
Urban renewal and strata scheme termination: Balancing communal management and individual property rights

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Abstract

A debate is taking place in Australia regarding potential changes to the legislation governing what proportion of owners must agree before apartment buildings can be re-developed and whether a collective sale model should be adopted in order to facilitate urban renewal. To date, urban renewal has proven challenging because of difficulties coordinating renewal within a planning system that relies on the market to deliver housing. This challenge is amplified by the governance framework created to promote multiunit housing – strata title – and associated tensions between communal management and individual property rights. This paper makes particular reference to the implications of this debate in the greater Sydney metropolitan area, which raises universal issues regarding tensions between the government and the market and between individual rights and the collective good. This paper argues that there is a case for changing the legislation, with government involvement required to respond to the significant social issues raised, to guarantee the needs of existing owners and tenants are met, and to ensure that high quality, economically viable, buildings result.

Keywords: urban renewal, property rights, planning, multiunit development

Word Count: 7,078
INTRODUCTION

Australia’s cities are undergoing a process of urban renewal as state governments promote urban consolidation in metropolitan areas. The facilitation of urban renewal in built-up areas has proven challenging because of difficulties in coordinating urban renewal in the context of a planning system that relies on the market to deliver housing. Indeed, at the time of writing, the Council of Australian Governments Reform Council is considering how to best advise on the interaction between planning systems and the private sector in delivering the strategic plans of Australia’s cities (Australian Government, 2011: 205). The challenge is amplified by the governance framework created fifty years ago to promote multiunit housing – strata title.

Strata titling was first introduced in Australia in 1961 under the Conveyancing (Strata Titles) Act 1961 in New South Wales (NSW). This formed the basis of similar legislation around Australia, and overseas (e.g. Singapore, New Zealand, Indonesia, South Africa, Brunei, Malaysia, British Columbia). Strata titling was introduced to facilitate the development of a mass multiunit housing market for sale. For the first time it allowed individual purchasers to own a dwelling in a multi-unit building, as well as a share in the common property of the development. Prior to this, the most common option for buying into an apartment building was owning an apartment under company title (where a person owns shares in the property that give them the right to live in a particular unit) (Dredge and Coiacetto, 2011: 418). Mortgage lenders were not inclined to lend on parts of buildings for which there was no clear ownership title. Strata titling changed this by enabling individual apartments (or ‘lots’) to be sold off one by one.

Strata title thus introduced a whole new market for properties that banks were willing to issue mortgages for. Enabling individual property rights in multi-unit developments opened up the possibility of home ownership to many for whom it would have otherwise been out of reach.
and also provided a significant market for small scale investor owners – typically termed ‘mum and dad’ investors. The development of strata title thus sat well with a long-standing focus of Australian governments (both state and federal) on assisting builders and developers to build properties as a means to promote economic growth and stimulate the economy.

However, in achieving this goal, strata titling created a number of largely unintended consequences that are causing significant problems. This paper examines some of those unintended consequences. While the introduction of strata title legislation helped to stimulate an apartment boom and provide a new market for developers by intensifying land uses, the resultant fragmentation of land ownership, and the revaluation of land assets on which strata properties sit, is now acting as a significant barrier to redevelopment (Easthope and Randolph, 2009: 254; NSW Transport and Infrastructure 2010: 26). This is inhibiting urban renewal in areas where it is desirable for older strata schemes to be terminated, and the buildings knocked down to make way for increasing residential densities.

This paper focuses on the issue of strata termination in NSW, focusing on the greater Sydney metropolitan area. However, as strata legislation introduced around Australia and internationally has drawn upon the NSW legislation, our discussions are relevant to other metropolitan areas looking to redevelop strata schemes. Throughout the paper, we draw comparisons with the situation in Singapore regarding the redevelopment of multiunit housing. Singapore has already made changes to their legislation, allowing for multiunit properties to be knocked down and re-developed with the permission of at least 80 per cent of owners (rather than 100 per cent) and the Singapore system is often referred to in the Australian discussions around termination now taking place.

These issues are also relevant beyond those jurisdictions with strata title legislation, and will be of interest to countries with other similar legislation governing the ownership of multiunit
dwellings, such as condominiums (e.g. the United States, Japan, Taiwan, Hong Kong),
commonhold or copropriété (e.g. the United Kingdom\(^1\), France) and Wohnungseigentum (e.g.
Germany, Austria). Indeed, some of these jurisdictions have already legislated to reduce the
proportion of owners needed to vote for termination (e.g. Hong Kong, Japan and some states
in the United States\(^2\)).

This paper is based on a review of the available policy and academic literature and
legislation, as well as discussions held as part of a study tour of Australian industry, peak
body and academic delegates active in the strata sector, who met with the Singapore Land
Authority, Building Construction Authority and other informants in Singapore in November
2011 to discuss the termination of strata schemes.

**THE STRATA TITLE SYSTEM**

The introduction of strata title in NSW gave banks and lenders the security required to issue
mortgages, which in turn made mortgage financing for apartments easier (Randolph, 2006:
474). Previously, most individual apartments were owned under company title, and owners
were shareholders in the company that owned the building. The shares each owner held gave
them the right to occupy their unit. However, the majority of shareholders had to approve the
lease, sale or transfer of a shareholding. Under strata title, rights to transfer, lease or mortgage
a lot are unrestricted and each unit has a separate title. This makes strata title a much more
desirable and secure form of property for which banks will issue mortgages.

\(^1\) Although this system is not as common as leasehold in the UK.

\(^2\) Property Council of Australia (2010:7). See also the *Uniform Condominium Act* (UCA) (1977,
amended in 1980), S2-118.
Strata title also allowed people to buy a property with a certificate of title to land. The message from the government, private developers, and real estate agents to individual owners was that they were buying private property in horizontal subdivisions. However, when people buy a strata titled property, as well as buying their own strata lot (usually the airspace within their apartment, including internal partitions), they are also buying a joint share in everything else (the common property, including the building and land) and the legal responsibility for managing that co-owned property. Herein lies the tension that pervades all aspects of strata title living – the tension between individual property rights (for the lot) and collective property rights and responsibilities (for the common property).

STRATA TITLE IN SYDNEY, AUSTRALIA

The introduction of strata title legislation facilitated a significant increase in the building of apartments by private sector interests in NSW and during the second half of the 1960s, more than half of the new dwellings constructed in Sydney were apartments (Cardew, 1980).

From the late 1980s governments around Australia promoted urban consolidation in response to ongoing housing shortages, and a concern with the assumed negative environmental, health and social impacts of ‘urban sprawl’ (Searle, 2004). In response, planning provisions were altered to facilitate higher density development. Indeed, the current metropolitan strategies for Sydney, Melbourne, Brisbane, Adelaide and Perth all promote the concept of a more
‘compact city’. In the five years to 2008-09, 75 per cent of all new dwellings constructed in Sydney were multi-unit (largely apartment) dwellings (NSW Planning, 2010a: 116).

Currently, there are almost half a million residential strata lots (properties) in the greater metropolitan Sydney area, housing over one million people – more than one-fifth of Sydney’s population. The number and proportion of strata residents is also likely to increase significantly in the near future as the state metropolitan plans continue to promote urban consolidation in major metropolitan areas. Together these require the provision of over 1.5 million new dwellings at higher densities within existing urban areas over the next 25 to 30 years (See Table 1). Strata title remains the obvious mechanism to enable this growth in new housing by ‘building up’, rather than ‘building out’.

3 VIC Department of Planning and Community Development (2002:30 and 2008); QLD Department of Infrastructure and Planning (2009:90); NSW Department of Planning (2010:42); Planning Western Australia (2010:27); SA Department of Planning and Local Government (2010:10).

4 As of July 2011 there were 485,042 residential and mixed use strata lots in greater metropolitan Sydney (City Futures Research Centre, 2011). The average household size of households living in flats, units or apartments and row, terrace or townhouses in the Sydney metropolitan area is 2.1 (from the 2006 Australian Bureau of Statistics Census of Population and Housing). Multiplying 485,042 by 2.1 provides an estimated residential strata population of approximately 1,018,588 people, which is 22 per cent of the population of the Sydney Statistical Division (the 2011 estimated population of the Sydney Statistical Division was 4.63 million, ABS 3218.0).
Table 1: Strategic Housing Targets\(^5\)

<table>
<thead>
<tr>
<th></th>
<th>Sydney</th>
<th>Melbourne</th>
<th>Brisbane</th>
<th>Adelaide</th>
<th>Perth</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td><strong>New dwellings</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>(*'000)</td>
<td>740 (by 2036)</td>
<td>620 (by 2031)</td>
<td>654 (by 2031)</td>
<td>258 (by 2040)</td>
<td>328 (by 2031)</td>
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</tr>
<tr>
<td><strong>Infill/fringe split</strong></td>
<td>70 / 30</td>
<td>53 / 47</td>
<td>50 / 50</td>
<td>52 / 48</td>
<td>47 / 53</td>
<td></td>
</tr>
<tr>
<td><strong>New infill dwellings</strong></td>
<td>518</td>
<td>329</td>
<td>377</td>
<td>134</td>
<td>154</td>
<td>1,512</td>
</tr>
</tbody>
</table>

Table Prepared by Ryan Van den Nouwelant, City Futures Research Centre, University of NSW

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5 Figures taken from VIC Department of Planning and Community Development (2002:14, 63 and 2008:3, 5, 18); QLD Department of Infrastructure and Planning (2009:91); NSW Department of Planning (2010:106, 114); Planning Western Australia (2010:4); SA Department of Planning and Local Government (2010:34, 71, 97).

6 Rounded to the nearest thousand.
TERMINATION AND RE-DEVELOPMENT

It is fifty years since the strata title legislation was introduced in NSW. Properties built shortly after the introduction of strata title, and many other buildings which were constructed in the first half of the twentieth century and converted to strata title, have become run-down, or are of lower densities than might now be possible, especially in higher value areas. As such, there is an incentive to build newer (and generally higher density) properties in their place. There are three main scenarios in which strata titled buildings would be knocked down and redeveloped:

1. A strata building requires so much remedial work it would cost more to maintain than knock-down and rebuild (i.e. it has reached the end of its physical and/or economic life).

2. A strata building has either not maximised the Gross Floor Area potential of the land it is built on, or is in an area that has been re-zoned to enable higher-rise developments, and there is profit to be made by the property owners in capitalising on this.

3. A strata building (or buildings) situated in an area (e.g. a few blocks) which could be targeted for a broader urban renewal project. In many areas with a high potential for redevelopment (such as near transport nodes like railway stations) in Sydney there are already existing strata titled dwellings.

However there is a major barrier to any of these three scenarios taking place. Under current arrangements, before a strata titled building can be knocked down for redevelopment, the strata scheme must be terminated and the owners corporation dissolved. Currently, there are
two mechanisms for terminating a strata scheme in NSW (*Strata Schemes Freehold Development Act 1973* ss. 51 and 51A):

1. By unanimous agreement. 100 per cent of owners, leasees, mortgagees, chargees and covenant chargees must agree to terminate the scheme, and sign the application for termination, which is decided by the registrar general; or

2. By order of the Supreme Court.

In practice, very few strata schemes have been terminated in NSW as "the normal course of events ... appears to have been for termination not to take place, because it can be very difficult to secure a 100 per cent vote on any issue" (Easthope and Randolph, 2009: 254). As of April 2012, only 826 strata schemes had ever been terminated in NSW (NSW LPI, 2012).

The privatisation and fragmentation of property, through splitting property ownership up into many different lots (not only vertically, but also horizontally) has made it incredibly hard for any new development to happen. Heller speaks about this in regards to common interest communities in the United States as the “tragedy of the anti-commons”, where:

> “multiple owners are each endowed with the right to exclude others from a scarce resource, and no one has an effective privilege of use. When there are too many owners holding rights of exclusion, the resource is prone to underuse.” (Heller, 1998: 624)

Sherry (2011) explains that the concept of the tragedy of the anti-commons also applies to strata titled developments in Australia, because each owner can exclude others from realising the value in their property asset (through terminating the strata scheme in order to sell or re-develop the building). In this sense, the strata title system, which was put in place by government to enable and encourage the private development of property, is now acting as a
constraint to the further private development of that property. This impasse is problematic in a number of respects.

First because older, poorly designed and poorly maintained strata titled properties cannot be renewed. While owners corporations in NSW are responsible for maintaining the common property of their schemes in a state of good repair under the *Strata Schemes Management Act 1996* (NSW) s 62, in practice compliance with this legislative provision is seldom enforced, and the practices of owners corporations regarding budgeting for, and carrying out, repairs and maintenance of their schemes are largely unregulated. Indeed, in a recent survey of 1,020 strata property owners in NSW, almost one third (30%) of respondents said that they were concerned that planning and budgeting for major repairs and maintenance in their scheme was inadequate (Easthope et al., 2012:4). The same report explained that disagreements over whose responsibility it is to plan for maintenance and issues around budgeting and financing repairs works were a major contributing factor, with 20% of survey respondents noting that there had been disagreements within their schemes over repairs and maintenance expenditure (Easthope et al., 2012:3-4). Indeed, different groups of property owners can have competing priorities and attitudes regarding funding their schemes. For example, investor owners and owner occupiers may have different priorities (Guilding et al., 2003), and the length of time people are intending to hold onto their properties may have some influence, as well as the length of time owners had owned their properties (Easthope et al., 2009).

Second, because lower-density strata titled properties cannot be knocked-down to make way for higher density urban renewal developments to enable the rational development of land and for more people to be housed in the Sydney metropolitan area.
Finally, because those strata property owners who want to realise their property assets through selling or re-developing their building find that they are unable to do so, as a single owner can stymie development.

**THE TERMINATION DEBATE – THE OPTIONS FOR CHANGE**

There has been a lot of discussion in NSW about how the existing system might be changed to make it easier to terminate schemes. A number of alternatives to the current system have been discussed (Sherry, 2006), including:

- a unanimous vote at a meeting of the owners corporation (i.e. a vote of those who actually attend the meeting);

- establishing a fixed term for strata schemes (i.e. stipulating the lifespan of the building at the development stage); and

- allowing termination based on a majority decisions (e.g. 75 per cent voting for) or minority opposition (e.g. 25 per cent voting against).

At the national level, the Council of Australian Government (the peak intergovernmental forum in Australia) agreed that the Housing Supply and Affordability Working Party would report on “the potential to reform land aggregation, zoning and planning processes and governance, including ... the impacts of titling systems (such as residential strata title arrangements) on the housing supply market” (COAG, 2010: Attachment B). At the time of writing, no report on these issues had been made public.

At the NSW level, the issue has been the topic of public discussion for almost a decade. In 2004, the NSW State Government released a discussion paper (*Strata Schemes in 2004 – The*
Further Issues) that identified and reviewed potential alternatives to unanimous consent. A year later the NSW government released its metropolitan strategy *City of Cities: A Plan for Sydney’s Future* (NSW Department of Planning, 2005), which stated:

“Existing blocks of flats are unlikely to be redeveloped because of high land value and the provisions of the Strata Schemes Management Act\(^7\) which make them difficult to secure as a whole block to redevelop. The higher standards of construction and design that is now required - including underground car parking and improved accessibility for people with impaired mobility - also mean this existing housing stock is unlikely to be redeveloped because it would not be profitable. Strata Scheme Management Act will be investigated to determine whether it can create opportunities for housing redevelopment that will add to the mix of housing.”

Subsequently, in 2010, two state government documents (NSW Department of Planning, 2010b; NSW Transport and Infrastructure, 2010) were released that mentioned the intention of the NSW Government to establish a Sydney Metropolitan Development Authority to pave the way for higher-density developments in identified urban renewal sites. These papers again grapple with the need for legislative reform to “*reduce[e] the majority of strata title holders required to enable strata redevelopment within defined urban renewal precincts.*” (NSW Transport and Infrastructure, 2010: 26). The Sydney Metropolitan Development Authority was established in September 2010, but no legislative reform regarding strata termination has been introduced. With a change of government in March 2011, the state

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\(^7\) *Strata Schemes Management Act 1996 (NSW).*
government’s position on the strata termination issue is unclear, but the pressure to enable higher density development means that this issue will remain current.

The most active stakeholder group in this area has been the Property Council of Australia (PCA), the peak body for the property industry. They have consistently advocated that the requirement for a unanimous resolution for termination be replaced with a requirement that not more than 25 per cent of owners vote against the termination (e.g. Property Council of Australia, 2010). Other groups that have advocated for making strata termination easier include: Strata Community Australia (NSW), the peak body for the strata sector in NSW (SCA 2012); the Urban Development Institute of Australia, a peak body representing all sectors of the urban development industry (UDIA 2010); and the Planning Institute of Australia (PIA 2010).

Indeed, the option of allowing termination based on a majority decision, or minority opposition is the option that has received the most traction in NSW (having been advocated for by the PCA, SCA NSW, UDIA and PIA). Similar changes have already been made in Singapore (which also has similar strata title legislation), and the Singapore case provides some insight into how such a change might be implemented in Australia.

**Singapore**

In the 1990s, three significant events occurred in Singapore which precipitated a change in that country’s legislation regarding the termination of strata schemes.

First, there were many walk-up apartments in blocks, built after the introduction of the *Land Titles (Strata) Act* in 1967, that were approaching 30 years and required significant maintenance works. As a significant amount of money was required to repair these buildings,
the majority of owners in many blocks wanted to sell. The only option for these majority owners was to take the issue to court, and make arguments as to why the schemes should be terminated, which proved to be both difficult and expensive.

Second, after the completion of the *Singapore Concept Plan 1991*, which mapped out a 40 to 50 year vision for Singapore, a series of Development Guide Plans were produced by the Urban Redevelopment Authority, Singapore’s national land use planning and conservation authority. Development Guide Plans are detailed land-use plans covering each of the 55 planning areas in Singapore, which specify planning objectives including land-use zoning, development intensity (density) and allowable building height (Chew, 2008). The Singapore government increased the plot ratios for selected areas, particularly those in prime locations (such as near Mass Rail Transit stations) in the Development Guide Plans produced between 1993 and 1998 (Christudason, 2010: 94).

Third, at the same time there was a strong upsurge in the market and property prices and developers started approaching owners and suggesting that they sell collectively to get a higher price than they would by selling the unit on its own (Yong, 2011). This was only made possible by the increase in plot ratios, meaning that the these sites had redevelopment potential because new value of the land on which a building sat could in fact be significantly higher than the collective value of the units currently on that site.

During this period, 100 per cent consensus was needed to terminate strata schemes (as is currently the case in NSW) and many such deals were unsuccessful because of a minority of owners holding out. In response, the Singapore government introduced the *Land Titles (Strata) (Amendment) Act 1999*, which allowed owners to make a collective sale of the building to a single purchaser with 80 per cent consensus (for buildings older than 10 years) or 90 per cent consensus (for buildings less than 10 years old).
As a result, there was a surge in the number of en-bloc sales. At this time, there were controversies over some cases of bad faith transactions, which were brought to court, and in 2007 the Ministry of Law conducted a public consultation on the collective sales process (Christudason, 2009). Following this consultation, amendments were introduced to the legislation to ensure better safeguards and transparency for owners (Christudason, 2009).

The experiences of Singapore provide important insights into the potential complex consequences of changing strata termination legislation.

Managing the termination and renewal process

In NSW, as well as changing the rules regarding what proportion of owners need to agree before termination can occur, there have also been different options proposed for managing the termination and redevelopment process. Potential termination and redevelopment models proposed have included a collective sale model and a renewal plan model.

The collective sale model

A collective sale model is currently in operation in Singapore. In Singapore, when 80 per cent of owners in building more than 10 years old (90 per cent in buildings less than 10 years old) agree, a building can be sold collectively to a single purchaser for the purposes of redevelopment. The purchaser then owns 100 per cent of strata scheme, and can apply to have that scheme terminated. Collective sales become feasible when the value of the land is greater than the total open market value of all of the individual lots combined, so that owners can sell their lots for more than they would have received if they had sold them individually. This can
be the result of plot ratio and/or height control increases, land being approved for another (higher value) use and deterioration of the existing building.

Under this model, mortgagees and owners are protected financially (Christudason, 2010). Whilst lessees are not able to object to the sale, they are entitled to compensation (Christudason, 2009). The process is overseen by a Strata Titles Board, which has the dual role of being a watchdog for minority rights as well as facilitating the collective sales to ensure urban renewal (Christudason, 2010).

**The renewal plan model**

An alternative to collective sale is a renewal plan model. This is the model that has received the most attention in NSW, and has been proposed by the PCA. Under this model, developers would plan for the termination and redevelopment of a strata scheme in consultation and co-operation with owners. A renewal plan would be prepared with details on the preferred development outcome, proposed building works, development application requirements, architectural plans, the obligations and liabilities of all parties and cost estimates and work programs. This would be followed by months of consultation before voting by owners on termination. Those owners who did not want to participate in the redevelopment would need to be bought out by participating owners. The key feature of the renewal plan is that existing owners would be able to own lots in the redeveloped building. A developer will be contracted to undertake and manage the process, although it is unclear exactly what role they would play in a renewal plan and on what basis they would be remunerated for the additional costs such intensive work attracts.
While the additional complexity, associated costs and significant risks are potential drawbacks when considering the adoption of a renewal plan model, the renewal plan model may have benefits over the collective sales model in regards to taxation. The regulatory and taxation regimes in Singapore and Australia differ so that it would not be possible to simply adopt the Singapore model of collective sales in Australia without considering the implications in the context of national and state legislation. For example, while an owner who sells their share in a strata scheme would be liable to pay capital gains tax, it might be possible to avoid this tax by using a renewal plan model where the lot owner transfers their ownership over an old lot to a new lot in the same strata scheme.

Notwithstanding the proposal for a private sector renewal plan model (Property Council of Australia 2010), the majority of the current debate in Australia has focused on the collective sale model, including proposed legislative changes (e.g. Strata Community Australia NSW 2012). This is likely the result of a lack of surety about exactly how a renewal plan model might operate in practice and an assumption that the collective sale model might be easier to implement in practice, in part influenced by the existence of models in other jurisdictions (such as Singapore) with comparable strata title legislation from which Australian policy makers can learn. Given this context, the remainder of this paper focuses on the collective sale model. However, further academic consideration of a renewal plan model is warranted. Recent work (Kim et al., 2012) undertaken on the reconstruction process of apartment buildings in Korea - a process with many similarities to the renewal plan model - provides an important starting point.

THE TERMINATION DEBATE – THE CASE FOR CAUTION
The Social Issues

A fundamental difficulty with proposals to change the rules with regard to termination is that the government, private developers and real estate agents have been ‘selling’ the idea that when people buy strata title properties they are buying ownership of title to land. In other words, part of the message to potential owners has consistently been that buying a strata title apartment provides the purchaser with the same bundle of rights and privileges as the purchase of an individual house. However, the realities of co-ownership⁸ - including a very much reduced range of rights concerning the buyer’s capacity to control the property compared to the ownership of an individual house (with no shared ownership of common areas) - are rarely properly explained to, or understood by, purchasers. This means that, both practically and politically, it will be hard for the government to change the rules and tell property owners that their right to their unit has been terminated by a vote taken by their neighbours.

Property rights

One of the major concerns about changing the termination regulations is that it erodes private property rights. This appears to have been the case in Singapore, as described by Christudason (2010: 104, emphasis added):

This welcome phenomenon in land-scarce Singapore was made possible through the Government’s two-pronged approach to incentivize private

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⁸ The term co-ownership is used here as a meaningful social description of the issue, rather than a legal definition.
sector led redevelopment. The approach involved on the one hand, the revision of planning measures, in particular the lifting of building height restrictions and enhancement of plot ratios. On the other hand, it involved the removal of supply-side constraints through the elimination of the legal requirement of unanimous consensus for a collective sale to proceed. The latter has been unabashedly acknowledged by the judiciary as a ‘derogation of fundamental property rights’ (Tan Siew Tian v Lee Khek Ern Ken) as it marked the shift of power to the majority unit owners and in process, derogated the value of the minority’s property rights...

Singapore also experienced a “groundswell of discontent” regarding the collective sale process. In particular, concerns were raised regarding the clarity, fairness and transparency of the process (Christudason, 2010: 102-103). It is anticipated that there would be similar issues of acceptance by the broader community should the termination process be changed in NSW. The dispossession of a minority of unit owners is therefore likely to create a significant social barrier to changing termination regulations.

**Owner profile**

Another significant social consideration is the differing priorities of investor owners and owner occupiers and the implications for tenants. Certainly, tensions between owner occupiers, who have to move upon sale, and investor owners (who do not) were a notable result of the change of legislation in Singapore (Christudason, 2009). In particular, in some cases older owner occupiers were less concerned with the money they could receive for the
sale of their property than they were with their attachments to their homes (Singapore Land Authority 2011).

In greater metropolitan Sydney, approximately half of all strata lots are owned by investor owners, and rented privately to tenants (City Futures Research Centre, 2011: 11). This has two significant implications. First, in buildings where the vast majority of owners are investor owners, owner occupiers could be voted out of their homes by other owners who are making decisions based purely on economic considerations, with no regard to the attachment to the dwelling as a home that owner occupiers may have. Second, when owners agree to terminate their strata schemes, tenants will be forced to relocate. Run-down buildings provide relatively cheap rental accommodation and when these properties are redeveloped, people may be forced out of the local area, effectively severing their community ties. The forced eviction of lower income tenants in an already unaffordable housing market, such as Sydney (NSW Department of Planning, 2010a:111), will undoubtedly increase pressure on government to respond in some way to make up the affordable housing deficit that could emerge.

It is important that these social issues are properly understood and managed, so that any legislative changes to strata termination do not have an unreasonable adverse impact on apartment owners and tenants.

**Potential community benefits**

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9 For more information about the nature of the residential strata title stock in NSW, disaggregated by local government area, see City Futures Research Centre (2011).
A further social consideration is the potential opportunities for capturing some of the profits of the redevelopment for the community, for example, through requiring monetary contributions to provide open space. The possibility of incorporating inclusionary zoning into new developments has also been raised in NSW (Shelter NSW, 2011). This would require that a certain proportion of new developments be earmarked for affordable (below market rent) rental properties. Inclusionary zoning has already been successfully implemented in some parts of Sydney, including the Pyrmont-Ulrimo and Green Square urban renewal areas, under State Environmental Planning Policy No. 70: Affordable Housing (Revised Schemes). A period of negotiation about a change in legislation regarding termination of strata schemes would provide an important platform from which to make the argument for amendments to the planning system to enable some of the associated profits should be captured for broader social and community benefit.

**Feasibility of the development and urban planning**

As well as the social issues identified above, there are also a number of other practical issues that would need to be taken into consideration before implementing any amended system in NSW. Before taking on a redevelopment, developers must determine whether the expected uplift in the value of a property is worth the risk, once the costs of acquisition, demolition, design and rebuilding are taken into account. The feasibility of redevelopment rests on a cost-benefit analysis, where the ‘cost’ of acquiring the site, demolishing the existing building(s) and designing and constructing a new building(s) must be outweighed by the benefit of the sale price of the new dwellings. Without a predicted profit of at least twenty-five per cent, adequate economic incentive will not exist for developers and lenders to justify risking their money and redevelopment will not occur.
The first economic consideration is the cost of buying out all the unit owners, thereby acquiring ownership of the site. A collective sale process may be preferable in this regard, to reduce the risk that some owners would refuse to sell, or hold out for a very high sale price.

The second economic consideration relates to the value of what can be built on the site. There must be a predicted uplift in value for the cost of acquisition, demolition and design and redevelopment to be outweighed by the benefit of sale. Generally, a redevelopment is worth investing in because more properties can be included in the new site. On those sites where the existing building meets or exceeds the maximum density allowable under existing planning controls, redevelopment is less likely unless that site is ‘upzoned’ to allow for higher density development.

Planning has not necessarily accounted for this intensification of development. Planning controls permit buildings to be built to a certain size and density. This size and density is determined by the streetscape, the character of the area and the social and physical infrastructure and service capacity of the local area, and which is enforced by zoning and development controls. If all of these current considerations were overridden purely by the imperative to create incentive for redevelopment, current strategic planning practices would be undermined. Such developments would also have a potentially significant impact on the local area. For instance, in areas with a high proportion of strata titled buildings, there is likely to be an increase in building bulk and scale (and greater resultant overshadowing and loss of privacy for surrounding properties) as well as urban design and streetscape

10 Or, if compulsory acquisition is introduced, whatever minimum percentage is required.

11 For a more detailed description of the planning process in regards to development controls in New South Wales, see Gurran (2007:66-67).
implications. More serious consequences resulting from the population increase may include increased pressure on infrastructure and services, such as transport networks, open space, schools and hospitals.

**Potential conflicts of interest**

The potential for local social resistance to higher density renewal schemes once they become widespread in established residential areas is considerable, as witnessed by the recent action of residents in a wealthy northern Sydney local council area of Ku-ring-gai who successfully overturned a Local Environmental Plan for the area which proposed up-zoning for higher density residential development around local train stations (Munro, 2011). Similar social opposition to high density redevelopment has been evident in other Australian cities (Cook et al, 2012; Woodcock et al, 2011). The potential for conflicts of interest between members of the community with different ideals regarding land use in their local areas add another layer of complexity to the decisions that must be made by planers at both local and state government levels regarding the termination and renewal of strata schemes.

Another concern is the potential for an increase in speculative buying should the legislation regarding termination of strata schemes be changed. In the context of the Sydney housing market, which has been experiencing sustained housing shortages, this could have a significant impact on housing affordability, unless cooling measures to discourage speculative buying were introduced.

The potential for investors to buy multiple lots (properties) within a strata scheme and attempt to pressure sales from those people resistant to redevelopment of scheme would also remain should the legislation be changed to facilitate termination. Anecdotal evidence
suggests that this practice is already occurring under the existing legislation, and there is no reason to think that it would not continue should the legislation be changed to facilitate scheme termination. Any proposed legislative change will need to address these issues and consider how to best mitigate them. In particular, the issue of compensation for the minority of owners who resist will need to be addressed. As well as setting up mechanisms to need to protect the financial interests of this minority, as achieved in Singapore through the operations of the Strata Titles Board (Christudason, 2010), debate will need to occur on whether and how to protect the social and community interests of this minority. For example, should provisions be put in place to rehouse these minority owners in a similar property nearby to enable them to maintain their quality of life and community connections, and, if so, should this provision extend to tenants of these properties?

THE FUTURE OF STRATA SCHEMES

The facilitation of urban renewal in built-up areas in NSW has proven challenging because of difficulties in coordinating urban renewal in the context of a planning system that relies on the market to deliver housing. While the introduction of strata schemes facilitated economic growth and the provision of housing in NSW in one period, it also resulted in the further fragmentation of property ownership that is acting as a barrier to further urban consolidation and renewal today.

As described, one of the major barriers to the redevelopment of land containing existing strata schemes is the difficulty of terminating those schemes. The tension between communal management responsibilities and individual property rights pervades many areas of strata title
living, but is brought to the fore in debates around the termination and redevelopment of strata schemes.

The situation has now reached a point where government intervention, and hence a shift in the balance in the relationship between the government and the market in housing provision, is required. The rules regarding the termination of strata schemes in NSW need to be changed so that unanimous consent is no longer required to terminate a strata scheme to avoid the tragedy of the anti-commons and enable the renewal of old properties and an increase in density in urban areas.

The termination and redevelopment process will need to be managed so that it actually works in practice – ensuring that developments are both economically viable and feasible within existing planning frameworks. Such an approach places greater emphasis on government involvement to coordinate the renewal process, or to at least set the framework for such processes. As well as amending the termination requirements in the strata title legislation, this is likely to involve changes to the planning system, in terms of setting renewal strategies, facilitating local re-zonings and then determining specific approvals for redevelopment. In addition, particular consideration should be taken in determining where new strata titled buildings are desirable to ensure future redevelopment strategies are not curtailed by large strata developments.

Government involvement will also be required in order to ensure that the potential negative social impacts of a changed system are minimised. If the rules regarding strata termination are going to change, the government will need to mitigate the social impacts on residents, owners and other stakeholders, particularly those residents who are most vulnerable. The government will have a difficult role to play in managing the outcomes for those who are likely to win from the process and those who see themselves as losing out. This will include
minority owners who do not want to move and tenants who are unable to find another property at a comparable rent once they are displaced. It therefore follows that reforms designed to encourage the provision of affordable housing should be an important component to this, and consideration should be given to planning policies (such as inclusionary zoning) and even the re-development of land by government land agencies to ensure the provision of such housing. However, such reforms need not be specific to strata schemes.

In order to successfully achieve the changes to strata termination, the government will also need to educate strata owners about exactly what they are buying when they purchase a strata titled property, so that they are aware that when they buy a property they may not have it forever. In addition, the government will need to persuade the many people who will be upset and whose property rights will have been diminished, that the changes are necessary. This will necessitate a public discussion about the tension between individual property rights and the collective good in relation to strata title ownership.

The government will also need to be cognisant of the effect that any changes might have on the activities of mortgage lenders and insurance companies, to ensure that their involvement in the sector is not curtailed. This will be particularly important for blocks that might be coming towards the end of their economic or physical life. The impact on long term property values will need to be understood.

The future success and longevity of the strata titled market will thus be dependent on the government looking beyond simply changing the law to facilitate private development. Instead, the government will need to actively seek to change the balance between government intervention and the market in housing provision, and between individual property rights and the collective good in urban management.
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