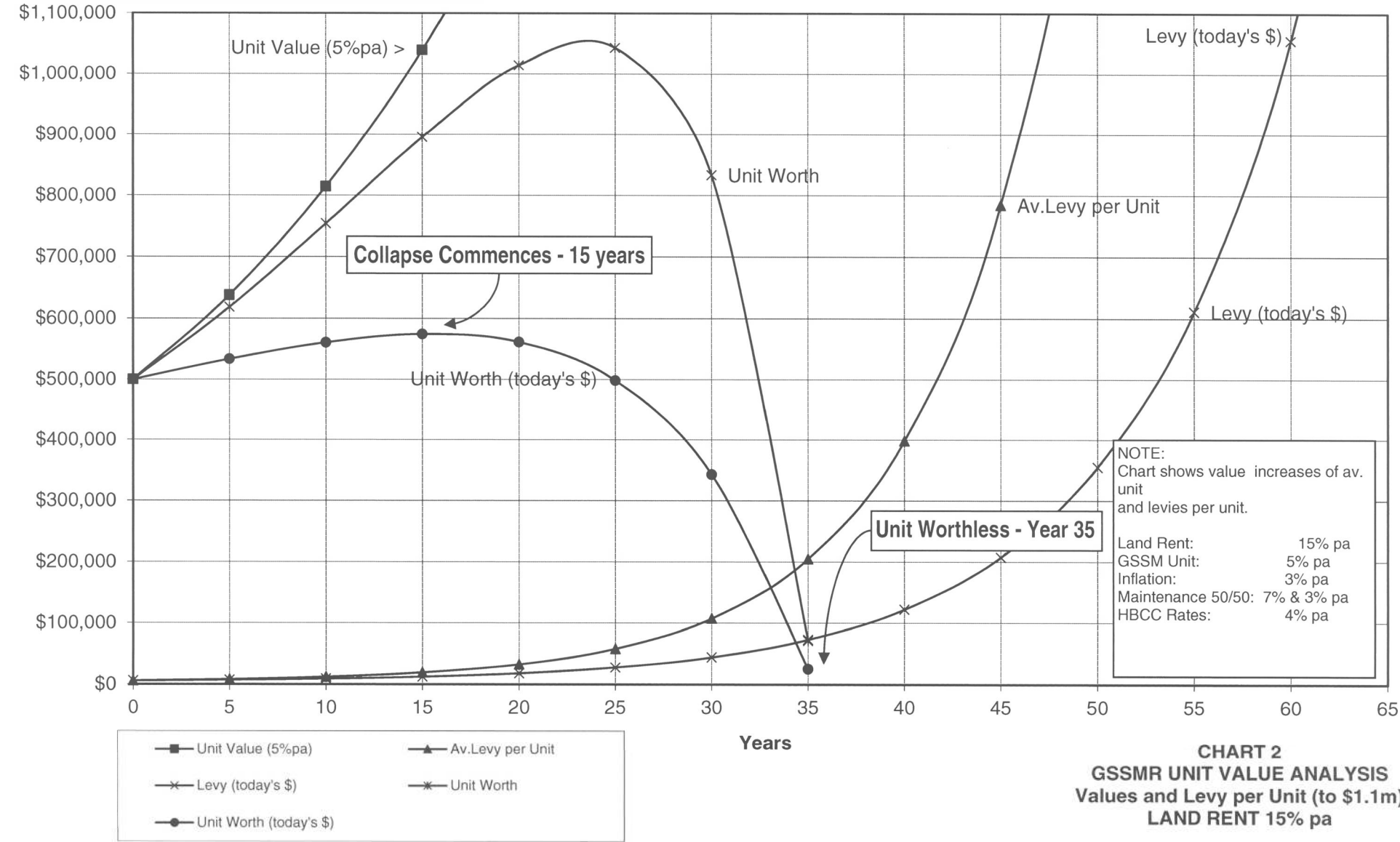
The following charts show typical scenarios for the cost structures for the 183 units comprising the Residential Precinct of the GSSMR development. This work was undertaken about 2008 when the land rent had been increasing dramatically at about 25% pa and the problems of the GSSMR structure had been first brought to the attention of the Department.

Sub-Leases become non-viable within about 25 Years

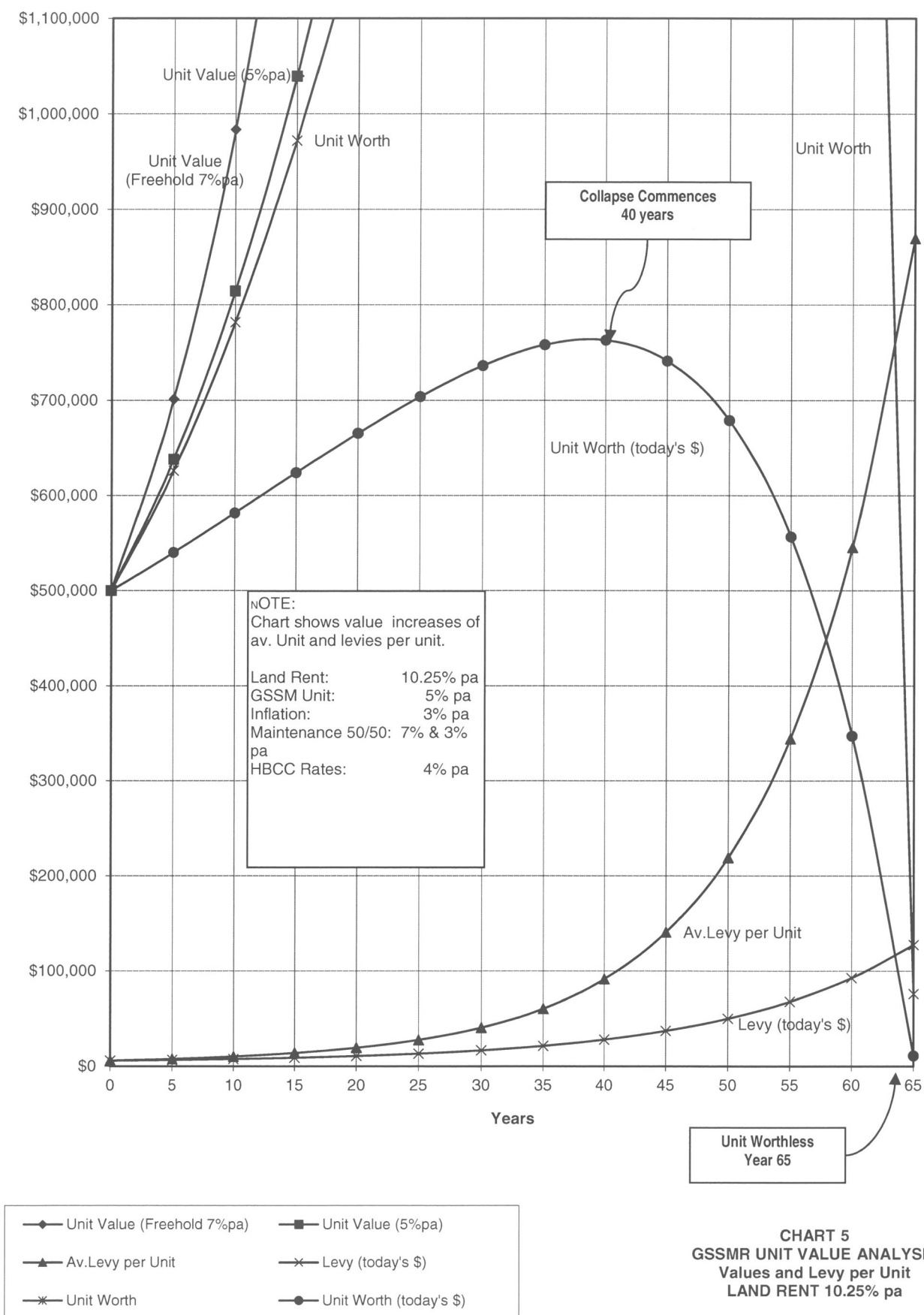


This was the actual situation faced by GSSMR in the early 2000's but for the later effect of the GFC when land values collapsed. However, high growth rate conditions will inevitably return to quality waterfront land in Hervey Bay.

GSSMR Perpetual Lease 209524
LAND VALUE & LAND RENT GROWTH 15% pa
Indicative Outcome
Sub-Leases become non-viable within about 35 Years



Note: A growth rate of about 15% pa is typical of long-term land value growth rates of prime waterfront land areas along the Gold Coast and Sunshine Coast.



Note: Actual GSSMR land rent growth:

1993 to 2018 (25 years) was 10.4% pa and,

2003 (project completion) to 2018 (15 years) was 9.4% pa. Any return to higher growth rates will shorten sub-lease viability

ATTACHMENT 4

INTRIM AGREEMENT

The following sets out a summary of agreement reached with the Lessee March 2020 which has yet to be converted to an MOU as intended:

1. We are prepared to waive all claims (say \$3m+) –
– solves Accor's problems (and ours).
2. We are prepared to take over the seawall and boardwalk issues (say \$3m) -
– solves DNRM&E's problems (ie we fund the Department's and developer's failures).
3. Accor are prepared to surrender at no cost to us their management interest in 'our' property -
– solves our problems.
4. However, any agreement is only viable if conversion to freehold occurs -
– solves all stakeholder problems (the State, Lessee and Sub-Lessees).

The above basis of agreement requires next that a similar understanding can be reached with the Department such that the surrender of the head lease and conversion to freehold can be undertaken.

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ATTACHMENT 5

DEVELOPER'S BENEFITS GRANTED

At least the following significant benefits were granted by the Department to the developer without regard to the public interest over the course of their involvement 1987 to 2006. The developer sought and was granted:

1. **Abandonment of the original 30-year lease** for a 75-year lease – the maximum under the Act. Undertaken without regard to the investment interest of the eventual 300 odd sub-lessees.
2. **Conversion to a perpetual lease** with approval for 999-year residential sub-leases even though GSSMR was already by then occupied by about 140 x 75-year sub-lessees. This change was made without formal reference to the sub-lessees and without their agreement. In fact, we have come to realise a 999-year sub-lease has probably no prospect of lasting beyond 75 years (see Attachment 3).

The introduction of the 999-year sub-lease, with about 150 to go, facilitated informal marketing of units to be 'as good as freehold', being for 999 years and on State land and enabling the developer to more readily sell out all interest in the head lease.

3. **Head Lease Transfer.** At project completion approval was granted to transfer the head lease without approval of the 300 odd sub-lessees, thus denying the sub-lessees their property rights under Clause 19 of the head lease and at least ignoring the interest of the sub-lessees who funded the entire development.
4. **Project Approval.** Project security deposits were released and approval granted to exit the development leaving behind substantial design and construction defects and years of frustration to follow for all involved and for the many who have sold-out at least disappointed by their experience.

Compare the treatment of the developer to that of the sub-lessees who over the years make the one request set out in our submission to have the structure of the property resolved in the interests of all stakeholders as we propose – a structure that should have been undertaken from original commitment by the Department in 1987 (when expressions of interest sought), or, 1991 (when the project was committed and the 75-year head lease granted), or 1998 (when the perpetual lease was granted), or, 2003 (when the project reached practical completion and securities released).

Mackay Harbour Board

We also refer to the development concept adopted by the Mackay Harbour Board (at the time) wherein they converted their harbour lease land to freehold upon completion of each residential building of their residential and marina development, placing each building under control of the strata-titled unit owners under administration of the Bodies Corporate Act at commencement of occupancy.

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Tabled by: Mr Ray Maxwell

At: Transport & Resources Committee Hearing, Brisbane

Date: 20 June 2022

Signature: 

Tabled by: Mr Ray Maxwell

At: Transport & Resources Committee Healing, Brisbane

Date: 20 June 2022

Signature: 