

Governing the Compact City:

The challenges of apartment living in Sydney, Australia

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ABSTRACT This paper addresses the challenges facing the strata sector in Sydney in the context of current Australian metropolitan planning strategies promoting increased urban consolidation. It argues that the current focus on higher density development is vulnerable to challenges of regulation, representation and termination in strata developments. Furthermore, the increasing size and complexity of strata schemes as well as the existence of ageing strata stock is placing pressure on the strata title system in NSW and these problems are likely to escalate as an increasing proportion of the population move into strata. It is therefore essential to comprehend the issues facing strata developments if they are to be effectively tackled. The concept of 'governance' provides one mechanism for improving this understanding.

KEY WORDS: Governance, strata title, housing supply, planning

Introduction

Urban consolidation has become the dominant policy orthodoxy guiding strategic metropolitan planning in Australian cities (VIC DSE, 2002; NSW DoP, 2005; QLD OUM, 2005). But while planners and developers have concentrated on forging a new compact city future for Australians, little attention has been directed at the long term outcomes of this process. Much of the contemporary academic debate about the compact city has focused on the assumed pros and cons of higher density housing as opposed to low density suburban development, with a predominant focus on environmental or infrastructure issues (e.g. Commonwealth of Australia, 1992; Breheny, 1995; Jenks et al, 1996; de Roo and Miller, 2000; Bruegmann, 2006). Given the predominance of higher density housing in the

strategic plans for Australian cities, it seems much more productive to shift attention to how well current higher density models actually perform in terms of achieving their desired outcomes. Leaving aside environmental and economic sustainability issues, relatively few observers have considered the social outcomes of such developments. A key component of this will be how well the governance arrangements for higher density housing work in practice. Indeed, given the increasing role higher density housing is playing in urban development, it is surprising that issues surrounding the governance of strata title, the predominant ownership and management form by which higher density housing is developed and owned in Australia, have received so little academic attention¹.

The legal framework that underpins this system is the various strata title laws that govern property relations in multi-unit developments in Australia. Each state and territory in Australia has its own strata legislation, although they all follow similar principles in practice (Everton-Moore et al., 2006). The Australian strata title system dates from the early 1960s. Since then, a number of contradictions in the Australian regulatory framework have emerged in the face of a growing and increasingly complex higher density residential sector. This complexity, coupled with the reliance on strata title to underpin the delivery of major strategic planning and housing policies, suggests that greater attention should be paid to assessing the effectiveness of strata title to deliver long-term socially sustainable housing. While the strata systems of the state and territory jurisdictions are broadly similar, this paper concentrates on the governance of strata title in New South Wales (NSW), with a particular focus on the city of Sydney, which has the highest concentration of strata housing in Australia (Randolph, 2006).

This focus on NSW has a particular relevance for the international experience of higher-density housing in two respects. The first is the fact that the *NSW Conveyancing (Strata Titles) Act (1961)* has formed the basis of the strata title legislation in many other countries, including Canada (Strata Titles Act 1966²), Singapore (The Land Titles (Strata) Act 1967), South Africa (Sectional Titles Act 1971), New Zealand (Unit Titles Act 1972), Indonesia (Strata Title Act 1985), Malaysia (Strata Titles Act 1985), and recently, Brunei (Strata Title Law 2006). Challenges facing the practical

¹ This issue has received some attention in the international literature, most notably work by Blandy et al. (2006) on multi-unit developments in New Zealand and the UK.

² Years refer to the original act. Amendments have been made in most cases.

implementation of this legislation in Australia and the need for legislative amendments are likely to have some parallels in these other countries. The potential for collaboration and learning from the experiences of these other countries is therefore substantial. Secondly, the Australian experience of urban consolidation, within the framework of relatively advanced legislation and management practices for strata living, is likely to be informative for those countries that have (or are planning) extensive higher-density developments, but less developed legislative and management structures, such as China and India. These countries may benefit from the Australian strata sector's experience.

While strata title can be applied to properties of varying densities in both rural and urban locations, we focus our analysis on residential strata titled apartments in metropolitan Sydney. The paper begins by providing some background to the strata title system in Australia. The remainder of the paper outlines what we consider the most significant challenges that have arisen with regards to strata living in Sydney and discusses these challenges through the lens of governance theory. It is essential that these challenges be recognised and addressed in order to reduce their long term impacts on the millions of people who own and live in apartments or who work in the emerging professions that manage the sector. Without this understanding, urban consolidation strategies are unlikely to be successful in creating inclusive and well managed higher density communities.

Background

In Australia today apartments and urban consolidation policies are at the centre of controversy over the future size, social composition and urban character of our cities. The increasing number, variety and dispersion of apartment buildings exemplifies contemporary urban change (Butler-Bowdon and Pickett, 2007:x).

While there have been small scale low-rise apartment developments in Australian inner city areas since the 1930s (Lewis, 2000; Spearritt, 2000), the strata title legislation introduced in the 1960s facilitated a major expansion of higher density residential development in Australia by allowing the ownership of individual apartments (Randolph, 2006). Today, around 3.5 million people live in

'bodies corporate'³ schemes across Australia, mainly in urban areas (VIBCM, 2007), with almost 2 million people living in strata schemes in NSW alone⁴.

In Sydney there are over 40,000 strata schemes containing almost 600,000 individual lots (see Table 1). Given that Greater Sydney's population is approximately 4.12 million people (ABS, 2006), and assuming a low vacancy rate, it can be estimated that approximately 27.5% of Sydney residents currently live in strata developments across the city⁵. Indeed, the 2006 census reports that 23.9% of the population in the Sydney statistical division live in a flat, unit or apartment (ABS, 2006), with the main concentrations of the sector found in the older inner suburbs. There are now plans to build strata units for a further one million people (400- 500,000 units) in Sydney over the next 25 years under the new Sydney Metropolitan Strategy (NSW DoP, 2005). If these plans are realised, by 2030 approximately 45% of Sydney's dwellings could be in the form of strata title dwellings (Randolph, 2006). Similar metropolitan plans propose to greatly increase the numbers of higher density dwellings in other Australian cities (QLD OUM, 2005; VIC DSE, 2005). Higher density strata developments therefore comprise a significant and growing component of the structure of the modern Australian city. This represents a major watershed for the Australian city, which has traditionally grown by suburban low density development dominated by separate single family dwellings on individual plots of land (Forster, 2006).

INSERT TABLE 1 HERE

Several other characteristics of the sector are worth noting. The first, and most significant, is the fact that around two thirds of the higher density private sector is rental property, a significant contrast to the tenure profile of Australian housing in general. Secondly, the higher density stock is comprised predominantly of one or two bedroom properties. It is therefore a sector catering principally to non-

³ This figure is for people living or working in bodies corporate schemes in 2007. This figure includes, but is not limited to, residential strata residents. No reliable Australia-wide figure for residents of strata schemes is available.

⁴ Estimate from NSW Department of Lands, 2007 and ABS, 2006.

⁵ Based on a figure of an average of 1.9 people per flat, unit or apartment in the Sydney statistical division – calculated from ABS 2006 Census Data.

family households, or low income families with little alternative other than to rent small dwellings. However, while urban consolidation policies are based upon an assumption that the increasing proportion of one and two person households in Australia will lead to a rise in demand for higher density dwellings, research by Wulff et al (2004:58) has found that:

most people who live alone [in Australia] prefer detached three-bedroom houses and that many of them are able to realise this preference. Planners have too readily assumed that the demographic shift to smaller households will facilitate a shift to more compact cities. There is very little evidence to support this assumption.

Thirdly, the sector is highly segmented into a number of specific submarkets of which two stand out (Bunker, et al, 2005). The first is a sub-market providing housing for a low income suburban population characterised by high proportions of immigrants, families and renters. This represents one of the most marginalised populations in the city. The second is a largely inner city moderate income sub-market, characterised by younger, economically active, largely child-free population and a mix of renters and home buyers. Other sub-markets include the mature and elderly home owner sub-market ('empty nesters'), a high income 'apartment elite' sub-market and the student sub-market, the latter two largely an inner city phenomenon.

The growth of the higher density market has not been a simple market driven response to changing housing demand, however. Over the last two decades, a series of strategic planning proposals have strongly promoted higher densities. As Kübler and Randolph (2008:15) note, by the late 1980s, urban consolidation had emerged as the cornerstone of prevailing urban planning, and was a key feature of the 1988 *Metropolitan Strategy*. Subsequent plans, *Cities for the 21st Century* (1995), *Shaping our Cities* (1999) and *City of Cities* (2005) have also emphasised urban consolidation. The strata title system is central to the NSW Government's push for urban consolidation, providing a legal mechanism allowing the sale and ownership of individual strata lots (apartments, townhouses etc.). However, concerns have been raised about the ability of the strata model in its current form to achieve effective urban consolidation (Thomson, 2007b). In particular, problems have been noted in regard to

the regulation of residents, developers and owners' corporations as well as the structures of decision-making and representation within the strata system. Furthermore, no process has yet been devised to deal with blocks that are at the end of their physical or economic life (Sherry, 2006).

Given the fact that the governance of strata units has an impact on a quarter of the population of the largest city in Australia (as well as many others around the country), it is important to provide an overview of some of the issues that have arisen in the governance of strata developments. The Australian situation is also informative for many other countries, including those whose strata title legislation is based on the NSW legislation, as well as those with high concentrations of apartment dwellings and underdeveloped legislative and management structures.

Challenges facing strata title developments

In many developed and developing countries around the world, intensive housing is proliferating in urban areas. Denser residential occupancy rates are popular with developers as they increase profits, and are attractive to government at local and national levels because they are seen to reduce urban sprawl and to enable inner-city regeneration. However, the experience of living in such developments has received little attention (Blandy et al., 2006:2365).

A range of issues have emerged in recent years concerning the development and operation of strata title schemes in NSW (Bugden, 2005, 2007; Norrie and Burke, 2007; Thomson, 2007a). We focus on just a few of these: regulation and dealing with diverse stakeholders; representation of owners and residents; and strata termination, and discuss these using extant literatures on governance. While not an exhaustive exploration of challenges facing the strata sector, nor an exhaustive review of the governance literature, this discussion provides an overview of what we see as the major concerns that have been raised about the current strata title system in NSW. We also draw upon the work of academics in other countries where parallels with the NSW case are evident.

'Governance' is a term that is increasingly used to capture the complexity of the interplay between the global economy and the rise in the privatisation of the management and everyday

operations of cities. We understand 'governance' to refer to the structures, processes and practices that determine how decisions are made about in a system and what actions are taken within that system. For the purposes of this paper, the 'system' is the particular strata development (e.g. apartment block) and the relationships that extend beyond that development, encompassing broader political, social and economic systems. Formal structures include the strata legislation and urban consolidation policies (which in turn influence council planning guidelines) and beyond these, larger state and federal political and economic structures. The strata legislation itself sets out other formal structures within the strata system, such as owners' corporations and their executive committees. Processes can be explained as 'the ways in which things are usually undertaken', and are largely determined by structures, for example, the granting of planning permission for a development by a council or the hiring of a strata manager by the executive committee. While such processes are largely determined by formal structures, they can also be influenced by informal structures, such as prior good working relationships between particular developers and councils, and alliances between developers and strata managers. Practices are what actually happens 'on the ground', such as the ways in which a particular executive committee meeting is run.

Throughout the remainder of this paper, we draw upon theories of governance that were developed to understand the macro scale of governments (Rhodes, 1996) and cities (Harding et al., 2000; Hambleton and Gross, 2008) and apply these to the micro scale of the strata development. We consider this an entirely appropriate approach as the governance of a strata development relies not only on what goes on within that specific development, but also on all of those relationships that extend beyond that development, connecting it with broader political, economic and social systems. In particular, macro-level formal structures such as strata legislation and urban consolidation policies directly impact on the governance of any individual strata scheme.

Rhodes (1996:653) outlines three main types of governing structures in his examination of the British government – markets, hierarchies and networks. He explains that bureaucracy is the prime example of hierarchy in the British government, while privatisation and market testing are examples of government using the market to deliver services. Rhodes also argues that the government operates through networks "characterised by trust and mutual adjustment".

Rhode's explanation of governance has a number of parallels with the work of theorists on urban governance. For example, Harding et al (2000) provide a nuanced account of governance through negotiation in their discussion of urban regime theorists. Urban regime theorists explain that in liberal democratic societies there are two interdependent systems of authority, one based upon popular control through the various organs of representative government (parallels to Rhode's hierarchical governance) and the other based on the ownership of private assets (parallels to Rhodes' market governance). This means that public officials cannot be indifferent to private (i.e. market) decisions and that, in effect, urban governance works "through a system of 'civic co-operation' based upon mutual self interest" (Harding et al., 2000:984) (parallels to Rhodes' networked governance). Hambleton and Gross (2008:11) argue:

In our view a focus on 'governing' is desirable as it can blend together an interest in using the *legitimate* hierarchical power of the state (i.e. government) with an *inclusive* approach to partnership building (i.e. governance). If we can move the discourse beyond a contest between 'government' and 'governance' approaches it may be that we can arrive at a sharper focus on the desired outcomes of societal action.

This understanding of negotiated governance between the power imbued in representative government and that generated through the ownership of assets provides a useful mechanism for understanding the governance issues surrounding strata title developments. Indeed, these macro-theories of urban governance are invaluable when trying to comprehend the micro-realities of strata living.

Regulation and dealing with diverse stakeholders

A major issue in strata title developments is the need to effectively govern the complex legal and contractual relationships between the many stakeholders in strata schemes.

While the strata title legislation may be seen as an example of authority through representative government, the legislation actually advocates a negotiated form of governance, placing increased

power into the hands of private organisations and individuals and the networks between them, while at the same time regulating their actions. The focus by the NSW State Government on urban consolidation, which has led to a reliance on strata title and accompanying legislation, has led to the creation of new governance structures based on the ownership of assets, such as owners' corporations.

In NSW, each strata development is managed by the strata owners of the building through a democratically elected executive committee. The owners' corporation, made up of all owners in a strata scheme, is formally constituted as the legal entity that manages the property in the interests of all the strata lot owners in the scheme. It therefore acts as a mini-council, with powers to set by-laws for the building, fix services charges and other levies, manage the maintenance and repair requirements for the building, and enforce compliance. Indeed, the ability to function as mini local councils has led some to suggest the strata sector has emerged as a fourth tier of urban governance below that of the federal, state and local levels (e.g. Tornai, 2008).

Governance through small associations like owners corporations is legitimised through a market-based approach to governance with a focus on public choice, fragmentation and local autonomy, which is at the same time managed under a legislative framework controlled by the States. However, owners' corporations are only one of many stakeholder groups involved in strata developments. Warnken (2005) lists a number of these, including: resident owners; investor owners; the resident unit manager (also known as a residential property manager or site manager)⁶; strata managers⁷; maintenance and repair companies; real estate agents; lettings agents, management rights brokers; legal practitioners; developers; financiers; local governments (planning, infrastructure, tourism); state governments (legislation, titles, dispute resolution, tourism, health, age care); tourist accommodation managers; as well as the taxation office, insurance industry, energy and telecommunication service providers, tourists, local residents, tourism retailers, hotel and motel operators, media, and the health and aged care industries.

Negotiating the relationships between all of these stakeholders is complex. According to Guilding et al. (2005), there is potential for conflict between resident owners and investment owners in

⁶ Who deal mainly with maintenance and cleaning.

⁷ Who undertake the day-to-day management of the building, manage external contractors and provide accounting services for the owners' corporation.

their relationships with the resident manager because resident owners' are primarily interested in the building and grounds caretaking, while investment owners are primarily interested in the sub-letting services. Such conflict causes strain on the role of the resident manager. This is a particularly salient issue in Sydney where the majority of new multi-unit development is sold to investors⁸.

There is also the potential for conflict between owners in different economic positions. This issue has been raised in the context of Hong Kong by Ngai-ming and Forrest's (2002:715) study of owners' corporations. They note that investment in the upkeep of buildings has a class and income dimension, with middle-class home owners who perceive themselves as on an upwardly mobile track being more "willing to invest in order to maintain the value of their properties and to accumulate more assets for future upgrading", while owners in older and cheaper buildings may be reluctant to invest.

In addition to conflict between resident owners and investor owners, conflict can also arise between residents (owners or tenants). Bugden (2005:12) notes that strata title living implies physically close living conditions in a relatively confined living environment, regular interaction among residents and conforming with standards of conduct (e.g. by-laws). It is generally thought that strata developments will attract a higher incidence of neighbourhood disputes than conventional single home neighbourhoods (Bugden 2005:14). Mechanisms for resolving disputes in strata schemes therefore become very important in order to manage neighbour disputes that are compounded by both close living arrangements and more formal interactions that are of necessity conducted through the owners' corporation. As a result, most Australian jurisdictions have incorporated some form of special dispute resolution processes for strata title properties in their regulatory frameworks for the sector. Indeed, regulating the behaviour of residents in strata properties is an issue that has recently flared up in the media in Sydney, with a number of news articles pointing to the problems that can arise in strata units when residents are noisy and inconsiderate and particularly where units are rented out on short-term holiday leases (e.g. Welch, 2006; Munro, 2007).

Although strata buildings are governed by a set of by-laws, effective regulation requires effective compliance. Policing compliance with by-laws is the responsibility of the owners'

⁸ In 2006, just over 50% of flats, units and apartments in the Sydney Statistical Division were rented privately (ABS, 2006)

corporation. In NSW, the *Strata Schemes Management Act 1996* enables the owners' corporation, in the case of non-adherence to by-laws, to serve a notice on the offending party requiring compliance. If they do not comply, then it can be enforced through the NSW Consumer, Trader and Tenancy Tribunal and the offender may be penalised. Parties to a dispute are required to attempt mediation before making an application for adjudication (Everton-Moore et al., 2006). However, in practice, this process is time-consuming and can have unsatisfactory results. At present, there are no available statistics that quantify the number of compliance problems in strata blocks, although anecdotal evidence suggests that failure to pay strata levies and charges is a main area of dispute.

Apart from regulation of residents by owners' corporations, other important issues have surfaced surrounding the regulation of developers and owners corporations. Recent changes to strata title legislation have attempted to mitigate problems stemming from conflicts of interest between strata managers, owners and developers by placing restrictions on the actions of the 'original owner', the owner of the strata scheme at the time the Strata Plan is registered (who is usually the builder or developer). When the Strata Plan is registered, the original owner controls the owners' corporation as it holds all the owners' voting power (POA NSW, 2004). It is therefore in a strong position to determine the ongoing management structure of the scheme, for example, in awarding long-term maintenance contracts and appointing strata managers. The *Strata Schemes Management Act 1996* places restrictions and duties on the original owner "to ensure a viable management structure is in place for the benefit of future owners of lots in the strata scheme who might otherwise possibly be prejudiced by decisions made by the original owner in the self-interested exercise of its majority voting rights" (POA NSW, 2004). However, under the current legislation, it is still possible for the executive committee to hire a strata manager on a ten year contract after one third of the unit entitlements are no longer held by the developer (NSW OFT, 2006:8). In practice, this means that two-thirds of the unit-entitlements can still be held by the developer after the initial period and the developer can therefore still control the executive committee during this period. A similar issue has also been recognised by Blandy et al. (2006:2369) in both the New Zealand and the United Kingdom with the developer controlling developments through professional managing agents they had contracted.

Regulation in terms of long term financial planning for strata schemes has also been raised in recent discussions about strata title. The *Strata Schemes Management Act 1996* requires the owners' corporation of any strata scheme comprising more than two lots to establish a sinking fund and allows an owners' corporation to levy owners for the purposes of contributing to that fund. Further, all schemes coming into existence from February 2005 were required to prepare a budget for a 10-year sinking fund plan and to levy contributions from the owners of the scheme in accordance with that plan. The *Strata Schemes Management Legislation (2005)* extended this to older schemes, staggered according to age, with all schemes requiring a 10-year sinking fund plan by July 2009 (NSW OFT, 2008). Nevertheless, compliance with even these limited requirements are not subject to strict enforcement, and while a lot owner can apply to the Consumer, Trader and Tenancy Tribunal for an order instructing the owners' corporation to meet its obligations, there are no penalties for noncompliance (NSW OFT, 2008).

These issues are compounded by the fact that the members of an executive committee who are responsible for running a strata scheme are all volunteers and often have limited skills and few resources with which to manage their strata development. The competence of the owners' corporations' officers is therefore a major issue, especially as schemes get progressively larger and more complex, often including commercial elements. These problems are compounded in schemes that are self-managed, without professional assistance (an estimated 55% of schemes are self-managed nationally; Unknown, 2005). But even owners' corporations that hire strata managers and building managers run into problems due to the incompetence of some managers. Despite the fact that strata managers in NSW are required to be licensed under the *Property, Stock and Business Agents Act* (NSW OFT, 2006), they are often poorly remunerated and may lack the professional skills needed to perform their duties, especially in the low value sectors of the market (Bugden, 2007), although professional associations of strata managers exist in all states that are trying to improve the professional standing of members. Further, building managers are not required to have any qualifications at all. This situation has been highlighted by Bugden (2005:12), who concludes that there is:

[a clear] need for better skills (particularly on the facilities management side) to cope with the increasing size and complexity of real estate developments and the increase in regulation in areas of safety and risk, as well as operational regulations (such as the real estate agency legislation).

Furthermore, the interactions and negotiations that have taken place between the government and other stakeholders in strata title developments have resulted in a multitude of necessary amendments to the strata title legislation, which have complicated the legislation and have made governance more difficult. The fact that each state and territory has its own legislation causes more confusion for companies and individuals with property interests in more than one jurisdiction (Australian Government, 2004:25). Further, despite these amendments, the growing complexity and size of the strata sector in Australia is placing further strains on the legislation in most jurisdictions.

In short, a negotiated governance is in place in relation to the strata sector in NSW, with negotiation between representative government and asset owners (strata owners and their tenants, developers, strata managing agents etc.). Indeed, the strata legislation appears to promote such negotiated governance. A significant amount of control over urban governance is placed in the hands of private individuals and organisations and the networks between them, while still being regulated by the legislation. However, it is difficult for the legislation to keep up with the pace of change in that is occurring in the strata sector, and to adapt accordingly to ensure that there are regulations in place to protect the interests of those individuals and organisations who may not hold the balance of power in a market-dominated environment.

Representation

In addition to issues of efficiency and competence in terms of regulation, it is also important to recognise the significance of effective representation among owners in strata schemes and to note the unequal power relations that can occur.

The concept of negotiated governance growing from co-operation based on mutual self-interest (Harding et al., 2000) raises the issue of which actors are involved in this co-operation and

have their interests considered, and which actors are excluded or under-represented and in what contexts. Webster's (2002) concept of 'club goods' provides a useful framework for theorising these issues. Webster (2002: 5) makes a distinction between different types of goods, by which he means "any form of goods, services, infrastructure or facility that yields benefits or disbenefits [sic] to individuals". Webster described four types of goods:

- *Pure private goods*. Consumption by one individual prevents consumption by any other.
- *Pure public goods*. All consumers consume the same good.
- *Local public goods*. Consumption is shared, but locals will benefit more.
- *Club goods*. Consumption is joint, but individuals can be prevented from consuming them.

Webster (2002:3) argues that "most public goods are consumed by particular publics and are better conceived of as club realms". He (2002:22) argues that the "urban realm" is "an interlocking and overlapping set of club realms". When dealing with clubs, we are necessarily also dealing with issues of governance in the sense of managing the boundaries of club realms. Strata schemes can be understood as a manifestation of a club realm, which require governance structures that allow for governance within the scheme as well as for the management of borders and the exclusion of people who are not members of that particular 'club'.

As noted above, the day to day administration of a strata scheme is carried out by the executive committee of the owners' corporation (often liaising with a professional strata managing agent). This executive committee is made up of representatives of the owners' corporation who are elected at each annual general meeting (AGM). All strata owners have a vote at the AGM. However, not all strata owners have equal weight within the owners' corporation. The measure of their weight is called their 'unit entitlement' and is based upon the relative value of their strata lot. The unit entitlement regulates both the voting rights of each unit owner and the levies that they must pay to the owners' corporation for insuring, maintaining, repairing and managing the common property (POA NSW, 2004). In other words, the extent to which individuals are represented in their strata relies upon their market share in the strata 'club'.

Shearing and Wood (2003) outline a complimentary approach to understanding governance. They propose the notion of a 'denizen' – a person who enjoys civil and social rights, but not full

political inclusion – to understand “the affiliations, rights, and expectations of those who are governed within and across multiple forms of ‘communal space’”. They explain that unlike the Hobbesian distinction between the public and private domains, the increasing existence of “mass private property”⁹ – areas that are used by many people, but have restricted access – is blurring the distinction between the public and private realm. The governance of these spaces is managed by property owners, often in the form of corporate entities. Hence, ‘denizenship’ is largely determined by purchasing power. To be a denizen of facilities like gyms, private educational facilities, gated communities or the common property of strata title developments, one needs to buy one’s way into these communal spaces (Shearing and Wood, 2003:414).

Indeed, the governance of strata title developments is certainly tied up with issues concerning access to the scheme and exclusion of those who are neither owners nor tenants. The bulk of the literature dealing with the issue of exclusion from particular residential areas has focused on the case of gated communities. However, the issues raised for gated communities are also broadly relevant for all types of residential associations, including strata buildings. As Kennedy (1995:761) has noted in the case of the US:

residential associations and gated communities often restrict non-members’ freedom of speech, limit non-members’ freedom of movement, and engage in racial discrimination against non-members.

However, it is questionable to what extent the organisations surrounding strata title developments are actually participatory and community-oriented, even *within* their own structures. The issue of representation within strata developments is beginning to receive increasing attention in Sydney (e.g. Thomson, 2007c). Indeed, while it could be argued that the governance of strata schemes should be a negotiated governance within a club realm – and this certainly seems to be what the NSW strata title legislation is trying to achieve – the reality in many schemes is that because their governance is based on market principles, the stakeholders within a strata title scheme do not have

⁹ A term borrowed from Shearing and Stenning (1983).

equal rights to participate. Sometimes they do not even have rights proportional to their market share of a scheme because of the practice of forfeiting proxy votes.

In strata schemes, owners can choose to assign their votes to a representative as proxy votes. Concern has been raised in Sydney recently that developers have been asking for proxy votes to be signed over as part of their sales contracts (Thomson, 2007b) and then using the proxy votes to pass motions that lead to the employment of developer-affiliated building managers, sometimes against the owners' best interests. Such building management contracts can last for ten years and often do not include performance guarantees or exit clauses for owners (Thomson, 2007b). In an attempt to crack down on this practice, recent reforms to the NSW strata legislation regarding proxy votes have stipulated that all proxies have a maximum life of 12 months or 2 consecutive AGMs, and that proxy votes held by a strata managing agent, a caretaker or an on-site property manager cannot be used to obtain personal financial or material benefits. It has been suggested "that this should be extended so that no one connected with a strata scheme should be able to use a proxy vote on decisions that would result in them gaining some financial advantage or benefit" (NSW OFT, 2004:35). Nevertheless, abuses still remain, with owners engaging in legal action to try to rectify the situation in their favour.

Furthermore, while owners in a strata scheme usually hold some power based on their market share, renters living within a strata scheme have no right to participate in the representative structures in place in their scheme (they have no vote) and have power only to the extent that they are able to influence the position of the owner of their unit. Given that the majority of renters rent through a real estate agent (ABS, 2006), the potential to influence decisions affecting their building is small. Indeed, this raises an essential point: the implications of the governance arrangement in place in strata schemes are unique when compared to those of private corporations or other club realms because people *live* in strata developments. This means that any viable governance framework needs to take into account the role of all residents in a strata scheme regardless of whether they own or rent, in particular, their personal ties to their homes and their relationships with each other and other stakeholders within a development.

Furthermore, international discussions on the governance of owners' corporations, gated communities and common interest developments have pointed to the tendency amongst such

organisations to focus on restrictions and legalities rather than democratic rights (Blandy and Lister, 2005). On the other hand, Ngai-ming and Forrest (2002), in their discussion of owners' corporations in Hong Kong, note that while owner's corporations also tend to focus on the legal, rather than the democratic and participatory side of governance, they have been criticised for being over-democratic, with owners more concerned about the efficiency of management.

Indeed, in some cases, democratic processes in the governance structures of owners' corporations (and similar) have been seen to lead to serious inefficiencies in the governance of these organisations. Hastings and Wong (2006:295) utilise Heller's (1998) concept of the 'anticommons' to make this point in regards to the governance of owners' corporations:

A "tragedy of the anticommons" is a situation where many owners have rights over a common property asset or resource, but the right is that of exclusion, rather than that of usage. In order for the asset to be put to use, permission must be secured from all owners. Since each owner has the right of exclusion; in effect any owner can veto the use of the asset. This leads to the tragedy of under usage rather than over usage.

Terminating strata schemes

The concept of the 'tragedy of the anti-commons' has been raised indirectly in NSW in regards to the termination of strata schemes. In NSW, many of the schemes built shortly after the introduction of the first strata title legislation, as well as those built earlier and converted to strata, are reaching the end of their useful life Sherry (2006:227). The termination of a strata scheme is required as a first step in creating a new development on a site and therefore if any redevelopment is to occur on the site of an existing strata scheme, that scheme must first be terminated.

Under the current legislation in NSW, schemes are usually only terminated by an application to the Registrar General where 100% of the lot owners, lessees and mortgagees have agreed to the termination (NSW Government, 2003: 20)^{10 11}. Indeed, while the decision is ultimately up to the

¹⁰ Applications can also be made to the NSW Supreme Court for termination where there is no unanimous agreement. However, to date, no strata schemes have been terminated in this manner in NSW.

individual lot owners (whose right to make this decision is determined by their ownership of assets), the regulation requiring a 100% vote has meant that in this case governance processes relating to termination have been largely determined by hierarchical governance. Indeed, the normal course of events, especially in larger schemes, appears to have been for termination not to take place, as it can be very difficult to secure a 100% vote on any issue. Indeed, data from the NSW Department of Lands for September 2007 indicates that there have only *ever* been 603 strata schemes terminated in NSW, compared with 65,276 existing schemes¹². Furthermore, of these schemes, only 324 actually had any sales (lots traded) data tied to them, indicating that 46% of the terminated schemes were either zoned as strata and no building took place, or building took place but no lots were sold (i.e. the schemes were most probably held by the builder or developer as investments for letting).

There has been discussion recently in NSW about whether the termination of strata schemes should be made easier, especially in cases where the demolition of a building would be in the best interests of the individual lot owners or the community at large (NSW Government, 2003). For example, the Property Council of Australia¹³ (2003:11) notes that if termination is not forthcoming due to one or more strata owners voting against it, owners can only choose between paying increasing maintenance on a declining building or selling their unit at a loss due to its poor condition. They also point to the possibility of the development of “urban slums”, should buildings in poor condition be retained.

A number of alternatives to the current system have been proposed, including a unanimous vote at a meeting of the owners' corporation; fixed terms for strata schemes (as is the case in some US schemes); and the cooperative re-development of strata schemes between existing lot owners and a developer (Sherry, 2006). However, the most popular alternative has been to base termination on a majority (rather than on a unanimous) decision, with proposals ranging from 75% to 90% of owners voting for termination (see, for example, The Property Council, 2003). Such an approach, if adopted,

¹¹ All the other Australian states and the ACT also require agreement by all lot owners before the termination of a strata scheme (NSW Government, 2003).

¹² The figure reported for existing schemes refers to residential only strata schemes, while the figure reported for terminated schemes refers to all strata schemes, including commercial, industrial and mixed-use schemes. The figure for termination of residential only strata schemes is therefore likely to be even lower than the figure reported here.

¹³ A body that lobbies on behalf of development interests.

is likely to draw upon the experiences in Singapore where a 90% vote is required to terminate the strata title for buildings less than 10 years old, while an 80% vote is required for buildings older than 10 years. Any such change is likely to be premised upon the argument made by Sood (2000:158) in relation to the Singaporean case, that:

the right to property is not just the right to hold on to property but also includes the right to freely alienate it ... the question is really one of balancing two components of the right to property in strata development, namely, the right of one group (the minority owners) which would like to hold on to the property and an equally legitimate right of another group (the majority owners) which wants to exercise its rights to alienate property.

Nevertheless, this issue strikes at the heart of notions of individual property rights that are deeply engrained in the Australian psyche and would prove difficult to enact without potentially significant conflicts. The situation surrounding termination of strata schemes reflects Robertson's (2005) discussion about the lack of understanding by apartment owners in the United Kingdom of the reality of their form of property ownership, which affords only limited rights compared to freehold title. Given the relative youth of much of the sector, this issue has yet to be tested in NSW. But it will become a major issue as the Sydney Metropolitan Strategy's housing targets for higher density urban renewal are implicitly dependent on the replacement of lower density residential development around existing urban centres with higher density developments.

Conclusion

Urbanisation and the need for urban consolidation is a global issue that raises significant economic, political, environmental and social challenges. In this paper, we have touched on an issue that may appear minor in comparison – the governance of strata title developments. Yet in Sydney alone, this issue affects the daily lives of a million people and around the world, tens, if not hundreds of millions more are living and working in strata developments governed by legislation based on that of NSW. In

the future, many more people may find themselves governed by similar legislation if countries with a large apartment stock, such as China and India, follow suit.

If the drive for urban consolidation in Sydney and elsewhere is to be successful, then the governance of strata title developments needs to be viable, cost-effective and inclusive. In order for this to happen there is a need for greater systematic understanding of the problems facing the governance of strata schemes in order to quantify and clarify the situation. The high density city cannot be governed successfully until the implications of regulation, representation and termination in strata schemes are properly understood. Nonetheless, we are pushing ahead with urban policies that are based on a highly vulnerable form of residential property ownership, with little information on which to base future decisions and actions aimed at resolving these fundamental issues over the longer term and effectively managing our increasingly complex forms of residential development.

This paper has provided an introduction to some of the issues surrounding the governance of strata title developments. Following Harding et al (2000), strata schemes in NSW have been shown to be governed in large part through negotiation between multiple stakeholders, with power distributed unevenly among different stakeholders and dependent upon the power imbued in the market manifest through ownership of property assets as well as the power vested in representative government to legislate strata. The paper has also highlighted the possibilities for significant social conflict at the local scale within blocks as well as the potential threat to local urban amenity through deteriorating and poorly managed blocks. In the future we are likely to see an escalation of problems surrounding the governance of strata schemes, especially in the relative increase in ineffective management and regulation as more blocks age and values and investment incentives fall. Less apparent, but of even greater importance, is the consequence that as the strata sector grows, an increasing proportion of players in the strata system (e.g. strata owners and managing agents) will be new entrants who would not only lack the knowledge required to be successful lobbyists in a system based on governance through negotiation, but also the wealth required to have influence in a system where 'denizenship' is based on purchasing power. This will, in turn, increase the relative power of established 'players' in the sector (e.g. major developers, professional strata managers). Hence, as the ratio of new entrants to established players changes, inequalities within the sector are likely to increase. Indeed, the drive for

urban consolidation will mean that not only will a large proportion of the population face problems associated with the governance of strata schemes, the growth in the sector itself might also worsen these problems by increasing the proportion of entrants who have little knowledge of the system, while simultaneously decreasing the number of strata professionals. If the supply of skilled strata professionals (e.g. strata managers, building managers) does not keep pace with demand, problems relating to regulation, representation and termination of schemes are likely to increase. Similarly, if effective legislative protections for new entrants are not implemented in tandem with these changes, inequity within the sector will only intensify.

Addressing these issues should be the priority of planners, developers and politicians in all countries promoting the consolidation of their urban areas. While debates about the pros and cons of higher density housing as opposed to low density suburban development are important, it is essential that such debates do not preclude debates on how to 'get urban consolidation right' and, in particular, how to mitigate the problems relating to regulation and dealing with diverse stakeholders, representation and termination, that can plague strata developments and impact upon the lives of the people living, working, and investing, in them.

These findings have implications not only for strata titled properties, but for all types of privately governed residential developments, including community title estates and 'gated communities'. Indeed, we have drawn upon the gated communities literature in making our arguments in this paper because of the many similarities to the issues faced in strata developments. What this paper has highlighted, especially in relation to the current literature on gated communities, is a focus not the 'gates' themselves and the associated issues of exclusion, but rather on 'getting governance right' *within* these club realms and recognising some of the practical implications of both good and bad governance in private residential developments¹⁴. Finally, while this paper has focused specifically on strata properties in NSW, researchers in other jurisdictions and in other countries will find some parallels with their own experiences and knowledge of apartment developments and gain some insight from the NSW case.

¹⁴ We recommend the work of Dixon and Dupuis (2003) in drawing this issue to attention in the New Zealand context.

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Table 1. Number of Strata Schemes and Lots in NSW, September 2007

Area	No. of strata schemes	No. of strata lots	Average no. lots per scheme
Greater Sydney	43,772	595,679	13.6
Inner Sydney	21,215	350,373	16.5
Other NSW	21,504	135,997	6.3
Total NSW	65,276	731,676	11.2

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