

# Common Ground: The Costs and Provision of Community Infrastructure in Community Title Schemes in NSW

**Author:**

Randolph, B; Easthope, H; Marceau, J

**Publication details:**

Report No. City Futures Project Reports: Final Report for the Urban Development Institute of Australia NSW

**Publication Date:**

2008

**DOI:**

<https://doi.org/10.26190/unsworks/580>

**License:**

<https://creativecommons.org/licenses/by-nc-nd/3.0/au/>

Link to license to see what you are allowed to do with this resource.

Downloaded from <http://hdl.handle.net/1959.4/40205> in <https://unsworks.unsw.edu.au> on 2024-04-26



# Common Ground

## The Costs and Provision of Community Infrastructure in Community Title Schemes in NSW



A study by the City Futures Research Centre at the University of New South Wales on behalf of the Urban Development Institute of Australia NSW

APRIL 2008

This study was undertaken by the City Futures Research Centre at the University of New South Wales on behalf of the Urban Development Institute of Australia NSW (UDIA NSW). The views expressed by the respondents do not necessarily reflect the views of UDIA NSW.

### **Acknowledgements:**

The authors would like to thank all those who participated in the research and who freely provided their time and information on which the report is largely based:

Leichhardt Council  
Canada Bay Council  
Blacktown Council  
Lake Macquarie Council  
Penrith City Council  
Dynamic Property Services  
Strata Master  
Southland Pacific Asset Management  
Stockland  
ANKA  
Landcom/Mirvac  
Liberty Grove Community Association  
Balmain Cove Community Association

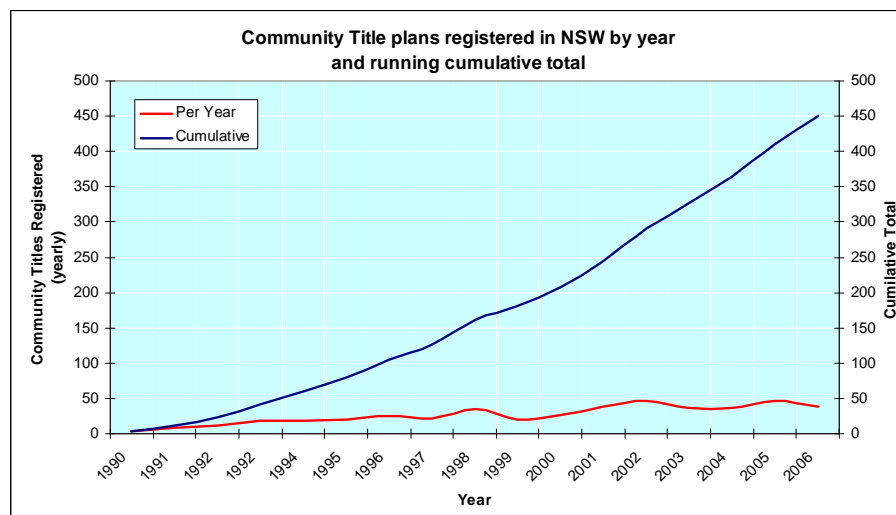
The authors also wish to thank the NSW Department of Lands, who provided data on the number and location of community title schemes in NSW. *Pro bono* legal advice was received from Holding Redlich Lawyers and Andreones Lawyers. Support and advice was also received from the UDIA NSW Strata and Community Development Committee. The authors would in particular wish to acknowledge the technical advice and guidance provided by Mr. Scott Woodcock, Chief Executive Officer of UDIA NSW and Mr. Wally Patterson, Chair of the UDIA NSW Strata and Community Development Committee.

## Common Ground - Summary

This study examines the subject of community title scheme in NSW. Community title is a form of land subdivision that enables shared property to be created within conventional Torrens title subdivisions. It is essentially a horizontal form strata title. Community title is common ground.

NSW has witnessed significant growth in the use of community title since its introduction in this state in 1989. As of June 2007 there were 450 community title schemes registered in NSW accounting for approximately 144,000 residents. Figure 1 shows the number of plans registered between 1990 and 2006.

Figure 1<sup>1</sup>



UDIA NSW commissioned this study to examine the recent application of community title and from those experiences present principles for developers and government on the ideal use of these schemes. The study employed five case studies chosen according to their geographic and socio-economic distribution.

Figure 2<sup>2</sup>

	Liberty Grove	Balmain Cove	Newbury	Wallarah Peninsula	Waterside
<b>Council</b>	Canada Bay	Leichhardt	Blacktown	Lake Macquarie	Penrith
<b>Developer</b>	ANKA	Australand	Landcom/Mirvac	Stockland	Stockland
<b>Dates of development</b>	completed 2002	completed 1999	2002 - present	1997-present	2003-present
<b>Size of Development</b>	14.7 Ha	5.9 Ha	18.9 Ha	654 Ha	74 Ha
<b>Type of publicly accessible infrastructure</b>	Two parks, all roads, pedestrian easements, storm water system	No publicly accessible CT land (Lot 1)	Drainage corridors, water features	Park, bushland, habitat corridor, foreshore paths, storm water system, bio-drainage mechanisms	Lakes and surrounding paths, pedestrian bridges
<b>Responsibility for maintenance of publicly accessible infrastructure</b>	Community association	Council land (Lot 11) maintained by both Council and CA	Community association	Community association, Council and National Parks and Wildlife Service	Community association

<sup>1</sup> Note: This graph includes data for the 450 schemes for which a date of registration was available. Where multiple dates of registration were recorded, the earliest date was taken. There are a further 269 registered community schemes for which no date was available. Records from 2007 (5 schemes) were not plotted.

<sup>2</sup> Note: This graph includes data for the 450 schemes for which a date of registration was available. Where multiple dates of registration were recorded, the earliest date was taken. There are a further 269 registered community schemes for which no date was available. Records from 2007 (5 schemes) were not plotted.

Baseline data and detailed systematic information on the operation of the subject community title schemes was collected and supplemented with resident surveys and interviews with key personnel. Those experiences enabled UDIA NSW to derive a series of principles to guide developers and government on the ideal use of these schemes. Common Ground contains 15 principles to help build a better community title estates.

### ***UDIA NSW Community Title Principles***

<b><i>Planning &amp; Design</i></b>	
1	Community title is a market niche. It is used to establish and maintain a level of local amenity, character or services for residents at a higher level than that usually provided by council. Ensure the scheme meets resident expectations as well as their ability and willingness to pay.
2	Community title includes features such as landscaped parks, walkways and recreational facilities that are maintained by a community association funded by the owners.
3	Community title may facilitate improved design outcomes while inclusion of landscape elements such as waterways and bushfire protection zones in such schemes recognises the benefit of local ownership and maintenance, provided sufficient recurrent funding by the owners corporation is maintained (refer to management and maintenance).
4	Physically delineate publicly accessible land, private shared land and infrastructure.
5	Comply with council's design guidelines where possible. Transfer of lot one to public ownership is presently not permissible and would be contrary to the intent of creating a point of difference in the market. Nevertheless adherence to council's design guidelines may provide the community association with greater options in the long term.
<b><i>Management &amp; maintenance</i></b>	
6	Prepare management plans at the development stage including financial projections for the adequate maintenance of infrastructure. Community associations have the potential to minimise levies by deferring regular maintenance which increases the risk of system failure and creates disproportionately higher repair costs.
7	Establish partnerships with specialist agencies and contractors to manage major infrastructure on behalf of the community association. Establish a budget and condition future residents to ensure sufficient funding for works.
8	Foster a strong working relationship with the council to understand the fundamental responsibilities of the local government and where the community association can most efficiently expend their resources to value-add.
9	Encourage the council to provide the same level of maintenance within the estate as they do elsewhere in the LGA or seek rate rebates if the local government service is reduced.
10	Address liability issues for publicly accessible areas within community title schemes. Inform the community associations and insurers of such liabilities including any maintenance agreements between the community associations and other bodies.

<b>Sales</b>	
12	Present a services inventory listing all assets that will be controlled by the community association. Document the purchasers' forecast levy expenditure at the point of sale.
11	Clarify the purchasers' legal obligations to cover costs consistent with the community association's responsibilities at point of sale.
13	Explain the developer's obligation to purchasers at point of sale regarding the maintenance of common areas of the scheme and advise of an indicative timeframe when this maintenance will cease and all assets either transferred to either local government or the community association.
14	Where land is dedicated to the local government, inform residents of the extent and nature of the land and infrastructure to be dedicated.
15	Illustrate public access to the estate and common areas.

### **Complexity of provision and maintenance arrangements**

The provision of publicly accessible infrastructure in community title schemes typically takes one of two forms:

1. Provision of infrastructure by the developer which is then owned and maintained by the community association.
2. Provision of infrastructure by the developer, which is subsequently owned by council or another government agency such as the National Parks and Wildlife Service, and maintained by both the community association and local council or the other government agency<sup>3</sup>.

The specific arrangements in place for each scheme greatly influence the options available to developers, community associations, local councils and other government agencies when responding to issues surrounding the provision, management and maintenance of publicly accessible property within community title schemes. Consequently, provision for publicly accessible infrastructure needs to be carefully considered at the outset of the scheme to avoid ambiguity later on when the community association assumes control over the scheme.

### **Management of publicly accessible property**

Where publicly accessible common property in a development is managed solely by the community association, issues regarding the functioning of the association are more likely to arise. The Executive Committees of community associations are comprised of residents who are usually able to contribute only a few hours a week and who often do not have the specialised skills required for the effective management of community infrastructure, which may be valued at millions of dollars. This situation can be mitigated by the employment of a qualified professional manager and specialised contractors.

### **Costs of providing and maintaining publicly accessible property**

#### *Provision and Maintenance*

Information on the costs of providing and maintaining publicly accessible infrastructure and comparative information about the typical costs to local councils for provision of similar

<sup>3</sup> These arrangements were those in place in our five case study areas. Other arrangements are also possible. For example, foreshore areas in the Breakfast Point development in Sydney are owned by the local council and leased to the community association.



infrastructure was collected in each of the five case studies where reliable data was available. It was generally held by both councils and developer representatives that the quality of infrastructure and standard of maintenance provided by developers or community associations was usually higher than in cases where the same facilities were provided and maintained by the local council.

### *Insurance*

Insurance for public liability and damage to property can constitute a significant cost for community associations. In particular, the possibility that public liability claims will be made against the community association for accidents that occur on publicly accessible property means that community associations should ensure that their insurance is sufficient to cover such claims. If it is insufficient, the costs of paying out on a claim will be borne by the owners in a scheme. This scenario typically requires community associations to over-insure, which drives up premiums and levies.

### *Fees and Levies*

The case studies suggest that residents new to a development receive little precise information about how community title works or about their responsibilities with respect to paying levies and their liabilities as joint owners of the estate. The case studies also suggest that even where information is provided, residents do not absorb it fully. This initial incomplete transfer of information seems to be the cause of many later problems.

There has been some debate over the possibility of council rate reductions where the maintenance of publicly accessible infrastructure is paid for solely by the community association. However, any reduction in rates would have to be proportional to the costs a Council would incur in maintaining those areas to its own standards rather than the current costs to (and standards expected by) community associations. Council representatives interviewed indicated that rate reductions (or rebates) were unlikely.

## **Conclusion**

Community title is essentially a market niche and a marketing device to create a point of difference for the brand. It is typically used for second and third homebuyer markets.

Accordingly it is critical that the scheme accounts for the average income of projected residents with respect to their ability as well as their willingness to pay levies to maintain local shared assets. Consideration should also be given to the tolerance of the residents in sharing such infrastructure funded by the community association with the general public, especially when considered within the context of perceived safety, asset maintenance and impact on insurance premiums.

Community title is a valuable tool in creating modern communities. Community title is about common ground for a shared future.

# Contents

<b>Introduction .....</b>	<b>1</b>
<b>1 Background .....</b>	<b>2</b>
<b>2 Methodology .....</b>	<b>4</b>
<b>3 Key Findings .....</b>	<b>7</b>
3.1 Differing provision and maintenance arrangements .....	7
3.2 Use of publicly accessible property by non-residents .....	7
3.3 Management of publicly accessible property .....	8
3.4 Costs of publicly accessible property .....	9
3.5 The importance of context .....	13
3.6 The future .....	14
3.7 Summary of benefits and constraints .....	15
<b>4 Key recommendations .....</b>	<b>18</b>
<b>Appendix 1: Case studies .....</b>	<b>21</b>
1 Liberty Grove .....	21
2 Balmain Cove .....	34
3 Newbury .....	44
4 Wallarah Peninsula .....	50
5 Waterside .....	56
<b>Appendix 2: Overview of the legislation .....</b>	<b>64</b>
<b>Appendix 3: Calculation of population living in community title schemes in NSW .....</b>	<b>65</b>
<b>Appendix 4: Costs of maintenance of publicly accessible infrastructure in Liberty Grove ..</b>	<b>66</b>
<b>Appendix 5: Costs to maintain Newbury in the initial period .....</b>	<b>67</b>
<b>Appendix 6: Section 94 data .....</b>	<b>68</b>
<b>Appendix 7: Estimated costs for council provision of publicly accessible infrastructure in Waterside .....</b>	<b>70</b>
<b>Appendix 8: Known costs of provision and maintenance of publicly accessible infrastructure in five case studies .....</b>	<b>71</b>
<b>References .....</b>	<b>72</b>
<b>Principles for the application of community title .....</b>	<b>75</b>



## Introduction

This research focuses on the provision of publicly accessible infrastructure within community title schemes in New South Wales (NSW). The project provides both baseline data and more detailed and systematic information on the extent and functioning of community infrastructure in selected community title schemes across NSW. The research responds to a number of concerns raised by the Urban Development Institute of Australia NSW (UDIA NSW) regarding the provision of public infrastructure within selected community title schemes in NSW. These concerns are:

- The overlap of responsibilities for provision and maintenance between public authorities and private owners.
- The costs of owning, operating, maintaining and providing public infrastructure in comparison with other forms of ownership (including the issue of the spread of risks and liabilities for accidents).
- The capacity of owners to pay maintenance costs, especially as infrastructure and facilities age.
- Owners' willingness to 'pay twice' for public facilities (once through community title obligations and once through council rates).
- Management arrangements for publicly accessible space.

The specific questions raised by UDIA NSW are addressed through five case studies selected to represent different types of community title developments. The case studies include:

- Comparative analysis of the nature and extent of public and shared infrastructure and community amenity services provided by community title schemes and local councils.
- Data on the current costs of providing, owning, operating and maintaining such publicly accessible community infrastructure.
- Comparative information on typical costs incurred by local councils providing public and shared infrastructure and community amenity services.
- Comparative information about the unimproved value of properties that are under community title and under other forms of title.

Finally, the report discusses the substantive issues identified during the fieldwork and provides some key recommendations for developers and local councils. The aim is to advance discussion of the issues around which a reform agenda might be generated.

## 1 Background

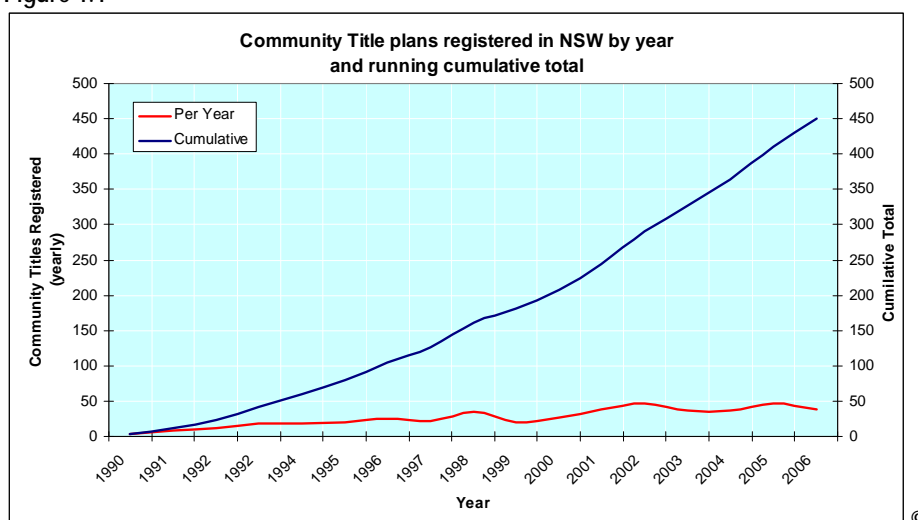
Community title is a form of land subdivision that enables shared property to be created within conventional Torrens title subdivisions (NSW Department of Lands 2006a). This makes it possible for individuals to own a dwelling and the land on which the dwelling sits, just as with Torrens title subdivision. However, concurrent joint ownership of the development's communal property is also held by property owners within a community scheme. The extent of community property can range from a small park shared by a group of houses to extensive road systems and sporting, commercial and agricultural facilities (NSW Department of Lands 2006a).

Community title provides an alternative to both Torrens and Strata title subdivision, allowing both for more flexibility in the subdivision of land than Strata title and for more control over the integrity of an entire development than Torrens title subdivision.

The community title legislation was first introduced in Australia in 1989 in New South Wales (NSW) as a result of a number of pressures, including the shortcomings of Strata title legislation in dealing with horizontal subdivisions, the desire of developers to maintain control over the integrity of the design and construction in large-scale developments, the desirability of master-planned communities in the housing market and the potential to ease the financial pressures placed on local councils to provide public infrastructure (see Appendix 2 for an overview of the legislation). Community title has been used in NSW as a mechanism to ensure developer provision of public space in new residential developments, spaces which may be used for conservation, recreation, or other purposes.

As of June 2007 there were 450 community title schemes registered in NSW. Figure 1.1 shows the number of plans registered between 1990 and 2006.

Figure 1.1<sup>4</sup>



NSW Department of Lands [2007]

<sup>4</sup> Note: This graph includes data for the 450 schemes for which a date of registration was available. Where multiple dates of registration were recorded, the earliest date was taken. There are a further 269 registered community schemes for which no date was available. Records from 2007 (5 schemes) were not plotted.

Approximately 144,000 people are estimated to live in community title schemes in NSW, or just over 0.2% of the population of the state. Of these, around 136,000 live in Sydney (making up 3.3% of the city's population) (see Appendix 3).

It is likely that community title will increase in importance in the future (NSW Department of Lands 2006a) as the push for urban consolidation in Australia's major cities calls for higher density residential development. Accompanying this trend is the tendency towards development on smaller parcels of land. As a result, residential amenities, such as open space, facilities, and swimming pools, are being provided and managed communally rather than by individuals for their own dwellings (NSW Department of Lands & NSW Office of Fair Trading 2006).

Compared with other forms of title, community title is a relatively new mechanism for the subdivision of land. However, it has proven to be a popular form of title in NSW, where the number of community schemes registered has been increasing steadily since the 1990s. As the legislation is relatively new, a number of issues have arisen regarding its practical application, many of which have been discussed in the NSW Government's (2006) Consultation Paper, *Review of NSW Community Schemes Legislation*. However, the matter of the provision of publicly accessible infrastructure within community title schemes and the issues that surround such provision were not raised in the governmental Consultation Paper. In this report, we present some initial findings regarding the provision of publicly accessible infrastructure and make a number of recommendations regarding the provision and maintenance of publicly accessible infrastructure within community title schemes.

## 2 Methodology

The research addressed the major issues raised by UDIA NSW through a detailed examination of the issues surrounding the provision of publicly accessible infrastructure within five community title schemes in NSW: **Liberty Grove, Balmain Cove, Newbury, Wallarah Peninsula, and Waterside.**

These sites were selected to provide a good spread of developments in terms of location, age, and provision and management strategies. Two of the sites are located in inner Sydney, two in outer Sydney and one in regional NSW. They also range from established communities (in existence from the 1990s) to current developments, and include a range of different provision and management strategies for publicly accessible space. The case study research, undertaken between February and August 2007, involved sixteen interviews with stakeholders, including community association executive committee members, site managers, community/strata managing agents, council staff and developers, as well as a review of deposited plans and council documents. Table 2.1 below outlines the interviews conducted at each case study location.

Advice on issues regarding public liability in community title schemes was received on a *pro bono* basis from Holding Redlich Lawyers and Andreones Lawyers.

Table 2.1 Interviews Conducted at Each Case Study Location

	Developer	Council	EC member	Managers <sup>5</sup>	Total number of interviews
Liberty Grove	✓ <sup>(1)</sup>	✗ <sup>(2)</sup>	✓✓ <sup>(3)</sup>	✓✓	5
Balmain Cove	✗ <sup>(4)</sup>	✓	✗ <sup>(5)</sup>	✓✓	3
Newbury	✓	✓	✗	✓	3
Walarah Peninsula	✓	✓	NA <sup>(6)</sup>	✓	3
Waterside	✓	✓	NA	✗	2

1 prior employee

4 developer no longer involved in project

2 interview declined; data provided

5 interview declined; e-mail correspondence approved

3 one current & one previous member

6 no-one in that position

<sup>5</sup> Managing agents and site managers are both referred to as 'managers' to preserve anonymity.

Table 2.2 below provides a brief overview of each of the five case study locations. Figure 2.1 shows their locations.

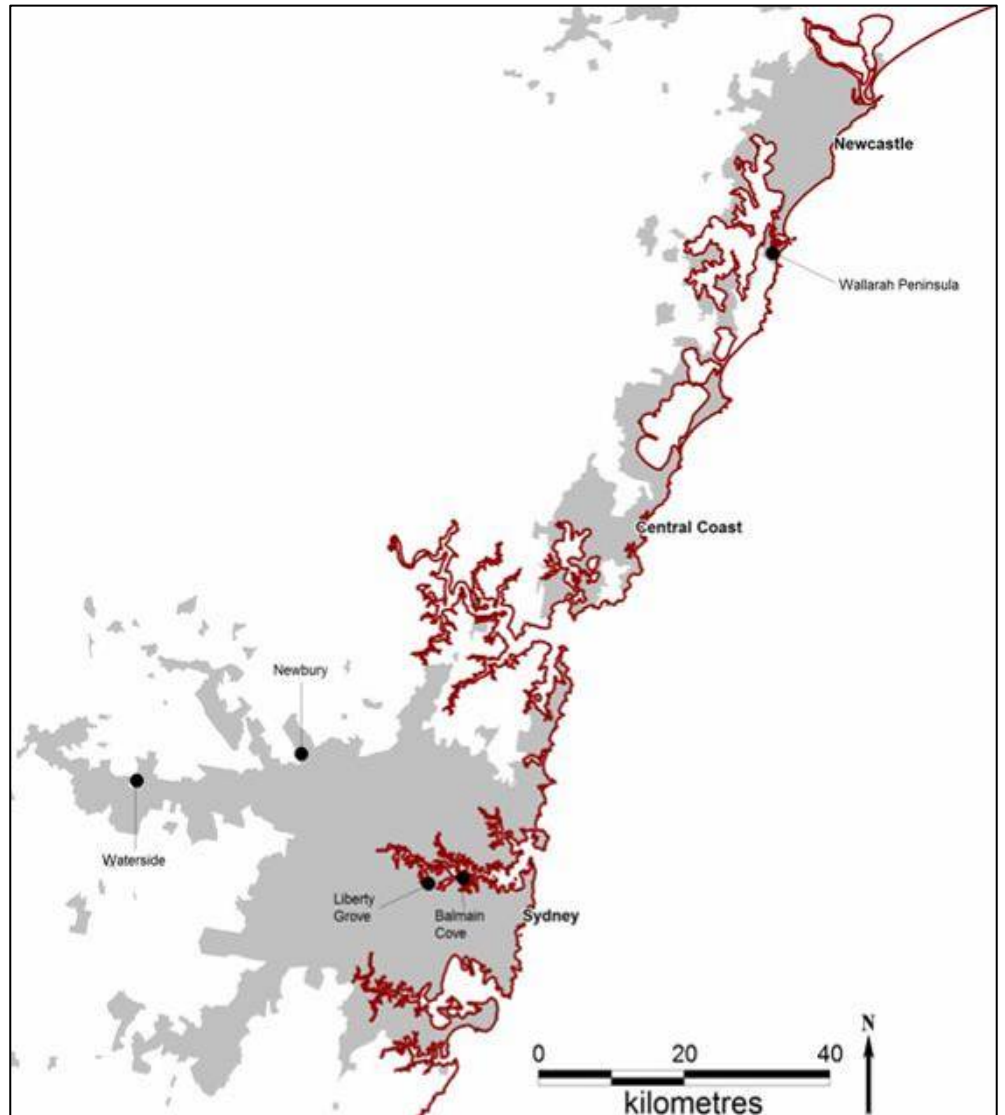
Table 2.2 Overview of case study locations



**Liberty Grove**

	Liberty Grove	Balmain Cove	Newbury	Wallerah Peninsula	Waterside
DP number(s)	270137	270180	270284, 270298, 270346, 270391, 270398, 270469 & 270504	270485	270488
Council	Canada Bay	Leichhardt	Blacktown	Lake Macquarie	Penrith
Developer	ANKA	Australand	Landcom/Mirvac	Stockland	Stockland
Dates of development	completed 2002	completed 1999	2002 - present	1997- present	2003- present
Size of Development	14.7 Ha	5.9 Ha	18.9 Ha	654 Ha	74 Ha
Type of publicly accessible infrastructure	Two parks, all roads, pedestrian easements, storm water system	No publicly accessible CT land (Lot 1)	Drainage corridors, water features	Park, bushland, habitat corridor, foreshore paths, storm water system, bio-drainage mechanisms	Lakes and surrounding paths, pedestrian bridges
Responsibility for maintenance of publicly accessible infrastructure	Community association	Council land (Lot 11) maintained by both Council and CA	Community association	Community association, Council and National Parks and Wildlife Service	Community association

Figure 2.1 Case Study Locations



The next section of the report provides a summary of the main findings across all five case studies in regards to the specific issues raised by UDIA NSW. More detailed analysis of each of the five case studies appears at the end of the report in Appendix 1.

### 3 Key Findings

This section provides a summary of the issues brought to light by the research undertaken in the five case study areas. The different ownership and management arrangements in place in the five case studies had significant implications for the use and management of publicly accessible infrastructure as well as the costs of providing and maintaining that infrastructure. The different contexts in which each of the schemes were developed were also extremely important to the development and delivery of an appropriate management strategy for publicly accessible property. The main issues regarding the future of community title schemes with respect to the provision of publicly accessible infrastructure are discussed.

#### 3.1 Differing provision and maintenance arrangements

The case studies presented in this report indicate the variety of methods through which publicly accessible infrastructure can be provided and managed in community title schemes in NSW:

1. *Infrastructure can be provided by the developer and owned by the community association as in **Liberty Grove, Newbury, Wallarah Peninsula** and **Waterside**.*

2. *Infrastructure can be provided by the developer, owned by the local council (or another agency such as NPWS) and maintained by both the council and the community association, as in **Balmain Cove, Wallarah Peninsula, Waterside**, and (potentially) **Newbury**.*

Community title developments do not automatically give rise to identical issues and concerns. The ownership and management approaches taken by stakeholders will influence both the issues that arise on the ground regarding this provision of publicly accessible property and the actions taken by developers, community associations and local councils in response to such issues.

#### 3.2 Use of publicly accessible property by non-residents

It is difficult to measure the use of a development's common property by non-residents in community title schemes. The only estimations available are anecdotal and the use of publicly accessible areas by non-residents seems to be largely determined by the design of the development and its integration with the surrounding area. The design of **Liberty Grove**, for instance, makes the development quite inward-looking, which may suggest that non-residents are less likely to enter the site. Its proximity to regional recreational facilities and emerging new residential development, however, suggests differently. For instance, non-residents can, and do utilise **Liberty Grove** as part of a walking circuit incorporating Bicentennial Park. Further, the increased residential population resulting from adjacent Rhodes apartment developments is likely to result in an increased pressure on local parks in the area, including those within **Liberty Grove**.

*It's an alternative to just dedicating things back to Council ... we've seen on a number of projects where that does happen, the upkeep of those facilities and the landscaping just doesn't occur. (Stockland employee, Waterside)*



Similarly, use of publicly accessible infrastructure within **Waterside** is likely to be significant given that it was designed to allow for pedestrian and bicycle access through the development to surrounding parks and sports facilities. In the **Newbury** development, the road system has been designed to connect with the surrounding roads and the nearby location of a shopping centre and schools is likely to encourage non-resident traffic in the area.

The assessment of the degree of non-resident use of publicly accessible property is also clouded by the problem identified in **Liberty Grove** and elsewhere of non-residents using residents-only common property. This use confused the access issue in **Liberty Grove**, leading to more frustration on the part of residents regarding the legitimate use of publicly accessible infrastructure by non-residents.

### 3.3 Management of publicly accessible property

Where publicly accessible common property is managed *solely* by a scheme's community association, issues regarding the functioning of the association are more likely to arise. The Executive Committees of community associations are composed of residents elected each year, who are usually only able to contribute a few hours a week and who do not necessarily have the specialised skills required for the effective management of community infrastructure, often valued at millions of dollars. This situation can be mitigated when members of the Executive Committee have some of these skills or where a professional managing agent is employed.

Different but equally important issues arise where the publicly accessible common property is dedicated to the local council. In some cases, this dedication happens after many residents have already moved into the estate. Thus, while potential residents are able to access information regarding the future arrangements for managing public space, buyers often purchase believing that facilities such as parks are private, but then find that those areas will be dedicated to the local council and will be publicly accessible. This situation can lead to confusion among residents about management responsibilities, the maintenance standards that should be expected, and residents' powers over who is allowed to use the estate's infrastructure.

This was a problem in the early stages of **Balmain Cove** and it may also arise as an issue in the **Newbury** development, when the parks are dedicated to the local council. In such cases, an agreement needs to be reached within the community association regarding the level of maintenance owners desire for the publicly accessible areas. As the level of maintenance provided by local councils is generally lower than that provided by the community associations of community title developments, owners may decide to contribute towards additional maintenance of their rounds even though they are publicly accessible. As one Council Officer noted:

It's a problem that we have with Council facilities ... that are developed by developers and handed over, because they hold onto it for a certain period of time to get their marketing value out of it and it's polished and

it's shiny for the time they need it to market the development, but as soon as it comes over to Council, we can only maintain to a certain level.

*There is also a higher standard of amenity and embellishment and better design of open spaces than if Council had done it (Mirvac employee, Newbury).*

Arrangements have sometimes been made in community title schemes for both the local council and a community association to provide maintenance in publicly accessible areas that have been dedicated to the council. The maintenance agreement in place in **Balmain Cove** between Leichhardt Council and the community association regarding the maintenance of the pocket parks and foreshore, for example, allows the Owners' Corporation to provide additional maintenance to a higher standard than that usually provided by Council.

### 3.4 Costs of publicly accessible property

There are two aspects of the costs incurred in the provision of publicly accessible space and facilities. These are the costs of initial provision and the costs of maintenance.

#### Provision

Information on the costs of initial provision of publicly accessible infrastructure and comparative information of the typical costs to councils of providing similar infrastructure were obtained for each of the five case studies (see Appendix 8). In many cases, however, the data were not complete, or else data provided on the cost to developers could not be directly compared with data provided by local councils on typical costs. For example, where infrastructure provided by the developer was not of the same type as that usually provided by council (such as the lake system at **Waterside**), direct comparisons were not practical. Furthermore, since the quality of the infrastructure provided by the developer is usually higher than that provided by local councils, the costs are not directly comparable.

#### Maintenance

The standard of maintenance provided by an estate's developer and the community association are usually higher than when provided and maintained by councils, again making the costs not directly comparable.

In four of the case studies (all but **Liberty Grove**), the local council contributes (or will contribute in the future) towards the cost of maintenance of many of the publicly accessible areas, with additional maintenance provided by the community associations. One exception is the provision of the lakes in the **Waterside** development, where Penrith Council development consent requirements included the provision of water sensitive urban design features within the scheme. While the walkways and pocket parks surrounding the lakes are publicly accessible, they are owned, and will be maintained, solely by the community association. This is an example of a Council negotiating the outcome of the management arrangement for the purposes not only of facilitating development on a complex site, but to ensure that the wider community could enjoy the amenity provided by that development.

## Insurance

Adequate insurance for public liability is especially important in community title schemes that provide publicly accessible infrastructure. Insurance premiums can pose a significant cost to property owners in these schemes.

*There are significant public liability risks associated with all of the common areas (Executive Committee member, Liberty Grove).*

## Fees and levies

The case studies indicate that little information is provided to, or understood by, residents about their responsibility to pay levies in community title estates. This incomplete information may stem from real estate agents not informing potential purchasers fully at the time of purchase. One **Liberty Grove** resident suggested that, while the management statement does include reference to levies, new buyers should be required to sign a separate clause in the management statement at the time of purchase that specifically outlines their responsibilities to pay levies. This would then ensure people are fully aware of their responsibilities before agreeing to the management statement.

A further issue is the practice by developers of paying the levies for all lots in the first two to five years as an incentive for potential purchasers to buy into the scheme (as was done in **Waterside, Newbury** and **Wallarrah Peninsula**). This practice may mean that owners are not accustomed to the payment of community levies in addition to local council rates and hence may be surprised by their later obligation to pay these.

Confusion among owners can also arise because levies may fluctuate during the life of a scheme and there are often disputes between owners who want to keep the levies as low as possible and others who wish to improve the services provided by the scheme's community association.

In addition to levies, owners in community title schemes are also required to pay local council rates in the usual way. In **Liberty Grove**, residents have approached their local MP requesting rate reductions because they are paying levies for facilities that are accessible to the public and would usually be provided by the local council (most significantly two parks and the roads that run through the estate). They have so far been unsuccessful. **Liberty Grove** is an interesting case as the areas that are publicly accessible are both owned and maintained by the community association, with no financial support from Canada Bay Council, despite the fact that these areas include the type of infrastructure that is usually maintained by local authorities (roads, parks and stormwater drains).

The possibility of agreeing to charge different rates for community scheme residents in the longer term was also discussed by officers at both Penrith City and Lake Macquarie Councils for the **Waterside** and **Wallarrah Peninsula** developments. However, any reduction in rates would have to be proportional to the council costs incurred in maintaining those areas to council standards so that rate reductions of this kind would not completely eliminate maintenance costs for residents.

A case for rate reductions may also be made in situations where owners of community association land are charged higher rates than owners of Torrens title subdivisions. The revenue statement of the Gold Coast City Council in Queensland, for example, specifies different rates for residential lots not in community title schemes (\$0.3417) and residential lots of different types and sizes in community title schemes (ranging from \$0.4393 to \$0.6408) (Gold Coast City Council 2007b:19). This differentiation raises several equity issues that do not appear to have become an issue in NSW where all local councils, to the best of our knowledge, rate residential properties in the same way, whether or not they are inside a community title development. In all of the case study areas reported here, the council rates levied on residents who own property within community title schemes were identical to those levied on residents in other parts of the LGA.

*It's just not equitable that people less than 100 metres from me are being rated at the same basis, and yet their services are more highly supported (EC member, Liberty Grove).*

Another possible argument in support of rate reductions for community title lot owners would arise if the land inside community schemes were to be given a higher value than land outside those schemes, resulting in higher rates payable by community lot owners. In order to provide an indication of whether this was occurring, we obtained land value data for lots within three<sup>6</sup> of our case study areas and similar lots adjacent to these schemes and within the same local area. Our results were mixed, with the land inside **Liberty Grove** being assessed at a higher value than land in surrounding areas; land inside **Balmain Cove** being assessed at a lower value than land in surrounding areas, and the assessed values of land inside and outside the **Newbury** development being very similar (see Table 4.1 below):

Table 4.1 Average land values per square metre for residential lots within community title schemes and residential lots adjacent to those schemes

Average Land Value per m <sup>2</sup>	Liberty Grove	Balmain Cove	Newbury
Inside the scheme	\$1389	\$2930	\$422
Outside the scheme	\$952	\$3225	\$472
Differential	\$437	-\$295	-\$50

In NSW, the provision of rate reductions to community associations would require a change to the *Local Government Act (1993)*. While s493 of the Act states that the categories for ordinary rates (including the residential category) can, at council's discretion be divided into sub-categories, this is only possible in accordance with s529 of the Act, which states that a sub-category of the "residential" category can only be determined "according to whether the land is rural residential land or is within a centre of population". This means that it would not be possible to determine a sub-category for community title land without a change to the *Local Government Act* which would have to be passed by both the lower and the upper houses of State parliament. A large lobby group would be required to support this change.<sup>7</sup> Further, the option of having special rates for community schemes would not enable the provision of rate *reductions* under the current system as special rates are levied *in addition to* the base rate. Rate *rebates*, however, may be a possibility.

<sup>6</sup> The research team was unable to make similar calculations for Waterside or Wallarah as these development are not yet fully subdivided.

<sup>7</sup> We are grateful for assistance in addressing this issue from Carolyn Chudleigh of Holding Redlich Lawyers.

We were unable to find any examples of rate rebates being provided to community scheme lot owners in NSW. However, Wyndham City Council in Victoria has provided a service rate rebate to lot owners in the Sanctuary Lakes development of \$171.70 per rateable property for 2007/2008. This amount has been calculated to be “equal to that which would normally be spent by Council in providing public works and services within Sanctuary Lakes to the standard that Council applies across the municipality” and is considered “cost neutral from the viewpoint of Council and other ratepayers” (Wyndham City Council 2007:31).

Perhaps the closest international examples of rate reductions for community title-like schemes outside Australia are in the USA. For example, in the state of New Jersey, municipalities are required to reimburse homeowners associations<sup>8</sup> for some private services that would otherwise be publicly provided (including snow removal, street lighting and collection of leaves and recyclable materials) (NJSA 40:67-23.3). Notably, the statute only applies to roads or streets “accepted for dedication to public use” (NJSA 40:67-23.3). However, the statute states that:

The amount to be reimbursed to the qualified private community shall be used by the qualified private community to pay for the service which the municipality chooses not to provide, and that amount shall be the actual cost to the qualified private community of providing that service, but not exceeding the amount which the municipality would have expended on that service if it were provided directly by the municipality to the qualified private community. (NJSA 40:67-23.5)

A number of other municipalities outside the State of New Jersey, including Houston, Texas, Kansas City, Missouri, and Montgomery County, Maryland, offer a property tax rebate for owners in residential associations that provide their own services (Kennedy 1995).

Another alternative open to the community association at **Liberty Grove** would be to negotiate with Canada Bay Council to dedicate the parks to the council, making it responsible for their maintenance. Further agreements could then be drawn up if the community association wished to provide a higher standard of maintenance than that provided by the council. It is not known what the position of either Canada Bay Council or the community association would be on this approach.

However, this approach of dedicating land and infrastructure to council, utilised in the other four case studies, is only possible for publicly accessible infrastructure that meets council standards and is of the type usually provided by councils. Additional facilities not usually provided by councils, such as swimming pools and gyms for a small number of households and other facilities such as golf courses, would generally be included in schemes as private common property and maintained as such.

Furthermore, in **Liberty Grove** the roads could not be dedicated to Canada Bay Council as they do not meet council engineering

---

<sup>8</sup> American homeowners associations have a similar function to community associations.



requirements. Similarly, in **Waterside**, it is unlikely that the lakes could be dedicated back to the local council as development approval was conditional on the applicant being willing not only to construct the lakes but also to agree to a system under which Penrith Council would not be responsible for their maintenance. These lakes are not the type of infrastructure normally provided by Council and hence it is unlikely that Council would want to be responsible for their maintenance. In such cases it is important to explain to owners why these areas, even though they are publicly accessible, must remain the responsibility of the estate's community association.

It should be reiterated at this point that, with the exception of **Liberty Grove** and some parts of **Wallarah Peninsula**, the local councils involved in our other case studies provide the same level of service and support within the community title schemes as they do in the surrounding areas. In all other cases, the community associations (and hence the owners of lots in the scheme) are responsible for the maintenance of publicly accessible areas only where these include infrastructure not usually provided by councils, or where the owners desire an enhanced level of maintenance.

### 3.5 The importance of context

The context in which a community title scheme is developed is of the utmost importance when developing and delivering an appropriate management strategy for publicly accessible community property. Any such strategy will depend on a number of factors, including:

- The specific policies of the local council in which the scheme is developed. Penrith City Council, for instance, is focusing on making Penrith a walkable area and is pushing strongly for new developments to be seamlessly integrated with surrounding residential areas. This stance influenced the design of **Waterside**. The type of publicly accessible infrastructure provided is likely to affect the extent to which the infrastructure is used by the surrounding community.
- The working relationship between a local council and a scheme's developer. When a council and developer have a good working relationship, negotiations between the two parties regarding the provision and maintenance of publicly accessible infrastructure proceed relatively smoothly and meet the objectives of both parties.
- The market at which the developer is aiming and hence the branding used to promote the development. For example, whether the development being marketed as 'exclusive' or as part of the 'wider community' influences buyer perceptions of what is appropriate.
- The type and extent of publicly accessible infrastructure to be provided. For example, the management and maintenance of a park (such as the 'village green' at **Wallarah Peninsula**) are likely to be less problematic and less costly than those of a lake (such as those at **Waterside**).

- The income of owners and residents and ability and willingness to pay additional levies to maintain facilities to a higher standard than the local council.
- The density of the development. For example, community title developments on brownfield sites generally have less space for both public and private community infrastructure than those on greenfield sites. This is likely to lead to pressure to provide less publicly accessible infrastructure and more infrastructure for the sole use of residents in brownfield developments.
- The degree and type of involvement of state government agencies in the process of development and its design and requirements. This involvement is especially relevant where the development is on sensitive land, as can be seen in the circumstances surrounding the dedication of land to the National Parks and Wildlife Service (NPWS) at **Wallarah Peninsula**.

### 3.6 The future

The issue of the cost of maintenance of publicly accessible infrastructure has come to the fore in the older case study developments of **Liberty Grove** and **Balmain Cove**, and can be expected to become a more significant issue in the other three case study schemes after five to ten years when their infrastructure requires re-investment or upgrading. In some cases, community associations have voluntarily set up sinking funds. However, the recent legislative changes to the Strata title legislation in the *Strata Schemes Management Regulation 2005*, requiring the establishment of ten-year sinking fund plans for all strata schemes by July 2009, does not apply to community title schemes. This issue needs to be addressed.

The ongoing relationships between the developer, community lot owners, the Executive Committee of the community association and the local council are of the utmost importance in the successful long term maintenance of publicly accessible infrastructure. This is particularly the case in the schemes where the developer maintains the infrastructure in the short term before handing it over to the local council and the scheme's community association for joint maintenance.

Some concern was also raised in the course of the research about publicly accessible infrastructure being included in community title schemes when the community association is responsible for their management and maintenance and where the failure of that infrastructure could threaten life and/or property. Examples include stormwater drains (**Liberty Grove**), bushland (as in **Wallarah Peninsula**) and waterways (as in **Waterside**).



### 3.7 Summary of benefits and constraints

This study has highlighted a number of benefits and drawbacks to providing publicly accessible infrastructure in community title schemes. A summary of these is provided in Table 5.1.

Table 5.1: Benefits and constraints on the provision of publicly accessible infrastructure in community title schemes

	Benefits	Constraints
Provision of infrastructure	Developers can provide higher standard of infrastructure to that normally provided by councils.	
	Developer can provide infrastructure that fits a particular marketing theme.	
	Councils do not have to physically provide additional infrastructure for new residents.	
Maintenance of infrastructure	Residents can maintain infrastructure to desired standard.	Residents required to pay a number of fees and levies.
		If levies are not paid, cost of recovery is high and areas can fall into disrepair.
		Where councils do not contribute to maintenance of publicly accessible areas, residents may protest they are 'paying twice'.
	<i>Joint maintenance arrangements</i> enable residents to take advantage of the same level of service provided by council to other residents in the LGA, while having the option to provide additional maintenance.	<i>Joint maintenance arrangements</i> can lead to uncertainty on the part of residents about who is paying for what and to whom to go to with complaints.
		<i>Joint maintenance arrangements</i> require cooperation between stakeholders, which can be time consuming and costly.
Management of infrastructure	Residents have control over the management of common property.	Uncertainty by residents about which areas are publicly accessible.
	By-laws can also apply to visitors.	Uncertainty by residents & visitors about what activities are permitted in publicly accessible areas.
	Councils have fewer complaints to deal with when issues arising within a community title scheme are dealt with by the community association.	Executive Committees are expected to do a lot of work, often with volunteer members who may not have the requisite skills.
		If residents do not adequately plan for future maintenance, infrastructure can fail, leading to large bills for all owners.
		Community associations require significant insurances, including public liability insurance.
Risks and liability		All lot owners are liable to pay for the repair or replacement of damaged or failed community infrastructure.
		All lot owners are liable to pay out on successful public liability claims for injury that occurs on publicly accessible community property.
		Where property is owned by council (or another agency) and the community association is involved in providing additional

		<p>maintenance, public liability claims are directed at the landowner in the first instance. However, where the community association is responsible for maintenance and the accident or injury is found to result from inadequate maintenance, the landowner <i>could</i> cross-claim the community association.</p>
--	--	---

### 3.7.1 Provision of infrastructure

Developers can provide a higher standard of infrastructure to that normally provided by councils and thus provide an enhanced level of amenity for residents. At the same time, local councils are not burdened with the provision of such physical infrastructure. However, in many cases, the cost savings to councils are offset by section 94 credits provided to developers. Furthermore, developers are able to provide infrastructure that fits with a particular marketing orientation but which goes beyond 'normal' council provision.

### 3.7.2 Maintenance of infrastructure

Community title allows owners to maintain infrastructure to the standard that they desire but owners are also required to pay a number of fees and levies, including a community levy (in some cases also strata and neighbourhood levies) and council rates. In many cases, it seems that owners were not aware of the extent of their responsibility to pay levies when they moved into a community title estate.

There can be disagreements amongst owners about the standard of maintenance they desire for the development and the amount of levies they are willing to pay. When levies are not paid, the community association must cover the legal cost of recovering those levies (although in some cases this cost is passed back to the non-paying resident). In the more extreme cases, there may be negative outcomes for the community infrastructure which might lead to issues of disrepair and potential public liability concerns.

In the case of **Liberty Grove**, the publicly accessible infrastructure within the scheme is maintained solely at a cost to the community association, with no cost to Council. This has led to concerns by some residents that they are 'paying twice' for these areas, once through community levies and once through council rates. This has resulted in some residents to considering the gating of the estate. However, Council is highly unlikely to approve the gating of this community. Indeed, many Councils in NSW are opposed to gated developments and it is therefore unlikely that problems arising from the provision of publicly accessible infrastructure in community title schemes will result in any significant increase in the number of gated communities in NSW.

Joint maintenance arrangements between the developer (initially), council and the community association (such as those in place in **Newbury, Waterside, Balmain Cove and Wallarah Peninsula**) raise a further set of issues. They are beneficial in that they usually enable residents to take advantage of the same level of service provided by council to other residents in the LGA, while also having the option to provide additional maintenance to improve standards within their

community scheme. However, such arrangements can also lead to uncertainty on the part of owners and residents about who is paying for what, as well as confusion about to whom to direct complaints. If they are to be successful, joint maintenance arrangements require a transparent cooperation between all interested parties, including correspondence and meetings, although this can be time consuming and costly.

### 3.7.3 Management of infrastructure

Owners usually have a degree of control over the management of publicly accessible infrastructure within a community scheme. For example, in the case of **Liberty Grove** the by-laws of the community scheme also apply to publicly accessible areas. The two parks in the scheme can only be used for passive recreation as defined in the management statement, meaning that organised sports are not permitted within the scheme. Local councils can also benefit where minor issues and complaints are dealt with within a scheme through by-laws and management by the community association, rather than residents approaching their local council for remedy.

Drawbacks with respect to the management of publicly accessible infrastructure within community title schemes include a level of uncertainty by residents about which areas are designated as publicly accessible. This can also lead to uncertainty by residents and visitors about what activities are permitted in publicly accessible areas. There are also public liability issues regarding the admittance of the public into community land that need to be recognised, with community associations being liable for accidents that occur on publicly accessible community property and potentially also financially responsible for accidents that occur on council-owned land that is maintained by the community association (see below).

Furthermore, Executive Committees are expected to have responsibility for the management of publicly accessible areas. They are usually made up of volunteer members who may not have adequate time or the required skills to effectively perform this role. Finally, if residents do not adequately plan for future maintenance (for example, through sinking funds), then infrastructure can fail, potentially leading to major safety and amenity problems, as well as the possibility of major additional levies being imposed on owners to pay for the cost of repair or replacement. This can cause serious problems if owners are unable or unwilling to pay these maintenance costs as infrastructure and facilities age. Furthermore, in those cases where failure of infrastructure or insufficient maintenance could lead to loss of life or property - such as failure of a lake system or waterway, or insufficient bush fire management - the gravity of this situation is apparent.

### 3.7.4 Risks and Liability

All lot owners within a community title scheme that contains publicly accessible property are legally obligated to pay for the repair or replacement of community infrastructure within a scheme (whether it is publicly accessible or not). This means that if the community association has not budgeted or insured sufficiently for such a cost, all lot owners

will have to contribute towards that cost (proportional to their unit entitlement).

Similarly, public liability claims for injury or accident that occurs on publicly accessible community property<sup>9</sup> will be directed to the land owner, who is the community association and hence if the community association has not budgeted or insured adequately for such a cost, this cost will fall with the lot owners in the scheme.

In those cases where publicly accessible property is actually owned by the local council (or another agency such as NPWS) and the community association is involved with that property only in the sense of providing additional maintenance, public liability claims would be directed at the landowner (e.g. the local council) in the first instance. However, where the community association is responsible for the maintenance of that infrastructure and the accident or injury is found to be as a result of inadequate maintenance, the landowner (e.g. the local council) could cross-claim the community association.

If a community association were to be found liable for accidents or injury (either as a consequence of being the owners of the land, or being cross-claimed) and their insurance was found to be insufficient to cover these costs, all of the owners in a community scheme would have to pay to cover the claim. This is a serious situation and the reason why insurance is a compulsory issue on the agenda of the AGMs of community associations in NSW. It is probable that community associations will take a very conservative view and over-insure, pushing up levies and creating potential conflicts among residents and owners.

---

<sup>9</sup> We are grateful for assistance in addressing this issue from Carolyn Chudleigh of Holding Redlich Lawyers and Francesco Andreone of Andreones Lawyers.

## 4 Common Ground Principles

The City Futures Research Centre's examination of the costs and provision of community infrastructure in community title schemes in NSW informed a series of principles to guide developers and government on the ideal use of these schemes. Common Ground contains 15 principles to help build a better community title estates.

<b><i>Planning &amp; Design</i></b>	
1	Community title is a market niche. It is used to establish and maintain a level of local amenity, character or services for residents at a higher level than that usually provided by council. Ensure the scheme meets resident expectations as well as their ability and willingness to pay.
2	Community title includes features such as landscaped parks, walkways and recreational facilities that are maintained by a community association funded by the owners.
3	Community title may facilitate improved design outcomes while inclusion of landscape elements such as waterways and bushfire protection zones in such schemes recognises the benefit of local ownership and maintenance, provided sufficient recurrent funding by the owners corporation is maintained (refer to management and maintenance).
4	Physically delineate publicly accessible land, private shared land and infrastructure.
5	Comply with council's design guidelines where possible. Transfer of lot one to public ownership is presently not permissible and would be contrary to the intent of creating a point of difference in the market. Nevertheless adherence to council's design guidelines may provide the community association with greater options in the long term.
<b><i>Management &amp; maintenance</i></b>	
6	Prepare management plans at the development stage including financial projections for the adequate maintenance of infrastructure. Community associations have the potential to minimise levies by deferring regular maintenance which increases the risk of system failure and creates disproportionately higher repair costs.
7	Establish partnerships with specialist agencies and contractors to manage major infrastructure on behalf of the community association. Establish a budget and condition future residents to ensure sufficient funding for works.
8	Foster a strong working relationship with the council to understand the fundamental responsibilities of the local government and where the community association can most efficiently expend their resources to value-add.
9	Encourage the council to provide the same level of maintenance within the estate as they do elsewhere in the LGA or seek rate rebates if the local government service is reduced.
10	Address liability issues for publicly accessible areas within community title schemes. Inform the community associations and insurers of such liabilities including any maintenance agreements between the community associations and other bodies.

<b>Sales</b>	
12	Present a services inventory listing all assets that will be controlled by the community association. Document the purchasers' forecast levy expenditure at the point of sale.
11	Clarify the purchasers' legal obligations to cover costs consistent with the community association's responsibilities at point of sale.
13	Explain the developer's obligation to purchasers at point of sale regarding the maintenance of common areas of the scheme and advise of an indicative timeframe when this maintenance will cease and all assets either transferred to either local government or the community association.
14	Where land is dedicated to the local government, inform residents of the extent and nature of the land and infrastructure to be dedicated.
15	Illustrate public access to the estate and common areas.

## Appendix 1: Case studies

### 1 Liberty Grove

#### 1.1 Background information

##### General information

- Council: Canada Bay
- Number of residential lots: 795 (295 courtyard homes and townhouses; 216 low-rise apartments; 284 high-rise apartments)
- Number of residents: Approximately 3,000

##### Ownership

- Average purchase price of community lots: \$442,043 (based on most recent purchase). Average purchase price of strata lots (based on 2006 sales) \$396,454.
- Average land value of community lots: \$260,498.
- Average area of community lots: 182 metres.

##### Development

- Developer: ANKA Group
- Area of development: 14.73ha, built on the site of the former Concord Industrial estate (approx 12.4 ha) and adjoining State Rail Authority land (approx 2.2 ha).
- Dates of development: 1996 - 2002.
- Types of and DPs of plans: Community plan (DP270137); strata plans (SP56097; SP59012; SP61690; SP62131; SPSP63405; SP65077; SP65967; SP63404; SP65078; SP65788; SP68375; SP68389). No neighbourhood or precinct plans.

##### Publicly accessible community property

- Two parks
- Roads and walkways
- Two pedestrian easements, one leading from Liberty Grove to Queen Street and the other to King Street in Concord
- Visitor parking
- Stormwater drains

##### Private community property

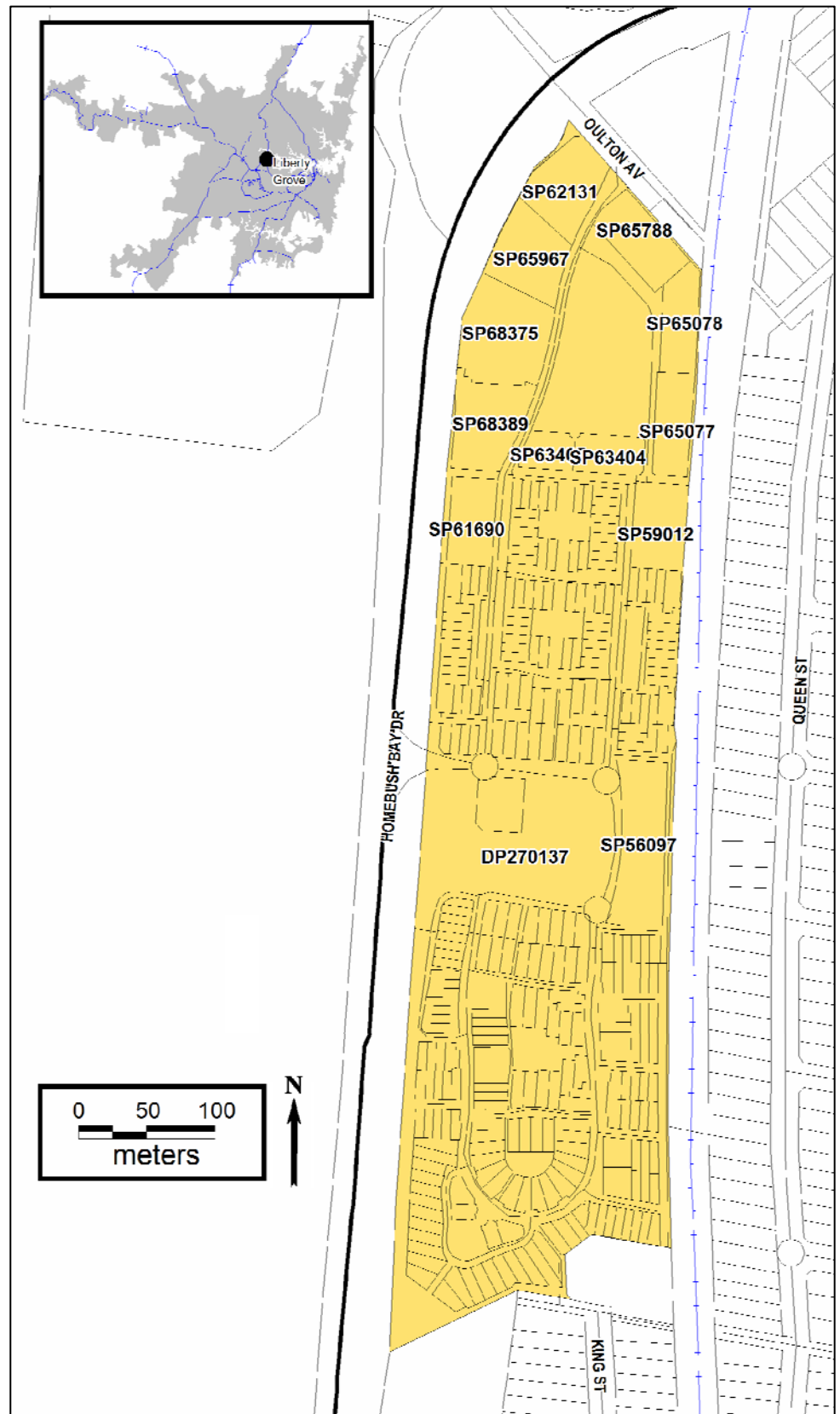
- Two swimming pools
- Two tennis courts
- Basketball court
- Gym
- Sauna
- BBQs
- Children's play equipment
- Conference room

##### Other

- Liberty Grove was one of the first community title projects in NSW. Many of the amendments to the Community Development and Community Land Management Acts are thought to have been based on experiences with the development of Liberty Grove (prior ANKA employee).



Figure 1.1 Liberty Grove



## 1.2 Value of community and publicly accessible property

### Value of community property

Based on its insured replacement value the community property has a value of \$22,350,000. The area of all of the open space in the development (excluding roads) is 2.9 hectares. An additional four swimming pools, gymnasiums and community rooms are located within the strata schemes. The community association is also responsible for maintenance of the stormwater drains in the development.

The publicly accessible community property has an area of 1.1 hectares. Its value is estimated by Dynamic Property Services to be approximately \$20,000,000.

Our interviews with stakeholders in Liberty Grove revealed, however, that there was considerable confusion regarding what exactly constituted publicly-accessible property in the development. While the two large parks were (correctly) thought to be publicly accessible, questions remained for residents as to the status of the walkways and roads. For example, a member of the Executive Committee was unclear as to whether the pedestrian walkways through the centre of Liberty Grove must be made accessible to the general public or not. In fact, these paths are not designated as publicly accessible space on the plans, but no barriers have been placed at the ends of the walkways which has meant that they are publicly accessible in practice.

## 1.3 Use of publicly accessible property

*From my understanding, it's generally residents that use the facilities even though they're public.*

There are two issues surrounding the use of common property that appeared to be conflated in our discussions around Liberty Grove. The first is the legitimate use of publicly accessible infrastructure by non-residents and the second is the illegitimate use of non-publicly accessible common property by non-residents. When asked about the use of publicly accessible common property by non-residents, the Manager noted that the residents treated the publicly accessible property as their own and use by the general public was not excessive:

From my understanding, it's generally residents that use the facilities even though they're public. I don't know the public's perception, whether they realise they're entitled to use Liberty Grove. It's tough getting a visitor's car park there.

Furthermore, the publicly accessible property is still owned by the community scheme and is subject to the by-laws of the community scheme (prior ANKA employee). Under these by-laws, these areas can be used only for passive recreation, defined in the Community Management Statement as:

Any activity conducted in the Public Open Space or the Communal Open Space that is not an Organised Sport, Game or activity and which does not adversely

impact on surrounding residential amenities by way of excessive noise or vehicular traffic or compromises the amenity or safety of persons upon the community parcel (Freehill Hollingdale & Page 1997:28).

This means that these areas cannot be used for sporting activities as envisioned by the Council:

The open space area known as The Village Green is seen to be suitable for school and junior sporting activities and also for use of community events. The northern parcel of public open space is seen to be suitable for junior sporting activities of a larger nature (Canada Bay Council Meeting No. 16/96).



**Sign at Bradley Reserve (the northern park).**

The use of non-publicly accessible infrastructure by non-residents was a more contentious issue. A prior member of the Executive Committee estimated that in summer up to 20% of the people using community property such as the swimming pools and tennis and basketball courts are not entitled to do so. However, he also noted that this is extremely difficult to estimate:

All you need is to ask some guy, where do you live, and he says I don't live here, but I'm a friend of the guy who lives over there, how do you prove that? And every time we try to bring in some sort of by-law that says that a resident has to stay in the company of his guests, it's always hailed down – oh it's too restrictive – it's Gestapo-like, so it's very difficult to police.

A member of the Executive Committee also noted that many people use the walkways through Liberty Grove:

It's not just confined to the grassed areas where people might come and use them, it's the whole of the external environment in Liberty Grove outside of our fences, you know, outside of our buildings. All of that is available for everyone to use, and I don't know how it's zoned or designated otherwise, but we maintain all of that and it is most definitely used by dog walkers and older people who want to walk on a flatter, more protected environment than on the roadways, they find it more pleasant in here than walking along the footpaths outside.

It was predicted that as time goes on, the use of Liberty Grove by non-residents will increase, especially given the continued development of apartment complexes at Rhodes Peninsula to the north of Liberty Grove:

People from there might easily be disposed to go for a walk, because there's quite a natural walk through Liberty Grove and back round through Bicentennial Park on the other side ... I should imagine that more people might choose to use Liberty Grove as part of their walk.

## 1.4 Management of publicly accessible property

The most significant issue with regards to management of the common property at Liberty Grove are: the costs of supervising the publicly-accessible property; managing the use of non-publicly accessible property by non-residents; and policing parking.

*The law's been set up to say OK you've got all the responsibility and absolutely no power.*

In terms of supervising the publicly accessible property, the Manager noted that there was a need to have extra security on public holidays because there are more young families coming to the estate, and that some maintenance is required such as re-screwing seats, replacing plants and cleaning.

Furthermore, one of the biggest issues to be raised by interviewees was the use of non-publicly accessible property by non-residents. The difficulty is in establishing whether people are entitled to use these facilities or not. As a prior member of the Executive Committee noted:

[The security guards] have the power to request [non-residents] to leave, they can use reasonable force to eject them ... The catch 22 is that they have to be virtually assured that that person is not entitled to be there and that's extremely difficult to establish.

Parking was a particular point of contention in Liberty Grove, where both resident and visitor parking is scarce. The Council is unable to police parking on the estate because the roads do not meet Council standards and the security guards, who do police the traffic, do not have any formal power (Manager). A member of the Executive Committee explained:

While we're given the responsibility of maintaining all of this we can't do anything to enforce any provision we want to ... the law's been set up to say OK you've got all the responsibility and absolutely no power ... we started stickering [sic] cars, politely asking them not to be in certain places and we got them shoved back in our faces and told we can't do that ... 'you sticker my car again and I'll sue you' ... we try and enforce some sort of standard ... and we've got absolutely no power, so all this responsibility and the law doesn't allow us to do bugger all with it except spend money ... it doesn't allow us to police, to restrict, to do anything positive that might serve the community and yet we've got the responsibility to own it and maintain it.

These issues have resulted in some discussion amongst the residents of Liberty Grove around the possibility of gating the estate. A prior member of the Executive Committee explained:

There are two fairly well-defined schools of thought. One basically says well yes, we don't like it very much, but what's it going to cost us to fix it, to gate the estate and do we really want a gated estate, it's going to cause more problems than it solves, what are the logistics of it if we gate the estate – how's my friend

going to come and visit me ... And there's the other school that says yes, it's our estate, we pay for it, we should have total control over it. If Council aren't prepared to subsidise our roads, we should have the total ability to prevent vehicles from entering and if it's going to cost money, we should be prepared to spend that money. So the estate is fairly well polarised.

## **1.5 Costs of publicly accessible property**

### **Development**

While the costs of development of all of the community property are not available, the 1.1 hectares of publicly accessible space were valued at \$2.3 million in 1994 (Canada Bay Council Meeting No. 24/94).

### **Upkeep / maintenance / insurance**

The major costs for the community association in managing publicly accessible property are repairs, maintenance and supervision of community property. It is estimated that the annual costs of maintenance of the publicly accessible areas in Liberty Grove are approximately \$216,000 (see Appendix 4).

The roads are a particularly significant part of the provision of infrastructure in Liberty Grove. The Manager estimated that it has cost the community association an additional \$60,000 for extra road works, signage, speed humps and one way signs in Liberty Grove since the development of the scheme.

Insurance costs for the development are also substantial. The cost of the public liability premium for the community association property is \$3,597 per annum (Manager):

It's quite a cost ..... we've got a schedule of insurances and every year they are presented and approved and because of our liability ... we don't want to cut corners on it, but there are significant public liability risks associated with all of the common areas (Executive Committee member).

The insurer has been asked whether it costs more to insure land that is accessible to the general public than it would to insure only the residents of the estate, but no satisfactory answer has been forthcoming (prior member of the Executive Committee).

### **Does it cost more because it is publicly accessible?**

The fact that some community property was publicly accessible was thought to have a minor inflationary impact on the cost of maintaining those areas. For example, the Manager argued that the rate of repairs in publicly accessible areas is higher because the people using the parks have no ownership stake and therefore are more likely to leave more rubbish and vandalise. However, the Manager noted that residents of Liberty Grove treat the publicly accessible property "like their own, it's

not like oh this is open to the public so let's just run it to ruin, they're really intent on managing the facilities".

A prior member of the Executive Committee noted that:

We can probably work out a cost [of maintaining publicly accessible property], but would that cost be different if nobody used it? I mean is one person walking along the roadway going to damage it to the extent where it is quantifiable .... The short answer to that is no.

### **Would it be cheaper for council to provide this infrastructure?**

When asked whether they thought that the community association could provide publicly accessible community property at a lower cost than Council, both the prior and current member of the Executive Committee estimated that Council may be able to provide specialist services such as road maintenance and underground services (sewerage etc.) at a cheaper rate, but that above ground maintenance would cost the same or less for the community association to provide than for Council. Furthermore it was noted that the level of service provision and maintenance provided by the community association is generally higher than that provided by Council:

Maybe we spend on it more than the Council would anyway because the council might not be so bothered by trees dying or the grass growing too long. Whereas if that happened here someone would grizzle, so the gardeners make sure they're on top of it all. So we've probably got a standard that might be a little bit above the council's so to compare the costs might not be reasonable (Executive Committee member).



*The Village Green*

### **Fees and charges**

The levies paid by owners are outlined below:

- Townhouses and duplexes: approximately \$1,890 per annum to the administration fund and \$580 to the sinking fund (a total of \$2,470 per annum).
- Two-bedroom apartments: approximately \$2,110 per annum to the administration fund and \$1,220 to the sinking fund (a total of \$3,330 per annum).
- Three-bedroom apartments: approximately \$2,834 to the administration fund and \$740 to the sinking fund (a total of \$3,574 per annum).

The levies paid by apartment owners are higher as these owners contribute to both strata levies and community levies.

Property owners in Liberty Grove are also required to pay the following (standard) council rates:



- Owners of properties valued under \$350,000 pay approximately \$750 pa.
- Owners of properties valued above \$350,000 pay approximately \$1,100 pa.

An issue was raised in regard to people buying into the scheme without understanding the requirements for payment of levies. This concern arises in part because real estate agents do not always provide this information to prospective residents (Manager; Executive Committee member):

People buy in this environment thinking that it's part of the world at large, you know, there's no real estate agent that says hey, by the way, do you realise that you're going to be paying for more services than you're going to get ... so people come in and while we sign this contract, the contract book is about that thick and regular people don't read things that thick and understand it all, you know (Executive Committee member).

A member of the Executive Committee suggested:

You can make it more explicit, a requirement of a solicitor and or an agent to make it clear, they have to specifically identify and have people sign that clause and explain what that means.

Indeed, by far the biggest issue surrounding the payment of fees and charges in Liberty Grove is that of 'paying twice' for services. In other words, residents are concerned that they are paying their community levies for services and are then required to pay full council rates in addition. A member of the Executive Committee explained:

A significant amount of stuff that we are responsible for, underground cabling, underground water ... Liberty Grove is now considered to be a suburb within Canada Bay itself, so it has the status of a suburb, yet it's responsible for all of its services except rubbish removal .... that's all we get, I mean we get the libraries and whatever else Council does, so in terms of general amenity yes, but in terms of your physical and local environment, there's nothing, we do everything. The main issue will come when there's a major issue of one of the services, or some of the services and there's millions of dollars at stake ... the council should be concerned about that. But we have these insurances too, but that's another cost. We talk about the sinking fund and all of the extra insurances we have to carry and some of them are geared towards that contingency, but is it reasonable, is that the way the government wants the world to be, everyone looks after their everything, that's not community at all, in terms of the broader community, it's not being treated the same.



The residents of apartments in Liberty Grove are particularly burdened by levies, as they pay three levels of charges: strata levies, community levies and council rates.

### **Do people mind these costs?**

The Executive Committee have raised this issue with the local MP (Manager, member of the Executive Committee, prior member of the Executive Committee) but to no effect at the time of this study:

It's a dork of a system but obviously the developers had conversations with Council and traded off one thing versus another thing and they've ended up with this silly system, I think, where we are responsible for our own roads and infrastructure under the roads, you know, stormwater, power, gas ... The principle is we pay rates at no concession and yet we're getting all these additional burdens ... we continue to try and canvas Council with it but at the end of the day they've got this agreement with the developer and how it works ... I can't see how you can possibly charge the whole of Canada Bay at a certain rate in the dollar and give them X number of services and charge us the same rate in the dollar and give us X minus roads, minus underground services, minus parks, how does that work? Where's the equity in that, there's just none (Executive Committee member).

The same question was raised as an issue when the developer was still involved in developing the whole project. A member of the Executive Committee explained:

Basically [his response] was he would blame the Council and the Council would blame him as to whose initiative it was. The Council gave him permission only on this basis, so he had to do it and then you go to the Council and ask why it was done, it was because the developer said he wanted it and he probably got something traded for that ... he probably got higher density or something ... but someone's made a buck out of it and we're paying the price ... and we pay the price continually ... It's been talked about for a long time with a lot of people with no result.

This issue was framed as an issue of equity:

It's probably more about equity than anything else, it's just not equitable, in my mind that people less than 100 metres from me are being rated at the same basis, and yet their services are more highly supported (Executive Committee member).

There were calls by the Executive Committee for concessions on local council rates and for recognition by Council that this is an important issue with regards to forward planning:

On the one hand we're paying these rates, and on the other hand we're having to dedicate a certain amount of the body corporate fees and everything else to a sinking fund. Now, it would seem reasonable to me, if we're to be responsible, that the concession on the rates could then be dropped into our sinking fund, so that would top that up, so rather than oblige the Council who are short supplied and short staffed to add us to their list, maybe they have a desire to stay away from maintaining this environment, that's their call I guess, but if we could use the overcharge ... to drop into our sinking fund ... We're quite new here so we haven't had any major expenses, but just imagine if a stormwater drain went bugger up or something, that's a huge number we're talking about. People don't come and fix those for hundreds of dollars, it's thousands upon thousands and I'm not a public works person so I don't know quite what the implication of us having responsibility for the outflow of a larger area is, so if we just chose not to fix it, what happens to Council, what does Council think about that? ... Maybe we're not totally isolated and maybe our actions will impinge on other rate payers, so if that's the case, really they should have [thought about that] (Executive Committee member).

## 1.6 The importance of context

A member of the Executive Committee noted that the issues discussed above regarding Liberty Grove should not be simply extended to all community schemes:

Because community schemes typically don't have the same mix of housing that we have. That drives some of the uniqueness and some of the inequity around this place. You've got tower blocks, semis, stand-alone houses and when you're talking about property value issues, there's clearly going to be quite significant differences within each of the risk factors.

Also, the scale of Liberty Grove and its status as a suburb add to its uniqueness (Executive Committee member).

A prior member of the Executive Committee also pointed to the need to recognise the importance of different types of community title schemes when discussing the usefulness of community title as a planning tool:

You've got a situation where you look at three different community schemes. You've got a community scheme which is maybe 20 houses on a super lot ... and they've got a road that's services the internal dwellings and then they've got an internal walkway. People use that walkway as a shortcut to get from point A to point B. The impact is virtually zero. They've got a little pocket park there and the little old lady who lives

[adjacent] loves to sit there ... nobody's really going to mind if she sits there, even if she doesn't live on that super lot. You've got things like Liberty Grove where yes, there is an impact, perhaps less on the parks than on the sporting facilities, but nevertheless, they've got to cross some common area to get to those things and there's a perception of the people who live here, well, you don't live here, what are you doing here, we're paying for this, you shouldn't be here. Then you've got ... a development that might have a huge bit of land ... and you've got a huge biodiversity type situation there and the community here is separate to that and in theory it could be totally divided, yet the community scheme pays through the nose for that .... And that is nothing more than an exercise by government ... we don't want to pay for it, we'll charge those people for it and there's no good reason for it, so in that situation, no it's dead wrong.

Furthermore, the history of Liberty Grove, especially its position as one of the first community schemes in NSW and the level of opposition it received from community groups when proposed, certainly had an impact on the nature of the development. Several local resident action groups opposed the development, including the King Street Residents Group (KSRG) and the Concord Residents Alliance (Canada Bay Council Meeting No. 1/94). Three hundred and seventy-five objections were received in response to the public exhibition of the development application (Canada Bay Council Meeting No. 22/94). These groups were opposed to medium density development (Canada Bay Council Meeting No. 1/94) and also emphasised their desire for new residents to identify as 'Concordian' (Prior ANKA employee). This opposition by residents influenced Council's decision to require the provision of publicly accessible property in Liberty Grove. It also led to a reduction in the number of dwellings to 795 (949 were originally proposed) and the concentration of higher-density buildings in the northern precincts of the site, where they would have less impact on existing local residents (ANKA Property Group & Liberty Grove (Concord) Pty Ltd 2000).

## 1.7 The future of Liberty Grove

The ability of the Executive Committee of the Liberty Grove Community Association to plan for the future of the development is constrained by the fact members volunteer their time and most do not have training or backgrounds in property management. As one member of the Executive Committee noted:

Some people don't have the skills or background to be involved in this strategy type stuff, they're more involved in cutting this lawn or cutting that tree, you know, it's like it's here and now ... we've got real jobs, it's not as if we've got nothing else to do.

Another related issue is the turnover in the membership of the Executive Committee:

While we might achieve something this year and have put plans in place and say this is where we're heading, there's nothing to stop a completely new EC coming along and just ignoring everything that's gone ahead ... and that I'm sure is going to happen and that's a bother, because of the nature of the environment there's this real propensity to repeat yesterday's work.

An Executive Committee member's comments below point to an awareness of the need to plan for the future and the potential problems that could occur as the development ages:

In time, there may be some major [infrastructure repairs required], and this is the worry for us ... the insurance is not just public liability, but also we have to insure against complete failure of these services and systems that we are obliged to maintain because we understand that they could be significant costs that would just kill us. You hope and touch wood that that's not going to happen to you, but the longer I stay here and the more involved I get, the more I see it as a big risk, to the point that I even thought about moving with part of the motivation being I don't want to be here when that happens, I don't want to be part of that big cost, because there's no way out of it, you've just got to wear it.

While there remain some concerns surrounding the future planning potential within the scheme, the Executive Committee has established a sinking fund. They take advice from a quality surveyor and get ten year sinking fund forecasts, which they comply with (Manager). There has been no discussion of using special levies or borrowing instead of sinking funds (Manager, Executive Committee member, prior Executive Committee member).

### Key Findings

- Some residents of Liberty Grove are unhappy that they are paying for the maintenance of infrastructure usually provided by council (e.g. road, parks, stormwater drains) through their community levies and are still required to pay the same rates as others in the LGA. Where Council does not provide the same level of service with regards to maintenance within community schemes as they do in surrounding areas, similar complaints are likely to arise.
- Because the roads within the scheme have not been built to Council standards, Council is unable to police traffic and parking within the scheme. This also means that the residents of the scheme do not have the option of dedicating the roads to Council.
- The responsibility for the upkeep and maintenance of the stormwater drains in Liberty Grove lies with the community association. If major repairs are required on this infrastructure, the cost of these repairs will lie with the property owners in the scheme. If there is a problem with this infrastructure, it will cause a major financial strain on the community association and all property owners.
- Many residents are unclear about which areas are publicly accessible and which are not and hence who has the right to be there.

## 2 Balmain Cove

### 2.1 Background information

#### General information

- Council: Leichhardt
- Number of residential lots: 295 (248 strata lots and 47 neighbourhood lots).
- Number of residents: approximately 625 (based on 2006 CD level data)

#### Ownership

- Average purchase price: for strata lots \$853,475 (average of lots sold in 2006). Only one neighbourhood lot sold in 2006 (for \$1.1 million).
- Average land value for neighbourhood lots: \$532,594
- Average area of neighbourhood lots: 162 m<sup>2</sup>

#### Development

- Developer: Walker Corporation was the original developer. They sold the development to Australand just before completion.
- Area of development: 5.9Ha
- Dates of development: completed 1999 (Australand 1999).
- Types of and DPs of plans: Community Plan DP270180; 5 strata plans (SP60294; SP58319; SP58291; SP61172; SP61173) and 4 neighbourhood plans (DP285540; DP285535; DP285597; DP285539).

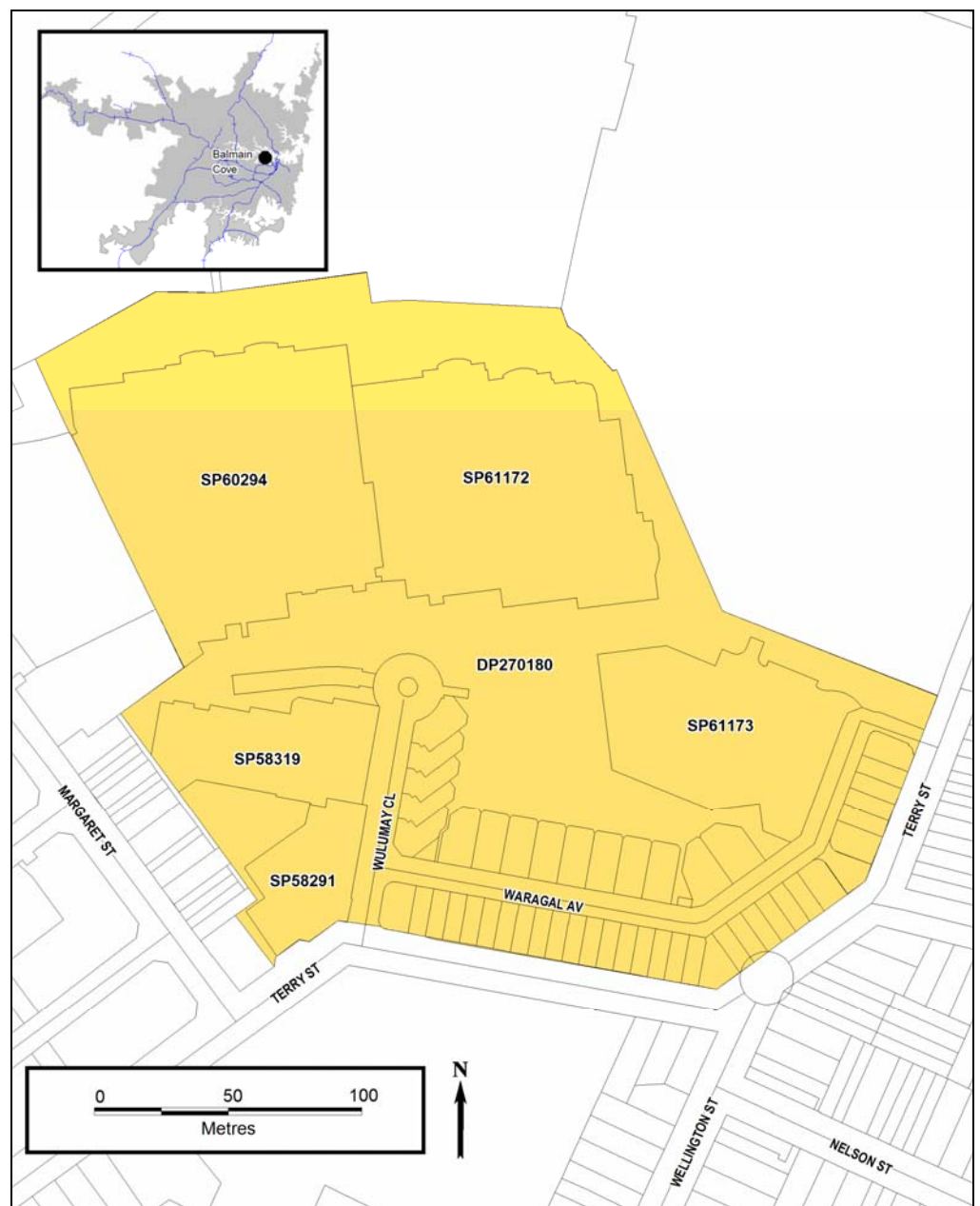
#### Publicly accessible community property

- None of the community property is publicly accessible. However, the development includes 200 square metres of land owned by Council (with a land value of \$1,480,000), which is maintained jointly by Council and the community association.
- In addition, there is a public thoroughfare between the two large waterfront apartment buildings, which is part of the common property of one of those strata developments (SP60294).

#### Private community property

- Swimming pool (plus two more in the two large strata schemes)
- 30 berth marina
- Child care facilities

Figure 2.1 Balmain Cove





## 2.2 Extent and value of community and publicly accessible property

### Value of community property

The community property at Balmain Cove is, in effect, made up of Lot 1 (the actual community property) and Lot 11, 20,000 square metres comprised mostly of parks and foreshore land that was ceded to Council in January 2002. All of Lot 1 is inaccessible to the general public, while all of Lot 11 is publicly accessible. Lot 11 is 20,000 square metres in area and has a land value of \$1,480,000. The value of Lot 1 was unavailable. While Balmain Cove does not strictly include any publicly accessible community property, we have included it as a case study in this report to illustrate the type of joint management arrangement that can be drawn up between a community association and Council for management of property within a community title scheme.

### 2.3 Use of publicly accessible property (Lot 11)

*The Cove residents would say that the existence of public infrastructure has created more problems than benefits.*

In general, the publicly accessible areas within Balmain Cove (Lot 11) are not used extensively by the general public. However, there are two notable exceptions. The first is the use of the open space by students from the adjoining high school after school and the second is the use of the foreshore walkway that leads to a ferry wharf (Manager).

Indeed, (Manager) noted that:

a lot of the public don't know that this is ... a public road, they get down to here and sort of turn around and drive out again. A few take a short cut through here but it doesn't benefit them really. So there's not a lot of that, there's a few, occasionally picnic somewhere down here [waterfront], but they're more inclined to go to the property next door [Balmain Shores] these days because they've got cash in the slot BBQs and things that we don't.

In general, the Manager was under the impression that residents did not mind that parts of the development are publicly accessible. He explained:

People don't really mind. Originally when we all started here a lot of people weren't happy ... they felt that that was wrong. They thought that they were buying into a community that would be gated. Totally enclosed and secure. But as time went on, they realised that no, that's not what they bought into, it's OK. But I think a lot would be happier with that ... Now as it stands they don't mind.

However, there was some concern raised by residents over problems arising from having publicly accessible property in the development, especially in relation to the neighbouring high school:

The Cove residents would say that the existence of public infrastructure (i.e. Elliott Park and the walkway to the foreshore) has created more problems rather than benefits. Vandalism to lights, signs etc, graffiti, theft and general noise pollution and disruption ... Probably the greatest concern is the fact that we are located next to a high school. This seems to create a greater propensity for the above anti-social activity to take place in the Cove as opposed to other complexes (Executive Committee member, personal correspondence 18 May 2007).

In addition, some concern has been raised about the use of a public thoroughfare between the two largest strata buildings that leads to the waterfront. The waterside walk was originally not well connected to land outside Balmain Cove and few people used it, but Council built a stairway up to street level and also joined the walk to the next section of shoreline, which meant that the walkway is now used more often (Council Officer). The Manager explained:

*Manager:* [the residents] don't seem to mind at all that the public have right of way through the waterfront and up through the property, cycling tracks through here. None of that really bothers them. If they could stop people walking down there [points on the plan to the path between the two strata schemes] they would.

*Interviewer:* Is that because that's not land owned by council?

*Manager:* Yes, because it's their property and [non-residents] walk down between their buildings.

Furthermore, there have been some problems in a number of community title schemes in Leichhardt (including Balmain Cove) with signs indicating publicly accessible areas having been removed (council officer), which suggests a level of dissatisfaction among residents with the provision of publicly accessible property within these schemes.

## 2.4 Management of publicly accessible property

Decisions regarding the management of lot 11 are made by the Executive Committee of the community association. The Manager explained that the complicated management structure of the scheme made it difficult to actually 'get things done':

*Manager:* If you've got a single strata of 150 or 200 units, the Executive Committee is more likely to give the manager the authority to get on with things than you can ever get in a community because you can't please all the people all the time in this position, and you've got five stratas all with their own views here and they are reluctant to pass it over to people like myself to manage it for them. So you find that they lay down rules and regulations and involve themselves in

committees and sub-committees and that doesn't get things done. It's a nightmare in a way, but you can't stop people all wanting to be involved. When things cost them more than they ever envisaged, suddenly they all want to be involved in it. Yeah, we can have 40 people at an ordinary executive meeting where they know money is being spent and they don't want it to be spent. It's difficult.

Staff from Leichhardt Council also raised the issue of the importance of design for management. A Council Officer said that if Balmain Cove were to be developed today, one thing Council would do differently would be to place publicly accessible parks near the foreshore (as was done with the neighbouring Balmain Shores development). When publicly accessible space is contiguous, it is more obvious to non-residents which components are publicly accessible and is therefore easier for the public to use, and maintenance can be completed more efficiently (council officer). A Council Officer also said that it should be obvious through the design of the development which parts of a development are publicly accessible, rather than through "a forest of signs".

## **2.5 Costs of publicly accessible property**

### **Development**

The costs to Walker Corporation or Australand for development of Balmain Cove were not available.

### **Upkeep / maintenance / insurance**

There have been a number of issues raised in Balmain Cove over the costs of maintenance. The two most significant are arguably the abolishment of security guards and an arrangement with Council over maintenance of the lawns.

Initially, Balmain Cove was patrolled by security guards working 12 hour evening shifts at a cost of between \$80-100,000 per year. This service was terminated as a cost-cutting measure. In committee deliberations there was much debate over whether the security service was necessary and whether it should be maintained given the differing financial resources of residents (Manager).

The maintenance of all open space at Balmain Cove initially was the responsibility of the community association. However, in 2003 residents complained that Council had installed more garden beds than the residents were prepared to maintain. As a result, Council made an agreement with the community association that specifies the individual maintenance responsibilities of Council and the community association (Council Officer). In effect, the community association maintains the garden beds and Council maintains the lawns (Manager). However, problems have arisen as a result of this arrangement as the lawns are not maintained to the same standard by Council as they were by the community association, resulting in resident complaints (Manager). Indeed, a member of the Executive Committee (personal

correspondence 18 May 2007) noted that community association members have spent additional time in dealing with Council over proper maintenance of the park grounds.

Under the agreement (Cusumano 2003), Council takes responsibility for:

- Emptying litter bins weekly
- Installing, and restocking dog litter bag dispensers weekly
- Repairs to paths and roadways, as required
- Maintenance of public lighting and contributing to electricity bills
- Maintenance of street trees and palms, including trimming of fronds
- Clearing the stormwater silt trap as and when required
- Road and street cleaning using suction sweeping machines every two weeks
- Broad acre mowing using ride on movers and/or tractor drawn movers and hand mowing around furniture, trees and garden beds including edging
- Weed eradication along paths and roads
- Programmed turf maintenance including aeration, fertilising, topdressing disease management and control of broadleaf weeds
- Manual street cleaning every two weeks

Council's estimations of the cost of lawn and garden bed maintenance are shown in Table 3.2.1 below<sup>10</sup>.

Table 3.2.1: Costs of Maintenance of Publicly Accessible Parks at Balmain Cove.

Council Standard		Council's Day Labour Proposal	
Mow lawn 17 cuts per year (this equates to Council's level of service – every 3 weeks)	\$23,000	Mow lawns a minimum of 32 cuts per year and co-ordinate hand mowing (this would be 20 cuts in the summer months and 12 cuts in the cooler months)	\$41,700
Garden beds	\$23,300	Council's in kind contribution. Plants, mulch & green waste removal	\$4,600
Total Cost	\$46,300	Total Cost	\$46,300

With regards to insurance, public liability falls with the owner of the land. Hence in a situation like **Liberty Grove** the responsibility for public liability (and therefore the insurance costs) lies with the community association. However, the situation is more complicated in Balmain Cove, where the land is owned by Council and maintained jointly by Council and the community association. In this case, if somebody were to be injured on the publicly accessible property insurance claims would be directed to Council (as the landowner). The Council would then need

<sup>10</sup> Adapted from Cusumano, V. (October 2003) "Item 23 Maintenance of New Open Space at Elliott and Bridgewater Parks – Balmain Cove and Balmain Shores", Infrastructure and Service Delivery, Leichhardt Municipal Council.

to look at the management statement to determine whether they could cross-claim the community association. For example, if the injury was a result of poor maintenance of an area maintained by the community association (as stated in the management statement), then the Council could cross-claim the community association because they had not complied with the contract. This means that it is a public liability issue for the Council and a contractual issue for the community association (Carolyn Chudleigh, Holding Redlich Lawyers).

Looking to the community management statement for Balmain Cove, however, the situation is still not entirely clear. While it specifically states that the community association is responsible for the maintenance of both the open space and retaining walls in Lot 11 (section 56.2), it also states:

56.7 The community association's obligations under this by-law end if Council:

accepts the dedication of Community Development Lot 11, or

agrees to maintain the open space areas and the retaining walls on Community Development Lot 11.

As Council *has* accepted the dedication of Lot 11, and has agreed to maintain some of the open space areas in Lot 11, this would seem to imply that the responsibility for maintenance on Lot 11 no longer falls on the community association. In this case, both parties may need to look to the maintenance agreement between Council and the community association (Cusumano 2003) to come to an agreement regarding liability. In any case, Leichhardt Council has public liability insurance for open space within the whole Council area, with a premium of \$400,000 per annum and public areas within Balmain Cove are covered by this policy (Council Officer). The community association at Balmain Cove also holds insurance, with a premium of \$4,457 per annum, which includes office bearer's liability insurance, insurance for voluntary workers, above and below ground repairs and public liability insurance for community association areas. It is understood by the Manager of Balmain Cove that Council is responsible for public liability insurance for Lot 11.

### **Does it cost more because it is publicly accessible?**

Given the situation within Balmain Cove where the maintenance of a large proportion of the publicly accessible common property is paid for by Council, it is not possible to answer this question succinctly. It is certainly possible that the costs of maintaining the property are increased as a result of its use by high school students. Further, on occasions when property within the development is vandalised (assumed to be caused by non-residents), there is a cost attached to making repairs.

### **Would it be cheaper for Council to provide this infrastructure?**

The costs of provision of the publicly accessible infrastructure were not available from the developer and estimated costs were also unavailable from Council.

Leichhardt Council does not consider community title developments as a means by which infrastructure can be attained without public expense (Council Officer). Indeed, in the case of Balmain Cove, Council provided the developer with Section 94 credits in lieu of the provision of public open space. The negotiation of contribution credits therefore offset any savings Council may have made in not having to provide the relevant infrastructure.

In terms of the comparable costs of maintaining the infrastructure, as noted above, the standard of maintenance expected by residents in Balmain Cove is higher than the Council's regular standard of maintenance. For example, while Council estimates that maintaining the lawns in Balmain Cove to Council standard would cost \$23,000, maintaining them to a standard acceptable to Balmain Cove residents costs \$41,700 per annum. Council has agreed to maintain the lawns to this higher standard in return for the community association paying the majority of the costs for maintaining the garden beds. As such, it is likely that maintenance of all publicly accessible infrastructure in Balmain Cove to Council standard would cost considerably less than it currently does at the standard expected by Balmain Cove residents.

### **Fees and charges**

The fees paid by residents of Balmain Cove range from an average of approximately \$930 per annum paid by residents in the smallest neighbourhood scheme, to an average of approximately \$2200 per annum paid by residents of the largest strata scheme.

In Leichhardt Council the minimum rate paid is \$492 for properties with a land value of up to \$184,408. For properties above this value, rates are calculated at \$0.002668 per rateable dollar. For example, owners of a property with the average neighbourhood lot land value in Balmain Cove of \$532,594 would pay \$1,421 per annum in council rates. In addition, all properties are also charged a waste collection levy, of between \$295 and \$362, depending on the size of the bins provided at the property and whether they are shared by households.

### **Do people mind these costs?**

There are some concerns regarding costs generally in Balmain Cove, not only costs as a result of the provision of publicly accessible infrastructure. The Manager explained:

*Manager:* I think generally a lot of people come to a higher value estate like this from a house where they've lived all their lives, a family home if you like and in retirement sell that off and buy a nice place with waterfront and gardens but gardens they don't have to attend and all those things and they have no idea really, what it cost them to maintain their home when they were living in it and how much it costs to have people do all these things for you. And that's where the levies often build up because they're very demanding – they want the gardens looking pristine all the time ...

*Interviewer:* So is their concern with the cost of the levies or is it with the fact that they're paying for areas



that are publicly accessible? Has it been framed in that way?

*Manager:* No, just pure cost, cost plus costs of having someone here to look after their access control. Keep in touch with the Council, keep in touch with the police, all those things are costly. After hours calls – we take all those. You know, the hot water systems break down, the electricity goes out, or the power's a problem, any of those things.

## 2.6 The importance of context

Despite problems with the application of community title legislation in Balmain Cove, the Manager had a positive view of community title as a way of providing publicly accessible infrastructure. However, they indicated that the current management structure was causing some problems:

I think the principle is very good, I really do, we need more of them, but it needs to tighten up the loose ends so it's got to be promoted to the prospective purchases so they know exactly what they're getting into. And as I said, it all says in the *Community [Land Management] Act* that the community association is the umbrella control of the whole site, but it doesn't put the power in there to do it. So there's always a feeling, particularly on this site, the people down [in the two large stratas] here are saying 'we're not having them up there dictate to us how much we should spend on these things, we'll look after ourselves and we've got the votes and we can stop them'.

## 2.7 The future of Balmain Cove

There appear to be some problems in Balmain Cove in terms of planning for the future maintenance of the development. Council are not concerned at present about maintenance of the development in the future, as existing agreements about who is responsible for what maintenance are expected to continue into the future (council officer).

However, one interviewee was concerned that not enough money is currently being spent on maintenance and that this will have serious implications in the future:

There is always a problem getting the dollars to do proper maintenance. A lot of them [residents] would rather wait, I seriously mean this, the committees will wait until it packs up and then they've got no option but to replace and they find that easier than to make a decision to maintain it and allow a cost.



A sinking fund has been established in Balmain Cove. Balmain Cove's sinking fund received levies of \$30,000 in the year to May 2007.

Quantity surveyors have been contracted to make sinking fund forecasts. The amount of money to be allocated to the sinking fund is then decided at community association meetings. The Manager for Balmain Cove noted that there has been some disagreement amongst residents about the amount of money that should be put into the sinking fund, with residents intending to stay in Balmain Cove in the long-term wanting to put more into the sinking fund than those intending to leave Balmain Cove in the short term.

### Key Findings

- When residents first moved in to Balmain Cove, some were under the impression that the areas within Lot 11 would be owned and maintained by the Executive Committee. In fact, these areas were dedicated to Council. There is some confusion about the nature of the land – who has the right to use that land and what they are able to do on that land. This is further complicated by the joint management arrangement in place between Council and the community association.
- The maintenance arrangement between Council and the Community Association is beneficial in that the residents of Balmain Cove are receiving the same level of service from Council as people in the surrounding area and are also able to choose to provide additional maintenance to raise their standards of their open space. However, the need for cooperation between Council and the community association can be time consuming, can add additional expense and can lead to confusion on the part of residents regarding who to approach with complaints or queries.
- The untenable situation in which agreement to spend money on maintenance cannot be reached by the community association before the infrastructure concerned fails and requires replacement. It is essential that adequate future financial planning occurs.

## 3 Newbury

### 3.1 Background information

#### General information

- Council: Blacktown
- Number of residential lots: 1,732 as of August 2007. In the two communities that currently have residents, there are 246 lots in community one and 389 in community two
- Number of residents: Most houses have 3-4 bedrooms and the average number of people per house is 3.2 (Mirvac employee). Based on a figure of 1,732 lots (this may change), the estimated population is 5,542 people

#### Ownership

- Average purchase price: Lower end of the market is around \$300,000 and includes housing built as part of Landcom's (2007) Moderate Income Housing Strategy. 3-4 bedroom homes sell for \$399-569,000 (Mirvac employee)
- Average land value: Selling from \$250-320,000 in August 2007 (Mirvac employee)
- Average area of lots: 633m<sup>2</sup> in Community one (DP270284)

#### Development

- Developer: A Landcom /Mirvac joint venture
- Area of development: 189 Ha
- Dates of development: 2002 – present
- Types of and DPs of plans: Seven adjacent community schemes are planned: DP270284; DP270298; DP270346; DP270391; DP270398; DP270469; DP270504

#### Publicly accessible community property

- Sydney Water drainage and riparian corridors and connecting fountain near the main entrance of the development (council officer, Mirvac employee)
- Some structures in the parks, such as water features, that were not included as Council infrastructure due to their high maintenance costs (council officer)

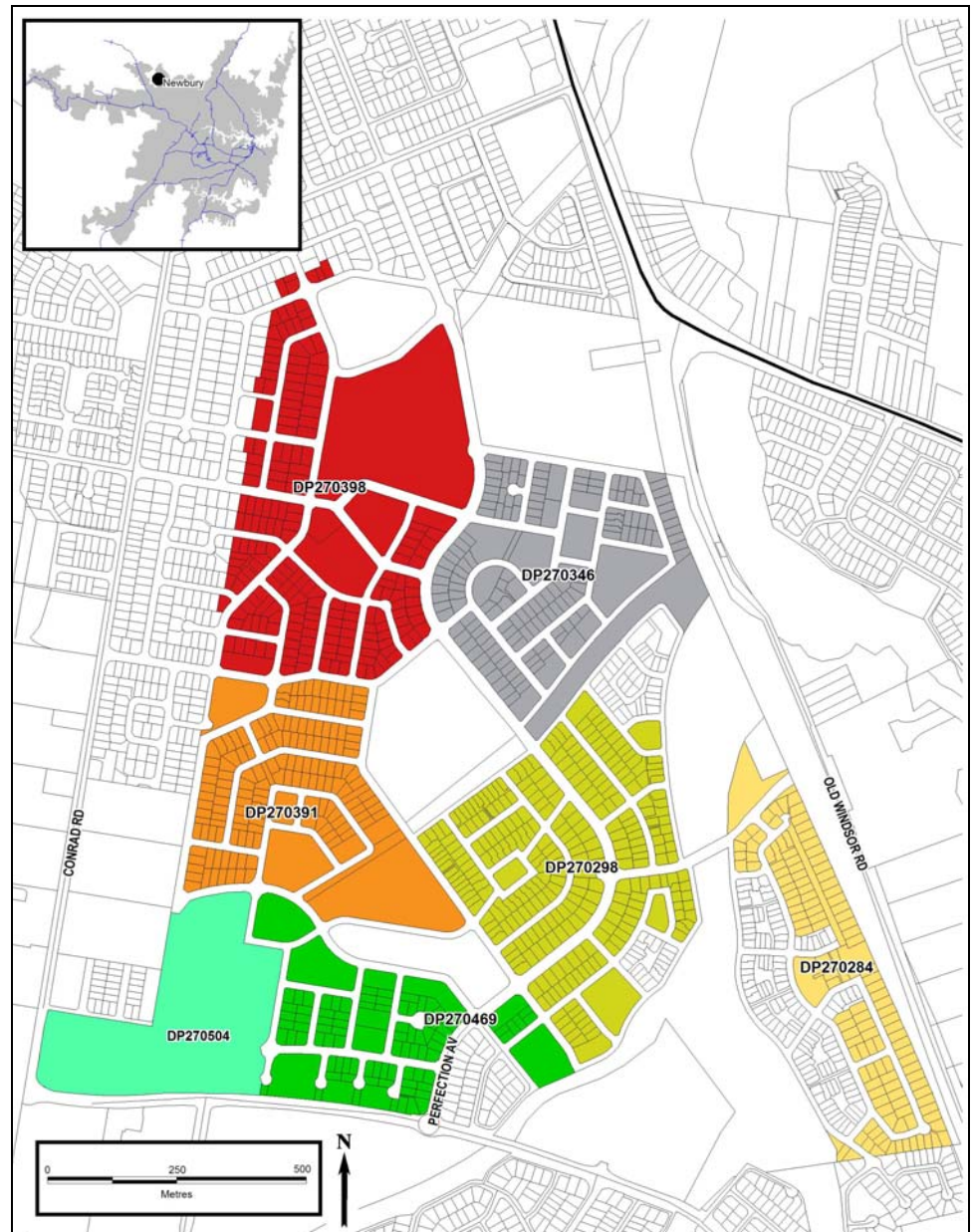
#### Private community property

- All seven of the community schemes have their own private facilities, including a clubhouse, tennis court, pool and spa

#### Other

- Mirvac considers the estate to provide 'moderate income housing' with the more affordable houses being on smaller blocks of land (Mirvac employee)
- When the masterplan was prepared for Newbury the idea of community title was not discussed. It was only when Landcom established a joint venture with Mirvac, who had already been successful in developing other community title estates in Sydney, that Landcom/Mirvac approached Council with the option of community title (Council Officer)

Figure 3.1 Newbury



### **3.2 Extent and value of community and publicly accessible property**

#### **Value of publicly accessible property**

The majority of publicly accessible infrastructure in Newbury will eventually be owned, managed and maintained by Council. All of the roads, footpaths and parks in Newbury have been developed by Landcom/Mirvac and meet Council design specifications. While Landcom/Mirvac have been maintaining these areas during the development stage, they will all eventually be dedicated to Council. Council will then be responsible for the management and maintenance of these areas.

Blacktown Council's position is that community property should not take the place of Council infrastructure. However, community title does allow a mechanism for developers to provide additional facilities and embellishments such as the water features described above. Council's concern is that these additions should not be excessive because of the costs to future residents associated with management fees (Council Officer).

The value of the publicly accessible community property (water features, drainage and riparian corridors) was not available.

### **3.3 Use of publicly accessible property**

Newbury is still under development and as such, patterns of use cannot yet be accurately estimated.

### **3.4 Management of publicly accessible property**

The majority of the publicly accessible property on the site will be dedicated to Council and hence will not be community property, but rather Council property. Council will maintain this property. The water features in the parks will be maintained by the community association and the drainage and riparian corridors will be maintained by the community association in partnership with Sydney Water.

### **3.5 Costs of publicly accessible property**

#### **Development**

The costs to the developer of the development of the site were not available.

The cost of development of the publicly accessible areas within the site if Council had provided these can be estimated using the works-in-kind agreement that Landcom/Mirvac entered into with Council before

commencing work on the site. In effect, the Section 94 credits are an estimation of the amount Council may have spent if they had provided the infrastructure, rather than the developer. In the case of Newbury, this was \$28.5 million. However, as one Council Officer noted:

Generally what happens with developers is that they provide over and above what they are required to provide in the Contribution Plan ... When the developers come to us wanting to do works in kind generally they're more than willing to do over and above what is required because of the marketing value. I know that all of the reserves in Newbury, they've probably spent double if not triple or quadruple what they were supposed to spend on a lot of the facilities.

### **Upkeep / maintenance / insurance**

Maintenance costs specifically for the publicly accessible community property in the scheme were not available.

While the parks in the scheme will eventually be dedicated to Council and do not therefore strictly constitute publicly accessible community property – it is interesting to note how much these areas cost to maintain in the initial period of the development. These costs are outlined in Appendix 5.

### **Does it cost more because it is publicly accessible?**

It is unlikely that the publicly accessible infrastructure in Newbury (such as water fountains and drainage corridor) would experience much more wear and tear than if they were in a completely private development.

### **Would it be cheaper for council to provide this infrastructure?**

In regard to the provision of public space within the development (that which will be dedicated to Council), the costs of provision to Council if they had provided it can be estimated from the Section 94 contributions agreed on by Council and the developer (outlined in Appendix 6). However, the actual costs of provision to council and to the developer are not directly comparable. As a Mirvac employee noted:

There is also a higher standard of amenity and embellishment and better design of open spaces and playgrounds than if Council had done it.

The cost of provision of the water features, drainage and riparian corridors was not available either from the developer, or as estimated costs from Council.

### **Fees and charges**

All residents in Newbury pay standard council rates. For land with a value up to \$201,000, the base rates are \$688 per annum. Land with a value greater than \$201,000 attracts the \$688 base rate, plus \$0.003417 for each \$1 of land value over \$201,000. For example, owners of land with a value of \$300,000 would pay \$1,026 per annum in rates.

In addition to Council rates, residents pay levies to their community association. For the majority of properties in the estate, the levies range from \$800 to \$1200 a year. The 'affordable' properties on the estate attract a community levy of approximately \$700. These figures include payments made towards a sinking fund (Manager). No decision has been made as to whether these levies will change once infrastructure is dedicated to Council (Manager).

There have been some problems with Newbury residents who are unwilling to pay their levies (Cooper 2006:55). In particular, some residents have complained about being asked to pay for facilities they do not use:

They say look we don't use the facilities, or they'll say, because Foxtel is fed through a main satellite dish and it was down for two weeks but they didn't get Foxtel, but they still paid the money so therefore they want to deduct that from their levies, or they can never get a booking at the tennis court so why should they pay the levies. (Manager)

The Manager noted that in discussions with real estate agents in the area, they had come across some reluctance on the part of buyers to pay levies:

That might just be an education thing. You know Mirvac would argue that their houses look better because their neighbours' houses look better than other ones outside the community.

However, despite some qualms with the levies, residents had not brought up the issue of paying both levies and Council rates (Manager) as they did at **Liberty Grove**.

### 3.6 The importance of context

Newbury is a particularly interesting development because it is made up of seven adjacent community schemes. This means that in the event of area-wide issues, these seven communities will need to co-ordinate with each other, without any formal over-arching structure under which to do so. As a result, it is possible that conflicts may emerge between owners in adjacent schemes. For example, the estate was conceived by the developers as one contiguous estate, with similar houses and a consistency of design features, and all seven communities have similar controls over the types of alterations allowed to the outsides of their houses. However, as each community association has the power to change those by-laws, it is possible that one association may allow a certain type of addition to properties that owners in an adjacent community may oppose and this has the potential to lead to conflict. Similarly, different communities may take a different approach to the management and maintenance of publicly accessible areas within their scheme.



### 3.7 The future of Newbury

Some concern has been raised that the standard to which the development has been maintained while Mirvac has been involved in the maintenance of infrastructure cannot be realistically maintained for the life of the project (Council Officer). Indeed, Mirvac has been maintaining the development at a very high standard for marketing purposes. At present, Mirvac have landscapers coming twice a week and some security guards on site (Council Officer). When Mirvac pulls out of the development, it is unlikely that either Council or the community associations will be prepared to take on this additional cost burden. It will therefore be necessary to make the residents aware that this is the case and that the standard of maintenance is likely to fall when Mirvac leaves the estate.

#### Key Findings

- There appears to be uncertainty on the part of the residents and Managers as to what land will be dedicated to Council. If residents were under the impression that the parks near their houses will remain as community property when they purchased their properties, there may be some dissatisfaction once these parks are dedicated to Council.
- Because the developer pays the community levies for the first few years – as a marketing incentive – new residents may be unclear about the fact that land will eventually be dedicated to, and maintained by, Council – probably at a lower standard than currently. This will mean that if residents want the parks maintained at their previous standard they will have to enter into a joint management arrangement like that in place at Balmain Cove.



## 4 Wallarah Peninsula

### 4.1 Background information

#### General information

- Council: Lake Macquarie
- Number of residential lots: 1800 including Pinneys Beach (350 lots) and Mawsons Ridge (800 lots)
- Number of residents: approximately 5,600 people when the estate is completed (Lensworth Wallarah Peninsula Pty Ltd, 2003:3).

#### Ownership

- Average purchase price: \$460-690,000 for a house and land package
- Average land Value: of all community lots (i.e. excluding strata). Land from \$240,000
- Average area of community lots: Lots vary from 350m<sup>2</sup> to 4000m<sup>2</sup>

#### Development

- Developer: Stockland (who acquired the Lensworth business in December 2004)
- Area of development: 654 Ha
- Dates of development: The planning and development stage took 10 years. Will take another 15 years to complete the development
- Types of and DPs of plans: Community plan DP270485

#### Publicly accessible community property

- Village Green (a small park) and the paths (public easements) that have a right of way over the Village Green (Stockland employee)
- Walking trails and fire trails (Andreones Lawyers 2006)
- Bio-drainage mechanisms

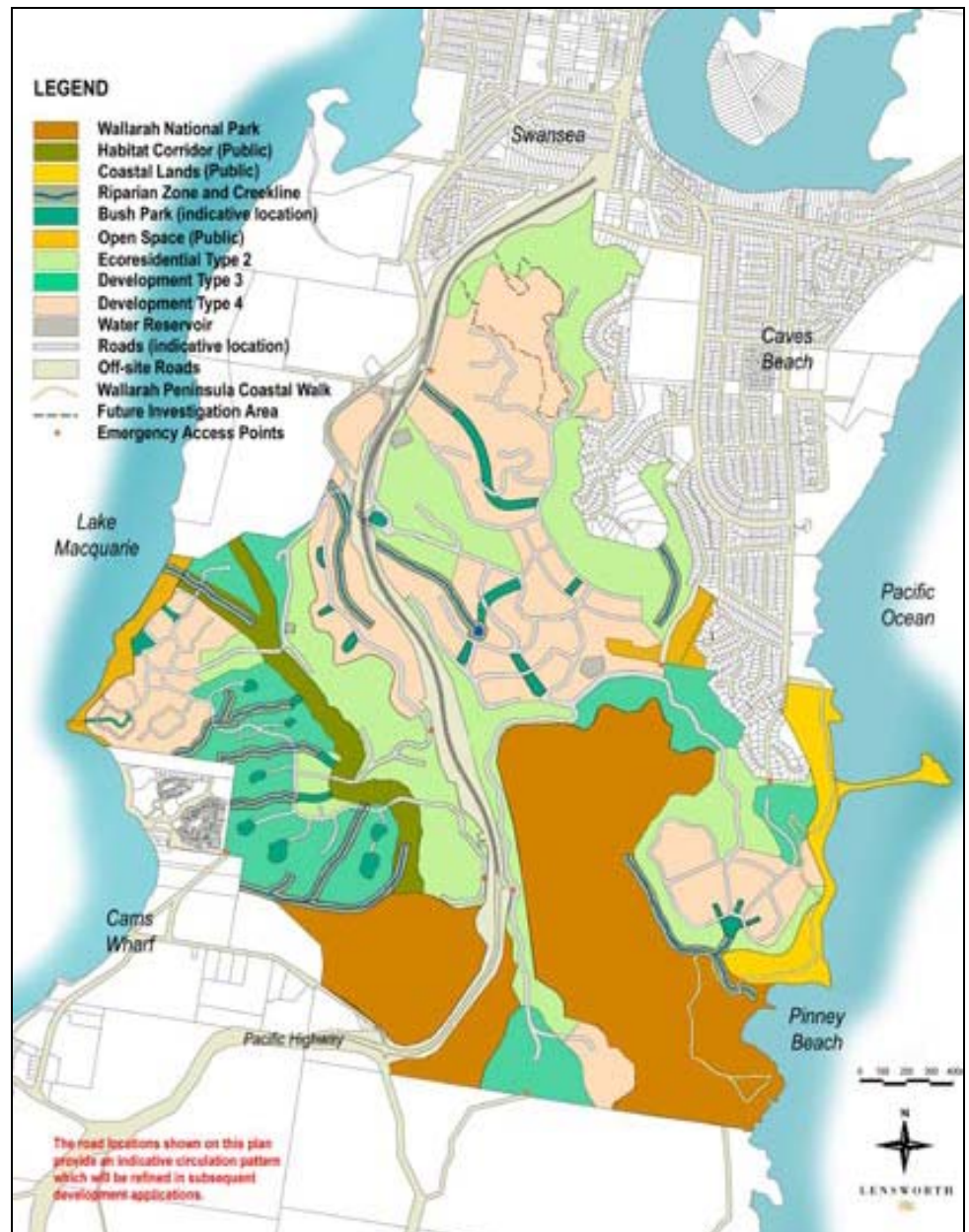
#### Private community property

- Pool
- Clubroom

#### Other

This project is currently under development. The comments in this section relate primarily to Stage one [Stages 1- 7 of the Lake Sector] of the development.

Figure 4.1 Wallarah Peninsula (Lensworth Wallarah Peninsula Pty Ltd 2003:21)



#### **4.2 Extent and value of community and publicly accessible property**

The value of the community property was not available.

In addition to the community property outlined in the box above, a significant part of the land and infrastructure in the scheme will be dedicated to Council. This includes the roads, habitat corridor, and foreshore paths. Furthermore, 200 hectares of land have been dedicated to the National Parks and Wildlife Service (NPWS) (Stockland employee).

#### **4.3 Use of publicly accessible property**

It is estimated that at peak periods around 500 people will use the Village Green and a large number of others will walk through the green to access Lake Macquarie. This is not expected to be a major cause of concern for residents (Stockland employee).

#### **4.4 Management of publicly accessible property**

Lake Macquarie Council has promoted community title in environmentally sensitive areas because Management Plans can facilitate conservation (Council Officer). This has been the case at Wallarah Peninsula:

While conventional covenants (under Section 88b of the *Conveyancing Act [1919]*) can be used to implement some of the land management controls, the Community Titles Legislation provides a much simpler mechanism to implement the necessary controls and to provide funding and management mechanisms for the resourcing of shared land management outcomes (e.g. bushfire fuel management). It is therefore anticipated that the Community Titles Legislation will be used over a significant portion of the Wallarah Peninsula Project, especially in those areas where ongoing management of the natural landscape and strong control of the built form are required (Lensworth, 2003:43).

The Village Green and the paths through it are owned and maintained by the community associations. The community association is also responsible for the control, management, operation, maintenance and repair of the fire and walking trails within the development (Andreones Lawyers 2006). The community association will also be responsible for the maintenance of the stormwater system and the bio-drainage mechanisms (Stockland employee).

Walarah Peninsula is being developed in an environmentally sensitive area and so significant attention was paid to maintaining the environmental values of the site. The presence of threatened species on



**Aerial photograph of Wallarah Peninsula (Lensworth Wallarah Peninsula Pty Ltd 2003)**

the site meant that bushfire and stormwater management plans were developed to mitigate environmental impacts on flora and fauna. Stockland made a commitment to respect environmental values and deal with conservation issues (Stockland employee). It took five years to achieve re-zoning of the site to allow for residential development under community title (Stockland employee). Stockland produced a *Conservation and Land Use Management Plan* (AGC Woodward-Clyde 2000) as part of the re-zoning process which established the development as 'sustainable mixed use', with the remainder dedicated as National Park (Stockland employee; Manager).

The NPWS prepared a joint management agreement with Lensworth Wallarah Peninsula Pty Ltd in 2003. This outlined management responsibilities in regards to:

- conservation management
- bushfire management
- pest species management
- recreation management
- education, public information and promotion
- community involvement
- security and access (NSW National Parks and Wildlife Service 2004)

#### **4.5 Costs of publicly accessible property**

##### **Development**

Walarah Peninsula is still being developed. As such, a reliable estimation of the cost of provision of publicly accessible areas is not yet available.

##### **Upkeep / maintenance / insurance**

As the development is relatively new, accurate figures on the costs of maintenance of areas within the development are not available.

A Council representative noted that Wallarah Peninsula is a relatively expensive area to maintain and that there will be pressure on the community association to manage the bushland to a high standard (Council Officer). He also noted that the bio-drainage system would be expensive to maintain as that kind of system is easily damaged (Council Officer). However, a Stockland employee stated that apart from the initial expense to Stockland of setting up the bio-drainage system, it should cost the same as a normal drainage system to maintain in the long run.

The public liability insurance for the scheme is significant, with the community association being required to "maintain public liability insurance in a sum insured not less than \$30,000,000" (Community Management Plan 2006).

### Does it cost more because it is publicly accessible?

An employee of Stockland noted that the infrastructure was not more expensive to provide despite being identified as publicly accessible, as it is likely that Stockland would have included similar infrastructure in an entirely private development.

With regard to maintenance costs, the development is still in its early stages and it is not possible to estimate whether areas within the development will cost more to maintain because they are publicly accessible.

### Would it be cheaper for Council to provide this infrastructure?

This data is not available. While it may have been possible to estimate these costs from Section 94 plans for the development, these plans have not yet been finalised.

### Fees and charges

The levies for owners are expected to be approximately \$1200 per year. Stockland will pay all of the levies for the first five years and most of this money will go into a sinking fund (Stockland employee). A representative of Stockland explained that the levies were quite low because the community association will own and maintain a relatively small amount of the community infrastructure in the scheme - the roads, foreshores, parks and paths will be largely maintained by Council (Stockland employee).

Wallarah residents will pay the same rates as other residents of the Lake Macquarie LGA. For the 2007-08 year, the base rate is \$392.97 per annum for properties with a value of up to \$180,000, with a levy of 0.00218074c per Land Value dollar in excess of \$180,000. Land at Wallarah Peninsula has a minimum cost of approximately \$240,000 and these properties, for example, would thus be charged \$524 per annum in rates. In addition, each household pays \$257.10 per annum as a domestic waste levy. There has been some discussion of charging different rates for the Wallarah development in the long-term. Council will wait for a record of expenditure by the community association and will review the state of the infrastructure after thirty or forty years and if residents have been making a contribution to the cost of services for that time they may request lower rates (Council Officer). However, a Council officer noted that the type and extent of maintenance currently provided by the community association at Wallarah are unlikely to provide an impetus for the lowering of rates.

*The need to effectively manage large areas of bushland will mean that the relationship between the community association and NPWS is likely to be particularly important.*

## 4.6 The importance of context

Unlike the city-based case studies we have discussed, the community associations within Wallarah Peninsula also have an important relationship with the NPWS. The need to effectively manage large areas of bushland within the development will mean that the relationship between the community association and National Parks is likely to be particularly important at Wallarah Peninsula.



#### 4.7 The future of Wallarah Peninsula

Walarah Peninsula is a very large and complex development, with significant areas of environmentally sensitive land. It can be expected that some of the major issues arising in the future management of the development will be related to the management of bushland within the site, with fire and water management in particular being causes for concern. The success of this management will depend on the comprehensiveness of the management plans and the effectiveness of their implementation. The community associations within the development will also need to have some expertise in these areas. For example, a representative from Stockland (Stockland employee) noted that community association Executive Committees would require input from consultants on bushfire management.

##### **Key Findings**

- The development is still in its early stages but a central concern must be with ensuring that the management of the bushland, including the walking and fire trails, is sufficient. This will require the maintenance of an effective partnership between the community association and NPWS. If the bushland is not managed properly, threats to both life and property could develop.

## 5 Waterside

### 5.1 Background information

#### General information

- Council: Penrith
- Number of dwellings planned: 140 apartments in 4 buildings and a further 467 attached and detached dwellings
- Number of residents expected: approximately 2,000

#### Ownership

- Average purchase price: \$500-600,000 for a house and land package
- Average land value: The lowest land value in Waterside is \$50,000, while the highest is \$4,385,000. This is probably because a number of development lots exist on the site that have not yet been subdivided. A more accurate figure at this stage is the land value per square metre: \$51.07
- Average area of lots: Approximately 350-450 m<sup>2</sup> (Stockland employee). Apartments are around 100 m<sup>2</sup>, lots range from 220m<sup>2</sup> to 600m<sup>2</sup> (Council officer)

#### Development

- Developer: Stockland
- Area of development: 74 Ha (Stockland employee)
- Dates of development: Earthworks started 2003. Houses went to market in June 2006. Another four years of development are expected
- Types of and DPs of plans: Community plan DP270488. Other DP and SP numbers not yet finalised. However, the scheme will include strata, neighbourhood and community plans

#### Publicly accessible community property

- Five lakes and laterals
- Walkways surrounding the lakes

#### Private community property

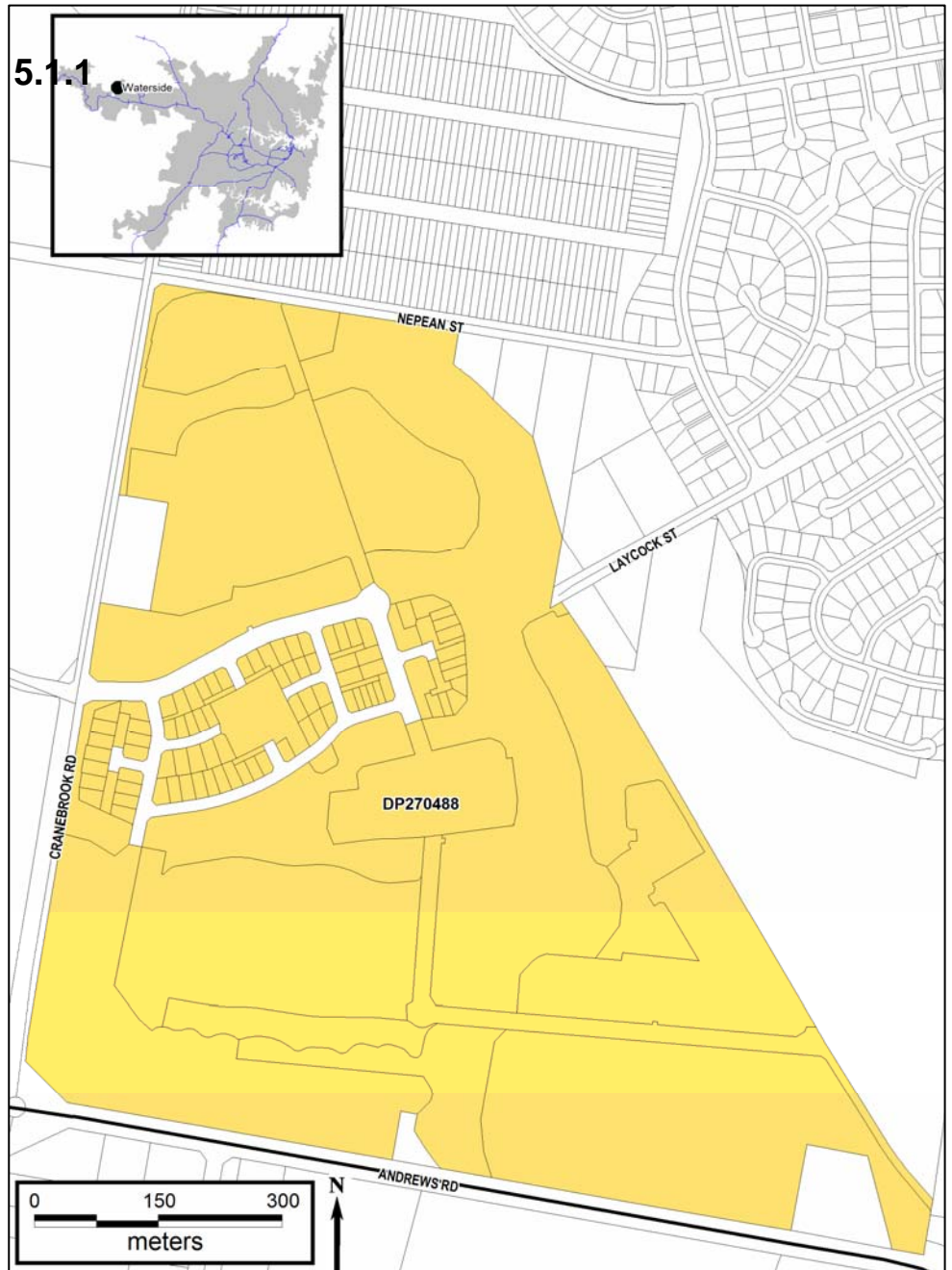
- Club house
- Swimming pool
- Tennis court
- BBQs

#### Other

- At the time of research, the estate is still under development.
- The development is attracting a number of purchasers from the local area, especially from Glenmore Park to the south.
- The development includes some business zones, with shops and offices planned.



Figure 5.1 Waterside



## 5.2 Extent and value of community and publicly accessible property

### Community property

Penrith City Council raised concerns about the impacts of the Waterside proposal on water quality and quantity in the existing creek system. As part of the development assessment process, flooding and water quality issues had to be addressed as the water traverses the Waterside site before reaching the Penrith Lakes scheme, a large future urban and parkland area. The site was purchased by Stockland in 2003 and Stockland approached Council with a proposal to make the site community title (Council Officer).



**Lakeside boardwalk**

Before residential development could go ahead, a series of (five) lakes and laterals as well as a pump system had to be constructed. As Council was not prepared to shoulder the maintenance burden of this infrastructure, it agreed to approve the development on the condition that it be registered as community title (Stockland employee).

For the developers, the benefit of having a community title scheme was that it enabled them to market the fact that the landscaping in the development, especially around the lakes, would be maintained at its current standard for the life of the project (Stockland employee). The Council also saw community title as a mechanism to provide security in the delivery of the desired environmental outcomes as well as a mechanism to ensure public accessibility throughout the lakes scheme (Council Officer).

The development will include a club house, swimming pool, tennis court and BBQs for residents only. The community property in the scheme (Lot 1), including the waterways and lakes covers 19.55 hectares.

As well as the lakes and surrounding walkways, the development also includes a 1.5 hectare area of woodland (Lot 9), that will be rehabilitated by Stockland before being dedicated to Council. As such, Lot 9 does not constitute part of the publicly accessible community property.

### Extent and value of publicly accessible property

Those parts of Lot 1 that are accessible to the general public, including the waterways and the surrounding land cover approximately 17 hectares.

All of the land around the lakes will be publicly accessible. The bikeway and pathway circling the lake system goes through Cumberland woodland to link into the Grey Gums reserve and the established suburb of Cranebrook. As such, the area is an important point for public access into the estate (Council Officer). Indeed, this is consistent with Council's vision of open space being "designed as a linked network incorporating sporting fields, neighbourhood parks, drainage reserves and landscaped streets/boulevards" with "a range of attractive community facilities appropriately located for active and passive recreation" (Penrith City Council 2005:19).

Public accessibility was a high priority for Council in agreeing to the development and there are strong public access requirements in the community management statement for Waterside, which cannot be varied without Council's agreement (Council Officer). A Council representative explained:

There's good reason for that. The estate isn't self-sufficient, it's not big enough to support a school, the nature of the topography is that it's not able to accommodate active recreation beyond some tennis facilities, so there's a need for integration for the estate to access some of the retail shopping, schools, active recreation facilities and indeed they've had to pay contributions towards enhancing some of those facilities as well. So it would have been interesting to see if it was a far larger site whether there would have been more containment proposed. In the early days of the Glenmore Park estate there was a proposal for a gated community and Council opposed it, said no we wouldn't have it and that was in the early-90s when there was a bit of a push for some of these gated communities elsewhere around Sydney and we said no we wouldn't agree to that.

### 5.3 Use of publicly accessible property

*You can't underestimate the broader community benefit of the Waterside estate in terms of flooding control and water quality controls.*

The development had only one resident at the time of this study. It is thus not possible to report on the use of the common property by residents. However, a Council Officer said that he believed that the publicly accessible components of the scheme would be used by residents of surrounding areas, especially as the estate has been designed so that the public walkways and cycle paths link up with similar paths in the area and most people entering the estate will be unaware of the nature of the title:

[Penrith City Council is] investing millions of dollars in footpaths right throughout the city and we've got a really active push to try to get people out of motor vehicles and onto pushbikes and walking, so we've got an accelerated program over the next two years ... the demand for pedestrian and cycleway movements throughout the city has really grown, so this [the Waterside development] just becomes a logical part of that ... The people who will go out and about on their push bikes will find destinations and this [Waterside] will be a really interesting destination.

Similarly, a representative from Stockland said that it is expected that people will come into the development from the established residential suburb of Cranebrook to the east and use the pocket parks and the boardwalks that circle the lakes in the development.

Another Council officer noted:

You can't under-estimate the broader community benefit of the Waterside estate in terms of flooding control and water quality controls, that scheme coming on line and those lakes that you see out there today have significant broad community benefit (Council Officer).

#### 5.4 Management of publicly accessible property

Management plans will be put in place that dictate what is to be done to ensure that the riparian corridor around the lakes and the pumps are properly maintained. A maintenance regime for the lakes has been developed by Penrith Council, the Department of Natural Resources and Stockland, with input from the adjacent Penrith Lakes development (Council Officer). A Council representative said that this "peer review" of the maintenance regime for the lakes has "giv[en] everybody a level of comfort about things, more so than normal".

An overall maintenance manual will also be available for the scheme.

Table 3.5.1 below, adapted from the *Penrith Development Control Plan 1998 (Lakes Environs) – Amendment No. 3* (2004:10), outlines the maintenance responsibilities of Council and the community association for publicly accessible infrastructure in the development. The highlighted rows indicate publicly accessible community property within the scheme.

Table 3.5.1 Management Designation under Community Management Statement

Element	Owned By	Maintained By	Cleaned By
Road System	Penrith City Council	Penrith City Council	Community Association
Community Property	Community Association	Community Association	Community Association
Landscaping <sup>1</sup>	Penrith City Council, Community Association & Neighbourhood Association	Community Association	Community Association
Road Bridges	Penrith City Council	Penrith City Council	Community Association
Road Retaining Wall	Penrith City Council	Penrith City Council	Community Association
Pedestrian Bridges	Community Association	Community Association	Community Association
Main Weirs	Community Association	Community Association	Community Association
Road Culverts	Penrith City Council	Penrith City Council	Penrith City Council
Low Flow Weirs	Community Association	Community Association	Community Association
Road Stormwater Pipelines and pits	Penrith City Council	Penrith City Council	Community Association
Road Pit Socks	Penrith City Council.	Penrith City Council.	Community Association
Gross Pollutant Traps	Penrith City Council	Penrith City Council	Penrith City Council
Recirculation System	Community Association	Community	Community

		Association	Association
Macrophyte Planting	Community Association	Community Association	Community Association
Grass Swales	Penrith City Council	Penrith City Council.	Community Association
Lake Warning Signs and fences	Community Association	Community Association	Community Association

<sup>1</sup> The landscaping on the site is owned by different parties, yet all of it is maintained by the community association. PCC owns the public roads medians, footpaths in public roads, roundabouts and woodland reserve. The community association owns all open space areas associated with the lakes and community property.

## 5.5 Costs of publicly accessible property

### Development

The publicly accessible areas of the common property, including the lakes, the laterals and the landscaping around the lakes, cost approximately \$15 million to develop.

### Upkeep / maintenance / insurance

Maintenance has not become a major issue as yet in the development. All of the community property will be maintained by the community association, including the maintenance of the lakes and areas surrounding them. In addition, the community association will pay for the landscaping on the verge of the roads and street sweeping, even though the roads will eventually be dedicated to Council (Stockland employee).

Stockland is meeting the outgoings for the community association for three years from the date of registration for stages 1A, 1B and 1C (113 lots). The current maintenance costs are \$75,000 per year for the maintenance of the streetscapes and manicured landscaping. This is expected to increase to around \$90,000 once all the remaining landscaped areas are completed.

Maintenance of the vegetation and riparian corridor around the lakes currently costs \$50,000 per year, but this is expected to decrease in the future as it becomes self sufficient (Stockland employee).

Stockland is not paying insurance for the common areas of the development at this stage until more residents move in. Hence, no insurance costs are available.

### Does it cost more because it is publicly accessible?

It can be assumed that the maintenance and replacement costs will be slightly higher for infrastructure that is publicly accessible as more people will be using this infrastructure. However, no reliable estimates of any additional costs were available.

### Would it be cheaper for council to provide this infrastructure?

In the case of the lakes, Council would not have provided this infrastructure. The plan was only approved on the condition that it be made a community scheme because Council was unwilling to provide and maintain the lakes infrastructure.



However, both a Council Officer and a representative of the developer recognised that there were distinct benefits to be gained by providing the infrastructure under a community title arrangement:

I guess it's an alternative to just dedicating things back to Council and saying look it's yours, you maintain it in the long term, but as we've seen on a number of those projects where that does happen, the upkeep of those facilities and the landscaping just doesn't occur. So what was originally sold to the purchasers just doesn't continue throughout the ongoing process of a project. So that's one thing that we sell as an outcome at Waterside in particular ... we see that as a marketing point that we can provide this landscaping now up front and it's going to be like that in perpetuity (Stockland employee).

With regard to maintenance costs of other publicly accessible areas, if Council were to maintain all of the publicly accessible infrastructure for stages 1A, B & C, this would cost approximately \$59,000 per annum (see Appendix 7), compared with the current costs of \$75,000 to Stockland. In fact, Council will maintain some of this infrastructure (as outlined in Table 3.5.1 above) once the ownership of parts of the development has been passed from Stockland to Council and the community association.

### **Fees and charges**

Community and neighbourhood levies combined are currently estimated at approximately \$1200 per household per annum. Stockland will meet the outgoings of the community association for a period of three years as a marketing sales initiative (Stockland employee).

Council rates for properties in Waterside will not differ to those elsewhere in Penrith LGA. For properties with a land value of around \$200,000, Council rates will be around \$800 per annum.

Council was aware that in the future some residents of Waterside may question why they are paying both rates and levies, with one Council Officer saying:

At this stage it's not proposed to have a differential rating system ... but I can expect that debate will come in time. Saying we're paying levies, we're paying into the sinking fund to cover insurances ... So I would think over time it's going to really test that relationship with Council when these people might be seen to be paying twice for something that is [publicly] accessible ... so what I expect will happen here, what we'll have to do if we see there is a well founded argument we'll have to come up with some form of special rate arrangement for that community ... Council I'm sure will consider it once you've got it fully developed and a certain number of rate payers in there saying well we're paying twice. The thing that will mitigate against it is that we will still be maintaining facilities outside



their estate for their use because they're not self-contained.

## 5.6 The importance of context

Waterside is an unusual development because of the extent of works required on the site before construction could begin. The creation of a lakes system within the development presents its own management challenges. It is very important that this lake system be well managed and maintained as it has flow on effects for the surrounding area. Stockland has developed a management plan for the lakes that has been met with approval by a range of stakeholders. However, it will be essential that the community association continue to maintain these lakes in perpetuity as this is not the type of infrastructure usually maintained by Council (and hence Council will be reluctant to take on management responsibility) and the consequences of poor management by the community association could be detrimental to life and property.

## 5.7 The future of Waterside

Both Council and Stockland have planned for future maintenance issues in the publicly accessible areas:

Going through the assessment and approval process ... we required, with little objection from Stockland because they needed to do it too, considerable rigor in identifying the costs and the forward funding program to ensure those significant infrastructure within the community scheme can be maintained in perpetuity and Stockland have got significant economic models on the sinking funds to address that (Council Officer).

### Key Lessons

- The Waterside development provides an example of the benefits of a strong relationship between Council and the developer. Stockland was able to develop the site as they were able to convince Council that they had a development plan that would take into account the need for a lakes system in the area, and a mechanism for ensuring the maintenance of water quality into the future.
- The creation of a maintenance manual for the entire scheme at the development stage and strict guidelines on the ongoing maintenance of infrastructure, particularly the lakes, into the future was an essential part of this. It can be hoped that such forward planning at the development stage will enable the residents of the scheme to avoid water quality problems that would have the potential to affect life and property.

## Appendix 2: Overview of the legislation

Community title legislation was introduced in NSW as an alternative to developments which were previously carried out under the *Strata Schemes (Freehold Development) Act 1973 (NSW)*, *Strata Schemes (Leasehold Development) Act 1973 (NSW)*, *Strata Schemes Management Act 1996 (NSW)* and the *Strata Schemes (Land Development) Act 1986 (NSW)*. There are four key elements to the community title legislation in NSW: the *Community Land Development Act 1989 (NSW)*; the *Community Land Management Act 1989 (NSW)*; the *Strata Title (Community Land) Amendment Act 1989 (NSW)*; and the *Miscellaneous Acts (Community Land) Amendment Act 1989 (NSW)*. The Development Act and Management Act were based upon the *Strata Titles Act 1973 (NSW)* (Ilkin 1998).

The *Community Land Development Act 1989* (Development Act) allows for shared ownership of land and amenities. Communal ownership is managed through a corporation, known in NSW as a 'community association' (CA), which is formed when the subdivision plan is registered. The Development Act "deals with plan requirements, plan registration, changes to subdivision boundaries and dealings with lots" (NSW Department of Lands 2007) and allows schemes to be developed either in single or multiple stages. A community plan is registered over the entire parcel to be developed. The Development Act provides for the subdivision of land into smaller parcels, which may then be developed or sold (or further subdivided). The owner of each smaller parcel has a legal interest in the common property areas created in the subdivision. The process of subdividing land, building upon it and using the sale proceeds to subdivide other parcels of land or construct more buildings is known as "staged subdivision" or "staged development" (Ilkin 1998).

As each stage is developed, the lots within the community plan can be further subdivided by neighbourhood, precinct or strata plans. When a neighbourhood or strata plan is created, an association is also created for each plan and that association will also become a member of the association for the community scheme (i.e. a second tier of management). A precinct plan can also be registered over a community development lot and then there will be a third tier of management (Parliament of NSW 1996). It is administered by the Land Titles Office within the Department of Lands (NSW Department of Lands 2006a). The regulations made under this Act are known as *Community Land Development Regulation 1995 (NSW)*.

The *Community Land Management Act 1989* (Management Act) covers management and financial matters relating to community schemes. It is administered by the Community Schemes Commissioner within the Office of Fair Trading (NSW Department of Lands 2006a). The regulations made under this act are known as the *Community Land Management Regulation 1995 (NSW)*. Once land has been subdivided, the Management Act provides a mechanism for the day to day management of the common property areas and lots to deal with financial issues and the resolution of any disputes that may arise (Ilkin 1998).

The management of a community scheme is the responsibility of the CA. A CA is a corporate body<sup>11</sup>, whose membership is made up of all of the lot owners. A CA is created upon registration of a community plan at the Land Titles Office. The CA is the registered proprietor of all association property and holds the management responsibility for the overall development concept (e.g. the architectural guidelines) and general community issues (e.g. roads, security and landscaping). The associations for neighbourhood and precinct schemes as well as strata corporations within a staged community title scheme are also members of the CA (NSW Department of Lands 2006b).

The last two acts, the *Strata Title (Community Land) Amendment Act 1989* and the *Miscellaneous Acts (Community Land) Amendment Act 1989* amended other NSW legislation – i.e. the *Strata Titles Act 1973 (NSW)*, the *Property, Stock & Business Agents Act 1941 (NSW)*, the *Local Government Act 1993 (NSW)*, the *Environmental Planning and Assessment Act 1979 (NSW)*, the *Land Tax Management Act 1956 (NSW)* and the *Valuation of Land Act 1916 (NSW)*.

<sup>11</sup>Corporations law does not apply to CAs and they are not corporations within the meaning of the *Companies Code 1982 (NSW)*. However, they "may do and suffer all other things that bodies corporate may by law do and suffer" (Ilkin 1998:464).

### Appendix 3: Calculation of population living in community title schemes in NSW

The following lays out a calculation of the number of people living within community title schemes in New South Wales. It has utilised the 2006 Census profile to capture numbers of people and dwellings, and to this end may provide a slightly inflated or deflated number due to the overlap of the Census Collection Districts (CD) which incorporate the community title schemes and the immediate surrounding areas.

This said, community title schemes, on the whole tend to be newly built and the CD geography reflects the built urban form well. In other words demarcation lines between CDs tend to follow roads which bound the schemes. Coupled with this, the data is from 2006 and so does not reflect increases in populations within the schemes post 2006.

Taking the community title lots from the Sydney Metropolitan Cadastre (some 7,500) and selecting the CDs containing these provides the following profile derived from the Census Table B31 (Dwellings). This provides an indicative value of some 136,000 individuals.

Table 6.1 2006 Census profile of population of Sydney Metropolitan Area

Census Derived Profile (Sydney Metropolitan Area)	Numbers
Separate house, Dwellings	28,470
Separate house, Persons	90,145
Semi-detached\ row or terrace house\ townhouse etc. with: Total, Dwellings	8,062
Semi-detached\ row or terrace house\ townhouse etc. with: Total, Persons	19,744
Flat\ unit or apartment: Total, Dwellings	12,527
Flat\ unit or apartment: Total, Persons	25,603
Other dwelling: Total, Dwellings	80
Other dwelling: Total, Persons	153
Dwelling structure not stated, Dwellings	129
Dwelling structure not stated, Persons	304
Total, Dwellings	49,268
Total, Persons	135,949
<i>Persons per Dwelling</i>	<i>2.75</i>
<i>As % of Sydney Metropolitan Population</i>	<i>3.3%</i>

Since the dwelling structure of the community title schemes outside of the metropolitan area is unknown (i.e. a mix of separate housing, medium and high density properties) it is only applicable to utilise the observed persons per dwelling distribution (2.75) and apply this to the remaining 2,923 Lots within community title schemes outside of the Sydney Metropolitan area. This provides an indicative number of persons of 8,065; so taking this number forward this provides a total population of 144,000 persons living in community title schemes within the entire state (or just over 0.2% of the population of NSW).

## Appendix 4: Costs of maintenance of publicly accessible infrastructure in Liberty Grove

The following calculations are based on the maintenance budget for Liberty Grove for the six months between 01/10/06 and 31/03/07. Costs for maintenance of the publicly accessible areas were calculated by taking all of those entries in the budget that related in part to publicly accessible infrastructure (advice on this was received from both Manager's) and then divided either by 7.5% for budget entries that related to the whole development; or by 37.9% for budget entries that related only to common property. These figures were used as the area of publicly accessible property within Liberty Grove makes up 7.5% of the total area of the development and 37.9% of the common property in the development. Hence, the final annual figure of \$216,021.18 should be seen as an estimate only.

Table 6.2 Estimated Maintenance Costs for Publicly accessible infrastructure in Liberty Grove for the six months 01/10/06 until 31/03/07

Fund type	Service type	Service Description	Total	Divided by	New total
Administrative	Insurance Premium	Insurance YE 28/10/07	\$22,404.55	37.9%	\$8,491.32
Administrative	On-site management		\$110,629.64	7.5%	\$8,297.22
Administrative	Repairs - electrical-globes	Long lift lights for bollards	\$243.00	37.9%	\$92.10
Administrative		Replaced lights	\$151.27	37.9%	\$57.33
Administrative		Stormwater pipe repair	\$580.00	7.5%	\$43.50
Administrative		Drain cover Charlton Dr	\$250.00	100.0%	\$250.00
Administrative	Services - grounds - lawns		\$96,483.84	37.9%	\$36,567.38
Administrative	Services - security		\$127,929.06	37.9%	\$48,485.11
Administrative	Utilities - electricity		\$10,013.57	37.9%	\$3,795.14
Administrative	Utilities - gas		\$184.00	37.9%	\$69.74
Administrative	Utilities - water usage		\$1,613.55	37.9%	\$611.54
Administrative	Services - grounds - materials & plants	Cole Cres plants supply	\$766.80	37.9%	\$290.62
Administrative	Services - grounds - materials & plants	Entrance upgrades	\$883.88	37.9%	\$334.99
Administrative	Services - grounds - materials & plants	Plant supply and install	\$640.15	37.9%	\$242.62
Sinking	Plants North Park		\$130.00	100.0%	\$130.00
Sinking	Mulch		\$180.00	37.9%	\$68.22
Sinking	Services- Tree Lopping/Removal		\$485.00	37.9%	\$183.82
	<b>TOTAL</b>				<b>\$108,010.64</b>

## Appendix 5: Costs to maintain Newbury in the initial period

In the initial period, before the parks are dedicated to Council, the community associations have been responsible for their maintenance. In community one (DP270284), landscaping costs were \$76,000 in the last financial year (2006/2007). Mirvac also employ landscapers to do some additional work in the park near the entrance to the estate so as to give a favourable impression to prospective purchasers (Manager).

The insurance for community one cost \$3,600 in the last financial year. This figure is a package that includes public liability and community property and building insurance and therefore it is not possible to differentiate between insurance that relates to publicly accessible areas (e.g. public liability) and insurance for privately accessible areas (e.g. building insurance for the clubhouse). In addition, community one spent \$14,000 in the last financial year (2006/07) on electricity. But again, a breakdown of these costs into electricity servicing the publicly accessible areas as opposed to private community property is unavailable.

The insurance and electricity costs for community two (DP270298) are similar to those in community one, while the landscaping costs for the last financial year were \$85,000, unsurprising given that community two is larger than community one.

In the other communities, which are still under construction, the landscapers are required under a six month contract to maintain their landscaping (Manager). It has been suggested that once all of the communities are completed, one landscaper can be contracted to service the whole area, thereby allowing for an economy of scale (Manager). It is not yet certain to what extent the community associations will provide park maintenance once Council takes on their ownership and management. It is possible that the community associations will choose to provide additional maintenance to that provided by Council, but this is yet to be decided.

Council is currently in the process of calculating future maintenance costs for the Newbury estate and as such, no reliable estimates are currently available (Council Officer). However, Council expects that Landcom/Mirvac will soon attain practical completion, after which they must maintain the property for a further 12 months, at which time they will have final completion, which will mean that they are entitled to credits for the work and they can dedicate the land to Council (Council Officer).

## Appendix 6: Section 94 data

### Balmain Cove Section 94 contributions

The total Section 94 levies per capita for Balmain Cove are calculated at \$6,280.02 per capita (with estimated population size based on dwelling size) (Leichhardt Council 1996a, 1996b, Leichhardt Council 1998). However, it is not known how many Section 94 credits the developers received to offset these costs.

### Newbury Section 94 contributions

The Newbury estate falls under the *Parklea Release Area Section 94 Contributions Plan*. Under a deed of agreement between Council and Landcom, Landcom agreed to undertake Section 94 works and to dedicate open space to Council. In return, Council offset the Section 94 contributions to be levied on the Newbury development applications (i.e. provided Section 94 credits to the developer). The following values were agreed upon:

- Open Space - Land \$16.2 million; Works \$5.5 million. Only those parks zoned 6(a) open space and 5(a) drainage and works listed under the S94 plan receive credits.
- Drainage - Land \$920,000; Works \$1 million.
- Roadworks - Land \$2.8 Mill; Works \$2.1 Mill. Certain road works were included in the S94 Plan. Landcom received credits for the construction of Stanhope Parkway and some half width roads adjacent to reserves. Other roads within the subdivisions were constructed at Landcom's cost and dedicated free of charge to Council. No credit was given for verges or path pavements.

### Wallarah Section 94 contributions

Lake Macquarie Council prefers to make works-in-kind agreements with developers, rather than accepting cash contributions, for on-site infrastructure. This is beneficial because if costs rise there can be funding shortfalls due to the length of time that has passed between Council receiving the contribution and providing the infrastructure (Council Officer).

Development within the North Wallarah area is levied in accordance with the Lake Macquarie Section 94 Contributions Plan No.5 - North Wallarah Peninsula. Contributions can be in the form of:

- Land dedications, and/or
- Works ( in lieu of cash contributions), and/or
- Cash contributions.

It is *expected* that the Section 94 contributions made by the developer will take the form of:

- Land dedicated to council, and
- Works in lieu of a cash contribution (works within the Stockland Development area ), and
- Cash contributions for works off-site to the Stockland Development Area)

Negotiations are still underway between Lake Macquarie Council and Stockland to finalise the composition of the above.



## Waterside Section 94 contributions

The developer is receiving some Section 94 credits for building a road connecting the new development with an existing residential area (costing \$3 million). A local amenities and facilities contribution plan also deals with the Cumberland Plain Woodland dedication and the provision of community facilities such as the club house and tennis court (for which they have a budget of approximately \$1 million) (Council Officer, Stockland employee).

No Section 94 credits were received for the lakes and surrounding areas however, as they were seen as infrastructure necessary to service the development. Aside from the works-in-kind, the Section 94 contribution being paid in cash by the developer is \$1.2 million (Stockland employee). The contribution rate was based on the following schedule:

Table 3.5.2 Contribution rate summary for Waterside (Penrith City Council 2004)

Works / Facility Type	Contribution Rate Per Hectare
Roads & traffic management	\$55,723
Open space	\$44,381
Community facilities	\$8,561
Administration	\$1,087
Total	\$109,752

## Appendix 7: Estimated costs for council provision of publicly accessible infrastructure in Waterside

With regards to maintenance costs, theoretically, if Council did maintain this infrastructure, it is estimated that for stages 1A, B & C, this would cost approximately \$59,000 per annum. This figure is based on the following calculations:

Length of roads in stages 1A, B & C = approximately 1.65 km

Area of lawns in stages 1A, B & C = approximately 4660m<sup>2</sup>

Area of garden in stages 1A, B & C = approximately 2330m<sup>2</sup>

Table 6.3 Council estimations of maintenance costs in Waterside (adapted from Penrith City Council 2007a &b)

Item	Unit	Rate / visit	No visits PA	Cost / unit PA	Quantity	Total annual cost
Lawns (including medians)	sq m	\$0.09	30	\$2.70	4660m <sup>2</sup>	\$12,582
Gardens	sq m	\$0.16	12	\$1.92	2330m <sup>2</sup>	\$4,474
Bioretention swales	per visit	\$400.00	12	\$4,800.00	1	\$4,800
Trees	each	\$10.00	3	\$30.00	100	\$3000
Lighting	each	\$50.00	6	\$ 300.00	50	\$15000
Cycleways & pathways	lin m	\$0.94	10	\$9.40	1.65 km	\$15,510
Kerb and gutter maintenance	km	\$244	1	\$244	1.65	\$402.60
Road pavement maintenance	km	\$1,775	1	\$1,775	1.65	\$2928.75
<b>TOTAL</b>						<b>\$58,697.35</b>

Please note that the choice of infrastructure items to include in the above calculation was made by the researchers, based on knowledge of the infrastructure in existence in stages 1A, B & C of the development and not by Council. As such, while the component cost estimations have been provided by Council, the final amount of \$58,697.35 should not be taken as Council's estimation of cost.

## Appendix 8: Known costs of provision and maintenance of publicly accessible infrastructure in five case studies

Table 6.4 below provides an overview of cost data made available to the researchers from each of the case study sites.

Table 6.4 Costs of provision and maintenance of publicly accessible infrastructure

Infrastructure Costs	Provision		Maintenance (annual)	
	Developer	Council	Developer (in initial period) or community association	Council
Liberty Grove	NA [publicly accessible property valued at \$2.3 million]	NA	\$216,000	NA
Balmain Cove	NA	NA	NA	Mowing of publicly accessible parks, general garden maintenance: \$46,300 [actual expenditure]
Newbury	NA	Open space, drainage, road works: \$28.5 million [estimated cost]	Landscape maintenance Community 1: \$75,000 Community 2: \$86,000 (\$161,000 total)	NA
Wallarah Peninsula	NA	NA	NA	NA
Waterside	Lakes, laterals, lakeside landscaping: \$15 million	NA	Streetscape and landscaping: \$75,000 (may rise to \$90,000 upon completion)  Revegetation and riparian corridor: \$50,000	Streetscape and landscaping: \$59,000 [estimated cost]

## References

- AGC Woodward-Clyde (2000) North Wallarah Peninsula Conservation and Land Use Management Plan, prepared for Lake Macquarie Council
- Andreone, Francesco (27<sup>th</sup> September 2007) Managing Director, Andreones Lawyers. Personal correspondence
- Andreones Lawyers (2006) DP270485 Community Management Statement: Stockland Wallarah Peninsula, Sydney: Andreones
- ANKA Property Group & Liberty Grove (Concord) Pty Ltd (2000) FIABCI Awards Entry Res 0101: Liberty Grove
- Australand (1999) Australand Annual Report and Accounts 1999, <http://www.australand.com.au/ArticleDocuments/ar1999.pdf> (accessed 29.05.07).
- Australand Annual Report and Accounts 1999, <http://www.australand.com.au/ArticleDocuments/ar1999.pdf> (accessed 29.05.07).
- Unknown (1998) Balmain Cove Community Management Statement
- Blacktown City Council (2004) Section 94 Contributions Plan No.5 Parklea Release Area, Blacktown: Blacktown City Council
- Blacktown City Council (2007) Section 94 Contribution Plans, [http://www.blacktown.nsw.gov.au/planning-and-development/section-94-contributions-plans/section-94-contributions-plans\\_home.cfm](http://www.blacktown.nsw.gov.au/planning-and-development/section-94-contributions-plans/section-94-contributions-plans_home.cfm), (accessed 20.08.07)
- Canada Bay Council (11<sup>th</sup> October 1994) Environmental Planning and Development Report, Meeting 22/94
- Canada Bay Council (25<sup>th</sup> January 1994) Environmental Planning and Development Report, Meeting 1/94
- Canada Bay Council (25<sup>th</sup> June 1996) Meeting 16/96 Committee of the whole council 'in the field' committee
- Canada Bay Council (28<sup>th</sup> October 1994) Minutes of the special meeting of the Council of Concord held at the Council chambers, Meeting 24/94
- Chudleigh, Carolyn (12<sup>th</sup> September 2007) Partner, Holding Redlich Lawyers, Personal Correspondence
- City of Canada Bay Council (2007) 2007/08 Fees and Charges – Part C, [http://www.canadabay.nsw.gov.au/verve/resources/City\\_of\\_Canada\\_Bay\\_Council\\_Fees\\_and\\_Charges\\_200708\\_Part\\_C\\_Updated.pdf](http://www.canadabay.nsw.gov.au/verve/resources/City_of_Canada_Bay_Council_Fees_and_Charges_200708_Part_C_Updated.pdf) (accessed 18.09.07)
- Cooper, M. (2006) Creating Communities: An Investigation of Community Title Schemes, thesis submitted in fulfillment of the UNSW Bachelor of Town Planning Degree
- Council of Lake Macquarie (1999) Local Environmental Plan 2000 North Wallarah Peninsula Zoning Map, [http://www.lakemac.com.au/downloads/NWP\\_LEP2000\\_Map.pdf](http://www.lakemac.com.au/downloads/NWP_LEP2000_Map.pdf) (accessed 19th September 2007)
- Cusumano, V. (October 2003) Item 23 Maintenance of New Open Space at Elliott and Bridgewater Parks – Balmain Cove and Balmain Shores, Infrastructure and Service Delivery, Leichhardt Municipal Council
- Freehill Hollingdale & Page (1997) DP270137 (Liberty Grove) Community Management Statement
- Gold Coast City Council (2007) Revenue Statement and Resolution of Rates and Charges 2007-08

Ilkin, A. (1998) *Strata Schemes and Community Schemes Management and the Law*, (3<sup>rd</sup> Edition) Pyrmont, NSW: LBC Information Services

Kennedy, D. (1995) "Residential Associations as State Actors: Regulating the impact of gated communities on nonmembers", *The Yale Law Journal*, 105(3), pp. 761-794

Landcom (2007) Landcom's Strategy for Moderate Income Housing, <http://www.landcom.com.au/moderateincomehousing.aspx> (accessed 25.09.07)

Leichhardt Council (1996a) Leichhardt Contributions Plan Transport and Access – Balmain peninsula – Residential Development

Leichhardt Council (1996b) Leichhardt Community Facilities & Services Contribution Plan

Leichhardt Council (1998) Leichhardt Open Space and Recreation s.94 Contributions plan

Lensworth Wallarah Peninsula Pty Ltd (2003) North Wallarah Peninsula Master Plan: Executive Summary, Swansea: Lensworth Wallarah Peninsula Pty Ltd

New Jersey Legislature (2007) New Jersey Statutes Annotated 40:67:23.3 Municipality to reimburse private community for services or provide services, available through <http://www.njleg.state.nj.us/> (accessed 17<sup>th</sup> September 2007)

New Jersey Legislature (2007) New Jersey Statutes Annotated 40:67-23.5 Use of municipal reimbursement to pay for services, available through <http://www.njleg.state.nj.us/> (accessed 17<sup>th</sup> September 2007)

NSW Department of Lands & NSW Office of Fair Trading (2006) Consultation Paper: Review of NSW Community Schemes Legislation NSW: NSW Department of Lands and NSW Office of Fair Trading

NSW Department of Lands (25/07/2007) Community Schemes, <http://rgdirections.lands.nsw.gov.au/communityschemes> (accessed 20.08.07)

NSW Department of Lands (29<sup>th</sup> December 2006a) Community Schemes, <http://rgdirections.lands.nsw.gov.au/communityschemes> (accessed 16.02.07)

NSW Department of Lands (29<sup>th</sup> December 2006b) Real Property Act Dealings: Community Title Schemes, <http://rgdirections.lands.nsw.gov.au/dealing/dealingsinvolving/communitytitle> (accessed 16.02.07)

NSW National Parks and Wildlife Service (2004) Wallarah National Park – Joint Management of the North Wallarah Peninsula [http://www.nationalparks.nsw.gov.au/npws.nsf/Content/WalarahNP\\_joint\\_management](http://www.nationalparks.nsw.gov.au/npws.nsf/Content/WalarahNP_joint_management) (accessed 19<sup>th</sup> September 2007)

Parliament of New South Wales (22<sup>nd</sup> October 1996) "Community Land Development Bill: Strata Titles Amendment Bill", Legislative Assembly (Hansard) Extract, <http://www.parliament.nsw.gov.au/prod/parliament/hansart.nsf/8bd91bc90780f150ca256e630010302c/ca256d11000bd3aa4a2563e70017caa8!OpenDocument> (accessed 16.02.07)

Penrith City Council (2004) Penrith Development Control Plan 1998 (Lakes Environs) – Amendment No. 3, Penrith: Penrith City Council

Penrith City Council (2005) Sustainability Blueprint for Urban Release Areas, Penrith: Penrith City Council

Woodward-Clyde (2000) North Wallarah Peninsula Project Conservation and Land Use Management Plan (CLUMP), prepared for Lake Macquarie Council, St Leonards: AGC Woodward-Clyde

Wyndham City Council (2007) Adopted Annual Budget 2007/2008

Penrith City Council (2007a) Penrith City Council Summary of Maintenance Activities and Associated Costs, Penrith City Council

Penrith City Council (2007b) Waterside Landscaping; Estimated Annual Maintenance Costs, Penrith City Council



## UDIA NSW Community Title Principles

Research by the City Futures Research Centre at the University of NSW enabled UDIA NSW to derive a series of principles to guide developers and government on the ideal use of these schemes. Common Ground contains 15 principles to help build a better community title estates.

<b><i>Planning &amp; Design</i></b>	
1	Community title is a market niche. It is used to establish and maintain a level of local amenity, character or services for residents at a higher level than that usually provided by council. Ensure the scheme meets resident expectations as well as their ability and willingness to pay.
2	Community title includes features such as landscaped parks, walkways and recreational facilities that are maintained by a community association funded by the owners.
3	Community title may facilitate improved design outcomes while inclusion of landscape elements such as waterways and bushfire protection zones in such schemes recognises the benefit of local ownership and maintenance, provided sufficient recurrent funding by the owners corporation is maintained (refer to management and maintenance).
4	Physically delineate publicly accessible land, private shared land and infrastructure.
5	Comply with council's design guidelines where possible. Transfer of lot one to public ownership is presently not permissible and would be contrary to the intent of creating a point of difference in the market. Nevertheless adherence to council's design guidelines may provide the community association with greater options in the long term.
<b><i>Management &amp; maintenance</i></b>	
6	Prepare management plans at the development stage including financial projections for the adequate maintenance of infrastructure. Community associations have the potential to minimise levies by deferring regular maintenance which increases the risk of system failure and creates disproportionately higher repair costs.
7	Establish partnerships with specialist agencies and contractors to manage major infrastructure on behalf of the community association. Establish a budget and condition future residents to ensure sufficient funding for works.
8	Foster a strong working relationship with the council to understand the fundamental responsibilities of the local government and where the community association can most efficiently expend their resources to value-add.
9	Encourage the council to provide the same level of maintenance within the estate as they do elsewhere in the LGA or seek rate rebates if the local government service is reduced.
10	Address liability issues for publicly accessible areas within community title schemes. Inform the community associations and insurers of such liabilities including any maintenance agreements between the community associations and other bodies.

<b>Sales</b>	
12	Present a services inventory listing all assets that will be controlled by the community association. Document the purchasers' forecast levy expenditure at the point of sale.
11	Clarify the purchasers' legal obligations to cover costs consistent with the community association's responsibilities at point of sale.
13	Explain the developer's obligation to purchasers at point of sale regarding the maintenance of common areas of the scheme and advise of an indicative timeframe when this maintenance will cease and all assets either transferred to either local government or the community association.
14	Where land is dedicated to the local government, inform residents of the extent and nature of the land and infrastructure to be dedicated.
15	Illustrate public access to the estate and common areas.