



## Renewing the Compact City

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# Economically viable and socially sustainable approaches to urban redevelopment

## Executive summary

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## Renewing the Compact City: Economically viable and socially sustainable approaches to urban redevelopment

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Any opinions expressed in this report are those of the authors and do not necessarily reflect the views of UrbanGrowth NSW, Strata Community Australia (NSW), Australian College of Community Association Lawyers, The Owners Corporation Network of Australia, NSW Fair Trading or UNSW Australia.

# Executive summary

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The aim of this project was to explore equitable and viable solutions to what has emerged as a fundamental issue facing Australian cities in coming decades: how to effectively, efficiently and inclusively redevelop older areas of privately owned multi-unit strata titled housing to achieve the higher densities needed to accommodate population growth without exacerbating social inequalities and collateral social disruption. The research therefore addresses questions of both feasibility and equity regarding the termination and renewal of strata schemes.

While urban environments have been gradually reworked through urban consolidation and densification over the past decades, we are now entering new and challenging territory. Urban renewal activity must shift from the relatively straightforward processes of redevelopment of previously disused or industrial land to the regeneration of existing residential areas. In many areas now targeted for renewal, replacing existing multi-unit housing presents a complex challenge. Many of these older strata schemes – particularly in inner and middle ring suburbs and around transport nodes – now sit on land under increasing pressure from planners, politicians and developers for more intensive use. Furthermore, many are reaching a point in their life cycle where substantial reinvestment will be required to upgrade ageing amenity.

To date, the mechanisms by which such goals may be translated into practice have been largely neglected in research on urban renewal. Other jurisdictions, such as Singapore, Hong Kong and New Zealand, have already implemented changes to legislation facilitating renewal of multi-unit residential buildings, however the experience has been varied. In Singapore, renewal has increased following changes to legislation, while in Hong Kong and New Zealand there has been limited renewal under the new provisions.

Some international research has explored aspects of this issue but as yet there has been little investigation that takes a holistic approach to examining the complex interplay of multi-stakeholder interests in achieving socially equitable strata renewal. Thus, while the project focuses on Sydney, it generates new insights into a globally significant field of city planning in complex market driven economies, and is relevant to other Australian and international jurisdictions grappling with similar urban renewal challenges.

This study was undertaken by researchers at the UNSW Australia funded under the Australian Research Council Linkage grant programme (ARC Linkage LP130100400). The partner organisations that supported this project include key stakeholders who will need to work with communities to steward urban regeneration. They represent the NSW state-owned developer agency (UrbanGrowth NSW), the strata management industry (Strata Community Australia NSW), strata lawyers (Australian College of Community Association Lawyers), strata lot owners and residents (the Owners Corporation Network of Australia), and government regulators (NSW Fair Trading).

## Policy and legislative context

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Over the past three decades in Australia there has been an emphasis amongst metropolitan planners and policy makers on urban consolidation and densification of existing urban areas. This urban consolidation is being delivered on the ground largely through the development of multi-unit strata titled properties. More than a quarter (27%) of all housing in Sydney is already in the form of attached housing - flats, units and apartments, as well as town houses and terraces - the vast majority of which is strata titled. This proportion will increase significantly in the future given the significant uplift in multi-unit development. At the present time over 65% of new dwelling approvals in Greater Metropolitan Sydney are for apartment development (Australian Bureau of Statistics, 2015). In addition, some townhouses, row houses and villas are also owned under strata title, adding to these figures.

The policy shift towards urban consolidation occurred during a period of substantial reconfiguration of urban economies which saw the relocation of manufacturing and industrial activities to the fringes of urban areas or offshore. In their wake, large parcels of often centrally located land became available for conversion into housing. Pyrmont-Ultimo and Green Square in Sydney, Docklands in Melbourne, and Southbank in Brisbane are three such areas that epitomise this change, and have been at the vanguard of urban policy change and restructuring of urban economies and urban housing.

As these spaces start to become scarce, increasing attention has been directed towards areas of existing development, especially around older town centres and transport corridors, to provide additional dwellings for a growing population. Some of this change has driven an intensification of the urban environment as commercial and mixed use buildings are rezoned for higher density apartments. However renewal of existing strata titled properties has not occurred in the same manner and has often been overlooked due to the complexities of their ownership structure and the difficulties associated with getting all owners to agree to terminate a scheme, or getting an order from the Supreme Court.



It is in this context that the NSW Parliament passed two new acts to replace all of the existing strata legislation in October 2015. Of particular interest for this research is Part 10 of the *Strata Schemes Development Act 2015* (NSW), which reduces the level of owner approval required to terminate a scheme to 75%. Termination can occur in two circumstances – either by collective sale to a third party (most likely a developer), or by a collective renewal, where the scheme is terminated and existing lot owners become tenants in common (shared owners) of the entire property. The latter would enable existing lot owners to retain their property rights in the land and to develop a new scheme collectively.

This research report therefore focuses on a highly topical change in the strata legislation in NSW that has the potential to significantly impact the strata market in NSW and elsewhere, with implications for other jurisdictions in Australia where similar legislative change is being contemplated.

## Project overview

The project was split into three stages.

**Stage One** identified the location, scale, market values and social profiles of residential strata properties across Greater Metropolitan Sydney and assessed the potential for renewal under current market conditions. This was achieved through detailed analysis of large population and property databases including the 2011 ABS Census of Population and Housing, the NSW Strata Title Database and the NSW Valuer General's Database. Detailed results from this stage of the research are published in a separate Interim Report. The feasibility analysis identified that 15% of existing schemes registered prior to 1990 (2,601 schemes) could be feasibly redeveloped as low-rise (up to 3 storey) buildings and a further 33% (5,729) could be redeveloped as higher-rise (up to 10 storey) developments, subject to local planning controls. Three main scenarios for strata renewal in Greater Metropolitan Sydney were identified:

1. **Gentrification:** The replacement of low-rise schemes (up to 3 stories) with new low-rise schemes built to higher quality specifications. Concentrated in high property-value locations in the Eastern Suburbs, North Shore and near the ocean and harbour.
2. **Densification:** The replacement of low-rise schemes with new higher-rise (up to 10 storey) schemes. Concentrated in middle-ring suburbs.
3. **Residualisation:** Areas where the replacement of strata schemes with new schemes is not economically feasible. Concentrated in areas already experiencing multiple disadvantage, largely in the Western Suburbs.

**Stage Two** established the core legal, financial and institutional challenges raised by strata renewal and identified the market drivers and consumer perspectives and attitudes related to scheme termination and renewal. This was achieved through two methods. First, the research team interviewed 34 key stakeholders including specialist legal and financial professionals, strata management industry professionals, local planners and spokespersons for owner and tenant representative bodies. Second, a survey of 1,261 strata residents and owners in properties registered prior to 1990 asked people questions about their attitudes towards the redevelopment of residential strata schemes.

**Stage Three** examined the process of strata scheme termination to explore equitable and feasible solutions to strata scheme termination and renewal. This was achieved through two methods. First, three scenario-building workshops with 37 key stakeholders were held to workshop feasible models for termination and renewal that addressed the key concerns and priorities raised in the interviews and survey in Stage Two. Second, six community workshops were held with strata owners and residents across the Sydney region – in Cabramatta (2), Coogee (2), Mosman (1) and Parramatta (1) - to work through social, financial, management and planning issues relating to scheme renewal, and to record the opinions and concerns of local stakeholders about hypothetical termination and renewal scenarios in their local area.

## Key findings

### Major issues in the termination of strata schemes

#### *Drivers of renewal*

There are two main drivers of strata titled building renewal in Sydney. First, as more than a quarter of all strata schemes are at least 35 years old, a process to facilitate the renewal of buildings as they face disrepair is important for the long term management of the built environment. Second, there is considerable pressure in Sydney to provide more housing within the existing urban area, and renewal of strata properties is seen as important to enable the provision of additional housing through urban consolidation.

#### *Property rights*

The proposed legislative changes aimed at facilitating strata renewal reveal inherent tensions in owning strata property. Owning a strata property simultaneously gives individual private property rights over a unit (lot) and rights over a share of the building and grounds (common property). This can cause tensions when decisions made by the majority regarding the common property are at odds with the rights of an individual owner in regards to their lot. This is further complicated by tensions that can arise between property rights, and rights to housing and home.

Change in the NSW strata legislation has the potential to significantly impact the strata market in NSW, with implications for other jurisdictions in Australia where similar legislative change is being contemplated.

#### *Vulnerable groups and hardship*

Forcing the relocation of elderly or less mobile people and people on low or fixed incomes has the potential to cause some significant hardship. Some of these hardships may be remedied through appropriate financial compensation, however research participants expressed strong support for formal recognition of other non-financial hardships in the process of strata renewal. Addressing the needs of vulnerable groups who presently live in strata will be critical to ensuring renewal can occur viably and equitably.

#### *Tenants*

Tenants are in many ways the neglected majority interest in the termination of strata schemes. It was widely acknowledged that tenants have few formal rights to be involved in termination. Appropriate information about a plan for renewal, sufficient notice for tenants (3-6 months) and some compensation for moving costs were identified as important.

### Models of renewal

#### *Speculative vs collaborative approaches*

A speculative approach with developers progressively buying into a strata scheme in an attempt to acquire all, or the required majority, of the units to initiate a termination is likely to occur in many cases irrespective of any change to the strata legislation regarding the vote required to terminate a scheme. However, this is not the only possible approach, and the preferred approach identified through this research was a collaborative one in which any process to acquire lots or instigate a renewal happens in a transparent and open manner, with developers directly engaging with the owners corporation.

### *Renewal models*

In some cases renewal will be led entirely by a developer and in others it will be led entirely by the owners in a scheme. However, there are also many other alternatives in between in a continuum from owner-led to developer-led strata renewal. While it was considered likely that a developer-led renewal with no further owner involvement would be the dominant scenario, a value share option, in which owners would have the choice to retain some stake in the outcome of a redevelopment, was a desirable proposition identified by strata owners in the survey.

### *Preferred model of renewal*

The preferred renewal model identified through this research responds to the desire of many owners for a value share approach, while also taking into account practicalities of risk and management of a construction process. This model involves the developer engaging with the owners corporation in a transparent and open manner, and owners being given the opportunity to purchase a unit in the new development on a 'like for like' basis as an off-the-plan sale. For this model to be broadly feasible, some type of stamp duty concession might be required on the 'replacement' units purchased in this way.

In actually working towards this outcome, five essential steps were identified in the termination and renewal of a strata scheme: trigger, due diligence, vote, appeals, and transfer.



## Decision making

### *Trigger*

A renewal process is likely to be triggered in one of the following ways: the proposal could come from within the scheme and be driven by a group of existing owners; a developer could make approaches to individual owners to buy out lots to take over the scheme; or a developer could approach the owners corporation as a whole through the executive committee or strata manager. Likely triggers in all cases are problems with the building prompting owners to consider the costs of renovations and repairs compared to a renewal, and local planning objectives enabling the land to be developed to a higher residential density.

### *Due diligence*

In order to make an informed decision about the renewal of their strata scheme, owners need reliable information about the quality of their building, the value of their building, and about the impact of a redevelopment on their personal tax affairs. It is essential that this information is reliable, accurate and transparent. Challenges that owners may face in accessing this information include being able to find the right specialists, being able to afford the specialist advice they need, and being able to access information in plain English or in their own native language, to ensure that they have fully understood the implications of any proposed redevelopment for their personal circumstances.

For many owners the decision making process will be the most demanding part of the renewal process. Making a decision about whether to vote for a renewal plan requires weighing up a complex mix of financial, emotional, physical and social factors, with the precise combination different for every owner. It is necessary therefore to ensure some degree of flexibility in the process, to ensure that different blocks can manage the decision-making process in the way that works best for them, while also putting in place enough structure to ensure the risk of manipulation is minimised.

## Managing the process

### *Fairness and oversight*

Central to the acceptance of strata renewal was the perceived and actual fairness of the process. This related directly to voting proportions and under what circumstances it would be considered 'fair' to force someone to sell their property. Community participants broadly accepted that single holdouts were a problem and in principle should not be able over-ride the will of the majority. However this was qualified based on the reasons for people holding out, and how many were holding out. No one wanted to see groups of owners or vulnerable individuals forcibly displaced.

For many owners the decision making process will be the most demanding part of the renewal process. Making a decision about whether to vote for a renewal plan requires weighing up a complex mix of financial, emotional, physical and social factors, with the precise combination different for every owner.

To ensure a fair and equitable outcome, there were mixed reactions about the role of a government body overseeing termination. Opposition to this was largely on the grounds of reducing government involvement in the functioning of the housing market. On the other hand, consumer groups and community members mostly expressed a strong sentiment that an appropriate level of oversight be offered by an independent body, preferably a government body.

### *The vote*

When specifically questioned about a less than unanimous voting threshold, community workshop participants and survey respondents were mixed in their opinion. For example, 43% of the owner occupiers who completed the survey agreed with the proposed change while 44% disagreed. Responses to the proposal given in the community workshops indicate that both opposition to, and support for, a less than unanimous voting threshold will likely be qualified by the specifics of the proposal for termination and renewal. These findings indicate that there is no clear majority supporting the implementation of the changes in these arrangements among strata owners.

### *Appeals*

Addressing individual circumstances in the case of a strata termination was expected to happen through a dispute resolution or mediation process. There was uncertainty amongst many research participants as to how this would occur but there was wide recognition of the importance of early mediated discussion. Addressing problems and issues prior to a legal appeal arising was seen as critical, both from community and professional perspectives.

### Transfer

Giving existing residents the opportunity to remain in the same location in a new development may go a considerable way to alleviating potential problems of displacement as a result of a strata renewal. Providing an opportunity for existing owners to receive a 'like for like' apartment in return for their consent was broadly viewed as a desirable outcome. There are of course risks involved, but developing this as a viable option will be critical to the success of strata termination as a general concept.

### Timelines

The complexity of terminating a scheme could result in a lengthy process and this was generally accepted as positive, to give all parties enough time to make appropriate informed decisions. However it was suggested that it may create problems of uncertainty leading to unnecessary anxieties over the future of individual living arrangements. This uncertainty may also have financial implications for owners and investors who wish to sell, and investors who may be left without rental return during this period.

## Implications for metropolitan planning and urban renewal

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Unlike the redevelopment of detached dwellings, the wholesale intensification of already relatively dense suburbs and centres through strata renewal requires a more strategic focus as a distinctive policy outcome. Moreover, to make strata renewal effective in practice, proponents of a strata renewal proposal will need to seek development approval and possibly re-zoning to provide the incentive to undertake the development. In this context, strata renewal is very much a planning issue. Local councils will need to develop policies to accommodate the strata renewal process, with particular regard given to which scheme renewal propositions might be supported in relation to local environmental plan and development control plan frameworks and which will not.

In considering the implications of strata termination and renewal, in addition to issues of individual equity and displacement, wider concerns of community equity and access to appropriate housing and infrastructure are also central to this issue. Finding the appropriate balance between the publicly sanctioned benefits of urban renewal in key target locations and the important role that existing older buildings play as a source of more affordable housing in what are often accessible places must be central to the understanding and implementation of strategies to make residential strata termination and renewal easier. While the proponents of strata reform may view these older strata blocks as barriers to progress, many others see them as a vital housing stock for both owners and renters.

Compounding this is widespread apprehension that urban renewal through higher density development will bring less amenity to an area rather than more. It was suggested by some interviewees and community workshop members that public opposition to higher density development in Sydney is well founded, based on the expectation of a lower standard of replacement building quality and the negative impacts on local infrastructure provision, especially in terms of overdevelopment and the lack of reciprocal provision of open space.



## Key recommendations

Our research findings indicate that residential strata renewal in Greater Metropolitan Sydney is likely to be feasible, at least in certain circumstances. This finding was foreshadowed in the Interim Report for this project. However, concerns were raised in regards to the equity of any process for strata scheme termination and renewal. Our assessment, based on the project outcomes, is that changes are needed to both the new legislation and other legislation and policies before the renewal process and outcomes could be considered equitable for strata owners, tenants and the broader community.

This report makes 27 recommendations regarding the strata termination and renewal process. Twelve of these relate specifically to the new legislation recently passed in NSW, while a further 15 lie beyond the scope of that legislation.

These recommendations were compiled following the release of the exposure draft of the Strata Schemes Development Bill in July 2015. It should be noted that some of recommendations below are now reflected in the Act that was passed by the NSW parliament on 28 October 2015.

### Recommendations regarding the NSW Strata Schemes Development Act

1. Reduce the voting period from one year to between one and three months and the time allowed to prepare a strata renewal plan from two years to one to minimise the uncertainty of the strata renewal process and the potential for coercion.
2. Introduce a tiered voting threshold based on scheme size starting at a minimum of 80%.
3. Include a statement of principles that reflects the broader policy aims of strata renewal in the Strata Schemes Development Act.
4. Strengthen the confidentiality requirements for the voting process to allow for a secret ballot.
5. Improve the transparency of the process by expanding the disclosure requirements for developers and extending disclosure requirements to owners who control more than 20% of the lots at the initial meeting.
6. Clarify the scope of the Land and Environment Court to consider hardship in deciding to approve a plan.
7. Provide clear guidance on the appropriate timing of 'compensation value' and 'market value' valuations.



8. Require the proponent of a renewal plan to provide the renewal proposal and plan in other languages if required by an owner.
9. Require that information regarding how and when tenants will be informed of the decision, and the date by which tenants will need to vacate the building, be included in all renewal plans.
10. Require that tenants be notified of key dates once the renewal plan has been approved by the owners corporation.
11. Require more detailed information in proposals and plans for collective redevelopments.
12. Clarify the responsibilities for payment of court review costs.
18. Government produce information packs in multiple languages on how to draft a renewal plan.
19. Industry bodies provide renewal guidance and training for strata managers with appropriate government support.
20. Government, in cooperation with industry and consumer bodies, raise awareness of mediation services approved by the Commissioner for Fair Trading amongst strata residents and owners.
21. Government, in cooperation with industry and consumer bodies, facilitate the use of the NSW Department of Fair Trading's strata mediation services if a dispute arises prior to owners being required to notify of their decision to support a renewal plan.

## Recommendations for Government beyond the scope of the strata legislation

The following recommendations have been separated into two parts, the first addressing wider planning implications of strata renewal, and the second addressing some procedural issues that can be dealt with outside the strata legislation.

### Planning

13. Government support the involvement of not-for-profit housing providers in strata renewal to facilitate the provision of affordable housing for rent and sale.
14. NSW Department of Planning and Environment review the *NSW Affordable Rental Housing State Environmental Planning Policy* to include the loss of affordable rental accommodation in terminated strata schemes.
15. NSW Department of Planning and Environment implement a new *Strata Renewal State Environmental Planning Policy* to ensure that the planning framework addresses the service, infrastructure, housing supply and affordability considerations of strata renewal at both the strategic and local levels.
22. Mediation providers train accredited mediators on the additional complexities of strata termination.
23. Government implement a waiver of stamp duty in cases of unit replacement on the same site.
24. Government explore implementing Capital Gains Tax roll-over relief in cases of unit replacement on the same site.
25. Banks develop new models for financing owner-led collective redevelopment with appropriate government support.
26. Government amend the *Residential Tenancies Act 2010* (NSW) to introduce new grounds for termination of a fixed term lease by tenants in the case of renewal plan being approved by the owners corporation.
27. NSW Department of Fair Trading and Land and Property Information commission a review within five years to monitor the implementation of the new Strata Schemes Development Act.

### Process

16. Government strengthen oversight of residential building and certification processes to foster greater public confidence in the quality of new multi-unit residential buildings.
17. Valuations included as part of a renewal plan be undertaken by an independent, certified valuer appointed by LPI on behalf of the renewal committee for a standard fee.



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