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Governing the Compact City: The challenges of apartment living in Sydney

ARC Project DP0773388 The Demand for Higher
Density Housing in Sydney and Melbourne
Working Paper 2

Dr Hazel Easthope &
Prof Bill Randolph

September 2008

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Abstract

This paper addresses the governance of strata title developments, in the context of current Australian metropolitan planning strategies promoting increased urban consolidation. It argues that the current focus on higher density development is vulnerable to challenges relating to regulation, representation and termination in strata developments. The governance of strata schemes is found to take the form of 'nodal' governance based on market principles, where stakeholders do not have equal rights to participate, and the market is not free, but is regulated by a legislative structure that has inevitably lagged behind developments driven by the market. Principal among these is the increase in the size and complexity of strata schemes, which has put pressure on legislative arrangements originally designed for small developments. These problems are likely to escalate as an increasing proportion of the population move into strata.

Key words

Governance, strata title, regulation, representation, termination, Sydney

Introduction

Urban consolidation has become the dominant policy orthodoxy guiding strategic metropolitan planning in Australian cities (VIC DSE, 2002; NSW DoP, 2005; QLD OUM, 2005). But while planners and developers are forging a new compact city future for Australians, little attention has been directed at the long term outcomes of this process. Much of the contemporary academic debate about the compact city has focused on the assumed pros and cons of higher density housing as opposed to low density suburban development, with a predominant focus on environmental or infrastructure issues (e.g. Commonwealth of Australia, 1992; Breheny, 1995; Jenks et al, 1996; de Roo and Miller, 2000; Bruegmann, 2006). Given the predominance of higher density housing in the strategic plans for Australian cities, it seems much more fruitful to shift attention to how well current high density models actually perform in terms of the outcomes they are assumed to deliver. Leaving aside environmental and economic sustainability issues, relatively few observers have considered what the social outcomes of such development will be. A key component of this will be how well the governance and management arrangements for higher density housing work in practice. Indeed, given the increasing role higher density housing is playing in urban development, it is surprising that issues surrounding the governance of strata title, the predominant ownership and management form by which higher density housing is developed and owned in Australia, have received so little academic attention. The legal framework that underpins this system is the various strata title laws that govern property relations in multi-unit developments in Australia. Each state and territory in Australia has its own strata legislation, although they all follow similar principles in practice (Everton-Moore et al, 2006).

The Australian strata title system dates from the early 1960s and since this time a number of contradictions in the regulatory framework have emerged in the face of a growing and increasingly complex higher density residential sector. This complexity, coupled with the reliance on strata title to underpin the delivery of major strategic planning and housing policies, suggests that greater attention as to the effectiveness of strata title to deliver a long term socially sustainable housing framework is needed. While the strata systems of the eight state and territory jurisdictions are broadly similar, this paper concentrates on the governance of strata title in New South Wales (NSW), with a particular focus on the city of Sydney, which has the highest concentration of such housing in Australia (Randolph, 2006).

Background

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

While there have been small scale low-rise flat developments in Australian inner city areas since the 1930s (Lewis, 2000; Spearritt, 2000), the strata title legislation introduced in the 1960s facilitated a major expansion of higher density residential development in Australia by allowing the ownership of individual flats within apartment blocks (Randolph, 2006:474, see also Table 1). Today, around 3.5 million people live in strata schemes across Australia, mainly in urban areas (VIBCM, 2007), with almost two million in NSW alone.

Table 1. Current Strata Title Legislation in NSW

Act	Year	Purpose of Act	Other information
Strata Schemes (Freehold Development) Act	1973	Initial subdivision and sale of land	
Strata Schemes (Leasehold Development) Act	1986	Initial subdivision and sale of land	Developer keeps an interest in the land, with subsequent purchasers obtaining a leasehold
Strata Schemes (Freehold Development) Regulation	2002	Supplements Strata Schemes (Freehold Development) Act (1973)	
Strata Schemes (Leasehold Development) Regulation	2002	Supplements Strata Schemes (Leasehold Development) Act (1986)	
Strata Schemes Management Act	1996	Management of schemes and the resolution of disputes	
Strata Schemes Management Regulation	1997	Supplements Strata Schemes Management Act (1996)	Outlines model by-laws, tailored for a particular type of schemes (residential, retirement village, industrial, hotel/resort, commercial/retail, mixed use)
Strata Schemes Management Amendment Act	2004	Amends Strata Schemes Management Act (1996)	Includes amendments relating to large schemes, sinking funds and dispute mediation
Property, Stock and Business Agents Act	2002	Controls the actions of strata managing agents and onsite residential property managers	

Source: Everton-Moore et al, 2006 and NSW Government, 2004

In Sydney there are over 40,000 strata schemes containing almost 600,000 individual lots (see Table 2). Given that Greater Sydney's population is approximately 4.12 million people (ABS, 2006a), and assuming a low vacancy rate, it can be estimated that approximately 27.5% of Sydney residents currently live in strata developments across the city¹. Indeed, the 2006 census reports that 23.9% of the population in the Sydney statistical division lived in a flat, unit or apartment (ABS 2006b), with the main concentrations of the sector found in the older inner suburbs. There are now plans to build strata units for a further one million people (400- 500,000 units) in Sydney over the next 25 years under the new Sydney Metropolitan Strategy (NSW DoP, 2005). If these plans are realised, by 2030 approximately 45% of Sydney's dwellings could be in the form of strata title dwellings (Randolph, 2006). Similar metropolitan plans propose to greatly increase the numbers of higher density dwellings in other Australian cities (VIC DSE, 2005; QLD OUM, 2005). Higher density strata developments therefore comprise a significant and growing component of the structure of the modern Australian city. This represents a major watershed for the Australian city, which has traditionally grown by suburban low density development dominated by separate single family dwellings on individual plots of land (Forster, 2006).

¹ Based on a figure of an average of 1.9 people per flat, unit or apartment in the Sydney statistical division – ABS 2068.0 2006,

Table 2. Number of Strata Schemes and Lots in NSW, 2007

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

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Several other characteristics of the sector are worth noting. The first, and most significant, is the fact that around two thirds of the higher density private sector is rented, a significant contrast to the tenure profile of Australian urban housing in general. Secondly, the higher density stock is comprised predominantly of one or two bedroom properties. It is therefore a sector catering principally for non-family households, or low income families with little alternative than to rent small dwellings. However, while urban consolidation policies are based upon an assumption that the increasing proportion of one and two person households in Australia will lead to a rise in demand for higher density dwellings, research by Wulff et al (2004:58) has found that:

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

Thirdly, the sector is highly segmented with two dominant sub-markets: a high value rental stock concentrated in inner Sydney, along waterfrontages and in the coastal eastern and northern suburbs, and a lower income rental market concentrated in low value town centres in suburban areas (Bunker et al, 2005). Other submarkets cater for moderate income and younger rental and first homeowners. A further characteristic is its high turn-over rates and its role for many as a transitory location prior to moving into a house.

The strata title system is central to the NSW Government's push for urban consolidation. Kübler and Randolph (forthcoming:15) note that by the late 1980s, urban consolidation had emerged as the cornerstone of prevailing urban planning, and was a key feature of the 1988 Metropolitan Strategy. Subsequent plans, Cities for the 21st Century (1995), Shaping our Cities (1999) and, most recently, City of Cities (2005) have also emphasised urban consolidation. As a result, strata title legislation plays a significant role as a legal mechanism for enabling urban consolidation. However, concerns have been raised about the ability of the strata model in its current form to achieve effective urban consolidation (Thomson, 2007b). In particular, problems have been noted in regard to the regulation of residents, developers and owners' corporations as well as in regard to structures of decision-making and representation within the strata system. Furthermore, no process has been yet been devised to deal with blocks that are at the end of their physical or economic life (Sherry, 2006).

Given the fact that the governance of strata units has an impact on a quarter of the population of the largest city in Australia (as well as many others around the country) it is important to provide an overview of some of

the issues that have arisen in the governance of strata developments. Furthermore, a number of other countries, including Singapore (Christudason, 2004), the UK (Robertson & Rosenberry 2001) and Canada (Christudason, 1996) have used the NSW strata title legislation as a basis for their own multi-unit legislation and it is expected that the issues raised here will have international relevance.

In this paper, we begin by outlining some of the challenges currently facing Strata Title developments. As these concerns are strongly tied to the governance and management of strata title schemes, we go on to outline some theories of governance and discuss how these can help us to understand the challenges facing strata title in NSW.

Problems with Strata Title

A growing range of issues has emerged in recent years concerning the development and operation of strata title schemes in NSW (Bugden, 2005, 2007; City of Sydney, 2006; Norrie & Burke, 2007; Thomson, 2007a). In this section, we focus on just a few of these: regulation and dealing with diverse stakeholders; owner representation; and strata termination. While by no means an exhaustive list of challenges facing the strata sector, this discussion provides an overview of some of the issues that have been raised with the current strata title system in NSW. We also draw upon the work of academics in other countries where parallels with the NSW case are evident.

1 Regulation and dealing with diverse stakeholders

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

In NSW, each strata development is managed by the strata owners of the building through a democratically elected body, the owners corporation. The owners corporation is formally constituted as the legal entity that manages the property in the interests of all the strata lot owners in the scheme. It therefore acts as a mini-council, with powers to set by-laws for the building, fix services charges and other levies, manage the maintenance and repair requirements for the building and enforce compliance. Complaints from individual owners are channelled through the executive committee of the owners corporation, which adjudicates on disputes. Corporation executives are elected on an annual basis and are themselves subject to legal requirements laid down in the strata legislation. Indeed, the ability to function as mini local councils has led some to suggest the strata sector has emerged as a fourth tier of urban governance below that of the federal, state and local levels.

However, owners corporations are only one of a multitude of stakeholders involved in strata developments. Warnken (2005) lists a number of these, including: resident owners; investor owners; the resident unit manager (also known as a residential property manager or a site manager²); strata managers³; maintenance and repair companies; real estate agents; lettings agents, management rights brokers; legal practitioners;

² These deal mainly with maintenance and cleaning tasks and are often employed directly by the owners corporation.

³ These undertake the day-to-day management of the buildings, manage external contractors and provide accounting services for the owners corporation.

developers; financiers; local governments (planning, infrastructure, tourism); state governments (legislation, titles, dispute resolution, tourism, health, age care); tourist accommodation managers; as well as the taxation office, insurance industry, energy and telecommunication service providers, tourists, local residents, tourism retailers, hotel and motel operators, media, and the health and aged care industries.

Managing the relationships between all of these actors is complex. According to Guilding et al (2003), there is potential for conflict between resident owners and investment owners in their relationships with the resident manager because resident owners are primarily interested in the building and grounds caretaking, while investment owners are primarily interested in the sub-letting services. Such conflict causes strain on the role of the resident manager. This is a particularly salient issue in Sydney where up to 70% of new housing coming to market is high density development - the majority sold to investors.

There is also the potential for conflict not between owners in different economic positions. This issue has been raised in the context of Hong Kong by Ngai-ming and Forrest's (2002:715) study of owners corporations. They note that investment in the upkeep of buildings has a class and income dimension, with middle-class home owners who perceive themselves as on an upwardly mobile track being more "willing to invest in order to maintain the value of their properties and to accumulate more assets for future upgrading", while owners in older and cheaper buildings may be reluctant to invest.

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

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

As well as regulation of residents by owners corporations, important issues have surfaced surrounding the regulation of developers and owners corporations. Recent changes to strata title legislation have attempted

to mitigate problems stemming from conflicts of interest between strata managers, owners and developers by placing restrictions on the actions of the 'original owner', the owner of the strata scheme at the time the Strata Plan is registered (who is usually the builder or developer). When the Strata Plan is registered the original owner controls the owners' corporation as it holds all the owners' voting power in the scheme (Property Owners' Association of NSW, 2004). It is therefore in a very powerful position to determine the ongoing management structure of the scheme, for example, in awarding long term maintenance contracts and appointing strata managers. The *Strata Schemes Management Act 1996* places restrictions and duties on the original owner "to ensure a viable management structure is in place for the benefit of future owners of lots in the strata scheme who might otherwise possibly be prejudiced by decisions made by the original owner in the self-interested exercise of its majority voting rights" (Property Owners' Association of NSW, 2004). However, under the current legislation, it is still possible for the executive committee to hire a strata manager on a ten year contract after one third of the unit entitlements are no longer held by the developer (NSW OFT, 2006:8). In practice, this means that two-thirds of the unit-entitlements can still be held by the developer after the initial period and the developer can therefore still control the executive committee during this period.

Regulation in terms of long term financial planning for strata schemes has also been raised in recent discussions about strata title. In 2004, legislative reforms were introduced that require all new strata schemes to prepare a budget for 10-year sinking fund plans to provide for the future maintenance of the building and a further regulation was gazetted in 2006 that requires all other strata schemes to have a 10 year sinking fund plan by July 2008. Nevertheless, compliance with even these limited requirements are not subject to strict enforcement, which implies many schemes may have a sinking fund plan, but are not bound to collect the monies required to maintain the fund at an adequate level.

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

[a clear] need for better skills (particularly on the facilities management side) to cope with the increasing size and complexity of real estate developments and the increase in

regulation in areas of safety and risk, as well as operational regulations (such as the real estate agency legislation).

2 Representation

As well as issues of efficiency and competence in management, it is also important to recognise the significance of effective representation among owners in strata schemes and to note the unequal power relations that can occur in such schemes.

As noted above, the day to day administration of a strata scheme is carried out by the executive committee of the owners' corporation (often liaising with a professional strata management agent). This executive committee is made up of representatives of the owners' corporation who are elected at each annual general meeting (AGM). All strata owners have a vote at the AGM. However, not all strata owners have equal weight within the owners' corporation. The measure of their weight is called their 'unit entitlement' and is based upon the relative value of their strata lot. The unit entitlement regulates both the voting rights of each unit owner and the levies that they must pay to the owners' corporation for insuring, maintaining, repairing and managing the common property (Property Owners' Association of NSW, 2004). Furthermore, owners can choose to assign their votes to a representative as proxy votes.

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

Another issue of representation has been raised regarding strata title developments within community-title schemes. For example, at the high value Jackson's Landing development overlooking Sydney Harbour, there are 20 strata buildings in a community-title development, but only nine seats are allowed on the community association (the corporate body which manages the scheme), resulting in some blocks with over 100 apartments not being individually represented in the management structure (Thomson, 2007b).

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

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

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

3 Terminating strata schemes

Another important issue to recognise in discussions on the complexity of strata scheme management is that of the termination of strata schemes. As noted by Sherry (2006:227), many of the schemes built shortly after the introduction of the first strata title legislation in NSW, as well as those built earlier and converted to strata, are reaching the end of their useful life. The termination of a strata scheme is required as a first step in creating a new development on a site and therefore if any redevelopment is to occur on the site of an existing strata scheme, that scheme must first be terminated.

Under the current legislation in NSW, schemes are usually only terminated by an application to the registrar general where 100% of the lot owners, lessees and mortgagees have agreed to the termination (NSW Government, 2003: 20)⁴. New South Wales is not alone in this regard, with all the other states and the ACT also requiring agreement by all lot owners before the termination of a strata scheme (NSW Government, 2003).

There has been significant discussion in recent years in NSW about whether the termination of strata schemes should be made easier, especially in cases where the demolition of a building would be in the best interests of the individual lot owners or the community at large (NSW Government, 2003). For example, the NSW Property Council⁵ (2003:11) notes that if termination is not forthcoming due to one or more strata owners voting against it, owners can only choose between paying increasing maintenance on a declining building or selling their unit at a loss due to its poor condition. They also point to the possibility of the development of "urban slums", should buildings in poor condition be retained.

A number of alternatives to the current system have been proposed, including a unanimous vote at a meeting of the owners' corporation; fixed terms for strata schemes (as is the case in some US schemes); and the cooperative re-development of strata schemes between existing lot owners and a developer (Sherry, 2006). However, the most popular alternative has been to base termination on a majority (rather than a unanimous) decision, with proposals ranging from 75% to 90% of owners voting for termination (see, for example, The Property Council, 2003). Such an approach, if adopted, is likely to draw upon the experiences in Singapore where a 90% vote is required to terminate the strata title for buildings less than 10 years old,

⁴ Applications can also be made to the NSW Supreme Court for termination where there is no unanimous agreement. However, to date, no strata schemes have been terminated in this manner in NSW.

⁵ A body that lobbies on behalf of development interests.

while an 80% vote is required for buildings older than 10 years. Any such change is likely to be premised upon the argument made by Sood (2000:158) in relation to the Singaporean case, that:

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

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

Approaches to Urban Governance

The discussion above regarding decision-making, representation and termination in strata schemes indicates that the concept of "governance", and in particular *urban* governance, may enable us to get a better understanding of strata title developments and the problems that they generate.

'Governance', understood as involving "government *plus* the looser processes of influencing and negotiating with a range of public and private sector agencies to achieve desired outcomes" (Hambleton, 2004:5), is a term that is increasingly being used to capture the complexity of the interplay between the global economy and the rise in the privatisation of the management and everyday operations of cities. The concept of "urban governance" has received significant attention in recent years as changing urban structures are understood to reflect changes in the role of cities in the global economy as well as changing political ideals.

There are a number of different theories informing urban governance approaches. Kübler (2005) describes three different models, which have informed urban governance in Australia - governance through hierarchy, governance through the market and governance through negotiation.

The *hierarchical approach* to governance is based on Weber's model of the rational bureaucracy, in which there is a structured division of labour and the actor(s) at the 'top of the pyramid' control the actions of those further down. Kübler (2005) explains that in the context of urban governance, this approach is reflected in the metropolitan reform tradition that advocates institutional consolidation and the need for metropolitan governments to enable efficient and equitable urban service provision (Kübler & Heinelt, 2002). This approach also points to a focus on the nation state and a focus on, in Australia, the three levels of governance in government – federal, state and local.

The *market approach* to governance, in contrast, is informed by neo-classical economics and the focus is on competition between local areas. Harvey (1989) described this as a shift away from managerialism and

towards entrepreneurialism in urban governance. He (1989:3) explains that the focus of urban governance moved away from the local provision of services, facilities and benefits to urban populations and towards finding “new ways in which to foster and encourage local development and employment growth”. In the context of urban governance, this shift is reflected in the public choice approach, advocating fragmentation and local autonomy (Kübler, 2005:5) and the benefits of competition and ‘voting with one’s feet’ for encouraging effective and efficient service delivery (Kübler & Heinelt, 2002:4). This focus on market mechanisms also allows for recognition that governance is not only the domain of the government, but that economic actors also have a role to play as governance actors.

The move towards the third type of governance outlined by Kübler (2005) - *governance through negotiation* - has allowed for a greater recognition of the numerous actors involved in governance and their interactions. Indeed, in the case of the governance of Sydney, an analysis of metropolitan strategies led Kübler and Randolph (forthcoming:15) to note that:

Metropolitan planning is no longer seen as the drafting of master plans to be implemented by state agencies, but more as an activity of managing a process that binds the agencies with a major stake in Sydney’s development in a coordinated approach.

Understanding governance through negotiation allows for a recognition that both public (e.g. government) and private (e.g. businesses and owners corporations) actors are influential in the governance of urban areas. Hambleton & Gross (forthcoming:11) argue:

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

Indeed, discussions of public-private partnerships have received increasing attention in recent years (e.g. Stoker, 1996; Osborne, 2000; Flinders, 2005) as a new form of governance through negotiation. However Pierre (1999:373) notes that “the issue of which political objectives guide such urban governance has been left largely unanswered”. He (1999:373) also recognises that because different segments of city administration embrace different values, problems of governability or “governance gaps” can arise within cities.

The focus on governance through negotiation has also been framed as a discussion on “new metropolitan governance” where “metropolitan problems are addressed through purpose-oriented networks of co-ordination and co-operation, involving municipalities, governmental agencies at various levels, as well as private-sector providers” (Kübler & Heinelt, 2002:8). Such new metropolitan governance structures operate “through ‘soft’ forms of co-operation, rather than through ‘hard’ metropolitan institutions” (Kübler & Heinelt, 2002:11). This means that it is unlikely that one new model of governance will emerge, since governance structures under new urban governance are so context-specific (Le Gales, 1998 in Kübler & Heinelt, 2002:11).

Kübler and Heinelt (2002:11-12) note that most of the focus in discussions on new metropolitan governance has been on the efficiency of urban service delivery, rather than on urban democracy and citizenship. They point to both a pessimistic and an optimistic view on the possibilities for urban democracy under new forms

of metropolitan governance. The pessimistic view holds that the focus of modern governance is on outputs – ‘making things happen’, at the expense of inputs (representative democracy) and decisions are co-produced, but not controlled by representative bodies (Kübler & Heinelt 2002:12). The optimistic view holds that new urban governance allows for ‘deliberative democracy’, where “free, open and public debate (or dialogue)” can enable civil organisations to influence government and be a check on its powers (Kübler & Heinelt 2002:13-14). Harding et al (2000) draw these two views together to provide a nuanced account of governance through negotiation in their discussion of the arguments of urban regime theorists. Urban regime theorists explain that in liberal democratic societies there are two interdependent systems of authority, one based upon popular control through the various organs of representative government and the other based on the ownership of private assets. This means that public officials cannot be indifferent to private (i.e. business) decisions and that, in effect, urban governance works “through a system of ‘civic co-operation’ based upon mutual self interest” (Harding et al, 2000:984).

While strata title legislation, as a tool of the State Government, may at first be seen as an example of hierarchical governance in action, the strata title legislation itself actually advocates a negotiated form of governance, placing increased control over the governance of urban areas into the hands of private organisations and individuals. Indeed, the governance of strata title developments can be understood as an example of “civic co-operation based on mutual self interest” (Harding et al, 2000:984).

There are certainly interactions between the government and other stakeholders in strata title developments and a multitude of amendments to the strata title legislation have occurred as a result of this interaction. However, these amendments have also made the legislation complicated and have therefore made governance more difficult. Each state and territory has its own legislation, which causes confusion for companies and individuals with property interests in more than one jurisdiction (Australian Government, 2004:25). Despite these amendments, the growing complexity and size of the strata sector in Australia is placing increasing strains on the legislation in most jurisdictions.

Elements of the market approach to governance are also evident in strata schemes in NSW. The focus by the NSW State Government on urban consolidation, which has led to a reliance on strata title and accompanying legislation, has also led to the creation of new mechanisms for governance, such as owners corporations. Governance through small associations like owners corporations is legitimised through a market-based approach to governance with a focus on public choice, fragmentation and local autonomy, which is at the same time managed under a legislative framework controlled by the states.

Indeed, it is difficult to simply divide governance into public and private realms. Webster (2002: 5) recognises this complexity and makes a distinction between different types of goods, by which he means “any form of goods, services, infrastructure or facility that yields benefits or disbenefits [sic] to individuals”. Webster described four types of goods:

- *Pure private goods*: these are consumed competitively. Consumption by one individual prevents consumption by any other.
- *Pure public goods*: these are consumed jointly. All consumers consume the same good.
- *Local public goods*: these have ‘distance attenuated benefits’. Consumption is shared, but locals will benefit more than those living at a distance.

- *Club goods*: these are jointly consumed, but individuals can be prevented from consuming them.

Webster (2002:3) argues that “most public goods are consumed by particular publics and are better conceived of as club realms”. He (2002:22) argues that the “urban realm” is “an interlocking and overlapping set of club realms”. When dealing with clubs, we are necessarily also dealing with issues of governance in the sense of managing the boundaries of club realms. Webster (2002:22) discusses gated communities as “a particular manifestation of the club realm that gives legal protection to the economic right over shared neighbourhood attributes”. The same can be said for strata schemes, which require governance structures - legitimised through a market-approach to governance - that allow for governance within the scheme as well as for the management of borders and the exclusion of people who are not members of that particular ‘club’.

We now turn our attention to the implications of the existing forms of governance in strata schemes in NSW, focusing first on the implications for owners (both owner-occupiers and investors), and then on the implications for residents (both owners and tenants).

Implications for owners

Drawing upon many of the themes explored above, Shearing and Wood (2003) outline a particularly useful approach to understanding governance that can be applied to areas that appear to be public, but are in fact private (i.e. club realms), such as strata schemes. They argue that in order to understand governance in the modern day, we require an understanding of ‘nodal governance’ where governance is understood not solely in terms of the state, but rather in terms of first (state), second (corporate or business) and third (non-governmental organisation) sectors as well as a fourth informal sector of people who operate outside the first three sectors. They propose the notion of a ‘denizen’ – a person who enjoys civil and social rights, but not full political inclusion – to understand “the affiliations, rights, and expectations of those who are governed within and across multiple forms of ‘communal space’”. They explain that unlike the Hobbesian distinction between the public and private domains, the increasing existence of “mass private property”⁶ – areas that appear to be public, but have restricted access – is blurring the distinction between the public and private realm. The governance of these spaces is managed by property owners, often in the form of corporate entities. Hence, ‘denizenship’ is largely determined by purchasing power. To be a denizen of facilities like gyms, private educational facilities, gated communities or the common property of strata title developments, one needs to buy one’s way into these communal spaces (Shearing & Wood, 2003:414).

Indeed, the governance of strata title developments is certainly tied up with issues concerning access to the scheme and exclusion of those from outside, in this case, people who are neither owners nor tenants. The bulk of the literature dealing with the issue of exclusion from particular residential areas has, not surprisingly, focused on the case of gated communities. However, the issues raised for gated communities are also broadly relevant for all types of residential associations, including strata buildings. As Kennedy (1995:761) has noted in the case of the US:

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

⁶ A term borrowed from Shearing and Stenning (1983).

However, it is questionable to what extent the organisations surrounding strata title developments are actually participatory and community-oriented, even *within* their own structures. The issue of representation within strata developments has begun to receive increasing attention in Sydney (e.g. Thomson, 2007c). Indeed, while it could be argued that the governance of strata schemes should be a negotiated governance – and this certainly seems to be what the NSW strata legislation is trying to achieve – the reality in many schemes is that their governance is a form of nodal governance, based on market principles, but where the stakeholders within a strata title scheme may not have equal rights to participate. Sometimes they do not even have rights proportional to their market share of a scheme because of the practice of forfeiting proxy votes. In these cases, the market in which the governance structure operates is not a free market, but rather one constrained by a legislative structure, which, while responding to the challenges posed by the increasing complexity of strata schemes (through amendments to the existing legislation), is still unable to keep up with the rapid pace of change within the strata title industry and the pressure for ever larger developments.

Implications for residents

It is essential that the governance of strata schemes be seen as distinct from the governance arrangements of private corporations or government agencies because people *live* in strata title developments. This means that any viable governance framework needs to take into account the role of residents in a strata scheme, in particular, their personal ties to their homes and their relationships with each other and other stakeholders within the development.

As mentioned previously, there are legislative pathways for regulating the behaviour of residents in strata schemes in so far as if a dispute cannot be resolved within the scheme by the owners' corporation, this issue can be taken to a governmental tribunal for resolution. However, governance is not simply a question of laws and legislation, there are other methods that can be used to govern behaviour. For example, the governance of communally managed residential areas like strata title developments also points to the importance of 'community' and the requirement to meet responsibilities to one's residential community. As Rose (1996 in Cowan & Marsh, 2004:846) notes, 'community' is not only the territory of governance, but a *means* of governance. According to Cowan and Marsh (2004:846), community "neatly fits the predominant motif of neo-liberalism – rule without ruling", because it allows people to be governed through their associations.

However, under these new ways of "governing the behaviour of individuals through acting upon [the] ethical force field" of a "rationality of responsibility" (Cowan & Marsh, 2004:849 in reference to Rose 1999) - where responsibility is aligned with community - responsibility is understood as not only disciplinary, but as also enabling the widening of opportunities for self-fulfilment and the reduction of social exclusion (Cowan & Marsh, 2004). Blandy et al. (2003:5) note that the focus on community is supported by "a view which sees social capital as a key determinant of neighbourhood renewal", where social problems are dealt with by encouraging social solidarity. As Forrest et al. (2002:215-216) note:

Policy makers have been increasingly drawn to ideas of reciprocity, self help and mutual aid in achieving social policy objectives – the idea of working with the stock of social capital in a neighbourhood.

The emphasis on 'community' as a means of governance is, however, problematic because communities are "diverse, conflicting and overlapping" and their values and purposes can change over time (Cowen & Marsh, 2004:847-848).

There is an apparent contradiction between the focus on market-based and exclusionary forms of governance on the one hand and governance that espouses the benefits of 'community' and democratic participation in its management structures on the other. Yet both these aspects are apparent in the governance of strata owners' corporations and similar organisations. This apparent contradiction could potentially be reconciled if we understand such organisations to be market-based and exclusionary in their relationships with outside actors, while participatory and community-oriented *within* the structures of the organisation. This is not the case, however, and many strata schemes are neither participatory nor community-oriented.

Conclusion

Urbanisation and the need for urban consolidation is a global issue that raises significant economic, political, environmental and social challenges. In this paper, we have touched on an issue that appears minor in comparison – the governance of strata title developments. Yet in Sydney alone, this issue affects the everyday lives of a million people. Indeed, if the drive for urban consolidation is to be successful, then the governance of strata title developments needs to be viable, cost-effective and inclusive. In order for this to happen there is a need for greater systematic understanding of the problems facing the governance of strata schemes in order to quantify and clarify the situation. The high density city cannot be governed successfully until the implications of regulation, representation and termination in strata schemes are properly understood. Despite this, we are pushing ahead with urban policies that are based on a highly vulnerable form of residential property ownership with little information on which to base future decisions and actions aimed at resolving these fundamental issues over the longer term and effectively managing our increasingly complex forms of residential development.

This paper has provided an introduction to some of the issues surrounding the governance of strata title developments that require further research. The possibilities for significant social conflict at the local scale within blocks as well as a potential threat to local urban amenity through deteriorating and poorly managed blocks are clear. Furthermore, in the future we are likely to see an escalation of problems surrounding the governance of strata schemes. Most evident will be the growth in ineffective management and regulation as more blocks age and values and investment incentives fall. Less apparent, but of even greater importance, is the fact that as the strata sector grows, an increasing proportion of players in the strata system will be new entrants who lack the knowledge required to be successful (e.g. new purchasers and unexperienced strata managers) in a system based on nodal governance; and the wealth required to have influence in a system where 'denizenship' is based on purchasing power. This will, in turn, increase the relative power of established 'players' in the sector (e.g. major developers, professional strata managers). Hence, as the ratio of new entrants to established players changes, inequalities within the sector may increase. Indeed, the drive for urban consolidation will mean not only that a large proportion of the population will face problems associated with the governance of strata schemes, but the growth in the sector itself is also likely to make

the these problems worse by increasing the proportion of entrants with little knowledge of the system, as well as leading to a shortage of strata professionals. Indeed, if the supply of skilled strata professionals (e.g. strata managers, site managers) does not keep pace with demand, problems of regulation, representation and maintenance are likely to increase. Similarly, if effective legislative protections for new entrants are not implemented at the same rate as these changes occur, inequity within the sector will only intensify.

Systematic research has yet to be undertaken on the implications of these key issues. The relevance of the concepts of urban governance presented in this paper in the context of the rise of the strata sector will be given greater consideration and examination through empirical research the authors currently have underway. There is also a proposal under consideration by a range of stakeholders including university researchers and strata professionals to establish a national strata research foundation in Australia, to provide key stakeholders in the strata industry with information to help them to make informed decisions and actions. It is hoped that within the next two to three years, results from this systematic and co-ordinated research will begin to inform the policy and practical responses of governments, developers, planners, strata managers, executive committee members, owners, and other stakeholders with an interest in strata titled properties.

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