

Renewing the Compact City

Economically viable and socially sustainable approaches to urban redevelopment

Final Report

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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.

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Executive Summary

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 might 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 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

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 shift, 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 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 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.

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.

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

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 the project (Troy *et al.*, 2015). 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 substantive 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.*

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.*

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.*
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.*
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.*

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. Troy, L, Easthope, H, Randolph, B & Pinnegar, S 2015, *Renewing the Compact City - Interim Report*, City Futures Research Centre, UNSW Australia.

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Chapter 1: Introduction

1.1 Renewing the compact city

Cities periodically need to undertake some form of reinvestment into the built environment to ensure their continued functionality and to reflect modern standards of living. With the exception of a few geographically focused mega-projects, in most Australian cities the renewal of the existing built environment has largely operated in a piecemeal fashion – block by block – and has resulted in the production of significantly less new housing stock than has urban expansion. Over the past three decades, however, there has been a greater emphasis on urban consolidation and densification of existing urban areas, and building activity has increasingly looked towards these areas for opportunities for housing development.

This policy shift has 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 into cheaper labour markets. 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, and as governments become more concerned with the additional infrastructure costs associated with fringe dwelling construction, there is increasing attention directed towards areas of existing housing, both detached and multi-unit, to provide additional dwellings for a growing population. Previous research has documented the ‘knock-down-rebuild’ phenomenon and its large and often unacknowledged contribution to the progressive renewal and revitalisation of urban areas (Pinnegar *et al.*, 2015). Renewal of existing flat buildings has not occurred in the same manner, however, and is often overlooked due to the complexities of their ownership structure.

In the past, the amalgamation of separate land parcels to form large development sites has been problematic, and while it does happen, it is usually through large cash incentives, or in the case of Government-led renewal programmes, through forced acquisition of property. However, where cash incentives have been the driver, consent of all land owners has been required. Renewal of land and housing in horizontal subdivisions as part of compact city policies poses certain challenges, but the vertical fragmentation of ownership over the same land parcel poses additional unique challenges (Easthope *et al.*, 2013).

Renewal in this context involves existing residential communities. Unlike the conversion of former industrial land, which often has few residents, the renewal of occupied areas requires engagement with the existing communities and their often diverse interests. In the case of housing, owners and residents bring to bear a whole range of values and attachments that can often be in conflict with redevelopment aspirations.

The unique complexity with multi-unit dwellings lies in the arrangements of ownership established under strata title. Decisions of the group necessarily affect each owner, and the consent of all owners has been required to allow redevelopment. This requirement makes it enormously difficult for renewal to occur and sets up a tension between what some consider a democratic right of the majority and the property rights of an individual (Easthope *et al.*, 2013).

With the exception of the large urban renewal mega projects, which have been led by various Government controlled agencies and mostly have aimed to facilitate private sector investment, urban renewal has historically occurred through private sector led redevelopment. The progressive rolling back of direct government intervention in housing and urban development places increasing emphasis on the market to deliver new housing. The context within which urban renewal is then occurring means that the particular dynamics of the private property development market have enormous bearing on what types of redevelopment are possible, where it occurs, and crucially who has access to these renewed spaces. The viability in this market context presents challenges in terms of equity of the process and outcomes.

Strata Title

As outlined in the Interim Report for this project, it is now estimated that over 65% of new dwelling approvals takes the form of apartment or unit development (Australian Bureau of Statistics, 2015), with virtually all of this being strata titled (Troy *et al.*, 2015). Flats, units and apartments already account for 27% of the dwelling stock in Greater Sydney, and combined with the rapid growth of new strata title in New South Wales, this form of land title will account for an increasing share of all housing. While buildings in many parts of the city have been well managed there are many where major repairs are needed or structural problems are emerging. Yet there has been little systematic consideration given to how this ever expanding volume of housing can effectively be periodically renewed.

The ownership arrangements of strata mean any decision-making process is difficult, and none more so than one that would see the removal of a residential building. Unlike single title housing, the majority decision of the group has the potential to affect the livelihoods of many. Any decision about the common areas of a building has the potential to affect a range of people with different expectations and aspirations in relation to their property.

This range of aspirations and expectations amongst owners and residents of strata properties can often lead to conflict. The people who live in strata see it as their home, some temporarily and some permanently. Yet not everyone living in strata actually owns a unit, with approximately 61% of owners being investor owners (Troy *et al.*, 2015). Strata is a complex community of people with similar and competing interests and agendas. The challenge is to manage a change that will affect this community in different ways, so that it is fair, equitable and viable.

The New South Wales parliament recently passed new strata legislation that enables a less than unanimous vote to terminate a strata scheme, so that it can be redeveloped. Under the new law, which is slated to commence in July 2016, only 75% of unit holders are required to consent for a plan to terminate a strata scheme to proceed, compared with the current 100% requirement.

Urban change and renewal

Compounding what are often seen as isolated issues around land titles, these changes also raise broader questions about the management of urban growth. In NSW, the State government has identified the growing issue of strata dilapidation and the pressure to increase housing supply as significant, and interlinked, policy concerns (NSW Government, 2012). In this, NSW leads the other States and Territories, largely due to the earlier and more extensive development of the strata sector in Sydney than in other Australian cities (Randolph & Tice, 2013). Implied in the policy direction of urban consolidation is an increase in densities of existing communities. Whilst it is often suggested that increases can be accommodated within existing infrastructure capacities, this claim has been refuted by many (Gleeson,

2014; Neuman, 2005; Searle, 2004), and certainly in some areas of existing strata in Sydney, the limited provision of community infrastructures is already problematic. Part of the issue with renewal of existing higher density housing, then, is how this agenda fits within the spatial planning aspirations of Metropolitan Sydney as a whole, and how infrastructures can meet the increased demands of growing populations, of which housing is only one component.

The renewal of older multi-unit housing brings all the factors mentioned above into play through the critical role of strata titling as a hurdle for renewal. The answer is not simple: the 'strata title straightjacket' (Property Council of Australia, 2009) raises highly complex problems for contemporary urban renewal, including the problems surrounding the coordinated buy-out of individually owned units within a single building; the need for all unit holders to become actively involved in collective decisions about the block's sale; and the issue of engaging the communities directly targeted by these renewal policies. Put simply, 'strata termination' has now become a key barrier to renewing the compact city, both in Australia and overseas (Easthope *et al.*, 2013). It is in the context of these broad scale metropolitan issues, micro scale building issues, and concurrent legislative developments, that this research project investigates challenges posed by the renewal of the compact city.

Research Aim

The aim of this project is to develop 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 higher densities needed to accommodate population growth, but without exacerbating social inequalities and social disruption.

1.2 Overview of the project

This study was undertaken by researchers at the University of New South Wales funded under the Australian Research Council Linkage grant programme (ARC Linkage LP130100400) with industry partners, including UrbanGrowth NSW, Strata Community Australia NSW, Australian College of Community Association Lawyers, the Owners Corporation Network of Australia and NSW Fair Trading.

The project was split into three broad stages that aimed to explore the scale, location, market and social profile of the strata sector and understand the key issues around the renewal of higher density housing.

Stage 1

Identified the location, scale, market value and social profiles of the strata sector across greater metropolitan Sydney and assessed the potential for renewal under current market conditions. The outcomes of this first stage of the project were published in an Interim Report (see Troy *et al.*, 2015).

Stage 2

Established the core issues raised by strata renewal from a legal, financial and institutional perspective and sought to understand the market drivers, consumer perspectives and attitudes related to strata scheme termination and renewal. This was achieved through two methods:

Key Stakeholder Interviews: Interviews with 34 key stakeholders including members of our advisory group and other leading strata managers, specialist legal and financial professionals, local planners, and owner and tenant representatives. The interviews were conducted over a period of

one year. The interviews identified the legal, financial, community and institutional challenges relating to strata redevelopment and renewal and helped develop approaches to the scenario and community workshops central to Stage 3 of the project.

Strata Community Survey: The strata community survey explored community attitudes towards the redevelopment of privately owned residential strata schemes (see Appendix 1). The survey ran between 11 August 2014 and 9 November 2014 and surveyed 1,261 residents (owners and tenants) of strata dwellings across Sydney.

Stage 3

Assessed the process of termination to identify equitable and viable solutions. This stage involved conducting three scenario-building workshops with key stakeholders and six community workshops in different locations across the metropolitan region.

Workshop 1: The first workshop focused on the supply side of the strata renewal process and included 13 stakeholders including developers, financiers, lawyers, and representatives of insurance groups and strata organisations. The aim of the workshop was to develop a practical mechanism to deliver some form of 'value share approach' to strata renewal. Specifically the workshop asked:

What might be a feasible model / models for a value share approach?

- i) What are the potential risks to developers, mortgage providers, owners, insurance companies etc.?
- ii) What are the potential benefits to developers, mortgage providers, owners, insurance companies etc.?
- iii) How could the risks be mitigated and the benefits increased in a balanced way to achieve a value share approach?

Workshop 2: The second workshop focused on the resident/owner side of the strata renewal process and included 16 representatives from strata owner groups, tenants groups and other housing organisations. The three main issues that were discussed were:

- i) How can decision-making regarding termination be managed in a way that is fair and equitable to all participants (including owners and tenants)?
- ii) How can the concerns of the minority owners be appropriately addressed and how can they be protected?
- iii) How can tenants be protected?

Workshop 3: The final workshop brought together members of the advisory group to work through the outcomes of the first two workshops, and discuss viable models of renewal.

Six Community workshops: The aim of the community workshops was to record the opinions and concerns of local stakeholders in regards to hypothetical termination and renewal scenarios in their local area. This helped to identify barriers to undertaking block renewal; the opportunities and dis-benefits to stakeholders; and preferred renewal approaches. Each workshop worked through social, financial, management and planning issues. Workshops were held in a range of locations to cover different social and market contexts within which renewal may occur. There were 51 participants across the 6 workshops.

- Three owner based workshops were held, one each in Coogee, Parramatta and Cabramatta.
- Two tenant workshops were held, one each in Coogee and Cabramatta.
- One full strata block workshop was held in Mosman (this included owners and tenants all from the same strata block).

1.3 Structure of report

The report is structured thematically, with research findings from all stages of the project introduced as relevant:

- Chapter 2 begins by outlining key concepts in urban renewal, and reviews the literature on strata issues, with a focus on renewal both in Australia and internationally.
- Chapter 3 is based on the outcomes of the key stakeholder interviews, and explores the major opportunities and concerns associated with renewal of the compact city.
- Chapter 4 draws on the key issues of Chapter 3 to outline a strata renewal model, which formed the basis of discussion in the stakeholder and community workshops, discussed in subsequent chapters.
- Chapter 5 examines key aspects of the decision-making processes that will likely operate at a scheme level in considering a renewal proposal.
- Chapter 6 explores the procedural aspects of managing a termination process once a decision has been reached to terminate a strata scheme.
- Chapter 7 gives an overview of broader planning issues in renewing the compact city, which largely rest outside the particular procedural components of terminating a strata scheme.
- Chapter 8 summarises the main findings of the research and proposes a series of recommendations for both policy and legislative change to facilitate an equitable and viable renewal of the compact city.

Chapter 2: Background/Literature

2.1 Urban change and renewal

Australian cities are experiencing an unprecedented wave of higher density residential development. In the last few years, the rate of multi-unit building has reached historically high levels with a focus of much of the activity in central city locations or on land released from redundant industrial and commercial uses. In contrast, earlier phases of residential densification were largely achieved through the redevelopment of single dwellings located on larger building lots (Cardew, 1980; Spearritt, 1999). While the apartment market in Australia evolved gradually from the inter-war period onwards, especially in higher value suburbs (Butler-Bowdon *et al.*, 2007), the popularity of multi-unit development took off following the introduction of strata title legislation in the early 1960s (Randolph, 2006). More recently, the incorporation of explicit policies to encourage urban consolidation and renewal within urban areas has become a main driver of strategic metropolitan planning, both in Australia and elsewhere (Forster, 2006; OECD, 2012).

However, we are now entering new and challenging territory for the aspirations of these consolidation policies in Australia. The dominant model involves renewal of existing urban areas along transport corridors and hubs, particularly in and around activity concentrations such as existing town centres which offer accessible locations to support higher population densities. While these planning policies are now in place, the *implementation* of urban renewal in built-up areas has proved challenging, most importantly because of difficulties in coordinating renewal of existing urban areas in the context of a planning system that relies on the 'market' to deliver the outcomes (Australian Government, 2011, p. 205; National Housing Supply Council, 2011; Searle & Bunker, 2010). Problems arise because this apparently simple 'market' is in reality shaped by a multiplicity of factors that together impede the process of renewal. Chief among these factors are: higher construction costs of infill development; fragmented ownership patterns and problems of site aggregation; high risk and poor scheme viability; unaffordability; lack of integration with infrastructure planning; more costly development finance; capacity problems in the development industry; uncertain planning assessment procedures; land use zoning restrictions; and strong community opposition (National Housing Supply Council, 2010; Pinnegar & Randolph, 2012; Randolph & Freestone, 2012; Urbis, 2011).

To be effective, urban renewal policies, and the housing targets that accompany them, require these centres and corridors to be redeveloped at higher density. However, these locations are already built up, many having been densified through earlier rounds of residential renewal, with multi-unit housing in the form of walk-up apartment blocks. Replacing existing multi-unit housing presents a complex challenge which has only recently been recognised by planners, politicians and the property industry alike as they look for suitable redevelopment opportunities (NSW Department of Planning, 2010; NSW Government, 2012; Planning Institute of Australia, 2010; Property Council of Australia, 2009; Strata Communities Australia, 2012). Furthermore, many older blocks are reaching a point in their life cycle where substantial reinvestment will be required to upgrade an aging amenity and replacement might offer a more effective outcome. But the mechanisms by which such goals may be translated in practice have been largely neglected.

The planning context

There are now an estimated two million strata units in a quarter of a million strata schemes across Australia (City Futures Research Centre, 2015). In NSW alone, there were 675,000 strata 'lots' in 68,400 strata

schemes in 2013, with 83% of lots in the Greater Sydney Statistical Area (City Futures Research Centre, 2015). Current strategic housing targets for the five largest Australian cities project a further 1.5 million 'infill' dwellings, of which the vast majority will be strata titled, being built over the next 25 years or so (Easthope & Randolph, 2009). Clearly, as a vehicle for the densification of our cities, strata title has been a stunning success.

However, the initial strata titling legislation avoided a critical issue that is beginning to pose significant problems for those who plan our cities and those who live in strata property. Fifty years on from the *Conveyancing (Strata Titles) Act 1961* (NSW), this 'blind spot' in the legislation as to the eventual redevelopment of the building is becoming apparent, with the increasingly uncertain fate of aging medium density flat concentrations coming to the fore. Two key issues are emerging. The first is the simple fact that many of these blocks, although sturdily constructed, may be coming to the end of their physical life. Especially where repairs and maintenance have been neglected, these older blocks will be in need of wholesale refurbishment or replacement. The second issue is the growing focus of strategic planning on the urban renewal and densification of existing centres and transport corridors to accommodate the projected population of our major urban areas, precisely the places previously densified by earlier rounds of apartment building.

This latter issue had not gone unnoticed, however. Following a review of the NSW strata legislation in 2004 in which the termination issue had been identified and possible options canvassed (NSW Government, 2004), the 2005 Metropolitan Plan for Sydney (NSW Department of Planning, 2005) recognised strata housing as a potential barrier to the successful renewal of strategic centres. The plan looked to deliver the majority (52%) of the 445,000 dwelling target in a range of existing town centres and corridors, but noted that:

"Existing blocks of flats are unlikely to be redeveloped because of high land value and the provisions of the Strata Scheme Management Act 1996 [*sic*] which make them difficult to secure as a whole block to redeveloped. The higher standards of construction and design that is [*sic*] now required – including underground car parking and improved accessibility for people with impaired mobility – means that this existing housing stock is unlikely to be redeveloped *because it would not be profitable*" (NSW Department of Planning, 2005, p. 139; authors' emphasis).

Although not explicitly stated as such, what this represented was the recognition that earlier phases of urban renewal and densification that had been promoted with vigour in the thirty years after the passing of the *Conveyancing (Strata Titles) Act 1961* had now become a significant impediment to any future change due to the unprofitability of such renewal. The 2005 Plan also noted that:

"Strata Title reform will be investigated to determine whether it can create opportunities for housing redevelopment that will add to the mix of housing" (p.139).

Subsequently, in 2010, two state government documents (NSW Department of Planning, 2010; NSW Transport and Infrastructure, 2010) both flagged the need for legislative reform to "reduc[e] the majority of strata title holders required to enable strata redevelopment within defined urban renewal precincts" (NSW Transport and Infrastructure, 2010, p. 26).

Following this, a review of the NSW strata legislation was undertaken in 2012 (NSW Government, 2012) which has culminated in the new strata legislation. The new law reduces the proportion of unit owners

required to terminate a strata scheme from the current 100% to 75%, thereby facilitating easier redevelopment of blocks in urban renewal locations. Comparable legislation was recently introduced in the Northern Territory (Northern Territory Government, 2014) and is being considered in West Australia. The repercussions of this development on the rights and responsibility for strata ownership have been reviewed in more detail elsewhere (Easthope *et al.*, 2013).

The current 2014 Sydney Metropolitan Strategy *Plan for Growing Sydney* (NSW Department of Planning and Environment, 2014) pursues a pragmatic market-led approach. Here the aim is to “...put in place flexible planning controls which enable housing development in locations that are feasible for development” (NSW Department of Planning and Environment, 2014, p. 64). In other words, the notion that what is deliverable equates to what is economically feasible has firmly taken root in the planning for Sydney.

However, older strata blocks remain a potential issue in many of the localities targeted for potential urban renewal. To date, the NSW Department of Planning and Environment has avoided the issue largely by excluding areas with significant numbers of strata-titled property from the Priority Precincts designated for focussed renewal activity. In time, however, the issue of strata renewal will come increasingly to the fore as repair and renovations costs mount in aging buildings and renewal pressures mount.

2.2 Buildings/maintenance/lifecycle

Strata owners, as members of the owners corporation, are collectively responsible for the maintenance of the common property in their schemes. The owners corporation is legally responsible for keeping the common property in a state of good repair, and financially responsible for the costs of repairs and maintenance. In undertaking this responsibility owners corporations need to work out how much money is needed, to raise that money through levies, and to spend that money by agreeing on the work to be done and getting it done. Each of these steps can pose challenges.

Budgeting and levy collection

During the life of a building, it will require routine maintenance, major capital works and possibly also emergency repairs. These are six main sources of funds for this type of building work: the administration fund, the sinking fund, special levies, loans taken out by the owners corporation, money from insurance, and money (and remedial work) received as a result of legal action (Easthope *et al.*, 2009, p. 5). Ideally, owners corporations should budget adequately to ensure that routine maintenance costs can be covered out of the administration fund, and major capital works can be paid for out of the sinking fund. Estimates of expected maintenance and capital works costs should ideally be made by specialist consultants, although this is not required under NSW legislation, and such estimates might be made by building managers, members of the executive committee or others with an interest in the scheme. While in NSW all strata schemes are required to have a ten-year sinking fund plan in place, there is some evidence that this is not always the case and that there is concern amongst a significant proportion of owners that the reserves in their sinking funds are inadequate (Easthope *et al.*, 2009;2012). This can result in special levies having to be called, leading to tension and distress amongst owners (Arkcoll *et al.*, 2013). In a survey of 1,020 strata owners in NSW, 30% were concerned that planning and budgeting for repairs and maintenance in their schemes has been inadequate (Easthope *et al.*, 2012). Easthope *et al.* (2009, p. 36) found that the most common reason strata owners gave for being dissatisfied with the budgeting undertaken in their schemes for routine maintenance was that “there was little proactive planning undertaken and the schemes operated on a ‘crisis management’ model”.

Getting maintenance and repairs work done

Insufficient funds can mean that required works are not carried out. This is not the only challenge strata schemes face in getting maintenance and repairs done. Other challenges include:

- Confusion on the part of some owners about who is responsible for maintenance and repairs work (Easthope *et al.*, 2009, p. 5), stemming from a lack of information about the roles and responsibilities of the owners corporation (of which all owners are members);
- A lack of knowledge on the part of owners about their building, sometimes as a result of insufficient information having been passed on by the developer, or that information having been lost (Easthope *et al.*, 2012);
- The challenge of dealing with the practicalities of repairs, maintenance or building improvements that require coordinated access to multiple properties (lots); and
- The need for a majority of owners to vote to undertake major repairs and improvements to the building where these involve more than the minimum legislated requirement to keep the building in a good state of repair. Difficulty agreeing on proposals can lead to deadlock and lack of action.

These issues are by no means unique to the NSW, or Australian, context. Much has been written about the challenges associated with getting repairs done in other dualistic systems (like strata title) overseas (eg. Borisova *et al.*, 2014 in Russia; Lujanen, 2010 in Canada, the USA, England and Germany; Puustinen & Lysnar, 2014 in New Zealand and Finland; Yip *et al.*, 2007 in Hong Kong and Taiwan).

Functional life of a building

The question of how long a building might be expected to remain habitable depends on how well the building was built, how well it has been maintained, and whether it has been improved or upgraded.

In regard to the build quality of strata schemes, concern has been raised about the apparently high incidence of building defects in NSW (Engineers Australia Multi-Disciplinary Committee, 2013). Where buildings have defects on completion, this can negatively impact on the functional life of the scheme, especially if these defects are not adequately remedied early. Common defects in strata schemes in NSW include internal water leaks, cracking to internal or external structures and water penetration from the exterior of the building (Easthope *et al.*, 2012). Another design consideration is whether strata developments have been built with consideration of the lifecycle costs of the development. Where this is not the case, unnecessarily high maintenance costs can result, making it more difficult for owners corporations to collect the required funds (Easthope & Judd, 2010).

Common problems due to age or lack of maintenance in strata schemes in NSW include water ingress, water leaks in internal wet areas, failure of services, outdated balcony balustrades, blocked guttering, electrical faults and concrete cancer (Easthope *et al.*, 2009, p. 4). In those cases where a scheme has been underfunded for a long period of time, it can be very difficult for owners corporations to raise the funds to deal with these issues.

In those cases where strata schemes have not been well maintained, it may no longer be financially feasible for sufficient work to be done on a scheme to bring it back to an acceptable standard, and consideration must be given to the best way to improve the building. In some cases, it may be that the most feasible option is to knock down the building and build a new building in its place at a higher density, so that the

sale proceeds of the additional lots can be used to cover the costs of the building work (see also Puustinen & Lysnar, 2014).

2.3 Strata in NSW

The following section is in three parts. The first part provides a brief overview of the origins of strata legislation in NSW, the second outlines the current legislation in relation to terminating strata schemes, and the final section summarises termination provisions in the new legislation.

Origins of strata in NSW

Strata titling was first introduced in New South Wales through the *Conveyancing (Strata Titles) Act 1961* (NSW). This was the first strata title legislation enacted in Australia. Each state and territory in Australia has its own strata title legislation, although they all follow similar principles in practice (Everton-Moore *et al.*, 2006). The NSW Strata Title system also has many similarities with comparable property ownership systems overseas, not least those that drew upon the NSW legislation in their development, including jurisdictions in Canada, Singapore, South Africa, New Zealand, Indonesia, Malaysia and Brunei (Easthope & Randolph, 2009, p. 244).

The introduction of strata title meant that for the first time in Australia, purchasers could own an individual unit in a building. Prior to its introduction, most privately owned apartments were either owned by landlords who owned the entire block, or owned under company title, where individual owners owned shares in the property as a whole, which gave them the right to live in a particular unit in the building. The difficulty with this system was that banks were not inclined to lend on parts of the building for which there was no clear title, and in situations where there could be delays to a repossessed property's subsequent re-sale because of the ability of other shareholders to approve or block sales. The result was that when loans were available on company title apartments, they were usually at higher interest rates than those available to purchasers of houses on their own title. The introduction of strata title changed this situation by giving individual owners a certificate of title to land upon purchase of their strata title lot.

The origins of the strata system in Australia are sometimes attributed to the developer Dick Dusseldorp of Lend Lease and his lawyer John Rothery (Clark, 2002). In fact, reforms to property law concerning apartments had been discussed by the NSW government before Dusseldorp's involvement, but Dusseldorp is credited with expediting those reforms with a view to introducing a new system of apartment ownership on which banks would be more inclined to issue mortgages and which would therefore make apartments a more attractive and tradable commodity (Clark, 2002).

Australia was not the first, nor the only country where such changes were occurring. A very similar situation had played out just a couple of years earlier in the USA, where Brown L. Whatley, a mortgage banker, is credited with pioneering the condominium in Florida in the late 1950s (Lasner, 2012, p. 178). Whatley based his recommendations for a new system of ownership allowing for individual ownership of units on the Puerto Rican *condominio* system, which in turn was based on systems of apartment ownership in place in inter-war Europe starting with Belgium in 1924 (Lasner, 2012, p. 178).

Since the introduction of strata legislation in the early 1960s, the legislation has been amended multiple times. This has been necessary in order to respond to the growth in the size and complexity of strata title developments.

Existing legislation on termination

Under the existing NSW legislation (*Strata Schemes (Freehold Development) Act 1973*), termination of a scheme can be achieved by applying either to the Supreme Court (s.51) or to the Registrar-General (s.51A). In the latter case, the application must be signed by all lot owners and registered lessees, mortgagees, charges and covenant chargees, “except where the Registrar-General agrees otherwise”. For an application to the Supreme Court, the unanimous support of all lot owners is not required, and the legislation does not offer any guidance to the court on the circumstances in which it is appropriate to terminate a scheme. By July 2013, 836 schemes had been terminated under these two provisions (Troy *et al.*, 2015), with only five being terminated by Supreme Court orders as of 2012 (NSW Government, 2012, p. 23).

Recent changes to legislation

In October 2015 the NSW parliament passed two new Acts which will replace all of the existing strata legislation. The Acts are slated to come into force in July 2016. The Acts had been in development for a number of years, and represent a significant overhaul of the current legislative framework. Of particular interest for this research is Part 10 of the *Strata Schemes Development Act 2015*, 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.

The process set out in the Act for achieving a termination in either circumstance is as follows:

- A proposal for the collective sale or renewal of the building is given to the strata executive committee (EC);
- The EC chooses whether to put the proposal to the body corporate to decide whether to investigate the proposal further;
- If the body corporate votes to proceed, a strata renewal committee is formed (out of body corporate members) and is given up to 1 years to develop a full strata renewal plan, outlining all the details of how the collective sale or renewal would take place;
- Once the plan is completed, owners vote on whether to approve the plan. Each lot owner has 1 vote, and 75% of lot owners must vote in favour for the process to proceed;
- If approved, it is then also necessary for the body corporate to pass a special resolution (requiring 75% of unit entitlement votes) deciding to send the plan to the Land and Environment Court for approval;
- The court must review the plan and determine that “the terms of the settlement are just and equitable in all the circumstances” before it makes an order approving the plan; and
- If the court makes such an order, any dissenting owners must sell their lots, and will be paid the greater of either the agreed price (as divided between all lot owners based on unit entitlements) or the compensation amount, determined by applying the “just terms” test developed under existing compulsory acquisition legislation.

Interestingly, the new legislation does not require that the new development must contribute to an increase in residential density, or that the building to be renewed be in serious disrepair. The legislation has therefore been criticised as facilitating the compulsory acquisition of private property by other private

individuals, without guaranteeing that a public benefit will be achieved in the process (Sherry, 2015). This goes beyond the encroachment on private property rights currently allowed under compulsory acquisition legislation, which can only be exercised by government, and which has only been used to achieve a public purpose (such as the development of new infrastructure).

The new legislation has also been controversial for a number of other reasons. In particular, while NSW is not the first jurisdiction to allow termination without unanimous owner approval, the 75% threshold is low compared to approaches adopted in other jurisdictions – see section 2.5 below. However, unlike other jurisdictions the NSW approach requires two votes to proceed – 75% of all owners, and 75% of votes based on unit entitlements – whereas others only require one or the other for a termination to be approved. The following section outlines the way other jurisdictions have addressed the termination issue in recent years, to help highlight the pros and cons of the new NSW approach.

2.4 Strata termination and strata reform elsewhere

New South Wales is not the first jurisdiction to seek to amend its strata legislation to allow termination without the unanimous support of owners. The approach taken in a few key jurisdictions is outlined below, to demonstrate the different ways a termination process might be structured.

Singapore

Singapore was one of the first jurisdictions to develop a method for terminating a strata scheme to facilitate renewal of multi-unit dwellings, by amending its strata legislation in 1999 to allow for collective sale to developers without unanimous consent of owners (Christudason, 2010). Finding opportunities to expand the supply of housing in Singapore, which has a very small land area, was one of the most important drivers of this reform. Older buildings are typically replaced by much larger buildings, a transition which underlines the economies of this change. It also must be noted that the housing context is vastly different to Australia, as the state has a much greater influence through direct ownership of the dominant share of housing.

This is an important distinction, as unlike New South Wales or other Australian states, the mechanism in the legislation does not change the unanimous requirement for the termination of strata schemes themselves. Rather it is by allowing a collective sale to a single owner without unanimous support, after which the scheme itself can obviously be terminated with the new owner's consent.

The collective sale mechanism can be enacted after meeting certain voting thresholds by existing unit holders. The voting proportion is variable according to the age of the strata scheme, as follows:

- For buildings under 10 years old, the threshold for a collective sale to pass is 90% of votes, based on both share values (i.e. unit entitlement) and percentage of the total area of all the lots; and
- For buildings of 10 years and over, the threshold is 80% of votes, again based on both share values and percentage of the total area of all the lots.

There is capacity for dissenting owners to appeal the collective sale decision, however it has been noted by Christudason (2009) that the courts will only change the outcome if proper procedure has not been followed, or dissenting owners do not receive proper financial compensation. The courts have declined to change the decision on any other hardship grounds. There are however two important protections that the Singapore legislation offers. The first is to require that all dissenting owners cannot make a financial loss as

a result of the transaction, and the second is to ensure that all outstanding mortgage liabilities are able to be settled following the transaction. This second requirement avoids owners being put into a position where they have to realise negative equity they may have in the property.

British Columbia, Canada

The *Strata Titles Act* was introduced in 1966 and was largely modelled on the New South Wales legislation of five years prior. Termination of strata schemes under this legislation was functionally enabled through linking the ending of a strata scheme to destruction of the building. This could occur through actual destruction such as that caused by a natural disaster, in which case an application would be made to the court to end the scheme. Alternatively, destruction could be 'deemed' by unanimous or special resolution and an application made to the registrar.

The deemed destruction provisions were ultimately replaced in the Strata Property Act by a requirement that a resolution be passed by unanimous vote at an annual or special general meeting, therefore requiring the consent of all strata lot owners. If a unanimous vote is not achieved, a $\frac{3}{4}$ vote resolution may be made to apply to the court for remedy. Once unanimous consent or a court order for termination is granted, termination will proceed through either:

- Voluntary winding up without liquidator;
- Voluntary winding up with liquidator; or
- Court-ordered winding up.

British Columbia is currently reviewing their strata legislation, and in a report on Terminating Strata by the British Columbia Law Institute, it was recommended that the unanimous resolution provisions be removed from the legislation (British Columbia Law Institute, 2015). The report recommends at least 80% of eligible voters be required to consent to termination.

New Zealand

New Zealand legislated to allow cancellation of a scheme without unanimous consent in 2010. Under the *Unit Titles Act 2010* (NZ), a body corporate can apply to either the Registrar or the High Court to cancel a unit plan after passing a special resolution vote, which requires the agreement of 75% of unit owners. There is provision for dissenting owners to object (in the case of the Registrar) or to be heard before the Court, and in both cases the final determination will be guided by what is considered 'just and equitable' in the circumstances.

In addition, in cases where a special resolution is not passed but 65% of the eligible votes are in favour of the cancellation, any eligible voter may apply to either the Registrar or the Court "to have the resolution confirmed on the grounds that the effect of the failure of the resolution to be passed would be unjust or inequitable on the majority" (s.211).

Northern Territory

The Northern Territory is the first Australian jurisdiction to have amended its strata legislation to allow termination without unanimous approval. This first occurred with the introduction of the *Unit Title Schemes Act 2008*, which allowed for termination if 90% of owners agree, but only in very limited circumstances. The Act applied only to schemes which had been registered under the new Act for at least 20 years (and opted

to allow 90% termination at the time of registration), or to existing schemes which are brought under the operation of the 2008 Act by unanimous resolution.

Expanding on this earlier change, in late 2014 the NT introduced the *Termination of Units Plans and Unit Title Schemes Act 2014*, which extended the application of the non-unanimous termination provisions to all schemes with 10 or more units. Under this new Act, the level of agreement required to terminate a development is determined using a sliding scale based on age, on the assumption that older buildings will be most in need of significant repair. Unlike the NSW proposal, the owners' voting rights are based on unit entitlement alone, and the percentage of votes in favour for a termination to occur is as follows:

- 80% for developments of 30 years of age and over;
- 90% for developments of at least 20 but fewer than 30 years of age; and
- 95% for developments of at least 15 but fewer than 20 years of age.

For all newer developments, the required threshold for termination remains 100%. However, for schemes with fewer than 10 units or which are under 15 years old, it is possible to apply to the Northern Territory Civil and Administrative Tribunal to approve the termination. The Tribunal may only approve such a termination where it is just and equitable to do so, any dissenting owners' objections are unreasonable, and it is otherwise necessary (taking into account the regulations). There are also some additional factors the Tribunal must consider in making its decision, including any adverse consequences that the applicant or dissenting owners may encounter, the financial risks and benefits involved, and whether a different order may be more appropriate instead. The Tribunal's order may be appealed to the Supreme Court on questions of law.

Western Australia

Western Australia is currently reviewing its strata legislation, and has published a consultation paper on strata reform (Landgate, 2014). A key issue it seeks to address is to change the provisions around the termination of strata schemes. While it identifies a similar set of issues to rationalise terminating schemes, the proposals differ from the NSW legislation. WA currently has three methods for terminating a scheme:

- Through unanimous resolution of all owners;
- By order of the District Court following an application made by the strata company, proprietor or registered mortgagee of a lot; or
- By order of the District Court to deem a resolution to be unanimous following an attempt to obtain unanimous resolution which has failed but still gained sufficient votes to be considered a special resolution under the Act. Schemes of two lots can apply for termination to the District Court under section 51A of the Act.

The consultation paper proposes to amend this legislation to facilitate termination in two ways. The first is to provide further guidance to the courts on how to determine the outcome of an application for termination where unanimous consent has not been achieved. For schemes of fewer than 10 lots in size, termination still requires unanimous consent, or application to the court, as outlined above.

The second is to reduce the requirement for unanimous consent for schemes with 10 or more lots. The voting requirement would be tiered based on the age of the building, which is not necessarily the same as age of the scheme itself. The age and voting requirements are as follows:

- 95% for schemes aged 15 years or less;

- 90% for a scheme aged 20 or more years, but less than 30 years; and
- 80% for a scheme aged 30 or more years.

If these required majorities are met, then notice is to be given to the Registrar of Titles, and any owner who supported this decision is bound to maintain support for 12 months.

2.5 From legislation to practice

As this review of policy and legislation has indicated, there is a growing trend towards non-unanimous termination of strata-style properties around the world. With the exception of Singapore, however, few renewals have been brought about under these new termination regimes, meaning much uncertainty remains as to how they will work in practice, and whether strata owners and tenants will feel their interests have been adequately protected. These issues are the focus of the remainder of this report, which aims to identify potential problems and offer some possible solutions. The next chapter begins by identifying the major issues identified during this research, with the subsequent chapters providing more detailed analysis of specific aspects of the new NSW termination process.

Chapter 3: Major Issues in the Termination of Strata Schemes

Renewal of individual buildings could foreseeably occur in a number of ways, through refurbishment, additions, or complete removal and reconstruction. Renewal can and does happen outside of strata termination, and whether the legal termination of a strata scheme is a necessary step to facilitate any type of renewal could be debated. However given the complexity of strata ownership, for most buildings it is likely that the legal termination of a strata scheme will be a pre-requisite for a renewal process. While the focus of this report is on renewal of higher density dwellings, in the context of legislative change it has been difficult to separate discussion of strata termination from wider metropolitan urban renewal issues. This chapter draws upon the interviews with key informants in strata industries and urban planning, and provides an overview of some of the broad issues associated with the renewal of the compact city, along with particular issues around the termination of strata schemes themselves. The focus in this chapter is at the scale of strata schemes, while broad metropolitan planning issues are discussed in Chapter 7.

3.1 Reasons for and drivers of renewal

During the stakeholder interviews there were two broad themes that emerged as to why a strata scheme ought to be terminated to facilitate renewal. One focused on building renewal, and the second to address urban change and renewal. Each of these is addressed individually below.

Building renewal

Strata legislation was first introduced in 1961 catalysing, the conversion of existing blocks from company title to strata title, as well as an increase in the construction of apartments. It has now been over 50 years since strata title was introduced in NSW and more than a quarter of all strata schemes were registered more than 35 years ago. Many of these buildings have not implemented appropriate mechanisms to ensure that there is ongoing maintenance or the accumulation of funds to support major works, leaving them in a state of disrepair. A range of different stakeholders identified these maintenance problems as a key driver for renewal:

“There are some that are really getting quite on and they are - a lot of them are pretty poorly maintained. There's a limit to how long they can last without renewal.” (State Government)

“Then that raises issues about how the scheme copes with increasing costs of maintenance and the mechanisms that are in place that require that to be shared amongst all existing owners.” (State Government)

“Old strata buildings that have got to the end of their life and the body corporate fees will have to be quadrupled, if they're going to really be looked after properly. They have to be fundamentally re-engineered and partly rebuilt.” (Property Industry Peak Body)

“Unfortunately the cost of maintaining these buildings is now getting far beyond what you would consider to be commercially viable. They're quite happy for these things to

fall down around their ears as long as they can still live there and that I see as a major problem.” (Service Provider Peak Body)

Associated with this issue of maintenance is a changing regulatory environment for building standards, in particular fire safety equipment. Many of the older apartment blocks do not meet current standards, requiring often significant expenditure to update the buildings:

“We had many outdated apartment blocks which they didn't comply with fire regulations. There was no way to retrofit many of them.” (Local Government)

There has been a legislated requirement to meet fire safety standards, and if strata schemes receive a fire safety order from their local council, they are left with no choice but to comply, often requiring that they raise levies to do so:

“But I can only say that fire is a good example, that all blocks of units of a certain age, or that didn't have appropriate fire systems in place, were told you've got three years to comply.” (Property Industry Peak Body)

Fire safety is one example where the regulatory environment leaves schemes with no choice but to comply, however in the absence of direct requirement to address problems, there is likely to be a variable response from owners corporations. This could depend on the financial capacity of owners and the reasons people own units in the first place (i.e. are owner-occupiers, or investing for capital gain, or investing for rental return). These factors affect how much incentive or disincentive there is to address problems:

“I guess where the problem is if they say well I'm not doing it, but the law's got to say you've got to do it, and I guess that's what part of this is about. But keeping things renovated, keeping things modernised, I don't see that as the major problem. The major problem is where owners don't want to, have let things run down so badly, you probably don't have that many people living in there but you've just got this building that doesn't comply with fire, with waste disposal, the whole host of things, mainly fire. So there should be some sort of process to make them comply.” (Property Industry Peak Body)

The financial capacity of owners to address these issues was a key component underlying suggestions that termination was the pathway to building renewal. The implication is that it is cheaper to knock down and rebuild than spend money fixing particular problems, so facilitating strata termination would result in an improvement to living and safety standards for residents in these buildings.

More broadly, termination was seen by many as a key part of managing lifecycles of the built environment. Present building activity is occurring without long term views or plans on how to appropriately manage housing stock as it ages, or reaches a point when full renovation or reconstruction is required. A property industry representative suggested collective sale and termination would be a better option than raising large special levies to undertake remediation works:

“But I don't think they've got much option, because their other option is that they're going to have put in \$200,000, \$100,000 or whatever of money into a sinking fund to really restructure the whole building.” (Property Industry Peak Body)

Critically, as there are increasing numbers of very large strata schemes, the scale of issues is increased. The level of agreement required is much more difficult to obtain because of sheer numbers, and the costs associated with major building works are significant:

“So there are 200-lot schemes now that are coming on board and there's no way that they'll ever be able to be terminated in 20 years' time or whatever, when they become too costly to maintain, unless there is a proper process to follow.” (State Government)

For these reasons, the interviewee quoted above suggested it was seen as appropriate to investigate how best to enable these types of schemes to undergo a renewal process.

Strata levies and sinking funds

The discussion around termination brought building lifecycle and maintenance issues to the fore, but only in so far as termination was seen as the remedy. The ongoing management of strata schemes is both critical to establishing the conditions for termination to occur, and also part of the process of managing termination itself.

Under the current and new legislation owners corporations are legally responsible for ensuring that all common property is maintained in a state of good repair. Part of meeting this responsibility is also ensuring that appropriate resources are accumulated over time to undertake what can be costly repairs. It was noted that owners committees often do not make appropriate arrangements to ensure that there are sufficient reserves built up in sinking funds for future repairs and renovations:

“The question of how much money these strata schemes put into their sinking fund becomes really an important issue. The sinking fund is not good enough to do any repair. Especially Botany or Carpentaria have quite a lot of problems with buildings that they had almost no sinking fund. They were falling apart. People were on fixed pension, income pension and they really couldn't do anything about it.” (Local Government)

Where owners are faced with substantial repair bills, and potentially large special levy liabilities, strata renewal is seen as potentially representing a more attractive financial option. In these cases it is not necessarily the building condition directly that gives rise to a renewal plan, but the lack of capacity or will of existing owners to address the problems. Notwithstanding some of the organisational challenges of managing sinking funds and commissioning repairs, outlined in Chapter 2, the absence of any capital to undertake major works is both a driver of termination, and a long term problem to ensure appropriate management of the built environment.

In some settings, low levies are seen as desirable because owners may be from low income groups and find it difficult to contribute strata fees each year. Community workshops in Cabramatta revealed this to be of particular concern in those areas where incomes are low and unemployment high by Sydney standards. In other settings, it was suggested by a finance industry expert that investors may be reluctant to support higher levies or special levies:

“No. It means, from an investor owner's point of view, you should never have a special levy and never have a sinking fund, if you're thinking pure rational economics of after tax cash flows.” (Finance Professional)

These payments represent money that will eventually improve the capital value of the scheme and units, however cannot be counted as such from a tax point of view until it is actually spent. If a capital gain event

was triggered by termination then this outlay won't affect the base value of an investors unit, and will thus increase capital gain taxes. A finance industry professional described this conundrum:

"The difference is that the profit is determined by looking at a thing called the capital gains tax adjusted...The capital gains tax cost base. So if you paid \$500,000 for the property and you've put \$100,000 into it in terms of improvements, then your capital gains tax cost base is \$600,000, your profit is only \$400,000 when you sell it, not \$500,000. The issue is that capital gains tax - when you pay a special levy or when you pay a sinking fund levy you've put money in but there's been no capital gains tax event, because the money hasn't been spent."

There is an inherent disincentive from an investor's point of view to contribute money into a sinking fund or special levy. Similarly for owner-occupiers, the value of the money in a sinking fund is not generally considered as part of the value of a unit, so it is effectively lost when you sell the unit:

"People don't say, this is a great strata unit, it's worth \$500,000 - hey, but my share of the sinking fund is \$50,000 therefore I should pay \$550,000 for it. The \$50,000 which is the current owner's notional - the money they have put in, doesn't get valued when there's a sale." (Finance Professional)

Of course, some buyers may investigate the state of strata scheme finances before purchasing a unit and factor in this notional 'extra' value, and much of this money may be spent before a transaction actually occurs. The impact of these inherent disincentives will therefore be contingent on timing and buyer awareness.

Blighting or deliberate run down

While the accumulated effect of insufficient levies and sinking funds may cause a building to progressively run down, this is not necessarily an intended outcome. However, it was noted by some interview respondents that should termination be actively considered by members of a strata scheme, it may create a situation where the running down of schemes deliberately occurs:

"Then that has a corollary effect, if this is the mechanism for managing the dissolution of strata, do people then start to look at strata maintenance [in] a very limited way?"
(Consumer Peak Body)

The extent to which this may occur was contested partly due to the current legal requirements for an owners corporation to ensure buildings are properly maintained. Yet given that poor building condition is cited as a reason to advocate changes to termination, running down buildings deliberately or otherwise has apparently occurred irrespective of legal requirements. It is for this reason that deliberate run down was considered a real possibility in some settings. Whether or not blighting actually occurs may depend on the voting composition of an owners corporation and the particular interests of the different owners involved.

Bullying

Bullying through owners corporations has been noted in other contexts, and will be addressed further in Chapter 6 around voting for termination. One particular scenario that was suggested in the strata management context was the role of levy setting in trying to force particular outcomes. It was noted above that low levies may inadvertently create a situation where termination is the most feasible pathway, and in this context it was suggested that levies may be set abnormally high by controlling interests to force reluctant owners out of a scheme or to agree to termination:

“There are actually advantages for certain types of owners seeking certain things from blocks of units to manipulate the strata fees in ways that influence existing owners. Particularly the levies can be held abnormally low, but also abnormally high, in a way that...essentially the person who controls the majority of the units in that block, because they probably purchase them all the time, is exercising undue influence over the other owners in the block to try and enforce their sale. So we need to be careful of some of those mechanisms which people might seek to use to coerce...Especially when the owners' corporation can be controlled by the developer.” (State Government)

Of course this can already occur if the purpose of unreasonable levy setting is to force the sale of remaining units, however the extent to which this happens now is unknown. This, combined with points above, raises important questions around appropriate setting of levies, but is not the explicit focus of this project. The important point here is ensuring protections against owners from being coerced into making a decision around the sale of their unit or voting for termination.

These inherent disadvantages and capacity to control levy setting within each scheme coalesce to produce highly variable management practices in regards to budget setting and levy collection. In this situation, termination might be seen as a resolution to the problem of buildings with insufficient funds to manage their upkeep. However, this does not address the longer term implications of the need to ensure appropriate management of strata schemes.

Building renewal alternatives

The desirability of going through a process of complete demolition and reconstruction in an effort to address compliance or maintenance issues was not really considered in the context of alternative pathways to renewal. For example, prior to this termination mechanism being actively considered by the state government, Randwick City Council tried to address building renewal issues through the planning system. A policy was developed (Randwick City Council, 2006) to encourage owners to fund major repairs by giving planning concessions or incentives, such as allowing new units and additional levels, to make a renewal proposition more feasible. This is further explored in Chapter 7, but does point to an alternate pathway to renewing aging stock that does not rely on strata termination.

Building renewal was seen as a legitimate issue, however many interview respondents questioned the extent of major structural issues being a concern for very many older apartment blocks. It was suggested that many older strata schemes actually represented better quality buildings compared to more contemporary construction:

“Having said they look quite aged, but they have good rooms and they're a good size.”
(Local Government)

“I actually think that the majority of buildings that were built, the red brick walk-ups, they're very, very sound buildings. Simple, a concrete slab, double brick, the bathroom may need doing, and the kitchen may - but the actual structure themselves, terribly sound. May not be to your aesthetic liking, but very sound, simple construction, easy to maintain, they didn't have a lift and it houses - it's medium density. Those places are actually highly sought after in not only the rental market but the owner market.”
(Property Industry Peak Body)

This was a point reinforced through the community workshops, and discussed further in Chapter 6, in that many people questioned whether new buildings actually represented better quality buildings. A finance industry professional questioned the legitimacy of the economic life arguments being applied as a generalisation for all strata schemes based on age:

“Now, the reason why all of this is relevant when you start to think of redevelopment is it gets up my nose enormously to hear all these arguments about ‘these buildings have reached [the end of] their economic life’. Some have, some will, but as a general statement - and this is an opinion because I don't have any data to back it up - that is total [rubbish]. What it is, is that there has been some change between when that strata plan was created and now which means the value of that block is not optimised...There's warehouses which have been built in the early 1800s which are considered fantastic for strata conversions. From an aesthetic point of view I could agree with someone knocking down every red brick block in Randwick, but that's a different thing, it's not an economic life of the building [issue].” (Finance Professional)

This respondent was trying to distinguish between generalised arguments suggesting all buildings have an ‘economic life’ as opposed to buildings that genuinely have structural problems that are expensive to fix compared with a redevelopment scenario. Importantly he makes the connection to changing aesthetic standards, which is a different proposition to claiming buildings have run their economic course. It highlights the question of whether there needs to be a stronger connection made between termination and the existence of actual structural issues that are costly to fix, in comparison to a termination and rebuilding process.

Urban change and renewal

The second major theme that emerged in support of termination was changing metropolitan structures and aspirations. There were two principal components to this discussed in key informant interviews. The first was about the longer term management of the built environment, which emerges out of the building scale renewal detailed above. In the metropolitan context this became about having an effective policy lever to ensure that renewal can occur in an ongoing manner, in much the same way other forms of housing are progressively renovated over time. The second component of metropolitan change arguments was rooted in the policy shift that has occurred over the past two decades towards compact city models of development:

“Obviously, some areas which are heavily strata-fied [*sic*] require either significant upgrading or refurbishment but also, as is eloquently positioned in part of the scoping papers here,¹ there requires some densification around these high value areas.” (State Government)

Many of the existing areas of older strata are in higher value locations that are centrally located and thus generally offer better access to amenity and employment. Planning and building professionals mostly took the view that these areas should therefore contribute more to the provision of new housing, with termination being a barrier.

¹ Refers to the discussion papers and positioning papers published by NSW Government (2012;2013)

That existing areas of strata should play a greater role in providing additional dwellings is in part born out of the idea that the availability of other development sites is diminishing. In the past, much of the new development of higher density dwellings has occurred on urban brownfield sites, and while there is some evidence to suggest these opportunities are declining, questions were also raised as to whether these sites would actually run out any time soon:

“I think it will be slow for the following reason. I think that there's still a fair bit of land. I think that there's still a fair bit of land, old industrial land and things like that. There are the major projects that UrbanGrowth are driving, like the whole Parramatta Road stuff, which we've been quite strong on pushing, and there are various urban activation precincts along corridors and round transport nodes.” (Property Industry Peak Body)

In the development of urban activation precincts—or priority growth areas and precincts, as they are now termed—strata has largely been viewed as a barrier, as the complexity of tenure is seen to pose a block on effective renewal compared with single title properties. Combined with the large renewal projects currently underway within Sydney, such as Green Square, Wentworth Point and the Bays Precinct, this perspective may mean that dwelling growth will occur irrespective of changes to the strata legislation to facilitate termination. That said, it was considered necessary to look at this issue so that strata does not pose direct barrier to realising necessary planning changes.

Other respondents pointed out that renewal of this kind does actually occur in some places, and this is supported by data presented in the Interim Report for this project (Troy *et al.*, 2015), with 97 schemes of three or more lots having been terminated since 2010:

“It seems to me that all the way up Bondi Road this sort of development is happening. It seems to me that the developers are actually doing it with the current regulation quite satisfactorily.” (Consumer Peak Body)

However, this change is geographically focused in higher value inner and coastal locations, which is indicative of the market processes that are likely to drive this change. As will be discussed further in Chapter 7, this raises important questions around the particular ambitions strata termination is supposed to support.

The private property market is seen as the primary driver of any renewal activity, even within government agencies that have the possibility of playing a greater role in identifying areas of renewal, and actively facilitating it. Alternatives that positioned one or various government agencies as having a leading role to play in renewing the compact city were not really considered. This is a critical point of distinction because, as was discussed in relation to building scale issues, the rationale for termination and the role of different entities in the process becomes central to what type of mechanism may be required to enable renewal to happen.

What was perhaps a notable absence in discussions with key stakeholders was the need to renovate, or upgrade stock in areas of low value and high disadvantage. Throughout the discussions, the market was assumed to be both a barrier to and driver of renewal, and the general position was that these areas would not change because redevelopment was not supported under current market conditions.

3.2 Property rights

Many interviews also included a discussion about rights attached to owning property. One of the core reasons, outlined in Chapter 2, for the introduction of strata as a form of property title was to facilitate the individual ownership of a vertical subdivision, making it easier for banks to loan for the purchase of units. The idea was to create a system where similar property rights were given to units in an apartment block as were conferred on owners of traditional horizontal land subdivisions. Strata title has been very successful from this perspective, however the issue of termination has highlighted a number of tensions inherent in this form of land ownership. The following sections focus on three tensions. The first is between understanding strata as individual or collective property, the second is between what is seen as a right to profit or the right of enjoyment, and the final tension is between strata as housing and strata as property.

Individual or collective property

The strata legislation simultaneously creates a form of individual ownership over a vertical subdivision (individual ownership of a property 'lot') and also a share in the scheme, in common with other owners, of the land and parts of the building and grounds (joint ownership of common property). A collective body comprised of strata unit owners (the 'owners corporation') is established to govern the common property.

It is at the nexus between individual rights associated with property ownership of the lot and the requirement to cooperate with the collective as joint owners in common property that the ground work is laid for tensions to emerge. Part of the tension resides in the physical reality of the strata building limiting the ability of an individual to assert one or more rights associated with property (rights to exploit, enjoy or exclude, and related to this, the right to control access). In strata, these rights become contingent on the cooperation of others. For example, one's right to enjoy one's own apartment (lot) is contingent on access to common stairs or lift spaces, which is governed by the rights of all owners collectively to control access (to the common property). The collection of owners also has the right to regulate many other aspects of an individual's right to enjoy, such as where to hang washing, having a pet or the colour of externally visible paint (Easthope & Randolph, 2009; Sherry, 2013). Similarly, one's capacity to exploit the resource of the property through redevelopment (both small scale renovation and large scale demolition) is contingent on the cooperation of others, who must give permission for works to be undertaken that affect the common property. This physical reality of a strata building is particularly important in the case of termination, as a decision to redevelop the entire parcel of land requires demolition of individual owners' units, unlike a detached house which can be redeveloped without physically impacting on neighbouring houses.

Right to profit

For many of our interviewees, the economic perspective was important. Indeed, a key theme that emerged in our discussions about termination was the limitation that the current voting arrangements placed on the capacity of existing owners to 'realise the investment potential' of their property. Part of this argument was conceptualised around the rights of individuals to exploit their property for profit, as expressed in a report by the Property Council of Australia on the issue, "[o]wners who want to realise the investment potential of their properties are stymied by the strata title straightjacket" (Property Council of Australia, 2009, p. 5).

The particular form of profit that is at stake revolves around the economic potential of the land. For example, the Urban Development Institute of Australia (UDIA) expressly frames this idea of value as an inherent concept, rather than value being created by the housing product that currently occupies the land. As they explained with reference to the new legislation, "UDIA NSW believes that this model would enable

residents within a scheme to take full advantage of the value of their lot” (Urban Development Institute of Australia, 2012, p. 4). Many older strata buildings are in locations that now permit higher building densities or have experienced significant value changes, and as such the potential uplift in value from a redevelopment offers significant financial reward.

Yet there are already many ways to realise the ‘investment potential’ of a unit, including by selling it to another purchaser, by renting it and so on. One interviewee emphasised that there was in fact nothing under the current legislation that prohibited owners from doing this:

I guess the point is that no one's stopping those owners from selling. They're not trapped just because there is a dissenting or dissenting owners. (Consumer Peak Body)

Clearly owners can still exercise their rights to profit from their property (their lot) by speculating in value change, by renting it out, or by occupying it for their own benefit. The existing NSW legislation (and similar laws across the country and internationally that emulate it) stipulates that joint owners do not have the right to restrict the transfer, lease or sale of any individual lot in a strata scheme. This means that there are multiple ways in which profit or exploitation of the property can occur. The right to profit from their individually owned lot property is not stymied, and cannot be under strata title legislation. What is impaired is the ability of individual owners to profit from their *share* in the *collective* ownership of the common property.

The argument that the requirement for a 100% vote to terminate a scheme contradicts the rights of property owners to exploit their private property for financial gain is therefore flawed. To the extent there are limits to their realisation of the economic potential of their asset, these arise because the lot sits within common property that is collectively owned. This means that that individual cannot choose unilaterally to do anything that might impact the common property (including the building and land in which their lot sits). This is because their rights in regards to ownership of common property are rights that they share with all of the other owners in the strata scheme.

In a market driven context, profit is clearly going to be a central motivation to any change occurring. Some owners may pursue redevelopment to remedy particular building issues, with the intention of staying on, but the scale of apartment buildings mean that for most, this will be the domain of a property developer. Some interviewees suggested that the benefit of having a majority decision-making process was to facilitate collective sale, thus enabling some of this profit to be shared equally amongst existing owners:

“if you've got a collective decision-making process, then...profits are going to be spread amongst all the unit holders and not just a single unit holder...it's about sharing the profits amongst, rather than there not being profits at all.” (State Government)

The idea here is that rather than the last ‘hold-out’ getting all the profit, or stopping a redevelopment altogether, the uplift value potential could be shared. There are some problems around valuation, location and general market conditions which might undermine this argument, and will be explored further in Chapter 6, as it assumes developers will pay out more than the sum of individual unit values. This may be the case in some settings, but whether it is universal is questionable. However, the critical point here is that collective sale is supposed to offer the best opportunity for an equitable distribution of the profits, if there is one.

Strata as a home

Most of these arguments, however, assume rational economic actors participating in a market driven process. Previous research and virtually all interview respondents recognised to varying degrees that strata units were more than just property as an economic or legal entity. All recognised that there are other social and use values, including less quantifiable emotional elements that are, and should be, associated with this form of housing:

“Well it depends what you mean by the term rights...The legal discourse simply governs property rights, with the property owner's rights being paramount, and it's a legal relationship. Whereas if you look at the way people think about housing and property or property and people...it's very much bound up in people's emotions and what they invest in that place called home. The importance of that place called home to not only their wellbeing, their family's wellbeing, participation in the community and community wellbeing. So when we negotiate about our housing and the only thing that we can negotiate with is a consumer rights framework, within a legal and economic type discourse, we can't even put on the table the thing that matters most.” (Consumer Peak Body)

This concern over the wellbeing of occupants provided one of the main threads of discussion through most of the key informant interviews.

There is a legal reality regarding property ownership which means that there are many ways people can be dispossessed of their homes (although they are usually compensated for this in some manner). This situation applies equally to houses as it does to strata titled units, regardless of any legislative change. However, the social realities of this ownership are different in that it is commonly understood that when you purchase a home you can keep it as long as you desire, reinforcing a notion of ‘ontological security’ (see Hulse *et al.*, 2011) and a property right precluding forced dispossession:

“I think the loss of security of tenure is the primary one. These people bought into their homes on the understanding that it would be theirs for as long as they wanted it.” (Consumer Peak Body)

This is reinforced in many ways through current approaches to housing policy, which maintain home ownership as almost sacrosanct and deeply embedded within the Australian model of citizenship. This broad political consensus on home ownership and citizenship means that owning one's home is imbued with more than the bundle of rights afforded under common law and the legislature.

Apart from the few interviewees who took a hard-line or pro-property development approach to this issue, there was less concern for reluctant sellers seeking greater profit (through holding out for more), compared with those who may be affected in an emotional or social manner by the termination of their strata scheme:

“I'm concerned about the pensioner at Bondi who's lived there all their lives. He or she is a widower/widow and this termination means that they have to move and simply it will destroy their world.” (Legal Peak Body)

There was acknowledgment and genuine concern for those who for various reasons may be unable to cope emotionally, physically or financially with a forced relocation. The clear distinction here was around those

who were invested in property as a financial product as opposed to those who occupied property as a home. Both sets of actors were seen as legitimate. This tension between strata as housing with a use value and strata as an investment with an exchange value was explicitly recognised by some interviewees, with some taking a strong position on which value should take priority:

“You should not treat somebody's roof over their head as an investment thing primarily. That's why it should not be possible to simply force somebody to sell because there's a buck in it for a majority of the other owners.” (Consumer Peak Body)

With the exception of one interviewee, all the stakeholders in our study acknowledged in some form or other that social – emotional, cultural, political – concepts of housing played an important and legitimate role in the process of urban renewal and should be taken into consideration when determining outcomes. There was, however, significant disagreement about the extent to which these kinds of intangible values should affect the outcomes. With the exception of consumer bodies representing the more disadvantaged groups, most interviewees and workshop participants did not believe this should be a complete barrier to affecting a termination process.

Tenure and ownership

One of the complexities that emerged was the range of perspectives offered on which set of rights was the appropriate prism through which to consider termination. The fact that such a large proportion of strata properties are owned as investment properties means that the dominant owner group are investors and the dominant resident group are renters, both having different sets of formal rights, and both potentially associating different values with property. Amongst investors there are likely to be those who invest for capital gain as well as those who invest for rental return. In the case of the latter, forcing a sale may actually work against their interest, particularly if tax events are triggered, such as capital gains and potentially stamp duty on a new property. Moreover, it was suggested that most investors are likely to be vulnerable to processes that might introduce more risk into their property:

“So the investors in strata are typically individual people...So although they look to be doing well in revenue and in assets, the combination of the risk, employment risk and financial risk - because they've borrowed a lot of debt they have to pay the interest, they have to pay the principal. That means that this is a very vulnerable area of society. Muck around too much with one of their major investments and it ain't going to look pretty.” (Finance Professional)

This response suggested that anything that could affect the underlying property value may be problematic. There is of course no one characterisation of all property investors, many having different motivations, and exposed to different risks. However this comment underlines what is seen as a growing trend towards investment in property for capital gain, rather than investment for income generating purposes:

“The investment in our private rental market has changed so substantially, so that now people are basically speculating for capital gain.” (Consumer Peak Body)

Similarly owner-occupiers are likely to bring a different set of values to bear in making decisions on the future of their unit. For example, the values attached to ‘home’ discussed above can be highly subjective and emotive, and do not easily translate into monetary or exchange value. Similarly tenants, who have limited formal rights, may still bring a range of social rights and social values to bear on the property, which

can otherwise be considered ‘their’ home in this context. The point here is that the ownership structure of strata buildings, as distinct from the remainder of the housing market, introduces layers of complexity to the decision-making process. Investor owners and resident owners will likely judge their property from different perspectives, each considered legitimate in their own right under the framework by which property and housing are understood in the current social context.

3.3 Vulnerable groups

There are many types of people that live in strata schemes, and the Interim Report for this project provided a snapshot of the variety of household types, ages and backgrounds of strata residents. Strata residents represent a more diverse cross section of the Sydney community than those living in other forms of housing, with 52% of higher density dwelling residents having been born outside of Australia (Troy *et al.*, 2015). In discussing the potential for termination and renewal, a number of different groups were identified by interviewees as being more vulnerable to a process that would see them required to sell and or relocate either willingly or against their will:

“We’re obviously a supporter of making some of these buildings more useful, extending their life and so forth, but at the same time our big problem was this location of – mainly of the lower income. All the residents and that you need to have safeguards. What happens to these people if they are relocated? Where they are going to be relocated?” (Local Government)

“Whether a single person in what may be a very large scheme should be able to stop the majority going ahead, that’s a valid question and concern about that. But a greater level of protection for those minority interests, especially when the minority interests are – could be quite vulnerable people in our present housing system. A greater level of protection for them in the process is badly needed.” (Consumer Peak Body)

Many people will of course agree to a renewal process. However, a major concern for many participants was the effect of reducing the unanimous threshold on people who do not agree because they are unable to, due to particular hardships they may face. The following sections focus on four broad groups that may face some specific hardships.

Low/fixed income owners

Going through the sale and moving process can be expensive when relocation costs, stamp duties and agent fees are all factored in. It was suggested by various respondents that low income and fixed income groups will face financial difficulties if required to participate in renewal:

“I suspect real hardship amongst low income homeowners. I’m not saying the hardship for tenants isn’t there, but people have actually bought the flat, they think they’re there forever. They’re at the end of their working life they haven’t got moving in mind. They’ll hold out because they’ve got no options. Holding out isn’t always a very comfortable option. I’ve seen people hold out, a lot of the old private tenants had to hold out because they had nowhere to go. It’s not a comfortable option.” (Consumer Peak Body)

The impacts outlined here are twofold. First is the transaction cost associated with going through a sale and relocation process. For many, a unit is their main asset and without the possibility of additional income,

these transactional costs may place an unsurmountable burden on these groups. Second, these burdens may restrict low and fixed income owners from re-entering the owner market in the same area, either forcing them into the rental system or to cheaper locations in the city. This was seen as potentially problematic in higher value locations where the difference between low value stock and newer high value stock can be substantial. In theory, the impact on these groups should be tempered by receiving a much higher price as part of a renewal proposal, as opposed to market value of the individual unit alone. Whether this transpires in practice, however, is yet to be seen.

Elderly

Of particular concern to participants were the potential effects on elderly strata residents, especially when age is also combined with low or fixed incomes. For many who are pensioners, the prospects of buying back into the local market are constrained by the substantial transaction costs, particularly if their original property is older and of lower market value than newer apartments:

“For older people especially people in their 80s-plus, it’s extremely difficult for them to have to suddenly sell up and move because it’s likely that a lot of these people they won’t be able to buy back into the area in which they live.” (Consumer Peak Body)

“It’s not necessarily just rent as well. It’s elderly populations, particularly in places like Bondi, who will lose - there’s no way they’ll be able to afford rents in that market if they’re forced to sell their unit.” (State Government)

It was noted in the Interim Report that there are higher concentrations of older people in apartments in higher value locations, such as in the eastern suburbs, coastal and harbour locations (Troy *et al.*, 2015). In these areas, rents are likely to be significant and there is a real possibility that those relying on pensions for income will be unable to afford rent in the local area. Should people be able to afford to re-enter the local housing market at a similar price point, then there is also a possibility of facing another termination soon after.

An added concern if pensioners were forced out of the housing market is the potential effect on their pension entitlements. Under current rules,¹ there is a 12-month grace period in which the realisation of one’s primary housing asset into cash form will not affect pension entitlements. This is to enable time to sell and find another home for purchase if desirable:

“If somebody is displaced, they can’t buy into anything else because it’s not available. There they’re stuck with all this money which is going to affect their pension.” (Consumer Peak Body)

“With the pension you’ve got a 12 month period of grace if you sell your home and then buy a new one. That can be extended by another year if it takes a long time to find a new house, but it is going to have an implication, which I suspect hasn’t actually been thought through.” (Consumer Peak Body)

The concern here is if this group is unable to find a suitable alternative dwelling for purchase within the grace period, their pensions will be reduced and they will be forced to draw down on their asset, which would otherwise be tied up in the form of their primary residence.

¹ See <http://www.humanservices.gov.au/customer/enablers/assets/> (accessed 24/11/2015)

In addition to such financial considerations, there were some other social impacts that were considered important. First, it was seen as desirable that the termination process enable the elderly to remain in the same locality, because of the disruption to social networks that may occur if forced to move from the local area:

“Changes to the legislation must be supported by fair and transparent framework ensuring an equitable distribution process for any assets and suitable options for housing relocation is in the same locality.” (Local Government)

Second, related to this is the more specific ‘aging in place’ concept for those who are frail or have other particular disabilities related to old age (Olsberg & Winters, 2005). The importance of a familiar environment to ensure people can maintain a level of independence for as long as possible was noted as a key consideration for the elderly:

“In fact everything they've been told by government is to prepare to age in place.”
(Consumer Peak Body)

“For many it'll just be the end of the line - it'll be a nursing home.” (Consumer Peak Body)

While each situation is different, forcing a change at this stage in people’s lives may push them into aged care, which places additional strains on this system of care. Crucially it has been identified that home ownership is the key conduit in the present housing system to greater self-determination for older residents (Olsberg & Winters, 2005).

In addition there are likely to be many physical challenges associated with actually going through the moving process. Assistance would almost certainly be required in all cases involving relocation of elderly residents. Some people will of course have networks of friends and family, however this cannot be assumed, and in the absence of finances and personal capacity to actually undertake a move, this could present a substantial burden.

People with disabilities

Many people with disabilities have had to implement modifications to their living spaces to enable them to live independent lives. The installation of ramps, hand rails, larger bathrooms and so on is often incurred at substantial costs. Some of these features (such as ramped access from external spaces) may feature in newer buildings, but other fittings (such as hand rails in bathrooms and toilets) are not necessarily present in other dwelling stock. While this can be remedied through appropriate construction in newer apartments and retrofitting in existing stock, this may be a significant cost burden for people with disabilities forced to move to a new property. As these types of facilities are not necessarily valued in a market context, it is unclear if compensation would be available through a collective sale or renewal process.

3.4 Hardship

The groups identified above may face some specific challenges, however there are hardships that may affect everyone involved in a termination process. Transaction costs involved in selling, buying and relocating can be quite significant. Almost all research participants recognised these and suggested that they ought to be taken into consideration as part of a renewal proposal:

“The other one is that transaction costs on property are significant, when you talk about mortgage registration, stamp duty and things like that, and also the costs of selling.”
(Finance Professional)

“And I think the hardship issue is one of the few occasions you can justify helping a bit more money to one of the owners.” (Property Industry Peak Body)

It is foreseeable that some of these could be remedied through appropriate remuneration, especially where a renewal process is capitalising on latent value in the land and generating potentially substantial profits. The new strata legislation does incorporate provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to account for this, but it remains unclear as to how these parts of the legislation will work in practice. This is particularly the case when there is a clear profit motive driving change, as opposed to an explicit public benefit or purpose. For example, how compensation may relate to the potential profit, and what a fair share may be, remains unclear.

In the survey of strata residents and owners, when questioned about financial considerations in making decisions around termination, the capacity to afford another unit in the same area was seen by 91% of owner-occupiers as important.

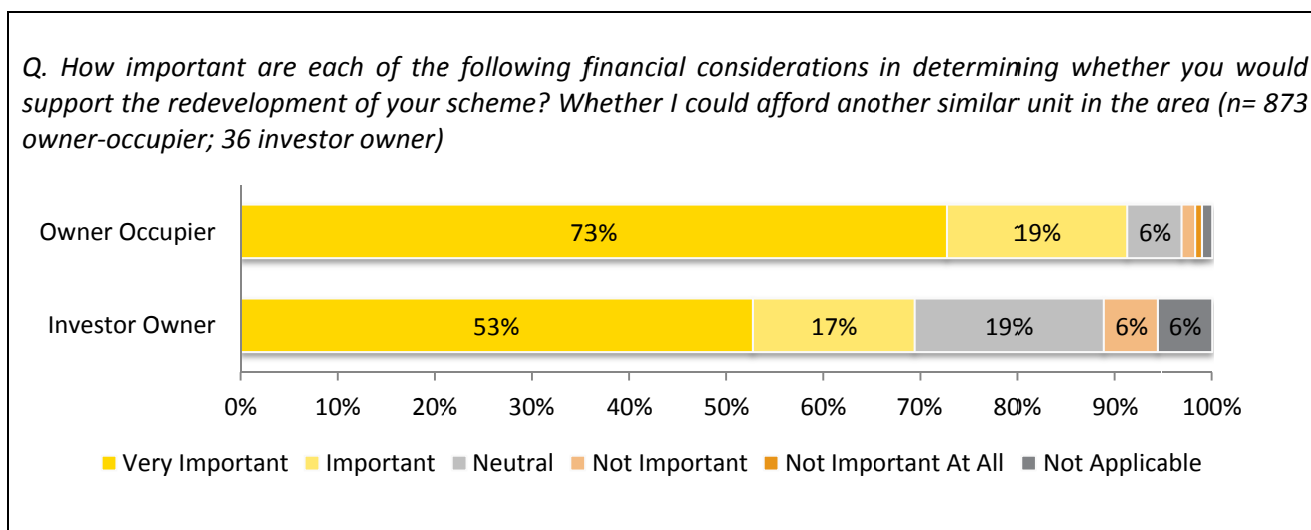


Figure 3.1 Affordability of alternative units in same area

However, some of the issues identified by stakeholders do not easily translate into financial hardships and therefore financial compensation, and are more socially orientated, relating to community attachment, social networks and so on. Almost all participants of the research (key stakeholders and community workshop participants) recognised non-financial hardships as valid concerns, and that they should be accounted for in some way through the renewal process:

“They might be able to say, there's no financial hardship because they can go and buy a unit at Penrith Lakes. But that misses the point entirely, that these people will lose all their friends, all their connections in the sunset years of their lives. I just think that's completely inappropriate so there needs to be other considerations. I don't think it needs to become a social wailing policy but we do need to take into account real concerns about some of this stuff.” (Legal Peak Body)

“Yes, I do think that the hardship that would be experienced by older people affected by this who do not want to sell needs to be looked at. I don't know how you would do that through a legal process. It's very subjective.” (Consumer Peak Body)

As this respondent suggests, the non-financial hardships can be very difficult to quantify, making them difficult to address through a termination process.

This view was also reflected in the community survey of strata residents and owners, with 89% of owner-occupiers and 67% of investor owners suggested that taking other forms of hardship into consideration was important.

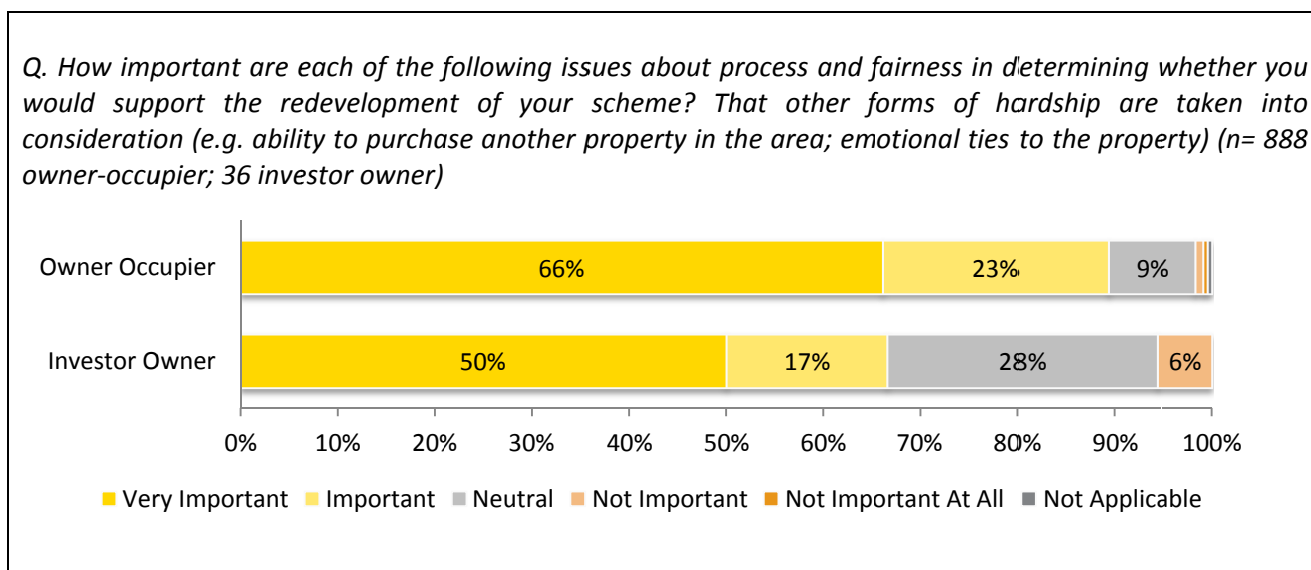


Figure 3.2 Importance of other hardship considerations

The role these types of hardship play in mediating decisions around termination was of concern to many people. There was a general perception that the legal process, and particularly the appeal process through the court system, will ultimately only address issues of procedural fairness:

“Because you can only go to the Land and Environment Court about procedure matters for the start - so did they apply the process? Not about whether or not the decision was fair or what impact it has on you. But only about procedural stuff.” (Consumer Peak Body)

What was clear from the interviews was that the fairness of outcomes in distributive or social terms, and not just procedural fairness, should play an important role in mediating the strata termination decision-making process and outcomes. This reflects a similar distinction explored in the previous section between differing interpretations of rights to housing and rights to property, where there are a set of social values (e.g. rights to housing and home) which in many ways are highly subjective, and are not always represented in legal property rights. It is a distinction others have made (see Holston & Appadurai, 1999) between having formal rights (through legal precedents and legislation) and substantive rights (rights that might deliver socially acceptable outcomes). So while people may be offered fair and equitable legal protection, it may not be the case that these protections deliver acceptable social outcomes.

3.5 Tenants

As suggested previously, tenants are the largest resident group in strata housing. Tenants already face significant pressures due to lack of 'ontological security' offered through the Australian rental system. Many interviewees recognised that tenants currently do not have any say in processes that might see the renovation of building stock, and the current proposals to change strata termination provisions do not alter these rights:

"Generally speaking, when a property owner wants to sell, a tenant moves and there's not a whole lot of consideration given to them, that's the way it goes with redevelopments of detached housing or single-owner blocks of units. So it's a little odd to expect that it should be very different in strata." (Consumer Peak Body)

"At least as big a worry is the situation of low income, vulnerable owner-occupiers who may not get another place in owner occupation in the area they want and who are looking at renting. Probably at a time in their life when private rental really doesn't offer much for them and can be a pretty hostile place." (Consumer Peak Body)

However, it was noted that tenants, particularly older tenants on low incomes, represent some of the most vulnerable segments of the housing sector. Displacement due to strata renewal would add an additional pressure on this group:

"If you're not in owner occupation by your old age, well, I think they're - they are the worst calls to get on the advice line, older person, private renting, nothing good comes of it. So few options and it's not going to get any better for them as well in that tenure." (Consumer Peak Body)

This was of particular concern in higher value locations, where the prospect of renewal is likely to target the cheaper end of the housing market because of obvious feasibility constraints, as discussed at the beginning of this chapter.

While the potential loss of security was a significant concern for owners, the tenants who attended the workshops in both Coogee and Cabramatta were more accustomed to the experience of living with insecurity, which is already a feature of the rental lifestyle (albeit a negative one). Much of the discussion about renewal therefore related to how the process would work in practice, particularly whether it would mean more moving costs, and how much notice tenants would be given if required to move. The potential for additional costs was clearly a concern, especially in Cabramatta, with key issues being the cost of hiring removalists, and the likelihood of a much higher bond for those who had rented for many years. Most participants felt that it would be appropriate to receive some compensation to cover these costs in the event of a renewal occurring. While some also felt additional compensation was appropriate (such as rent being covered for the notice period), others thought the likelihood of receiving any further financial assistance was low.

While the expense of moving was an important issue, on balance the most significant concerns related to timing and communication. Most participants felt that if the process was managed well and tenants were given appropriate notice and information, it should not be too difficult to cope. The two main issues to address in determining how to manage the process were, the point at which tenants should be informed that a renewal process had started, and how much notice they should receive.

There was some debate over the point in the renewal process at which tenants should be informed. On the one hand, given the potential length of the process, some renters felt that finding out as a renewal process was initiated could create unnecessary anxiety, as the plan may take significant time to come to fruition and may ultimately be rejected anyway. On the other hand, there was concern that if tenants were not told until a decision was made, there would not be sufficient notice to find a new place, and misinformation may spread in the interim. As one participant put it, it would not be in anyone's best interests to have tenants find out about a potential renewal through rumours circulating in the laundry room. Another participant described the anxiety caused by finding out about her previous block being redeveloped when she discovered a Development Approval notice on the fence, and was not told for some time after that whether and when it would be necessary to move. It is therefore necessary to balance the need to give tenants useful information and the goal of minimising unnecessary worry, a balance which may be challenging to achieve in some circumstances.

Beyond this, there was also a question of how long the actual development might take to begin. One participant told of having his lease in Coogee terminated as the building owner wished to renew the block; while he was happy with 12 months' notice, it was actually another 8 years before the block was demolished. Given the potential for development delays like this, owners would presumably prefer not to give notice until the demolition is actually scheduled, and this may also be preferable for some tenants. The desire to keep tenants in place as long as possible will have to be weighed up against the need to ensure reasonable notice, and the potential for this to cause further delays.

In terms of the amount of notice required, workshop participants felt periods of between 3 and 6 months were appropriate, and tenants should be able to end the lease early if they found a new place before the notice period had ended. Coogee tenants were particularly keen on an extended notice period given the tight rental market in the area, and the highly seasonal demand. A number of participants mentioned that looking for a rental property in Coogee in summer was significantly harder than in winter, presumably because of the influx of working holidaymakers to the area during the warmer months. Furthermore, if the renewal process becomes popular in an area, the need for extended notice will become increasingly important, as many people will be looking for apartments at once (including temporarily displaced owner-occupiers).

Workshop participants also offered a few further suggestions on how these communication and timing concerns might be minimised. The first was a requirement to notify potential lessees in advance if a renewal process has begun, perhaps through a checkbox on the lease that asks "is there a strata renewal committee in place for this scheme?" Another was to recommend that once owners have voted to approve a renewal plan, an independent party be appointed to meet with tenants and explain the likely impact (e.g. timing, notice periods, any available compensation etc.).

3.6 Conclusion

This chapter focused on the drivers of strata renewal and some of the key challenges faced by renewal. It is argued that there are two core drivers of strata building renewal. First, more than a quarter of all schemes are at least 35 years old and some face significant problems of disrepair. Having a process that facilitates the renewal of buildings is considered central to the long term management of the built environment. Some of these schemes have been well managed and are in good condition, but many have likely suffered from years of poor management. Many schemes have had inappropriate levies meaning that there are insufficient resources to conduct major periodic maintenance. While this may have been inadvertent, the

spectre of termination raises the possibility of buildings deliberately left to deteriorate to make renewal the only option. As much as this is an issue of building renewal, termination raises longer term questions about the appropriate management of building stock generally.

Second, as Sydney continues to grow, there are considerable pressures being placed on housing, and renewal of strata is seen as central to the realisation of metropolitan planning ambitions. Changing patterns of employment and housing, and limitations on fringe dwelling construction, have led to strata increasingly being seen as a barrier to realising these planning goals.

The new legislation aims to facilitate strata renewal, and in so doing reveals some inherent tensions in owning strata property. Owning strata gives individual private property rights over a unit, as well as rights over a share in common property. This is further complicated by a tension between legal property rights, and social rights to housing and home.

Going through a process of termination and renewal throws up some challenges. Forcing relocation on low or fixed income groups and the elderly has the potential cause significant hardship. While some of these hardships may be remedied through appropriate financial compensation, there was strong support through the research for formal recognition of other non-financial hardships. Addressing the needs of vulnerable groups who presently live in strata will be critical to ensuring renewal can occur equitably.

Tenants are in many ways the neglected majority interest in termination of strata schemes, and appropriate information and notice for tenants was strongly desired by current rental residents. Notwithstanding debates over appropriate rights for tenants, it was widely accepted that they have very little formal right to be involved in termination, but would like to be given the opportunity to exercise more control over their living circumstances. Notice periods and moving without penalty were seen as central to realising this desire.

Chapter 4: Models of Renewal

Chapter 3 highlighted a range of issues surrounding the termination and redevelopment of strata schemes either individually or as part of a broader urban redevelopment process. A recurring theme during the interview process was the under-developed methodology for actually implementing termination and redevelopment, and uncertainty about what kind of process would be followed. Many statements were either qualified by reference to, or assumed to revolve around, general concepts of how redevelopment may occur. This was problematic as many of the outcomes and potential impacts of redevelopment were contingent on what kind of redevelopment scenario was being discussed. It should be noted that at the time of the interviews the legislation was yet to be released to the public and as such there were different understandings on what may be enable under the legislation.

There were however two main themes that emerged to describe the ways through which renewal could potentially occur. The first is speculative and the second collaborative. These two processes are explored below. The chapter ends by outlining a five step process which would fit within a collaborative approach to renewal, and which formed the basis of stakeholder and community workshops on renewal, the outcomes of which are discussed in Chapters 5 and 6.

4.1 Speculative or collaborative approach

As demonstrated in the Interim Report, strata scheme termination already occurs, albeit at a slow pace. There have also been anecdotal stories of attempts at termination which have been blocked by single owners. The expectation is that termination and renewal following a legislative change will largely proceed in a similar way to how it occurs now. Many interviewees expected that prospective developers will progressively buy into a strata scheme in an attempt to acquire all of the units:

Interviewee 2: “No, but they'll purchase...into a block that's run-down and they'll slowly take over the units.” [...]

Interviewee 1: “Once you own the requisite proportion, you control effectively the strata.” [...]

Interviewee 1: “With that comes the ability, not necessarily to force people to sell, but you can make their life very unpleasant, particularly if they're an owner/occupier instead of an investor.” (State Government)

There is nothing stopping developers now or in the future purchasing into schemes for the purposes of acquiring sites for renewal, and the general concern was that this would happen without the knowledge of existing owners in a strata scheme. The intention of strata legislation in the first place was to prohibit current owners from having a say in a sale process relating to another owner's lot in their scheme. What changes in the context of termination and renewal is the possibility of one owner gaining control of a scheme to force termination without there being a realisation that this is happening.

Whether this is done overtly or in secret is yet to be seen, but it was thought that in the first instance the approach to existing owners would likely occur one by one:

Facilitator: “How might that tricky approach be made? That's critical I would have thought...”

Interviewee: “I guess it depends on whether they've already got a toehold in the asset. If they've got a toehold in the asset, they can start the conversation within the context of the owners corporation...in the strata scheme. If they're coming in as a pure clean aspirant to purchase, it's probably going to require a bit of shoe leather and door knocking.” (Property Industry Peak Body)

This raises certain transparency issues for owners who are otherwise unaware what the real intentions are behind offers of sale or proposals to terminate. Additionally there is the potential for equity issues around the distribution of profits.

The second model, which potentially addresses some transparency and equity concerns, is loosely termed a collaborative approach. The essential feature of this model is that the approach on the part of the proponents is done openly and through direct involvement of all owners through the owners corporation. Some of the developers and financiers we spoke with in stakeholder workshops noted that this was a preferable option, to minimise the negative reputational risk that might be associated with a speculative approach.

4.2 Renewal Models

Based on the interviews, three potential renewal scenarios that might lead to renewal were identified.

Owner-Led

The first is where an owners corporation collectively decides to undertake a renewal of their building. This would generally involve commissioning architects, obtaining development approval, commissioning a builder, vacating the block and undertaking the renewal. At the completion, owners could return to new units and sell any additional units produced in the process.

This option was considered unlikely by most attendees at the expert workshops because of the complexities of development at this scale and the difficulties in managing a potentially broad set of interests. Additionally, financiers suggested they would not be inclined to finance such a scenario because they prefer not to loan to a group with no clear decision-making authority. There was also some ambiguity over how current mortgagees would react to a proposal that would see the demolition of what is effectively the asset underpinning the mortgage. These barriers were not considered insurmountable, but rather would make this scenario unlikely in most cases.

Developer-Led

The second scenario is one in which the owners corporation decides to sell all units to a developer, for a premium, who would then undertake a redevelopment. This scenario was the one considered most likely to occur by participants in the expert workshops. To distinguish it from a speculative approach, this scenario would involve the approach of a developer being made through an owners corporation as a whole, rather than to each owner individually.

Value Share

The final model, which aims to address some of the concerns discussed in Chapter 3, particularly those around displacement, is a value share approach. In this scenario, owners would receive a share of the profit or a new unit in the development as payment for their current asset and consent to the process.

These three scenarios were outlined in the community survey, with each respondent being asked to nominate a preference.

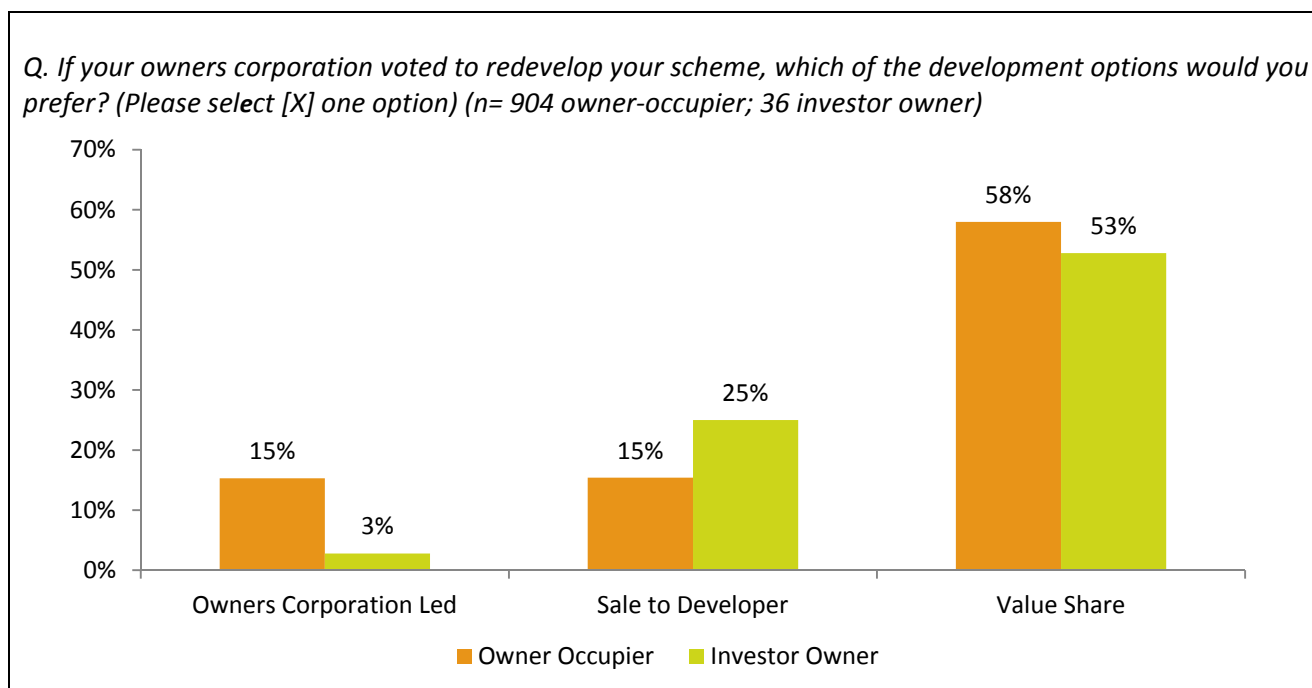


Figure 4.1 Renewal model community preferences

There was a clear preference for a model that delivered to owners some kind of stake in the final outcome. Through stakeholder workshops it was considered unlikely that a profit share approach would be feasible due to the reluctance of developers and financiers to be engaged with a consortium of owners who would have to retain an active interest in the project. As this respondent suggested, such an approach is relatively untested, and potentially problematic:

Facilitator: “The other alternative is the buy-in approach. I suppose the buy-out approach, the inclusive approach where owners remain part of the deal. If I’m a lender that causes a problem because your asset, the collateral for your loan might not be there in six months, it might be a hole in the ground.”

Interviewee: “This is a really good question. We are alert to the fact that one of the issues at the moment is you don’t just have to get the person who owns it [in name], you have to go and get Commonwealth Bank or whatever. We’d sort of factored that in but how will lenders view this? It’s a good question and I’ve got to admit we haven’t asked it.” (Property Industry Peak Body)

This model was thought possible only if existing owners effectively relinquished all decision-making to a developer. However, this may be both risky and undesirable on the part of the owner because they would lose control of any decisions, with a risk of losing their asset completely if the project failed. While there was the potential benefit of reducing buyout costs for developers in circumstances where owners contributed their asset in return of profit later on, many considered that this would be an unacceptable risk for owners to bear, in particular those where their unit is their only substantial asset.

A more practical outcome identified through the research was the receipt of a new unit in the redevelopment. The desirability of receiving a new unit in the redevelopment was expressed on many

fronts including existing owners, advocacy groups and property groups. Offering people a new unit has the potential to resolve displacement issues, emotional attachments to the locality, loss of social networks, and importantly for prospective developers, facilitate owners actually consenting to the process:

“[they] may still be resistant but when you are offering people the opportunity to stay and live in their community...” (Property Industry Peak Body)

Owners and investors were certainly open to the prospect of a new unit as demonstrated by answers to the following survey question.

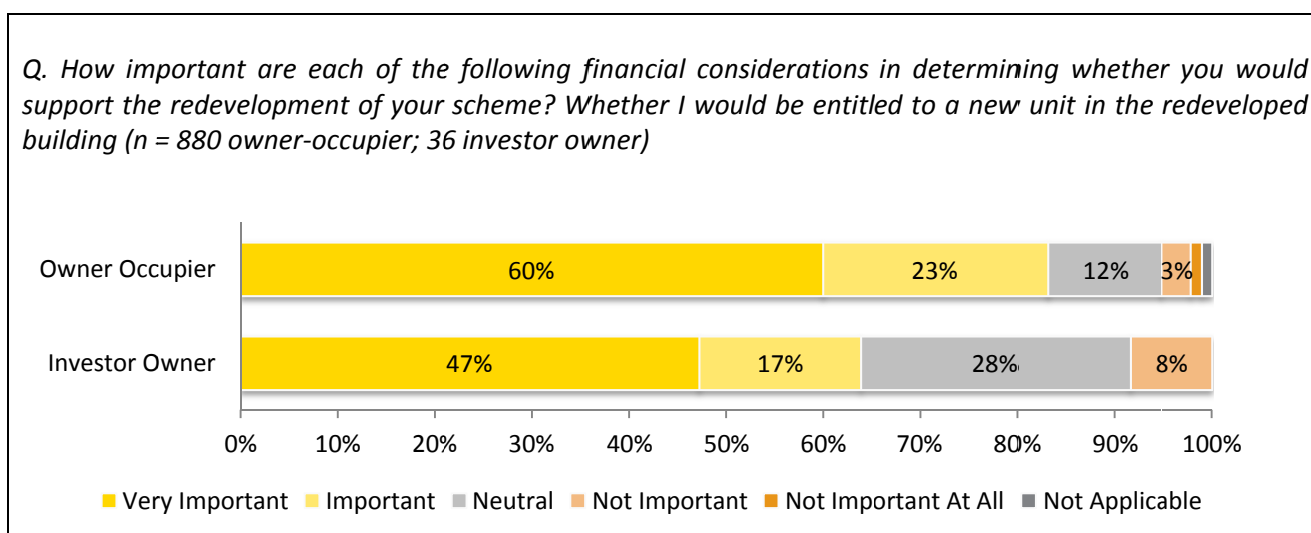


Figure 4.2 Importance of a new unit in the decision-making process

Similarly to profit share, there were potential pitfalls of this approach, however these may be dependent on the contractual arrangements put in place. If an owner contributed their asset, and in lieu of payment received a unit, this may present an unacceptable risk to an owner who potentially could lose their home should the project fail. An alternative proposition was to offer first right of refusal to purchase off the plan at a price that would facilitate a like-for-like transaction based on size and amenity, not necessarily on market price.

4.3 Preferred model of renewal

The outcome of the stakeholder workshops identified a preferred model of renewal that would facilitate existing owners sharing in a renewal outcome. The model would consist of the following components:

1. The overall project would be developer-led, with the approach being made through or by the owners corporation (i.e. collaborative).
2. Existing owners would be offered a new unit in the proposed redevelopment on a 'like for like' basis (e.g. 2 bed for a 2 bed).
3. Existing owners would be paid a fair value for their unit, which includes market value plus an additional premium.
4. Existing owners after being paid for the existing unit, would opt to buy back into the new development as an 'off-the-plan' purchase, at a price no more than their old unit (unless opting for an upgrade, for example 2 bedrooms to 3 bedrooms).
5. The normal 'off-the-plan' deposit would be paid and the full amount due upon completion.

Under current regulations, it is likely that stamp duties would need to be paid by existing owners when they buy back in, and there is a suggestion this may create a barrier to this process proceeding. Stamp duties may present a barrier generally for termination. This scenario has been likened to a house renovation which doesn't attract stamp duties. Concessions in this case could be justified and are discussed further in Chapter 6.

Five-Step process

Whatever model is finally pursued, the process through which termination would proceed is likely to follow the following five steps. These steps were used to frame the community workshops, and will be used as the basis for discussion in Chapters 5 and 6:

1. Trigger
2. Due Diligence
3. Vote
4. Appeals
5. Transfer

4.4 Conclusion

This chapter outlined some of the wide ranging renewal scenarios. It was recognised that 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 legislative change reducing the vote required to terminate a scheme. The approach being advocated is a collaborative process, where any move to acquire lots or instigate a renewal happens in a transparent open manner, directly engaging with the owners corporation.

Who then drives a renewal will vary, with a range of options on a continuum with developer-led at one end and owner-led at the other. While it was considered likely that a developer-led renewal with no further owner involvement would be the dominant scenario, the option for some owners being able to remain part of the outcome represented a desirable proposition from different perspectives.

The preferred renewal model is thus based on what is seen as a desirable social outcome, but taking into account practicalities of risk and management of a construction process. This model involves facilitating existing owners receiving a new unit in the redevelopment in place of their old unit. In actually working towards this outcome, there will be five essential steps to ensure a fair and equitable outcome can be achieved.

Chapter 5: Decision-Making

Based on the outcomes of the stakeholder interviews, the research team devised a 5-step model (described in Chapter 4) as a mechanism for guiding the examination of strata renewal issues at the community workshops. This chapter explores the first two steps in this model – trigger and due diligence – in more detail. It provides an overview of the key issues owners would need to consider when deciding whether to embark upon a renewal, and explores some of the challenges for ensuring that owners have sufficient and appropriate information to make an informed decision. It also highlights key concerns that research participants expressed about the information-gathering and decision-making process. The issues considered here emerged predominantly from the community workshops, supplemented by some feedback from the interviews and the stakeholder workshops.

5.1 Trigger

As noted in Chapter 4, two main scenarios were identified as feasible in terms of how the renewal process might be triggered – the proposal could be owner-led or developer-led. Few of the workshop participants seemed to think that their owners corporation (OC) would be likely to initiate a renewal process, whether it be due to apathy, a desire to stay in the current building, or because the financial case was not strong enough. One of the Mosman participants was particularly proactive, but explained why such a renewal had never been initiated, in part because a developer would no longer have the right to build some existing buildings under current conditions:

“I’ve looked at it many times...but it just doesn’t stack up. When the council regulations are so [strict]...it just doesn’t work. In fact you’d spend anything, within reason – and I will, and have – to keep [buildings] standing and in good order. [Because if you renew], your existing use rights evaporate.”

While the possibility of financial gain from a renewal would certainly be a consideration for many owners, many of the workshop attendees suggested this was more likely to be the primary consideration for investor-owners rather than owner-occupiers. However, given that investors rarely sit on the executive committee (EC), and in many cases do not attend meetings of the OC, the likelihood of them trying to initiate a renewal through these channels seemed low. As such, the contexts where an OC-led renewal did seem more plausible were in circumstances where additional concerns were present for owner-occupiers: either a serious building safety or repair issue, or broader local planning changes, including rezoning to allow for higher-density development. At the same time, these circumstances were also discussed as scenarios in which the owner-occupier response to a developer-led proposal might be more enthusiastic. This section will consider each of these three scenarios in turn.

Building problems

Community workshop participants seemed most amenable to the idea of renewal in those situations where a building required significant work, and this was also a situation where participants could imagine their OC initiating the process. As one Coogee resident explained, “I think if major repairs were required it would give me more impetus”. A Parramatta owner was facing the possibility of significant repairs costing between \$10,000 and \$20,000, and felt that the repair bill was likely to make the lot owners seriously consider initiating a renewal.

It was in Cabramatta that maintenance and building repair issues were most clearly a concern, however, with the issue dominating the workshop discussion. Many participants felt that their buildings were in increasingly poor condition, but were frustrated to find that strata levies also kept increasing. One owner explained that currently it was necessary to wait for physical signs of decline to appear before anything would be done to fix the issue, by which time it had often become very serious – particularly in the case of structural faults. In this context, if it were possible to improve the repair process by making building renewal easier, some participants felt that this could be a positive development.

Local planning objectives

Changes to the broader neighbourhood context were also raised as both a potential reason for considering renewal, and a factor in deciding whether to accept a renewal proposal. The prospect of a neighbourhood rezoning acting as a trigger was raised in Parramatta, as one of the participants had recently encountered this situation and was anticipating a proactive response from the OC:

“I think our land...might have been rezoned...so as a consequence the owners corporation will start to talk about that now, as to how do we go about approaching that and the general consensus would be that we’ll have a meeting with all the owners...[and] the executive committee would appoint someone to negotiate with developers.”

The participant’s comment indicated that the OC saw the rezoning primarily as a financial opportunity, as the land would now be far more valuable. In addition, the comment suggested that there were enough likeminded owners for it to be worth exploring renewal options even without a legislative change. In these circumstances, feedback from the stakeholder workshops suggested that the best option for owners would be to put the redevelopment out to tender, rather than approach a specific developer. Any tenders received could then be treated as renewal proposals, and the process in the legislation could be followed from that point onwards.

For others, broader planning changes were raised not as a financial opportunity but as a factor that could accompany renewal and make the prospect more appealing. As a Coogee resident explained:

“It might help to sweeten the acceptability if you also talked about replanning the streets or something like that, because overcrowding is a real problem. And having other forms of transport – if it went along with that, more people could be attracted.”

Many Coogee residents indicated that planning issues were already a significant concern in the area, with local services like schools oversubscribed. Given the high cost of property in Coogee, the residents who attended the workshops had generally made an active choice to live in the neighbourhood, and were therefore particularly focused on the potential impact of the renewal process on the area. This was also apparent in Mosman, but less so in Parramatta and Cabramatta, where participants were more focused on the likely impact of the changes on their personal living arrangements. This variation provides further support for the conclusion that the renewal process, if introduced, will likely operate very differently across different parts of the city.

Developer-led proposals

In the context of a developer-led renewal proposal, a number of options were canvassed by workshop participants as to how they would prefer to be approached. These included individually, or through either the OC or the strata manager.

Approaches made to individual owners

Some owners felt they would prefer to be approached by the developer individually in the first instance, to allow them to assess the offer on its own terms. Some felt having the executive committee on the front line of dealings with a developer (on behalf of the OC as a whole) might raise questions about the trustworthiness or communication skills of EC members. For this pragmatic reason—as much as any concern about the EC's motives—a Coogee owner suggested the following would be best practice:

“It's not a good communication vehicle to go through the executive, not because you don't trust them, it's just that it doesn't work to get to everybody...[instead the developer] can go in and have a look at the strata roll and write to everyone [directly], and that would probably be the most economic and straight way of doing it.”

Other owners were concerned about the idea of an individual approach, however, for a few different reasons. To begin with, there were concerns that an individual approach would give too much power to the developer, as it would be “a problem of the big guys versus the little layman”, to quote one Coogee owner. Concerns about this entrenched power imbalance were also raised in the stakeholder workshops, both in terms of the difference in professional knowledge and the difference in bargaining experience. Furthermore, a Cabramatta resident suggested that a structured approach was necessary to ensure everyone felt they could trust the information they were being given: “You should see that that decision has not just come from a developer, that it has come through a hierarchy or some sort of process before it gets to you.”

Beyond concerns about transparency and ensuring the developer didn't wield too much power, there were also concerns about equity in terms of how particular residents might benefit or be disadvantaged. As a Cabramatta resident explained: “I can't see the fairness if they just knock on my door and talk to me personally. So I think the first thing should be to bring everyone together to have a meeting.” It was important that the process neither rewarded holdouts nor put vulnerable residents more at risk, as a Parramatta resident explained:

“I'd be concerned if they approached each individual person so if I just held out until the very last moment then conceivably I could say 'well look I'm not doing anything until you give me half a million, or a million dollars'. And I think equitably speaking there are some people that are easier to be bulldozed, [such as] the 88 and the 90 year olds, you could well – 'we'll give you a new place and \$20,000, that'll do you' – and I know my father would think 'oh yeah, ok'.”

Were a developer-led individual approach to occur, it is hard to anticipate how owners would ultimately balance such equity concerns against the possibility of obtaining a good deal for themselves. On balance, however, the feedback seemed to suggest that workshop participants would be happy to see a process in place that would help to minimise the potential for such uneven outcomes, even if that reduced the possibility of benefitting disproportionately themselves.

Approaches via the OC or strata manager

For those concerned about the implications of an individual approach, the preference was generally for all approaches to be made through the EC as representatives of the OC, to allow for a coordinated and open review process. Another suggestion was that contact could be made via the strata manager in the first instance, reflecting the fact that the strata manager seemed to be the primary point of contact for many residents about building issues, rather than the EC. Yet while strata managers may often be the most effective communication conduit, some questions were raised about whether they would have sufficient training to deal with a renewal proposal effectively. As one Coogee resident explained, “I’m not too sure...how knowledgeable is my strata manager with this kind of information, when so much is at stake?” Mosman residents raised similar concerns, since strata managers were generally trained to deal with issues that arose regularly across multiple schemes. For a renewal proposal, however, “[i]t’s going to be new, it’s going to be different for every single block.” Nonetheless, participants in both Parramatta and Cabramatta noted that strata managers were often better known to residents than the other owners were, and the Parramatta owner felt they could play a useful role:

“I guess the strata manager at the moment would be the person that we’d go to for information. As long as they’re given sufficient education on the whole process they would likely be the first point of contact for a lot of places.”

At present, however, the involvement of strata managers is not envisaged in the new legislation. This does point to the need for strata managers to be trained to deal with issues relating to renewal, however, as they will likely receive inquiries once the legislation is enacted (see Recommendation 19 in Chapter 8 of this report).

Interestingly, a preference for a coordinated approach was also expressed in the stakeholder workshops, for two reasons. First, it would mean the process would be facilitated more easily, whether the coordinating role be played by the EC or a strata manager (for an additional fee). Second, some stakeholder participants believed that developers would be keen to avoid bad publicity given the sensitive nature of the renewal process, and would not want to be seen to be bullying owners out of their homes. Following a prescribed process rather than approaching owners individually would therefore be appealing to developers, despite the possibility of being able to bargain more effectively on an individual basis. With regards to the strata manager playing a role in the process, some stakeholders noted they were actually hesitant about dealing with self-managed schemes, as they were viewed as often being hard to work with administratively. Having a strata manager to facilitate may therefore be a more effective approach.

While the new legislation proposes that an approach be made to the EC in the first instance, it is worth noting as a final point that further EC involvement was raised as a concern in the Mosman workshop. Participants felt that giving a negotiating role to the EC would create risks for the EC members, including a threat of legal action by lot owners unhappy with the outcomes of the negotiation, as well as the potential for conflicts of interest. As one participant explained, these conflicts could be both real and perceived:

“There’d be potential conflict of interest all over the place...Even if you do it with the best will in the world, there’s still a perception of a conflict of interest if there’s any difference in outcome for any one lot owner.”

While the new legislation limits EC involvement to a decision on whether to put a renewal proposal to the OC for a vote, these issues are worth noting as potential risks in the event that lot owners are unhappy with the EC’s decision.

5.2 Due diligence

Once a renewal proposal has been put forward, either by a developer or by the OC, the next issue for owners is how to go about assessing the proposal's merits. To do this effectively may require access to a wide range of information, including legal, financial and technical advice. This raises a host of questions. Who should provide this information? Who should pay for it? Is information-gathering an individual responsibility, or something the OC should organise on behalf of all owners? To what extent should a developer be required to provide or pay for the required information, and if so how trustworthy is this likely to be? And what needs to be done to ensure that vulnerable residents have equal access to information?

To address these questions, it is helpful to break down the concept of 'due diligence' in more detail. There are two different steps required to ensure owners are in a position to make an informed decision about a renewal proposal: the first is to ensure they have access to the necessary information about the proposal to understand what is being offered; the second is to ensure they have access to appropriate expert professional advice to ensure they understand their legal rights and the likely impact of the offer on their personal circumstances. These two categories of due diligence—information and advice—will be addressed in turn.

Information required for owners to make an informed decision

When determining the range of information required to ensure owners can make an informed decision about a renewal plan, there are issues of both content and form to consider. In the first category, residents identified building quality issues, valuations and tax implications as three areas in which they would seek additional details. In the second category, residents mentioned language issues and concerns about transparency as two of the main impediments to feeling comfortable with the information provided.

Information about building quality

In addition to language issues, there were also concerns raised by workshop participants about wanting to understand various building quality issues before making a decision. As such, a number of participants suggested that it might also be helpful to have information from an architect or building expert. This information could outline the state of the existing building (especially in cases of redevelopment due to building decline), to ensure developers aren't scaremongering residents into renewing a block that is in relatively good shape. This was one of the first things a participant from Cabramatta mentioned when asked what kind of information would be needed to help facilitate the process:

"Well if they're saying to you that your building is aging, you'd want proof. Where, when, how long has this been going on for? Did they get somebody, a professional to come out and survey the building, and provide documents, to say 'this building is old, it needs fixing, it's damaged'? That's what I'd want."

A similar desire was expressed by a Mosman owner, who identified "two things, which is quality of the building and the council conditions of what's possible...zoning etc." In addition to the zoning information, those residents looking to buy back in would also appreciate having an architect or building expert offer independent assessment of the likely quality of the proposed new development, given the widespread concerns about new development quality (these will be discussed further in Chapter 6). This would ideally be provided by a certified government representative, but alternatively the OC, the strata renewal committee (SRC) or a lot owner could hire a professional for this purpose. While the new legislation

provides for the strata renewal committee to be given funds to obtain necessary professional advice, it remains unclear what, if any, oversight the rest of the OC has regarding the choice of professional to conduct this assessment.

Information about building value

A formal valuation was seen by many workshop participants as an important part of the due diligence process. At the same time, however, the scepticism expressed about the development industry also extended to doubts about the likelihood of getting an accurate property valuation, with questions raised by Coogee owners about “how honestly can you get that?” and valuations described as “pie in the sky stuff”. Some participants felt that valuations were influenced by the individual perspective of the valuer, or could be excessively inflated depending on market demand, as a Parramatta resident explained:

“I’ve had my apartment valued by several different valuers and the amounts are considerably different. It really depends if you like on the political motivation behind the valuation. [For] one we were actually in the real sort of economic boom time before the global financial crisis, there were lots of valuations which were excessively inflated for various reasons, enabling you to leverage against your property to buy another property, etc. So I would be concerned about an independent valuer, in terms of their relation to the redevelopment process.”

To resolve this, more rigorous accreditation of valuers was proposed, while others felt independence or reliability could be improved by having the OC pay for the valuation, not the developer. In more affluent areas at least, most participants seemed willing to pay for valuation, as long as this meant it would be reliable. In the words of one Parramatta owner:

“I want whoever does it to be accountable to me, or to the body corporate...I don’t want someone else paying for the valuation because essentially they are going to be accountable to that other person.”

While such steps could help to ensure accuracy, a Coogee participant argued that the process could still be manipulated:

“I did a private sale of my unit, so I didn’t go through a real estate agent, but in order to get a mortgage I had to get it valued. So my broker said ‘you just say what you’re paying for it and he’ll value it at that’. And that’s what happened. So you can have all of these...you can have all the mechanisms you want but really what is going on in the operational world might be a little different.”

Questions were also raised about what would be included in the valuation – as well as an individual apartment evaluation, some participants wanted to receive a valuation of the whole block, to enable more informed negotiation with the developer. Others mentioned that they would like a valuation not only of the existing property but what is proposed, to determine whether they can negotiate a higher price based on the developer’s likely profit. This indicates these owners were quite attuned to the financial dynamics of the renewal process, and were contemplating the outcome as the realisation of a financial asset as well as the sale of their home. This was certainly the case for one Cabramatta participant, who felt it was reasonably straightforward to calculate the developer’s likely profit even without professional advice:

“First look at the zoning – how many levels is council going to approve in this? What’s the future going to be for these zones? How many levels? These guys might have

connections - instead of getting 6 levels they might get 16 levels...by looking at the council you sort of know that. So look at that, divide by the lot size and how much you can build in that area, that's the calculation of how many units you can put in there, right? Divided by the current price of what's next door [in] your street, find out how much it cost, right...Easy to find that out, it's not that difficult. Development costs are about \$200,000, \$230,000 to build two-bedroom units, at today's level...That's easy to find that out, right? So put all that together and you can know exactly what his cost is and how much you're going to get out of him. I mean, he won't give you that amount of money. No developer is going to give you that amount of money. He's always going to make at least 25%, if not more."

Information about tax treatment (CGT, Stamp duties)

Making an informed decision will require owners to gather information about the tax treatment of collective sales and renewals in a general sense, as well as seek advice on how the sale will affect their personal tax liabilities. Tax was a point of some discussion in the workshops, with a number of participants suggesting that current tax policies could be an impediment to renewals proceeding. Suggestions were made that a stamp duty waiver or concession – either on a new unit in the renewed block, or a new unit anyway – would be a meaningful incentive to approve a renewal plan. In relation to capital gains tax, there was a particular concern about the perceived unfairness of dissenting owners being liable for this impost, as they are already forced to sell against their will. Finally, participants also raised questions about whether the costs of the collective sale/renewal process be tax deductible, and whether this would apply to both investor-owners and owner-occupiers.

However these tax policy questions are decided, the workshops indicated that tax liabilities will be a significant factor in the decision-making process for many owners contemplating a renewal. This was viewed by some participants as being particularly true for investor-owners. While many owners in more affluent areas will already have tax advisors who can provide them with tailored advice about the tax implications, ensuring more general taxation information is available for owners who cannot afford such advice would also be helpful.

Information in multiple languages

Concerns about the impact language issues might have on the process were raised in both the Parramatta and Cabramatta workshops. In Cabramatta language issues were identified as a reason why owners in the area might not participate in OC meetings, meaning they were at risk of missing out on key parts of the decision-making process. As one owner explained:

"I can guarantee that in this area there is a language barrier between strata and the people that own units. Because they would have come out as migrants in say the 70s, some people, and bought their units in the 70s with little or no English. And here they have this strata company that has to communicate. There might be a communication barrier or they might not feel that they have anything to contribute when they go to these meetings."

While there were some strata managers who could speak Vietnamese, it was also clear that there was very limited participation in strata meetings among the workshop participants. In addition, the communication issue extended beyond meetings, undermining the effectiveness of written communications as well:

“I’m sure nobody gets letters from strata in Vietnamese or Chinese, which is the majority language in this area. So strata in that sense can say we’ve done our communication, we haven’t received anything back, we’re going to proceed with x, y or z.”

While such issues might mean strata managers or OCs can sometimes make changes with limited opposition, in Parramatta the point was made that comprehension issues might also impede a renewal process from going ahead. In cases where participants didn’t fully understand the process or the offer, the more likely response was to reject it. As such, having accessible information available may help to facilitate renewal, and in any case was necessary to ensure the process was equitable, irrespective of one’s language skills or educational background. While having information available in multiple languages may help, it was also important to have it available in plain English, as one participant explained:

“Certainly with an ethnically diverse community I would like to see all the – all this information put in plain English terms – actually, Fair Trading possibly could play a role there - placing all the legal jargon in plain English terms so a person say from India for example would have equal access to that knowledge...as a public servant.”

While this was important for owners with English as a second language (ESL), it would benefit other owners as well.

Information that is transparent

Most of the transparency concerns raised by owners related to the prospect of the developer providing information that was misleading or incomplete. Interestingly, these concerns about the way developers might manipulate the information-gathering process related to both form and content. While one participant felt it was acceptable for developers to provide information as long as they couldn’t engage in the ‘hard sell’, another felt there were steps they should be excluded from entirely; for example, “[y]ou don’t want the property developer saying what it’s worth.”

Looking beyond the role of developers, there are also other ways in which transparency issues could arise during the renewal process, given that the people considering a proposal and then preparing the renewal plan will all be lot owners themselves. The potential for this to create problems is contemplated in the new legislation, with owners of significant holdings (more than 25% of the lots) required to declare this before voting on or being elected to the SRC. In addition, potential and actual members of the SRC must declare any other pecuniary conflicts of interest. Thus the legislation addresses scenarios where a member of the SRC has a pecuniary interest which could create a conflict with the proper performance of their role, and requires the court to be satisfied that the relationship between the owners and the purchaser/developer did not prevent the renewal plan being prepared in good faith. Gaps remain, however; for example, a developer who is also an owner does not need to declare this except in connection with the process of electing the SRC described above. The fact that such potential conflicts need not be made public means that other owners may be less well-equipped to judge the impartiality of information or advice offered by their neighbours than would otherwise be the case, thus making it more difficult for owners to work together to achieve a better collective result. This issue will be explored further below, and recommendations in relation to these specific areas of concern are outlined in Chapter 8.

Professional advice regarding an owner's personal circumstances

Once owners have access to the information required to make an informed decision, they are likely to want professional advice to help them understand how this information affects their personal circumstances. As one participant explained, every individual would have to go out and seek legal advice, and do their own research, which will result not only in a lot of duplicated effort, but also potentially conflicting advice. Nonetheless, having the capacity to obtain detailed and expert personal advice was very important to many residents, but not something they necessarily felt they knew how to do. Most of the participants in Mosman seemed reasonably comfortable with this prospect, but in Coogee some owners were less sure, particularly a number of elderly participants. In Cabramatta, most owners seemed at a loss as to who they might approach to seek advice in the event of receiving a renewal offer.

Finding the right specialists

When asked what kinds of advice they would want, one Coogee participant answered “all of it”, while others stressed that they would want advice from people who are genuinely expert in strata, as a very technical area of law and financial management. One Parramatta owner explained further:

“I’d want all of that information, but I’d want it from somebody who wasn’t going to make it up as they go along. As in there are some people – they can be very clever in their own fields, but obviously this is a very specialised thing that they’re looking at...I’ve got a great conveyancer, but I wouldn’t be asking them for advice on this.”

The question of finding such appropriately skilled people was a challenging one. As one Coogee resident put it:

“We as owners or investors, we’re just laymen. We don’t know the specialists. While the developer[s] are the specialists. So suddenly we are landed with this problem...that we don’t know any of the specialists. Now maybe if there was an organisation – I’m just thinking the Department of Fair Trading would have a listing – where we could go and say ‘ok, these are the people’.”

The mismatch in knowledge between developers and residents was clearly a particularly significant issue for one elderly Coogee resident, who framed the developers’ position as “like insider trading because the developers have this insider knowledge, they know much more about the whole environment and what you can do, and what you can build.” This was a point echoed by an interviewee from a consumer peak body:

“People will actually need - they’re up against developers. They actually need proper, full scale property law advice, and if necessary, some advocacy...This is a legal problem and these people are going to need assistance asserting their legal rights to the property and settling about their legal rights to the property.”

Tax advice was also an area where specialist, personalised advice would clearly be necessary, particularly in relation to the calculation of Capital Gains Tax.

Paying for advice

While participants in more affluent areas were primarily concerned about ensuring they could access appropriate expert advice, participants in the Cabramatta workshop expressed particular concerns about the likely cost of professional advice. The impression given was that participants generally did not have an

established relationship with suitable legal or financial advisors, and that obtaining advice would be a significant financial imposition. Participants also seemed unaware of any community legal services or other low-cost options that might provide advice of this kind. The lack of such services was also raised by a consumer peak body representative, who noted how the restrictions on legal aid would affect this process:

“There is no legal aid for anyone to go to the Land and Environment Court anymore...[Owners] can do this, they have this legal right to go to the court. I'm [thinking] ‘yes, with what [resources]’?”

As such, if the renewal process is to work equitably in practice, it may be necessary to direct additional resources towards providing access to affordable advisors for owners, at least in lower socio-economic areas like Cabramatta. The cost and logistics of accessing the required specialist information was also identified as a particular hardship for the elderly and other vulnerable residents, given that many may be on a limited income and not have the personal or professional networks in place to help them find appropriate assistance. This is an issue that NSW Fair Trading has acknowledged with its announcement of a special hotline to help vulnerable residents to obtain the information they need. It is not yet clear, however, exactly who will be able to access this service, nor whether the hotline will only provide general information or will also provide specific legal and financial advice.

Reaching a decision

As these comments suggest, the workshops clearly indicated that many owners would weigh the circumstances and information very carefully before making a decision about a renewal offer. This is to be expected, given that an apartment is many people's most important asset, and particularly given that the participants were sufficiently interested or concerned to attend the workshops in the first place. What was less clear, however, is how much weight participants would give to different factors in the decision-making process, particularly once the proposition became real rather than hypothetical. While many of the factors in the decision-making process were shaped by owners' personal circumstances, there were also some important questions raised about the potential for collective action in reaching a decision. These additional aspects of the decision-making process are considered briefly here, before moving on to a discussion of the specifics of the voting process in Chapter 6.

If the money is good, the decision is easy

A number of participants made the point that if the offer was sufficiently good, a lot of concerns about other details would become less important. A Mosman owner joked that the only advice required would be “a price you couldn't refuse, that's all the advice you need!”, while a Parramatta participant claimed that “most people will probably vote in favour if there's a substantial enough benefit ...it'll be a lay-down misère.” A Cabramatta owner viewed price as equally decisive, explaining that it would be the key consideration in deciding whether to accept:

“It's common sense – if the developer offers very good money, I think people will think about that. With good money, you can buy a better [unit] than the current one. I think it's common sense - if they give me good money, of course I'll go. It's common sense, right?”

Another Cabramatta owner offered a similarly pragmatic perspective when other participants started discussing what they would want to know about the new development, arguing that a developer didn't need to provide details if the offer was good:

“Why would a developer come to you and say what [they’re] going to do with this place? All they care about is – ‘I’m going to buy your place, here’s the money, what I’m building is my problem.’”

Most resident owners had the perception that financial considerations would be the deciding factor for investor-owners, who were seen to be interested simply in getting the most possible value out of their investment. This perspective seemed to be inferred from the fact that investors rarely participated in strata management; for example, one participant had been chairman of an executive committee for 40 years and had never received an inquiry from an investor about anything other than levy changes. It should be noted that there were only two participants who identified themselves as investors, and as noted in Chapter 3, the motivations for investors are likely variable.

For owner-occupiers, however, personal and social factors would clearly play a part in the decision, irrespective of the price offered. For participants with children, for example, it was important to stay in the same neighbourhood where they had established relationships with schools, doctors, and other services. This may outweigh the appeal of a good offer. For others – particularly the elderly – the upheaval of moving could be a “massive disruption” and therefore a disincentive to sell in itself, even if the price and available new homes were otherwise appealing.

On a more intangible level, some participants pointed to their emotional relationship with their home or community, noting that selling your property was not a ‘normal’ investment decision and that an apartment is not just ‘bricks and mortar’. As one participant explained, you don’t get attached to shares in the way you do to your home, so making decisions about the two different assets was quite different. One’s living arrangements shape day-to-day life in a much more immediate way, and owning property is seen by many as something that contributes to a sense of security. As a result, a number of workshop participants said the renewal concept made them feel fearful for various reasons: that the market may change and they wouldn’t find somewhere decent to live; that the developer would make promises that weren’t fulfilled; or that a new apartment wouldn’t be as good as the old one. For one Cabramatta resident, becoming a property owner had been a major life achievement, and there was a sense of hesitancy about giving that up, even if only in the short term. The emotional nature of these responses highlights how the particular qualities of property as an asset might make owners more risk averse, and will need to be taken into account in the decision-making process.

Ultimately, the fact that such social or emotional factors inform a decision doesn’t mean that a good offer won’t prevail; the point is simply that the decision-making process is complex, and highly personal. As such, the prospect of renewal raises interesting questions about how to find the right balance between these individual considerations and the collective interests of the whole scheme.

Individual vs. collective decision-making

While many apartment owners rightfully think of their property as a private asset, the nature of the renewal process reinforces the fact that strata title also involves an element of collective ownership and decision-making. Because of the limited participation of many owners in their OC, however, this collective quality is often underappreciated. This creates issues not only in terms of owners feeling their property rights are being unfairly curtailed, but by potentially making it more difficult to work collectively to develop the best possible renewal plan for everyone. As one Cabramatta participant noted, the same problem often shapes dealings with strata managers:

“I’ve met a lot of owners and they say ‘well I don’t go to the meetings’. So in that sense there isn’t a lot of community power for the owners versus the strata company.”

The same issue is likely to apply in relation to a negotiation with a developer, as a Parramatta resident pointed out, because “[i]f you do it on a collective basis I think you get a much better return”. On the flip side, a Mosman participant felt that collective negotiation was the only way renewal would ever proceed, from the developer’s perspective as much as the residents’, because “[c]an you imagine dealing with 14 people? It wouldn’t happen.”

Looking beyond the negotiation stage, however, the pros and cons of a collective approach to renewal become a little less straightforward. In particular, questions were raised in the workshops about the extent to which it was appropriate for some owners to help others with the decision-making process, and the point at which this might be viewed as bullying or coercion. For example, participants wondered if owners who have a strong position on renewal could help those who are uncertain to understand the issues better, or might this be viewed as coercion? And what if information or advice given by a neighbour proved to be inaccurate? Similarly, should the EC reach out to owners who don’t come to a meeting about the proposal, to ensure that they understood the purpose of the meeting but chose not to attend? Or could this be interpreted as trying to rally numbers in favour of a particular position?

Mediation was discussed and approved of by most workshop participants as one way to make the decision-making process fairer (albeit with some concerns raised about the possible cost). As a Parramatta resident noted, having a formal process would give less confident residents a chance to air their concerns and ask questions, in a setting where the risk of manipulation or misinformation was minimised. It is worth noting that in the new legislation, however, formal mediation is not contemplated until after the vote, when the renewal plan reaches the Land and Environment Court for review. The concerns raised in the workshops about managing the decision-making process among neighbours indicates a need for mediation also to be available at an earlier stage of the renewal process (see Recommendations 20 and 21). This could help residents to access the potential benefits of collective negotiation with the developer, while still ensuring they have the information and freedom to make the best individual decision, based on their own personal circumstances.

5.3 Conclusion

For many owners—particularly those not on the EC or the SRC—the decision-making process will be the most demanding part of the renewal process, and is therefore likely to receive particular scrutiny from the courts and in public debates. 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.

Chapter 6: Managing the Process

This chapter addresses the final three steps in the five-step process: voting, appeals, and payments. The chapter also includes other major considerations that fall within the process, that were identified during the interviews and workshops. For this reason, there are additional headings that address important issues that are not directly part of a process that would involve existing owners, but are all part of ‘managing the process’ of termination.

6.1 Fairness and oversight

Fairness

One of the strongest themes to emerge from interviews and workshops was the desire for a process that was seen as fair and transparent. In the community survey of strata residents and owners, 93% of all owner-occupiers and 91% of all investor-owners rated fairness and oversight as either very important or important when it came to making a decision on a renewal proposal (see Figure 6.1).

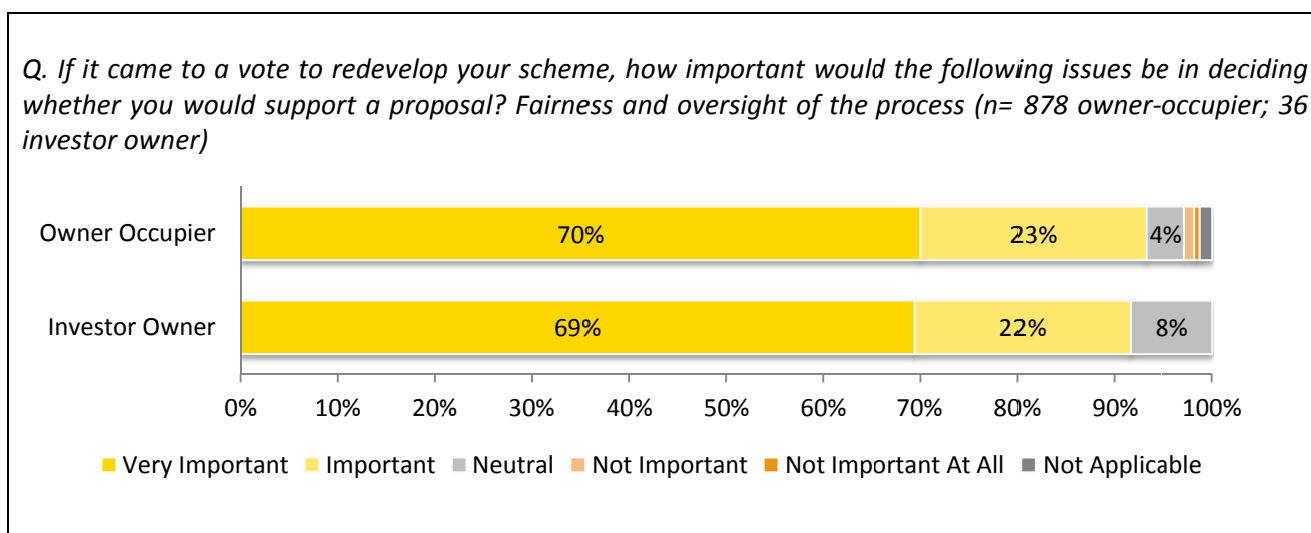


Figure 6.1 Importance of fairness and oversight of renewal process

As discussed in Chapters 4 and 5, how the whole termination process is initiated will be central to what could be considered a fair process. It was noted that major developers and financiers were cautious not to develop a bad reputation through strata termination by being seen to treat existing owners unfairly. While these large entities have a mind towards public reputation, there was concern that this view is not necessarily shared by all. There was a general worry that people would be unfairly treated by some property development interests, and the importance of having a system that guarantees procedural fairness was stressed. This would include declaring conflicts of interests by different parties very early the strata termination process.

Oversight

One of the by-products of the unanimous voting requirement was that it offered a level of a protection against predatory or unethical behaviour. So long as one could withstand any unpleasant behaviour, ultimately ownership of a strata titled property offered the protection that no-one (except the government) could force a sale. While most people will enter a prospective termination in good faith, this

loss of security contributed to some participants wanting a third party entity to have oversight of the renewal process.

Role of government or other body

There was a mixed reaction from stakeholders about the appropriate level of government involvement in the process of termination and renewal more broadly. Some interviewees suggested the key to the government's role should be in developing and implementing a process or mechanism that was seen as fair. One respondent from a government agency indirectly affected by strata renewal suggested:

“The state government's interest is to make sure there's a good process and a mechanism but like in any of these areas we leave it up to the individual property owners to manage their own property interests. Strata is the same.” (State Government)

A development industry representative suggested that government should be involved in early cases, to ensure a proper procedure is established:

“I think as we go through the first case study's examples of renewal, I think it would be good - I think a genuine role for government is not to take over.” (Property Industry Peak Body)

Both these responses indicated a ‘hands off’ approach that would ultimately lead to minimal involvement in strata renewal.

This position was partially contrasted by some consumer peak bodies who suggested that some type of formal oversight would be critical to ensuring fair outcomes, although questioned the capacities of agencies in the present form to deliver on this. In responding to a series of questions about fairness of process, tenants, owner-occupiers and investor owners all showed high levels of support for the proposal for formal court oversight and the capacity to contest termination decisions on multiple grounds, some of which potentially sit outside procedural aspects of renewal. Figure 6.2 shows that over 85% of survey respondents in all tenure categories supported the proposition for the Land and Environment Court to oversee the procedure of termination. The common ground for all research participants was that whatever mechanism or body formally became part of the termination process, it should be to ensure what can be seen as and demonstrated to be an open fair and impartial procedure.

Q. The NSW Government's proposal to make strata redevelopment easier includes a range of measures that seek to balance the interests of all owners. What is your opinion on key features of the proposed model? Independent oversight will be provided by the Land and Environment Court who will check that the proper process has been followed and that all parties have been treated fairly in the distribution of any proceeds (n = 301 renter; 883 owner-occupier; 35 investor owner)

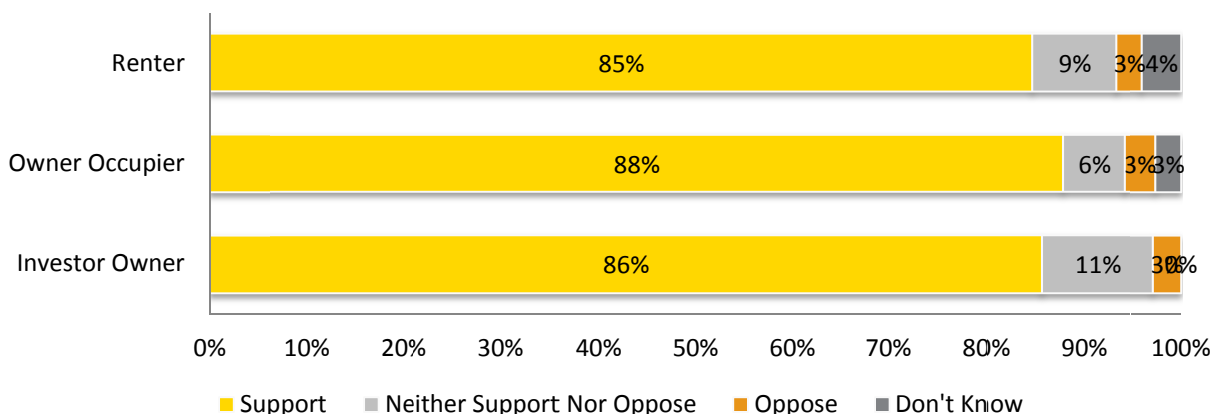


Figure 6.2 Support for court oversight of strata renewal

6.2 The vote

This report is more broadly focused on renewal of higher density forms of housing, however the research occurred in the context of the proposed changes to the legislation, including the reduction of the voting threshold from 100% of owners. At the time of the research, the voting threshold of 75% of owners had been floated, but not yet confirmed in the draft legislation. Even though the new voting threshold was yet to be decided, the proposal to change the proportion was central to all discussion that formed the basis of the research, and was explored in multiple ways: through the community survey, the key informant interviews, the stakeholder workshops and the community workshops.

Voting proportions and holdouts

There are mixed perceptions about what the changing voting proportion aims to achieve, however participants generally considered that it was being introduced in an attempt to avoid a 'hold out' situation. Hold outs were thought to take two forms. The first is when a person is holding out because they are hoping to achieve a higher price as the prospective buyer is left with no other choice if they wish to obtain ownership of the whole strata block. The second is when a person does not want to leave their home because of a range of social reasons, or has no financial or personal capacity to do so.

"Two people are holding out. One, the little old lady, who doesn't know what to do. The other an investor, who just thinks by holding out to the last person, he'll get more than everyone else." (Property Industry Peak Body)

With the exception of one interview respondent, all thought that it was acceptable for the 'old lady' to hold out where there is no process in place to facilitate a move and she would otherwise be left without a unit, or be forced out of the area. There was little acceptance that the person who holds out purely for speculative gain represented a fair proposition.

Making this characterisation is problematic because it homogenises what is in reality a very large and diverse set of groups and interests. However this characterisation and the different responses it generated, often un-prompted, highlights the need for reasons for resisting a sale to be taken into consideration. What is morally justifiable becomes an important consideration in the level of community acceptance of termination proceedings.

When specifically questioned about a less than unanimous voting threshold, community survey respondents were mixed in their opinion (see Figure 6.3). While 49% of renters and 43% of owner-occupiers supported a change away from unanimous vote, 38% of renters and 44% of owner-occupiers opposed the changes. This equates to a difference of +11% of renters and -1% of owner-occupiers. Although it was a small sample, 58% of investor-owners supported changes compared with 34% who opposed.

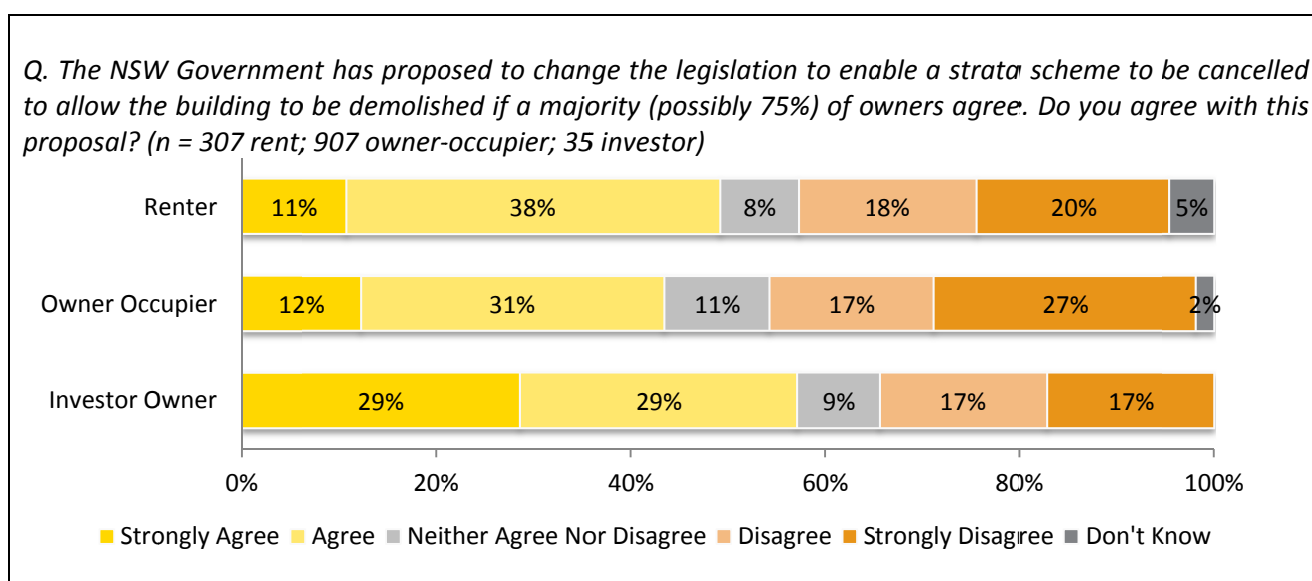


Figure 6.3 Community response to change in voting proportions

This distribution of responses indicates mixed feelings in relation to changing the termination provisions. Based on responses to this proposal during community workshops, it is likely that both the opposition to and support for a less than unanimous voting threshold will be qualified, depending on exactly what is proposed, and how the flow of impacts and benefits will occur.

During the community workshops, reasons played an important part in whether people agreed with a less than unanimous threshold, and no one wanted to see the 'old lady' left in a worse position. There was a general recognition that this group potentially represented one of the most vulnerable both in terms of capacity to cope with change (financially, emotionally, physically) and the capacity to be fairly represented in the termination process. Despite this, there was wide support for a system that avoids the single holdout. One workshop participant described this issue:

"Because the whole idea that you're not going to get 100% to agree on it – yes you've got to look at the people who disagree, but you will get some people who will not agree with anything unless they get \$2 million for a \$100,000 property. So it's to stop that, it seems to me – that unreasonable blocking. Because it might not be 25%, it might just be one person who's holding out."

Most people were concerned that the last person could hold too much sway over any particular proposal and this may not be fair, but did not want to see groups of people denied what was seen as their right to live in their dwelling for as long as they saw fit.

While there was fairly broad consensus that hold outs were an issue, there was a lot more uncertainty about what the voting threshold should be. During interviews, and community workshops, it was often asked where the 75% threshold came from. One respondent representing a property developers' advocacy group suggested that it is based on what the property development industry desired.

"We barracked strongly for 75 per cent, which is what the government is currently proposing." (Property Industry Peak Body)

Aside from this, there was little knowledge of a rationale behind the 75% figure, though most thought it was too high. A strata finance expert suggested:

"So where do you set that number? Part of me is saying it should be high, like 90 per cent. That's what it is for compulsory acquisition of shares in a company. There's a workable precedent for that." (Finance Professional)

Others were less inclined to put a number on what the proportion should be, aside from the organisations and people who maintained that 100% was the most appropriate. During community workshops the suggestion was that a particular number was not the most appropriate way to think about the issue. For these groups, the issue revolved around the hold out, as most thought it was not fair on the majority if one person could stop the decision of the remainder, however did not want to see groups of people potentially being forced to sell. Therefore any change to the voting threshold should be designed to deal specifically with this scenario

Ballots and Timelines

When it came time to vote, there was a clear preference by community workshop participants, and most stakeholder workshop participants, that a ballot should be secret. There was concern that if the voting intentions of the dissenting owners in particular were known to the group, this would leave them susceptible to bullying by parties interested to swing the vote in their favour. Bullying is a concern in many situations in respect of managing strata entities, and in the case of termination, the stakes are considerably higher. Concern about bullying was in part related to timelines, as a drawn out process may provide further opportunity for dissenting owners to be pressured to change their decision. There was a general perception through the workshops that a vote would occur at one moment in time, and the result would then be known. With the release of the draft legislation, it was noted that owners could wait to vote or change their vote for up to a year after a renewal plan had been distributed for consideration. The Act as passed now requires votes to be submitted within three months of the decision being made to distribute the renewal plan to owners, with voting only to commence after a 60-day cooling off period. The net effect is therefore to allow approximately one month for voting to occur, rather than up to 10 months in the draft legislation.

There was also concern over who should administer the vote. At the time of the community workshops, the provisions in the legislation were not known, but it was made clear that for most people, an external, independent arbiter was desired. This was preferred on two counts: to ensure the voting decision of particular individuals would not be disclosed to other members of the owners corporation, and to ensure the voting process would be done in a transparent manner, free from influence by individuals who

themselves stand to benefit as owners. Moreover, as has been recognised in Chapter 3 and in Section 6.2, there is a risk that one owner controls a large proportion of the vote and has the capacity to take effective control of an owners corporation. Who is charged with administering the vote will therefore be critical to ensure a fair and equitable voting process, both in perception and in practice.

6.3 Appeals

Reducing the termination voting threshold below 100% will inevitably mean that there could be disagreement at all stages of the process that will never be resolved. The role of dispute resolution and appeals in the context of the 5-step model and the community workshops were discussed in two ways: first around mediation and dispute resolution, and second around formal appeals.

Dispute resolution

In both the stakeholder and community workshops, participants recognised the value of having a formal mediation process to address concerns of all parties involved, particularly those who are inclined to disagree. This was thought necessary for two reasons. First, many owners may reject a decision mainly because they are uncertain as to what termination may actually mean for them. Mediation in this context becomes about ensuring all information is conveyed and understood by all parties prior to voting occurring. Second, there may be minor reasons for objecting to termination and mediation may be an effective way of overcoming these barriers, allaying fears of change. The net effect then is about trying to deliver a consensus around termination, which in theory makes voting proportions less of an issue. The important concept here was that discussion and mediation needed to happen before disputes arise.

There was some concern about how a mediation process would occur and how it would be managed. Some owners were not confident they knew who would facilitate. Perceived or real bias of the nominated mediator or discussant was raised as a problem, particularly if it was up to the owners corporation to find or nominate a person. Most people were not aware that Fair Trading offers mediation services for a small fee, and the first reaction was to approach strata managers for advice on how to proceed. However, many were sceptical that strata managers would be well suited to either assist in discussion, or provide appropriate direction.

Managing strong personalities was identified as a potential issue in this context and there was a general acceptance in community workshops that there should be some process in place to protect vulnerable people. It was suggested, however, that this may become less of an issue in larger schemes and there would be more 'safety in numbers'. Conversely larger schemes would inevitably mean more opinions to be negotiated, which may make decisions more difficult, as well as make it more difficult for the quieter voices to be heard. These points demonstrate the specificity of many situations. Not all strata schemes would be dominated by one strong individual and many will be aware of formal avenues that can be pursued in order to resolve disputes and tensions.

Appeals and dissenting owners

Much of the discussion around mediation during the development of a renewal proposal was about creating a mechanism to help more people to contribute and ultimately consent to a renewal plan. If such mediation occurs, it should mean that problems will generally not arise among the people who consent to renewal (i.e. the 75%). Instead, more serious conflict will arise primarily in relation to those who do not consent, but are required to sell their units as part of a renewal plan.

It is at this stage that a formal appeal process would be required to ensure that the rights of dissenting owners specifically are protected. There was some ambiguity as how participants thought an appeal could happen. Most community workshop participants thought that a formal appeal would only occur and only be appropriate in relation to procedural issues. While procedural issues are no doubt important and the legislation contains checks to ensure these are followed, there were mixed views on how hardship based appeals should be considered.

During the stakeholder workshops it was suggested that hardships should be addressed before a vote is taken on termination, through a mediation process. In many situations where all parties are acting in good faith, this may be the case, and result in consensus around outcomes. There was also a general view that addressing hardships of different kinds should be ensured through the termination process, with most interview respondents supporting this proposition. Survey responses also showed that 89% of owner-occupiers suggested other forms of hardship should be taken into consideration in the termination process (see Figure 6.4).

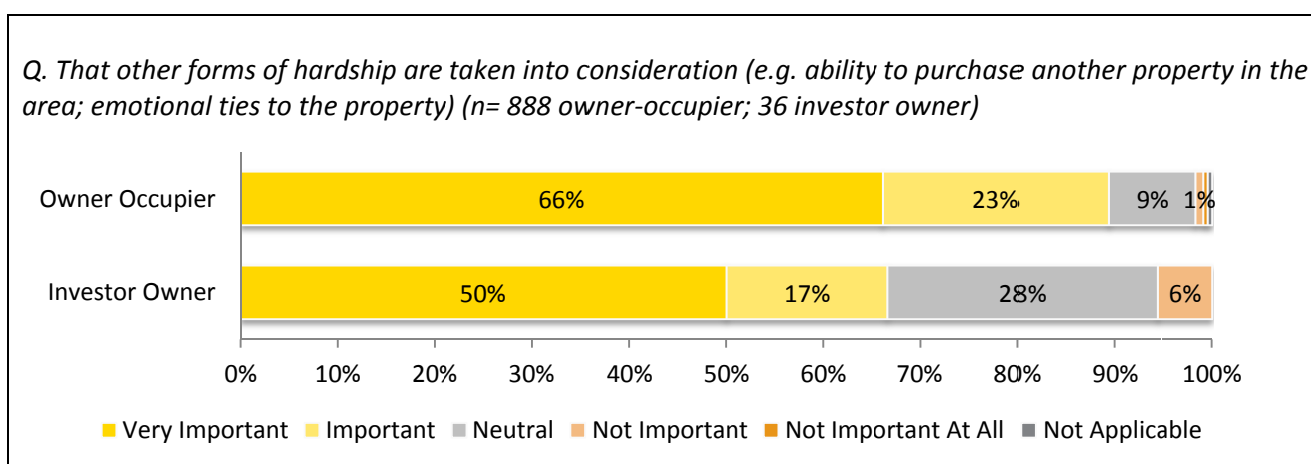


Figure 6.4 Community attitudes to hardship based appeals

However, there was uncertainty in the community workshops whether this should occur as an appeal right through the court system. The concern with allowing broader hardship appeals by dissenting owners was that it may slow down and complicate the court review process, creating further uncertainty for owners.

6.4 Transfer

The final part of the five step process involves payment and transfer. Negotiating this step may in fact occur throughout the previous four steps, so in many ways this step is deeply implicated in the whole termination process. This was included as the separate part of the model to facilitate a discussion of what people may get in return for consenting to renewal, and specifically, the possibility of receiving a new unit as payment for an older unit.

‘Like for like’

The collaborative model developed through the workshops aimed to work through scenarios that would facilitate existing owners receiving a new unit in a redevelopment in exchange for their original apartment. The rationale for this was to provide a mechanism for existing residents to remain within their community, to overcome displacement issues and maintain attachment to the local area. When strata residents were asked in the community survey if they would prefer to remain in the area, 75% of renters and 73% of owner-occupiers said they would prefer remain in the same area (see Figure 6.5).

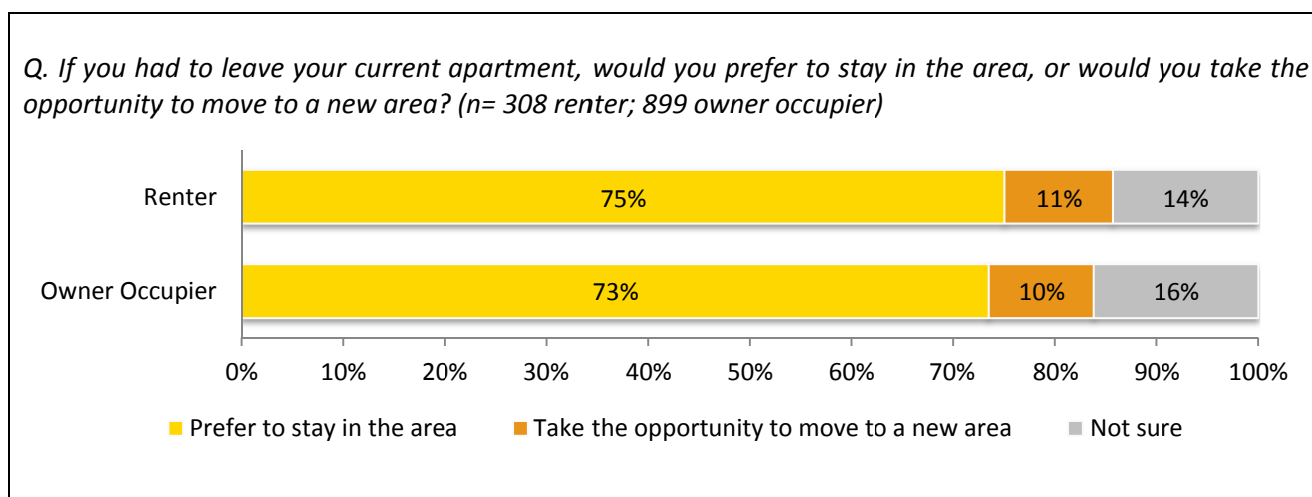


Figure 6.5 Community preferences for remaining in the same area

The important concept here was that owners would receive a dwelling of equivalent size, which may be different to what is considered equivalent value – ‘like for like’. For some consumer peak bodies, ‘like for like’ was about ensuring owner-occupiers could remain owner-occupiers in the same area:

“Well I guess the main thing is the extent to which they can be assured that what they get out of the redevelopment is on par with what they had before, which is owner occupation in the area. Whether that means entitlement to a unit in a redevelopment or - I mean that doesn't quite do it, because it - they still have to move out and then move back in. What happens to them in the meantime is significant also. Or whether it's that they're compensated sufficiently to get owner occupation in the same area.” (Consumer Peak Body)

“For any of this to work fairly - you'd need the housing system to be delivering affordability for a start and secondly, you'd need to have a system where you're actually replacing for the tenant or for the homeowner what they had. So if it's a two bedroom flat in Canterbury, it's a two bedroom flat in Canterbury.” (Consumer Peak Body)

As the second quote above suggests, like for like is ensuring that people are able to continue owning and living in the same area in a similar apartment. It was recognised that there may be a notional difference in market value between old and new apartments, however it was made clear that equivalence should not be based simply on equivalent market value.

This idea was supported by a broad cross section of interests, including government agencies and property industry advocacy groups:

“But I think we only briefly touched on the other side, which is what a resident would need to be able to move into another place...but another mechanism that exists for dealing with that is like for like. So the residents who live in there at the moment in a two-bedroom have to be offered a two-bedroom of equivalent size or whatever in the redeveloped building on a like for like basis. So that's one way of dealing with some of those dislocation or relocation issues.” (State Government)

Most community workshop participants agreed that this type of 'exchange' proposition could represent a fair outcome, although for some they would prefer to be paid and then move on. However, there were a range of problems that ought to be considered, and which may limit the prospects of this type of transaction.

New apartments as payment

Risk

Risk to existing owners was cited as the major drawback to this approach. If existing owners were required to contribute their asset in lieu of payment and in return for a new apartment, this would place an unacceptable risk on, in particular, owner-occupiers:

"From the owners' point of view the real risk obviously is that they get their value back and that they're secured as far as possible so that if they sell their apartment on a promise there's a very real risk that they'll get nothing. They'll actually lose their home and get nothing out the other end if the developer goes bust, is a rogue or something."
(Legal Peak Body)

Should a redevelopment not proceed because the development company becomes insolvent, then there is the possibility of losing that asset, because it would first need to satisfy debt obligations of the company:

"I just think it's that step too far to try and put in security for the owners ahead of banks or anybody else because that will probably stymie the process completely." (Legal Peak Body)

While contributing an asset to a development company may reduce their overhead costs and make a project more viable, it would not be socially acceptable to put owner-occupiers in this position. It was highlighted in the stakeholder workshops that the only likely way this could occur was if an owner was paid for their existing unit, and then bought a new unit off-the-plan at an agreed price. If the project then failed, the loss would be limited to the deposit on the new unit.

Financing and decision-making

The second reason contributing an asset in exchange for a new apartment was not considered desirable was that both financiers and developers were uncomfortable with the prospect of having multiple interests and decision makers:

"From the developer's perspective I think, as I said, it's more around them being able to control the build. They don't want a committee running the build, they don't want a committee running the process." (Legal Peak Body)

One bank representative suggested that they would not loan to any development proposal where there was a consortium of interests. They would prefer to see a single developer entity take control of the entire asset and make all decisions in relation to that asset and the renewal project.

Designs

This has direct implications for decision-making around the designs on new units. Many community workshop participants indicated they would like the opportunity to have input into the design of their new apartment, at least from an internal fit out point of view. However, from a developer point of view, there was a reluctance to give control of any aspects of the new building to other parties. Receiving a new unit would be similar to the off-the-plan process now, where owners have limited say in the final product.

Developer reputation and building quality

This adds additional risk and uncertainty to the process for owners, who are then not certain of the quality of the new unit they would receive. There was a general perception with the community workshops that many new buildings are of lower quality than older building stock. One of the community workshop participants from Coogee suggested:

“One of the major problems with this whole proposal is that there is already such a lack of integrity in the processes, in the developments, in the development industry as it is, that as soon as you get presented with this sort of stuff it’s like ‘oh, more of the same crap’. You know? These people up here who are already making tons of money out of making rubbish just are looking for another opportunity to get their hands on more and build more rubbish. What ever happened to doing things to a certain level of quality, to having some pride in what they build?...The whole system is geared towards doing things at the cheapest possible level.” (Coogee Owner)

Previous research has identified building defects to be a significant issue in new apartments (Easthope *et al.*, 2012) and while there is some recourse to address building defects under current regulations, there was a high degree of scepticism over the adequacy of controls. One interview respondent noted often-cited examples of development companies going bankrupt and leaving no resources to rectify defects:

“They actually have quite a few buildings in Randwick that after people...have moved in they complain to us, but we can't do anything about it. It’s a matter for the private certifier. The builder has gone bankrupt or left. How you address those issues I don’t really know.” (Local Government)

This reputation of current development practices would need to be addressed if a new apartment is to be viewed as a desirable outcome of a strata termination process.

Cost of managing new buildings

One of the longer term implications of renewal is the effect it may have on the ongoing maintenance costs of strata buildings. As discussed in Chapter 3, strata levies are presently often insufficient to meet proper maintenance and sinking fund costs. Despite this, many older buildings are cheaper to maintain because they are often simple structures with no complicated infrastructure:

“And intensive long term management and maintenance. There isn't - as soon as you have to put a lift in a building it gets to be that much more expensive to live in. So we're talking about low cost and low priced housing, as soon as you put a lift in it's got a problem.” (Consumer Peak Body)

Modern buildings over three stories will likely have a lift, and many have other common facilities, such as pools and barbeque areas, that require upkeep. This translates into significant recurring costs for residents, which for low and fixed income residents can represent a substantial burden. The way this affects different groups will vary, however it raises issues about long term viability of different building types and management arrangements.

Stamp Duty

One of the most significant transaction costs for any purchaser is stamp duty, which was frequently cited as being a key barrier to the termination of strata schemes. To at least maintain a position as being an owner of a unit of a particular value, a stamp duty outlay would be required as part of a strata termination

process. In the cases where an existing owner consents to sell and potentially purchases somewhere else, this is equivalent to the current arrangement regarding property transactions. However a termination may differ on two counts. The first is where an owner does not wish to sell but is required to as a dissenting owner in the process, and stamp duty would represent a substantial cost which they would be forced to bear. The second difference is in the example where an owner chooses to participate in a renewal and remain in the same location. This is akin to going through a house renovation, which would not involve a stamp duty transaction. Because of the requirement to relinquish title in the old strata scheme, however, and re-purchase in the new, this would trigger a stamp duty event, without there being a practical change in the asset held.

Capital Gains Tax

A capital gains tax event is likely to be triggered by a termination for investor owners, as under collective sale and developer-led renewal scenarios, land title will have to be transferred, requiring payment for the lot. For some investor owners this may prove to be a barrier to giving support, as it creates an immediate cost burden. The extent of the liability will be dependent on how long the unit has been owned, if any concessions apply and if it is owned through a self-managed superannuation fund. In situations where the intended outcome is to receive a new unit in the redevelopment, there is an argument that this should be considered as a similar outcome to the knock-down and rebuild of single houses, which doesn't trigger a CGT event. While this may provide a disincentive for investor owners to participate in a renewal proposal, the extent to which it is an unjustified burden would be better considered in the context of wider debates on capital gains tax and specifics of actual renewal models being followed. An owner-led redevelopment model would likely avoid this as land title is vested in common with all participant owners, but this is not considered to be a likely scenario.

Time scale and changing markets

The renewal process is likely to take years to complete, which poses some challenges within the current market context. Both rising and declining markets pose distinct challenges, which are exacerbated by time:

- **Rising market values:** First, in a rising market context, the point at which a price is negotiated for the existing units will be crucial to an owner's ability to purchase back into the local housing market. The time between negotiation and settlement is likely to be protracted, which opens up the real possibility that values will be significantly higher at the point the existing owners are ready and have the finance available to purchase an alternative unit.
- **Declining market and negative equity:** In the context of a declining market, recent purchasers may be faced with realising negative equity in their unit if forced to sell. Transaction costs can be substantial, and if coupled with a decline or no change in unit values this can mean that someone who only recently purchased a property may be forced to incur a loss, affecting their ability to purchase an alternative dwelling.

Market geography and profit margins

As noted in the Interim Report, housing market geography will play a key role in outcomes. Value differences between new and old apartments and the possibility of zoning changes will substantially affect the potential contained within each site. This value difference will be central to driving change in a market setting, however the feasibility analysis noted substantial variation in the size of value uplift potential, ultimately affecting purchase prices for existing units. The possibility that there are large windfall gains by

going through a collective sale process will vary substantially based on location within Sydney, and the particularities of each site.

6.5 Timelines

There was some desire among community workshop participants for the process to include time to make a decision – particularly as a way to ensure vulnerable residents do not succumb to the ‘hard sell’ from a developer without having the chance to properly research and understand the details of the deal. One suggestion was to implement a ‘cooling off’ period after the plan has been presented. The legislation reflects this idea by requiring that voting cannot occur until two months after the final strata renewal plan has been presented.

At the other end of the spectrum, however, there was also some concern expressed about the potential for a renewal process to drag on for an extended period of time, and the effect this could have on owners both emotionally and financially. On the financial front, owners raised questions about the likely impact of an active renewal process on the value of their property. Will an ongoing renewal process make the property more or less valuable? Could there be any restrictions on selling while a renewal plan is being developed? Would investors have to inform potential new tenants about the risk of eviction if a renewal plan is being developed but hasn’t yet passed, and what impact might this have on the rental yield? These uncertainties could make it more difficult for owners to realise the full value of their asset, and should therefore be resolved in as speedy a manner as possible, while still ensuring the process is equitable.

In addition to these potential financial implications, some owners were also worried about the emotional impact of the process taking a long time to resolve. This would likely be a particularly significant issue for dissenting owners. Interestingly, some insight into the potential impact emerged from the Coogee tenants workshop, where participants described the emotional toll of not feeling completely in control over one’s living arrangements. This was particularly an issue in expensive neighbourhoods, where tenants told of landlords refusing long lease requests, presumably so they could increase the rent again under a new lease. The emotional toll was also hard on tenants with a family, who were likely to have become connected in with local networks and services (doctors, schools etc.). It seems possible that dissenting owners may experience much the same toll from being subjected to a renewal process, particularly if it will be difficult to find another property in the same area. As such, just as the best solution to tenants’ concerns may be to ensure clear and reasonable timeframes for receiving information and being required to move, it is also important to strike the right balance between giving owners appropriate decision-making time and not letting the process drag out.

6.6 Conclusion

This chapter addressed a range of issues that are central to managing the actual process of termination and included the final three stages of the five step model: vote, appeals, and payment. Central to the acceptance of strata renewal was the perceived and actual fairness of a process that aims to deliver redeveloped buildings. 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 mostly expressed a strong sentiment that an appropriate level of oversight be offered by an independent group, preferably a government agency.

Part of this fairness concept related directly to the vote and under what circumstances it would be considered 'fair' to force someone to sell their property. Results from the community survey suggested mixed opinion on changing the unanimous voting requirement, with 43% agreeing and 44% disagreeing to the proposed changes. Community workshop participants broadly accepted that single hold outs were a problem and in principle should not be able override 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 forcibly displaced, nor did they want to see vulnerable individuals forcibly displaced.

Part of addressing these details of individual circumstance was expected to happen through a dispute resolution process, namely mediation. There was uncertainty how this would occur but wide recognition of the importance of early mediated discussion. Having an impartial mediator was considered highly important, however there was little knowledge within community workshops of what options would be available to assist in mediation. Addressing problems and issues before a formal legal appeal was required was seen as critical, both from community and professional perspectives. Insisting on, and offering formal mediation as a key step in the process was widely seen as positive.

Concepts of displacement were central to many of the vulnerabilities explored in Chapter 3. Giving existing residents the opportunity to remain in the same location, in a new development may go a considerable way to alleviating these problems. Providing opportunity for existing owners to receive a 'like for like' apartment in return for their consent was broadly viewed as a desirable outcome. There were of course some risks involved, some of which can be addressed through appropriate payment and contract arrangements. But developing this as a viable option will be critical to the success of strata termination as general concept.

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 appropriately informed decisions. However, it was also suggested that too long a process may create 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. A balance is needed to ensure time to make appropriate decisions, without creating long periods of uncertainty and stress.

Chapter 7: Metropolitan Planning and Urban Renewal

A key driver of the recent legislative changes concerning the termination of strata schemes was the realisation of the potential barrier to renewal that the strata sector currently represents. This has been made explicit in a range of State government documents over the last decade (see Chapter 2). The issue has come to the fore in relation to the renewal of older established town centres and corridors, where an earlier wave of renewal has resulted in a large number of older walk-up flat buildings. These are now located in areas that planners and developers perceive as ripe for renewal at higher density. The difficulties of acquiring these properties for redevelopment has prompted State planning authorities and developer peak bodies to actively support legislative change to facilitate more speedy renewal outcomes.

However, this is a highly contested area. In addition to the issues of individual equity and displacement discussed in the earlier part of the report, there are wider issues around the appropriate balance between the publicly sanctioned benefits of urban renewal in key target locations, and the important role these buildings play as a source of affordable housing for both owners and renters in what are often accessible places. While the proponents of strata reform view these older strata blocks as barriers to progress, many others see them as vital housing stock which may need to be retained *in situ*.

Compounding this is the widespread apprehension that urban renewal through higher density development will bring less amenity to an area rather than more. In discussing the need for civic dialogue about the often negative reaction to new development, it was suggested by both stakeholders and community workshop members that public opposition is well founded, based on the rational fear of creating a lower standard of buildings and urban environment. This is especially the case in terms of overdevelopment and the lack of reciprocal provision of open space:

“It's not irrational. It's a rational fear that the same [*thing*] is going to happen again and the same over-hyping of the benefits of density that are never delivered is going to happen again.” (Think Tank)

This research has attempted to tease out the wider issues around strata renewal in the context of the overarching focus in metropolitan strategic planning on urban renewal and the role that the changes to the strata termination arrangements might play in driving renewal initiatives on the ground. This is important, because in large part the pressure for legislative changes has been driven by an interest to ensure strata buildings can more easily be redeveloped as part of the wider planned renewal of existing urban areas.

These are issues that properly lie within the remit of the land use planning system to resolve. This chapter reviews the findings of the research into the appropriate role the planning system might play at both strategic and local levels in managing the process, particularly the wider public interest issues that strata termination will inevitable generate should it become a common process. Importantly, the potential of strata renewal to radically change existing communities, land use outcomes and housing supply and affordability levels are matters that need to be recognised by planners and incorporated into both planning policy and practice. Unlike the redevelopment of detached house properties, which has largely been ignored as a strategic planning issue, the wholesale intensification of already relatively densely developed suburbs and centres through strata renewal requires a more strategic focus as a distinctive policy outcome. In this context, strata renewal is very much a planning issue.

7.1 Local planning

Issues around the redevelopment of individual buildings and the impact on the local area were a significant concern for community workshop members and survey respondents, as well as among some stakeholders. There was a recognition that strata termination is not something that would take place in isolation of its neighbourhood context. In addition, there were nuanced views expressed about the need to balance renovation and redevelopment as a means of improving the housing stock and local amenity, with an acknowledgement that neighbourhood outcomes were also an important consideration. This was especially true in terms of the provision of infrastructure needed support any significant density increase.

Redevelopment or renovation?

Survey respondents were asked their opinion on the reasons that could trigger a renewal of their building in relation to its physical condition (see Figure 7.1 and 7.2). The results showed that if the building was in a poor or unsafe condition then termination was largely supported, with tenants more likely to be in favour than owners.

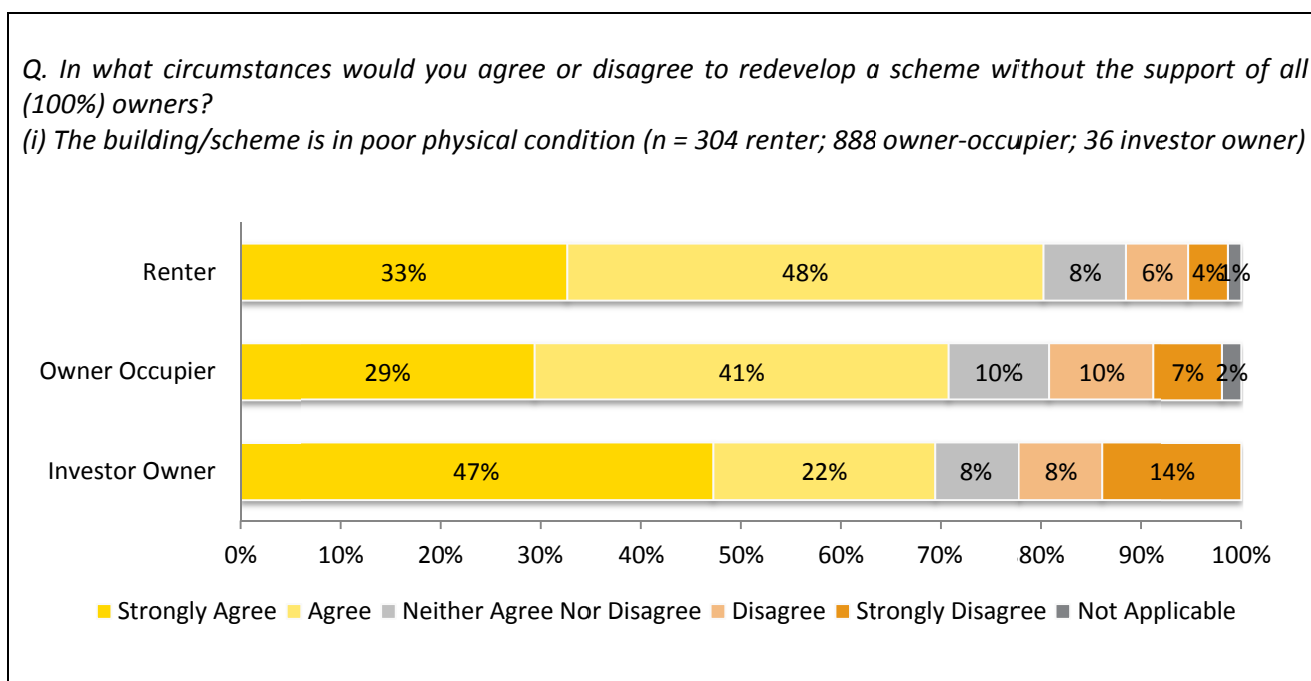


Figure 7.1 Community attitudes towards renewal to address poor building condition

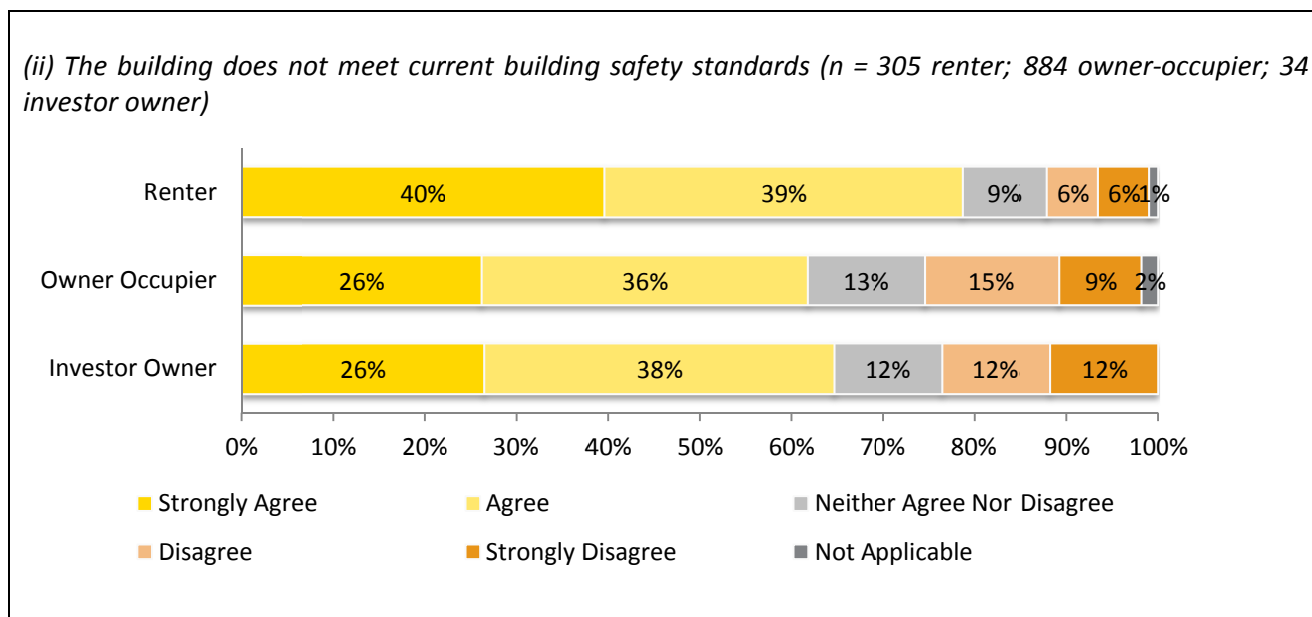


Figure 7.2 Community attitudes towards renewal to address safety standards

However, termination is not the only option in this situation. Clearly, renovation and upgrading is also possible, with the choice of either redevelopment or upgrading largely to be determined by cost and difficulty:

“Terminating...is not the only path to strata renewal. The building I'm talking about... [the owners] don't need to terminate the scheme, they just need a 75 per cent majority because they're making changes to the common property, such as adding balconies, and they are changing the unit entitlements and they're creating two new lots...There's no need for them to terminate anything.” (Finance Professional)

One council has actively pursued a policy of encouraging block upgrading as a more practical alternative to redevelopment, by offering modest amounts of additional floor space to pay for the improvements:

“We actually try to encourage some of those outdated ones to do something about renovation and modernising some of those buildings, including working with them to get some bonuses.” (Local Government)

But this route is also not without its problems, which in many ways reflect the same kind of barriers that arise in trying to demolish and rebuild as part of an owner-led plan, or one where owners buy back into the new scheme:

“The barriers...come in two different ways. The owner-occupiers, obviously they need to relocate themselves. They need to come back and so forth. So there is a cost associated with that. With the rental ones [investor owners]...the only thing they really care about is their room that they are getting...Also sometimes you have got older people and that they are on a fixed income.” (Local Government)

One finance industry representative described an example of an attempt at building renewal based on a live example this organisation was engaged with.

“Have a look at this particular property and it just sticks out they should do it. They've got two fire orders, a concrete cancer, a building which is a blot on the landscape in

every sense. They can either spend - these numbers are approximate - \$10 million to fix the fire orders and the concrete cancer or they can spend \$20 million to totally do the whole building including two penthouses on the top, which they've got DA approval for, and sell the penthouses - they expect \$12 million for the penthouses. So therefore it's cheaper in the long run to do the whole development.

Even if it was break even, they sold the penthouses for \$10 million, fixing the concrete cancer and the fire order does nothing for amenity or for value. The net cost is \$10 million. Total refurbishment - the net cost is \$10 million and the floor area of each unit's increased by 25 per cent. The value goes from \$10,000 per square metre to \$14,000 per square metre. So when you've got a 40 per cent increase in value per square metre, and you've increased the floor space by 25 per cent, you can see there's an enormous increase in value to play with things, as well as having an extra lift and landscaping and all these sorts of things." (Finance Professional)

This example illustrates how a major refurbishment and additional floor space can be achieved without scheme termination. This would only require a change to the existing strata plan to accommodate the changes through a special resolution of the owners corporation. It was clear that this does happen on occasions and there was also evidence that some councils have been actively trying to facilitate this through the planning system. In other words, to achieve improved stock condition as well as generate a modest increase in density, which might be more in keeping with local neighbourhood amenity and community expectations, the planning system could be more effectively used to encourage *in situ* renovation of older blocks without the need for termination and redevelopment of the entire strata scheme. While undoubtedly disruptive for residents, and potentially still causing some displacement, this might prove a more palatable policy option for neighbourhoods where significant density is not being sought, but where a sufficient value uplift or amenity improvement for owners would result.

Sustainability benefits

A further issue raised in the community workshops was the potential for renewal to contribute to improved sustainability outcomes. There was some agreement that if sustainability was a key focus of the redevelopment, and not just that the new building would be BASIX compliant, then residents would be more likely to support the renewal process. As one participant explained, when asked about the possible benefits of strata renewal:

"They could be actually more sustainable structures as well, like environmentally sustainable. So I would be hoping that a new – if this happened to me and obviously, faced with a new structure - that it was north facing, that it was utilising a lot more of the architecture to heat and cool my unit, or there were solar panels. Things like that I'd be really keen to see. Because I think 1960s architecture and structural design didn't really take in the broader environmental stuff." (Coogee owner)

To that effect, there was an opportunity for local councils to insist that redevelopment should actually deliver enhanced environmental outcomes, whereas presently there is no necessary link between the two. Enhanced sustainability outcomes (over and above BASIX) could be a factor in agreeing to spot re-zonings of individual strata schemes in return for demolishing an older, but basically sound, building. The new dwellings could then demand a price premium to the extent that the higher environmental performance (for example, savings in water and energy costs) could be amortised over the long term as clear operational

savings. In this way, the planning system could act to encourage the costs of managing and maintaining the building over its life-cycle to be more transparently reflected in design, delivery and pricing.

The role the planning system might play in supporting a life-cycle approach to both the development and management of strata dwellings should also be considered in the light of the longer term implications of getting this wrong at the outset (see Easthope *et al.*, 2013). In so far as termination is being seen as a remedy to poor building conditions in the current context, there was a realisation that part of the problem relates directly to the poor management of buildings over a longer period:

“Well, it probably doesn’t need to be replaced if it was properly maintained right at the outset and the problem is that these things have been deteriorating for many, many years.” (Service Provider Peak Body)

It could be argued that the planning system has a role to play in ensuring the replacement schemes are delivered and set up with a view to maximising longer term maintenance and sustainability outcomes and minimising operating costs.

Local infrastructure (to support increased densities)

A further issue raised by community workshop participants was the broader contribution strata redevelopment might make to improving local infrastructure. Several stakeholders also alluded to the need to see block redevelopment in a broader perspective, and not simply in isolation from the wider urban context:

“Young people and families, actually they don’t mind now living in different style of living, as an apartment. Fair enough, they may want to do that, but they cannot really do that if the rest of the infrastructure is not there. If you don’t have easy access to your child care, schools, employment, what’s the point? I much rather go live some area that have got a bit of backyard and open space of my own... but if more density is behind it then really density needs to come with, in my opinion, with other infrastructures like access to good open space, to employment, to schooling or any other thing that...” (Local Government)

“So you can understand that on a bigger scale, there’s got to be some sort of adjustment to the infrastructure. That’s difficult in established areas, that’s difficult but it’s not impossible.” (Property Industry Peak Body)

An appreciation of the wider significance of strata renewal in terms of neighbourhood impact was also clear among survey respondents, with resident owners overwhelmingly stating that this would be an important issue in their decision to support a termination proposal (see Figure 7.3). Perhaps surprisingly, this view was also widely supported among investor-owners, with almost half agreeing that neighbourhood impacts would be of some significance to them.

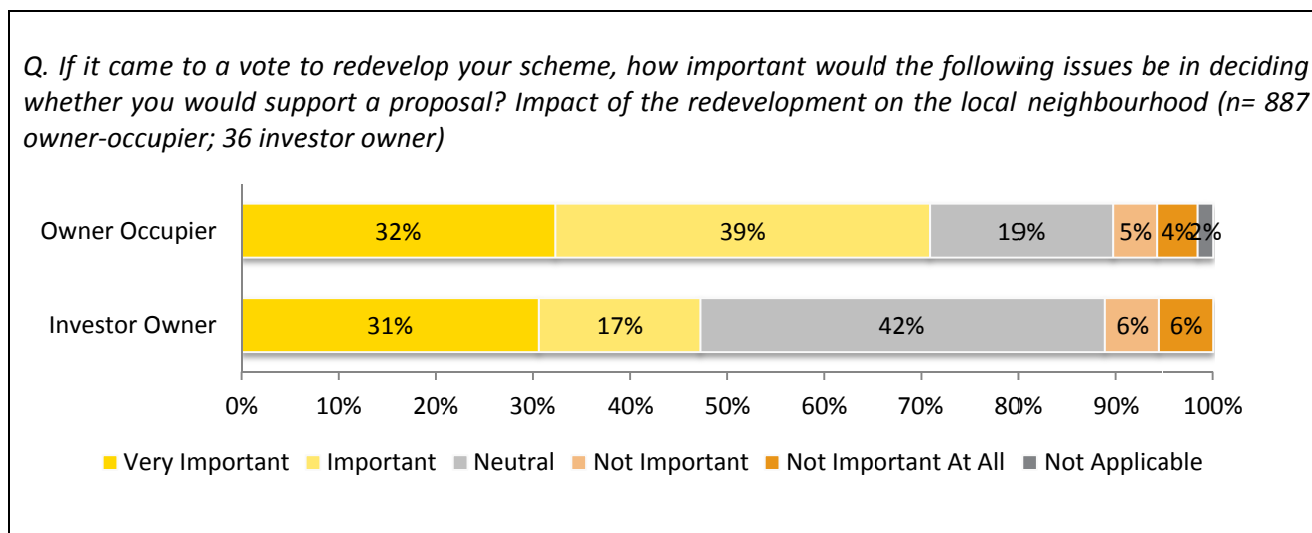


Figure 7.3 Community attitudes on importance of impact on the local neighbourhood

7.2 Strategic Planning

Turning to the strategic planning context, while there may well be a perception that strata termination *per se* is not a strategic planning issue, the fact is that strata renewal has been largely championed in the context of urban renewal debates, and any strata redevelopment will require planning approval. Furthermore, that redevelopment will almost inevitably play a role in achieving any metropolitan level housing supply targets, meaning that strata termination is indeed very much an issue that the strategic planning system needs to have a view on and policy response to. However, this was not necessarily a view that was accepted by some planners, especially those in more strategic roles.

In particular, there was a view that while important as a support for strategic planning objectives, the issue *in itself* was not a planning concern. When asked about how facilitating strata termination interacts with wider urban renewal objectives, two planning stakeholders responded as follows:

“Interviewee 1: I don't think there's anything more we can say, except sooner or later it has to be confronted, or it limits the options for the redevelopment of the orderly development of the city.

Interviewee 2: I mean, the other thing is, you've got to - it's not all just about the four-lot schemes and the like. There are some big schemes that are old and run-down and are so difficult to maintain that there needs to be - because they will - those schemes will never have full agreement.

Interviewee 1: But this isn't an issue for the planning system.

Interviewee 2: Of course it's not.”

(State Government)

In other words, while there was an acknowledgement that termination is part of a wider discussion about the delivery and management of housing stock, there was limited willingness to see it as part of the wider planning system and objectives in Sydney. While termination was recognised as a factor in realising strategic planning ambitions and it was felt that government should intervene to ensure termination can

occur, this was only from the perspective of freeing up the market to allow the “orderly development of the city”. Beyond that, planning had little or no role to play in the process.

This view is not shared across government, however, as indicated by this response from a representative of another agency:

“I very much think it is part of the planning remit...it seems to me that reform needs to happen at a broader level than the Strata Act but, potentially, also in a targeted sense too around certain areas which we want to see a focus of activity in the redevelopment.” (State Government)

This comment suggests that strata termination might be permitted, but on a more targeted basis and focused on areas that had been identified for renewal, rather than as a blanket option across the strata stock. In any event, to be successful, strata renewal would require both rezoning and planning approval, which potentially puts councils in a very powerful position in terms of controlling the location, form and scale of strata renewal in their local area.

Suffice to say, there are different perspectives within the bureaucracy which may well reflect varying views on the proper role of government to undertake strategic planning and to intervene to deliver planned outcomes.

Spatial plans and renewal precincts

The way in which strata titled buildings were developed means that there is a clear geography to their distribution. In some areas, strata accounts for over half the housing stock. The distribution of strata schemes therefore has a significant implication for spatial planning, especially at the local level. This means that strata renewal will have much greater implications for some council areas than others. It also means the strategic planning for these areas needs to account for the prevalence of aging strata buildings:

“The inner ring suburbs, particularly in the inner west, there's a lot of old apartment stock that is...located close to train stations and the like. It has been government policy for a while to start increasing density around those hubs. So there is potential there for it to take off.” (State Government)

The focus on local centres and transport corridors sets the spatial framework within which strata renewal might become significant, while in other areas there will be less pressure to renew:

“I think that might [be] that you don't have a generic approach to strata title, which I think is quite important. There's...a difference between potential in that middle ring and what you should actually do in planning terms.” (Think Tank)

But again, there are some who think strata schemes are an opportunity for renewal, and others who don't:

“Mind you, there are quite a lot of redevelopment sites left in this area. I suppose being able to capitalise on major infrastructure that is going to arrive in terms of the light rail [would be one opportunity].” (Local Government)

“When we've looked at these precincts and we've looked at prioritising the process we get involved in, we've discounted ones with high levels of strata because of the difficulties in getting those areas to turn over.” (State Government)

How significant would strata renewal be in stimulating renewal? Those who had considered this issue thought that the main focus in the next few years for urban renewal schemes will be on surplus public land where the barriers of cost, fragmented ownership and community pushback are minimised.

There was also some ambivalence as to whether making wholesale changes to strata legislation was the correct approach to facilitate broader planning ambitions, such as Priority Precincts and other targeted renewal sites. A better approach might to target particular areas, if urban renewal to deliver on spatial planning intentions is the overriding objective:

“So again, it goes back to this idea of do we need to reform the entire legislation for strata or...target it to areas that are declared urban renewal zones or something like that. Maybe the Urban Activation Precinct approach makes sense, that if your property sits within the declared UAP boundaries then, maybe, then that evokes these amended strata laws which make it easier for redevelopment to occur.” (State Government)

This notion of targeted strata renewal into areas identified for specific redevelopment activity was also put forward as a way of developing the process:

“[Strata renewal] would be something that was not necessarily instantly taken up. That it would slowly increase as - over the years - and would probably be focused on, at least initially, those urban activation precincts and the like, where there was a particularly big bump in building heights. So that's where the take-up would be to start with.” (State Government)

When combined with a wider debate on the use of other powers currently available to organisations such as UrbanGrowth, this brings into question the need to amend voting proportions for scheme termination in order to undertake urban renewal in targeted precincts.

Housing targets

The potential for strata renewal to contribute to State government housing supply targets is substantial over the long run. However, the extent to which renewal would lead to a significant increase in supply (i.e. net gains in housing stock over and above demolitions) will depend on the attitudes of local councils to rezoning. There are also considerations of what kinds of housing is delivered, whether it provides a broad range of housing choices and where and when the redevelopment might take place. All these will essentially be determined by how the development industry perceives the opportunities to bring profitable schemes forward, and also whether they have the capacity to bring existing schemes to the point where redevelopment is possible.

The role of the development industry in determining the pipeline of new supply is highlighted in the following quote:

“Around here, there's quite a lot of redevelopment sites left, especially in [locality]...for the past two three years, we have very few DAs...probably [the] public or landowners are realising what's happening. With the UAP¹, with the light rail...if I am a landlord, I really want to see what's happening with the UAP before I commence to do an 8 storey

¹ Urban Activity Precinct

[development] if I'm going to get 16 or 18 in two years' time, so why should I do that?"
(Local Government)

In other words, developers will not bring schemes forward without some certainty over the development potential and what will ultimately be possible. Therefore the planning system, both locally and at State level, has an obvious role to play in creating certainty about the redevelopment process for strata schemes.

On the other hand, it was clear from the strata survey that lot owners were not convinced that they should be expected to sell out, simply because the government is seeking to increase housing supply from the redevelopment of their block. When asked whether the need for more housing in their area would be an important criterion for them in deciding whether to sell out or not, the majority were at best ambivalent (see Figure 7.4).

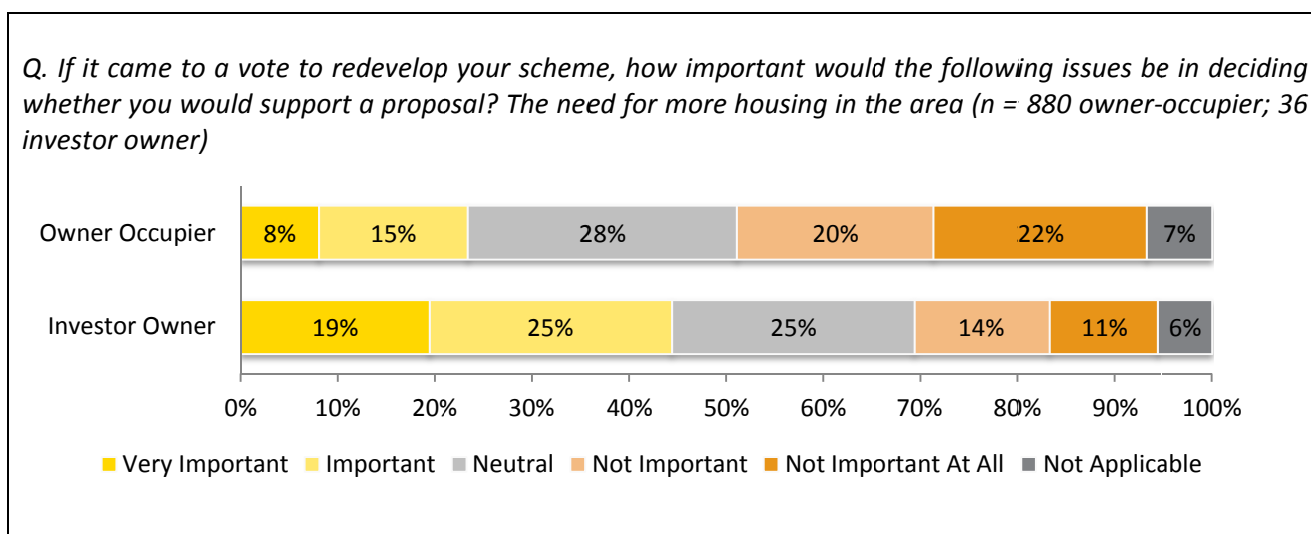


Figure 7.4 Community attitudes on importance of the need for more housing in the area

But it is not just about meeting housing targets. There is also a role for the planning system in setting the guidelines as to what form that new supply might take. Local councils, in particular, should be in a position to expect certain outcomes in return for decisions to allow redevelopment of existing strata schemes:

"Because...the story is not entirely about the numbers, the supply of new stock or new dwellings. It's about the range of dwellings that are being made available in the community." (State Government)

"Mixed communities is not just an ethos, it is a business model for getting the number of homes that you want at the pace that you want them, which otherwise would be constrained by a single business model. So it's mixed tenures, mixed providers, the whole mixed thing is not just an ethos, it's a business model for getting more, faster."
(Think Tank)

And councils are also in a position to have a view as to what the wider community impacts of any renewal process will be:

"...if it's just about a numbers game, you want to increase the numbers, that's one way of looking at it. But if you also want to improve socioeconomic outcomes for a wide group of people, there's another set or suite of policies required...It's whether or not

you're into the broader suite of policies, which I think returns into an ethos which is: are we interested in the communities?" (Think Tank)

So while the potential for strata renewal to contribute to reaching strategic housing targets may be significant, there is nevertheless a range of other issues that need to be considered in setting the planning framework by which supply through redevelopment should be permitted. Strata renewal should not, therefore, simply be seen as a straightforward matter of generating increased housing supply.

Community acceptance/expectations

The issue of wider community acceptance of strata redevelopment was raised in the stakeholder interviews, resident survey and in the community workshops. It was clear that the real issue is density and building height:

"But the issue would be in terms of community acceptance for whatever reason and this community doesn't - actually is really negative. I think Sydney community, just Sydney as a whole is very much against height..." (Local Government)

Strata residents were largely unmoved by the potential for wider community benefits when identifying their reasons for accepting or rejecting the renewal of their own strata scheme. Several questions in the survey probed this issue.

First, few respondents were significantly influenced by the potential for the land to be used for a public use outcome, such as a hospital or school development, which has been a prevailing use of land resumption or compulsory purchase processes in the past. Less than a quarter of all respondents thought this would be an important factor in their decision, with resident owners the least likely to agree to this proposition (see Figure 7.5).

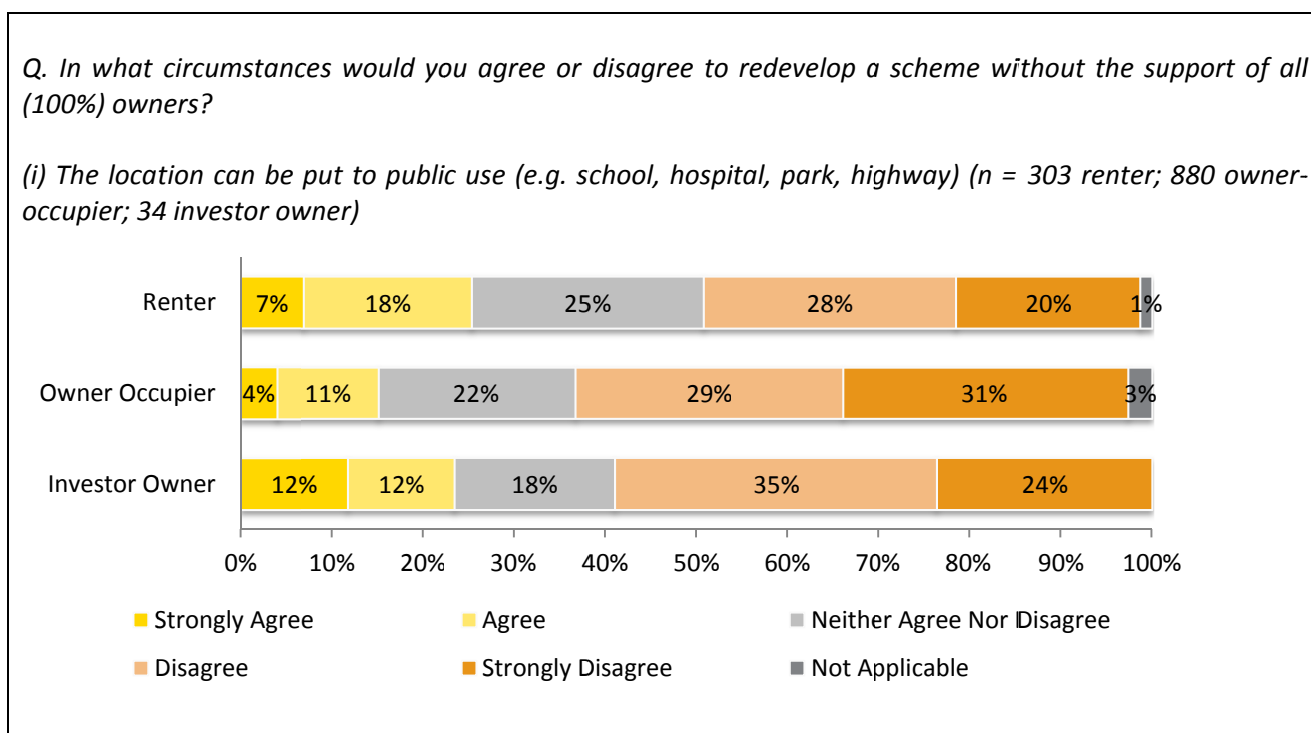


Figure 7.5 Community attitudes on support for renewal because of public uses

A similar response was recorded for both renters and owner-occupiers to the suggestion that their scheme could be rezoned for higher density to support redevelopment – only 24% of both these groups supported such a proposition, while well over half were opposed or very opposed (see Figure 7.6). There is a clear resistance among strata residents to the idea that they should make way simply to achieve higher density renewal.

However, the response from investor-owners indicated a much greater willingness to contemplate termination for this reason, with around 6 in 10 saying they would be willing to agree (Figure 7.6).

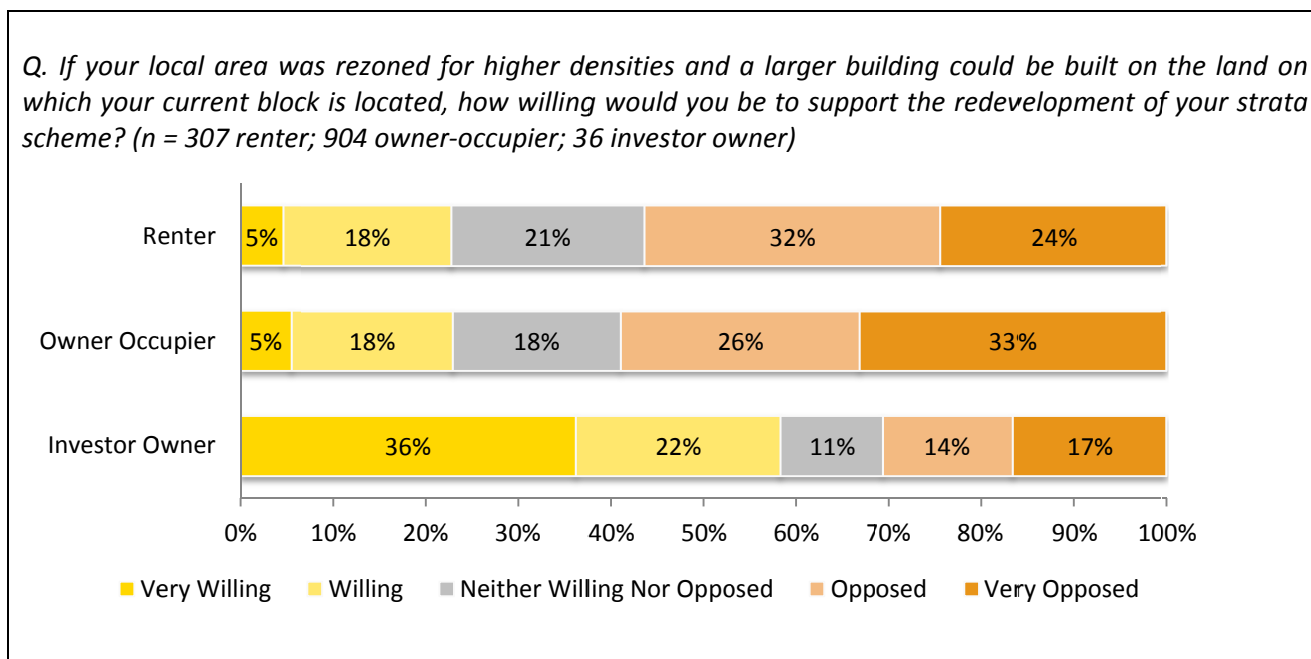


Figure 7.6 Community attitudes on support for renewal because of rezoning for higher density

This is an important finding for the proponents of strata termination reform on the grounds that it would stimulate higher density redevelopment in locations targeted for rezoning, and thereby generate increased housing supply. So while few strata residents accept that they should vacate their homes simply to achieve planners' desire for greater residential density, there is likely to be much greater acceptance of rezoning as a valid reason for termination in buildings or locations where investors predominate.

There was less negativity expressed by owner-occupiers in the survey when asked whether they would actively consider redeveloping their strata scheme in the future. The result was almost evenly split between those who said they would, those who would not and those who were uncommitted, although the balance was towards the negative (see Figure 7.7). The response to this question was much more positively skewed for investors, with a clear majority open to such a proposition.

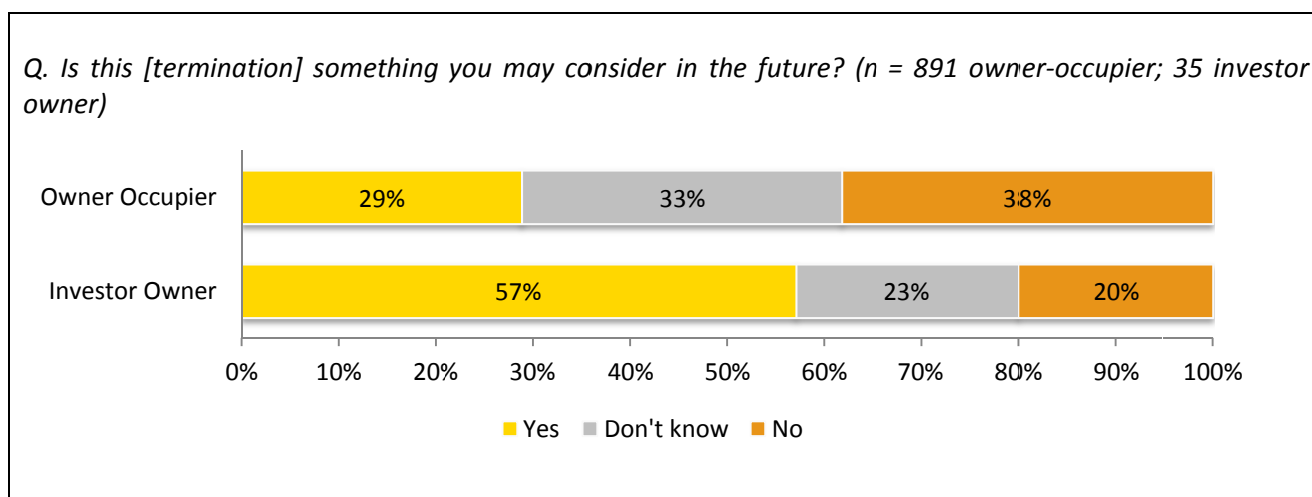


Figure 7.7 Community attitudes on considering termination in the future

Affordability

In the NSW Government's strata title law reform discussion paper released in 2012, a key link was made between strata renewal and meeting housing supply requirements in coming years. The main thrust of this policy is to look to the market to generate the increased supply that will have a moderating effect on prices, and hence on affordability. A clear link was made by some interviewees between increasing supply in particular locations and improving affordability outcomes:

"There's a strong efficiency argument about making better use of the land that's well-located to services and infrastructure. To the extent that there's a distortion in the market [because] of the inability to terminate the schemes that's preventing that from happening, [then] the city is being forced to locate people in other areas, rather than where it's efficient." (State Government)

However, there are questions about the type of strata schemes that a renewal process may replace. It is logical to suggest that lower value dwellings will be the target of renewal because of the impacts on the overall feasibility of redevelopment, as discussed in the Interim Report (Troy *et al.*, 2015). The lower the buyout cost, the lower the redevelopment overheads.

The corollary of this is that renewal is likely to target lower value housing stock in a particular area. So while supply may increase, affordability outcomes may still be reduced because renewal results in a reduction of the more affordable housing stock:

"I think there's one final thing, which is planning's interest in this as well, which is that these older style blocks are an important level in the housing market for relatively affordable rentals for the types of property that they offer...That if they're redeveloped into something that doesn't provide that same dollar entry point into the market, or that moves it further out of the city, then that causes issues in an affordable housing context." (State Government)

"This is taking the relatively low-priced private rental stock and the low-priced homeownership stock in one go." (Consumer Peak Body)

This presents two issues. The first is around how existing owner-occupiers who face particular hardships, as discussed elsewhere in the report, will be able to afford to buy back into the local area if they are being compensated at a market value that reflects the current condition of the stock. These residents will then be required to navigate a market that is becoming more expensive due to a reduction in stock at that price point and its replacement at a higher price point. The second is the wider effect the reduction of low value stock has on the housing market in the local area. Of course, these pressures apply equally to renters as well as owner-occupiers.

There is, however, likely to be a geography to this process. There is an expectation that renewal will focus on higher value locations because of the potential for value uplift between old and new build apartments:

“It's not necessarily that the lowest rental options are being redeveloped. It quite often will be the location rather than the building type.” (State Government)

It is in these areas where reductions in relatively low value stock may have the greatest impact, and these are potentially parts of Sydney that experience the greatest housing market pressures. In other areas where the cost difference between new and old properties isn't as large, the capacity for the wider housing market to absorb increased demand may be greater. Importantly in these scenarios, the outcome will be a gentrification of the location, because the new dwellings will be of significantly higher value than the existing stock.

The extent to which renewal will catalyse a wholesale gentrification and displacement of housing in particular areas will be contingent on the scale of change and the timing of change. If one smaller strata block is renewed in a particular area, then the surrounding housing stock may be able to absorb any changes:

“Where renewal may be happening will be around a particular centre or a train station or whatever. But that doesn't mean that the broader suburbs around that can't absorb those people.” (State Government)

Conversely if renewal of a larger block, or multiple blocks, occurs at the same time in the same area, then the potential flood of prospective owner-occupiers and tenants in low value categories of the local market has the potential to significantly affect housing options. The extent to which this becomes an issue is related to how renewal as process is addressed more broadly in the context of housing policy, and planning for and managing urban change. This makes it an issue that is broader than debate on strata termination specifically. That said, it will be through a termination process that the issues are brought to the fore and it is foreseeable that termination and renewal has the potential to generate both positive and negative outcomes, depending on how it is broadly managed:

“But I wouldn't even look at this without there being reasonable commitments by government to affordable housing for lower income households. So while we've got a housing system that's in as much stress as it is and no realistic prospects for sensible government intervention...There are things you can do about the individuals, but you actually have to have some mechanism that deals with the stock so that you haven't actually lost part that affordable stock from the system.” (Consumer Peak Body)

As this final quote suggests, the stresses that exist in the wider housing market are central to both the problem and resolution of strata renewal.

For planners, the issue of the loss of more affordable housing stock in an area has been a long-standing concern, one reflected in a series of planning policies in NSW aimed at retaining affordable housing through the statutory planning framework. If strata termination and renewal become commonplace, it is appropriate that lower priced strata title housing should also be included into planning policies that seek to retain affordable housing stock in an area.

Importantly, there was some recognition among some strategic planners that affordable housing outcomes were important, and that housing options needed to be provided that did not exclude those displaced by the process of strata renewal:

“You're going to get really strong messages from people like [State Housing Authority] and the like and the various providers, that they're worried about the loss of the low-cost rental - essentially rental - accommodation in a given area. So we need to as a planning department try and account for some of that by delivering a range of housing products, [so that] the new [buildings] are still giving those residents in an area a place to live without too much upheaval.” (State Government)

The suggestion was that the best option may be to reform the Affordable Housing SEPP rather than implementing a new policy or more proscriptive solutions such as inclusionary zoning. It was also suggested that ultimately this should be the domain of local councils to deal with at the time a development application is lodged, rather than as a strategic planning matter. There was clear emphasis that this should be market driven, and if affordable housing was not being delivered then this would be a market failure due to restrictions on land and development potentials and that strata was a particular barrier in this context.

7.3 A Wider Role for Government

Re-zoning, renewal and value uplift

A key driver of the strata renewal process will be land use rezoning to allow one strata scheme to be replaced by another larger and higher scheme on the same land parcel. This is the mechanism favoured by government for achieving urban renewal, at scale, and is set out clearly in the current metropolitan strategy, *A Plan for a Growing Sydney* (NSW Department of Planning and Environment, 2014). Rezoning provides the incentive for the private sector to initiate and undertake renewal to take advantage of the value uplift this generates. In essence, the new legislation to facilitate strata termination in order to develop higher density strata is legislation to help create value:

“When you lodge a strata plan you automatically create value out of nothing, and that's the wonderful benefit of strata, mostly accrued by the developers but it's also a problem...The fundamental point is that the legislation, by enabling the air space to be divided - I mean, that's not strictly legally what it is but in practice that's what it is - and allowing someone to live 30 metres above the ground with people above and below them, it's a mechanism to create value.” (Finance Professional)

In targeted renewal areas an agreed re-zoning plan will be employed to drive the land use change forward. However, the general strata renewal process may need to be undertaken with spot re-zoning to provide sufficient uplift in value for the redevelopment to be feasible. Councils will need to prepare policy guidance on how these might be considered. Several stakeholders commented specifically on this:

“Also I'd be really carefully about rezoning because I would say rezoning can give a [value uplift] to the first land owner so it needs to be really managed carefully.” (Local Government)

“[The] Council has accepted a directive from the New South Wales government to have 25,000 new dwellings. How do you put 25,000 new dwellings into [the area]? It's pretty well developed already...Well, you can only do it by turning houses into flats, or by turning flats into more flats. When you do that you automatically create value.” (Finance Professional)

The issue of who should reasonably benefit from the value created in the strata renewal process, and how some of that might be used for public purposes to support the new density being created, was also raised:

“So it comes down to who should get the increase in value which is determined by legislative changes, the very fundamental thing which happens when you create a strata plan in the first place...Part of that profit is due to a change in legislation which enables that new value to be realised, and part of that profit relates to the developer's risks they've taken on.” (Finance Professional)

“But if you have put fees and charges up front then when I come to buy the land from you, I know how much I need to pay. If I need to pay for public transport, for the schools, for admission infrastructure and that is going to cost me so much, then that actually can be passed on to the original landowner.” (Local Government)

“Where government changes something so that there's a value-uplift, some of that has to be returned to affordable housing...But nonetheless somebody gets a significant gain - because the increase in prices is largely about land values - so government changes to the regulation, so somebody gets greater density or whatever value-uplift.” (Consumer Peak Body)

These are certainly issues that the planning system needs to address if the renewal of strata schemes is to be undertaken in an orderly manner, rather than in a piecemeal and uncoordinated way. It will also affect whether the costs to the community of supporting the higher residential densities this will generate is adequately provided for in terms of infrastructure needs. While there is no scope in this report to consider issues of value capture of some of the value uplift that strata renewal will create, it is nevertheless an important question that planners, both at a strategic and local level, need to confront.

Coordinating renewal

What role should government take in facilitating or managing the strata renewal process? Several stakeholders saw some role for government (either state or local) in terms of coordinating the process and supporting the market to become active. But this was largely confined to the larger precincts, perhaps areas where there was a less obvious value proposition. This involvement could be seen as de-risking the renewal process to encourage private sector involvement. This might be achieved by taking a 'market-leading' role through demonstrator projects, or guidance packages:

“I think if there were problematic areas that were - you know there's a reason for the precinct to grow in this area and that site needs to be redeveloped or whatever, there's probably a role.” (State Government)

“A lot of interest was placed on the Metropolitan Redevelopment Authority model over in Perth which has got both development and planning consent powers. The pace in which they've been able to get things happening but also just basically coordinate authorities, there's obviously a lot of interest for UrbanGrowth because that's probably one of the major things that not happened in Sydney in the past, is its ability to be able to corral these various stakeholders to drive outcomes.” (State Government)

“So I think for the government to do a bit of de-risking and do a few pilot projects for how to get these things going, would be very useful as a demonstration. It may be done in partnership, to some extent, with private sector. It could well be a sort of thing UrbanGrowth could actually do to facilitate that. The big risk of course from the private sector is the planning risk. If in going out to do this, you end up saying we're going to need, let's say, some 10-storey towers or whatever. The local community ends up fighting it and the council then rejects it and you end up nowhere, it's not going to help anyone.” (Property Industry Peak Body)

However, there was reluctance on the part of the planning stakeholders to use compulsory acquisition to support any government involvement in renewal of this kind, despite their capacity to do so:

“But we have to be very careful about government using compulsory acquisition powers to acquire land for redevelopment... It's certainly not planning's policy that we should possibly acquire a redevelopment.” (State Government)

This in part may stem from an obvious problem of purchasing property and then on-selling the land for redevelopment, as well as the issue of where funds for such activity might come from. Nevertheless, it was noted the UrbanGrowth had the power to resume property for renewal purposes should it need to.

7.4 Conclusion

Strata termination reform has been in large part stimulated by the perception held by strategic planners that strata buildings were posing a longer term barrier to efficient renewal and densification of targeted town centre and transport corridors. Indeed, residential strata properties have been deliberately excluded from the designated Priority Precincts precisely for this reason. In addition, the need to have a more practical solution to ensuring buildings nearing the end of their physical life might be redeveloped has over time become more pressing. But in addition, there is also pressure from the development industry to make it easier to bring forward proposals to redevelop existing multi-unit buildings regardless of condition, on the basis that additional value could be derived from the redevelopment process. These various rationales for the reforms ultimately point to different outcomes. While the actual manner in which strata termination is undertaken is not a planning matter, the whole process leading to renovation or redevelopment, whether in identified renewal precincts or for an individual block, requires the involvement of the land use planning process to make any renewal effective. In that sense, then, strata termination is clearly a matter that the planning system needs to be cognisant of and to address through policy and practice, given the potential scale of the market it might generate.

However, other than in the straightforward development approval function, the potential role of the planning system is contested. Some favour a more direct approach, while others support the prevailing metropolitan strategic planning position that government should take a much less interventionist line, with

decisions as to where and when a building might be renewed left to the market. However, strata termination and subsequent renewal is not something that will take place in isolation of its neighbourhood context.

This chapter has canvassed a range of planning related issues. Is there an appropriate balance to be struck between renovating a block and redeveloping it? The former might be disruptive in the short term, but might serve to retain the community while upgrading their accommodation. Strata residents clearly supported easier termination if schemes were badly deteriorating, but not so that greater housing density or taller blocks might replace their homes. Should councils play an active gatekeeper role in permitting re-zoning and renewal in specific target areas where higher densities are deemed appropriate? And should they refuse spot re-zonings for isolated one-off redevelopment proposals unless there is a clear case due to poor building condition? There is a good case for the latter in order to avoid ad hoc renewal activity with poor urban amenity and urban design outcomes. There was recognition that strata renewal has broader community impacts that need to be considered when planning permission is given for a block to be replaced. As yet, however, planning policy and practice have not addressed these kinds of issues.

Whether there is now a need to review the NSW Affordable Housing SEPP to include the loss of affordable accommodation in terminated strata schemes was also raised. The planning system clearly has a role in ensuring housing affordability is a material factor in assessing applications for the redevelopment of this housing stock, given its widely recognised role as providing lower cost housing options. Again, councils will need to develop policies and practices to manage the pressure simply to redevelop to generate an up-market product, thereby squeezing lower cost housing out of their area.

Finally, it is also clear that the renewal process, permitted by the planning approval process, will create the potential for significant value uplift. The valid question arises as to how the benefits from this uplift will be distributed. Clearly unit owners will be looking to share any uplift in value and the developer will need to be rewarded for their risk-taking. But beyond that, increased density means increased pressure on infrastructure and services. Whether existing arrangements (such as development contributions made under section 94 of the *Environmental Planning & Assessment Act 1979* (NSW)) will be sufficient to account for these needs is an open question. Nevertheless, planning authorities will need to have a clear understanding of the potential value strata renewal will generate and have a view as to how much of that uplift the community might be entitled to retain.

Reform to strata termination arrangements in NSW has been clearly set within the context of a broader process of urban renewal and the need to densify existing residential areas in line with metropolitan strategic planning objectives. Any redevelopment proposal involving a strata termination will require development approval by the local council. It is therefore material to the way the planning process will develop into the future, both at strategic and local levels. Consequently, there is a need for the planning system to account for the likely impacts and outcomes of strata renewal as councils find themselves facing mounting pressure from development proposals involving strata redevelopment. There are few signs, as yet, that the planning system has recognised this issue or is developing specific policies and practices to deal with it adequately.

Chapter 8: Conclusion

8.1 Summary of recommendations

The recommendations are drawn from the research findings, which respond to the two central questions underpinning this project:

- Will strata renewal be feasible?
- Will strata renewal be equitable?

Our research findings have indicated that renewal is likely to be feasible, at least in certain circumstances. This finding was foreshadowed in the interim project report. On the issue of equity our assessment based on the project outcomes is that changes are needed to both the new legislation and to other legislation and policies before the renewal process should be considered equitable for strata owners, tenants and the broader community. The complexity of strata renewal highlights that this is a *whole of government* issue and touches on a range of policy areas that would need to be updated to ensure equitable outcomes.

This section sets out the full list of changes we recommend be made in order to ensure a more equitable outcome. These recommendations are divided into two categories: (1) changes that should be made to the new Strata Schemes Development Act and or associated regulations; and (2) changes that are outside the scope of Strata Scheme Development Act legislation and will require amendments to other legislation, policies or funding arrangements. This second category of recommendations is designed to ensure that the broader policy goals of the strata renewal process can be achieved, and includes recommendations relating to:

- The potential for strata renewal to contribute to an increase in affordable housing.
- How the tax implications of strata renewal can be handled both equitably and efficiently.
- Community concerns about the likely quality of new buildings developed through strata renewal.
- The ability of the broader planning framework to ensure that the strata renewal process achieves positive outcomes for the community as a whole, not just for individual property owners.

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

Recommended changes to the draft/new legislation and issues that should be addressed in related regulations

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.

Participants in our community workshops expressed concerns about the risk of coercion during the voting process, as well as the uncertainty the renewal process as a whole will create for both owners and tenants. The voting period in the draft legislation allowed owners to consider and change their minds for up to a year (s.177). To minimise uncertainty and the potential for coercion, we recommended that the voting period last for a minimum of one month (to ensure full consideration of the plan), but no more than three

months. We also recommended that the time allowed for preparing a strata renewal plan be reduced from two years to one year (s.166). These changes were reflected in the Act.

2. Introduce a tiered voting threshold based on scheme size starting at a minimum of 80%.

Many participants recognised that individual hold outs were a problem and could have an unfair influence over other owners' residential and investment options. However, both community members and stakeholders felt that the 75% voting threshold was too low, and would contribute to inequitable outcomes. Based on this feedback, we recommend the voting threshold be increased and tiered according to strata scheme size, starting at a minimum 80%. Figure 8.1 shows the distribution of strata schemes by size and the variation in voting proportions that would address individual hold outs.

3. Include a statement of principles that reflects the broader policy aims of strata renewal in the Strata Schemes Development Act.

The potential for strata renewal to lead to the loss of more affordable accommodation was a concern raised by participants in both the survey and the community workshops. Some doubts also emerged about whether strata renewal would actually deliver desired urban planning outcomes, or simply facilitate unaffordable, high-end developments or renewed gentrification. In addition, some workshop participants wanted independent confirmation that their building was in need of demolition before voting for renewal, or would be more likely to agree to renewal for maintenance issues than for financial gain. Given these responses, we recommend that the legislation be amended to include a statement of principles that reflects the broader policy aims behind the legislative change.

4. Strengthen the confidentiality requirements for the voting process to allow for a secret ballot.

In the community workshops, strata owners were unanimous in expressing a preference for a secret ballot. While the draft legislation indicated that the votes will be confidential, this was undermined by the fact that the secretary of the owners corporation is charged with collecting the votes (s.174). We recommended the legislation be amended to ensure complete confidentiality by providing for an independent body (such as a returning officer) to be charged with collecting and storing the votes. This is now in the Act.

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.

The conflict provisions in the draft legislation related only to members of the strata renewal committee. If other owners control more than 20% of the properties in the scheme, they should be required to declare this at the initial meeting to consider a proposal (s.158), and details should be included in the notice provided to owners announcing that a strata renewal committee has been formed (this can be done in the regulations under s.162(2)). This will ensure other owners are able to fully assess the potential risks and rewards associated with the decision to set up a renewal committee. This has been strengthened in the Act.

Research participants felt that the best way to achieve equity in the renewal process was to ensure that all participants had equal access to relevant information. To facilitate this, if a person giving a renewal proposal under s.156 holds any existing interest in the scheme, the regulations should require disclosure in the proposal (under s.156(2)). This will allow both the executive committee and the owners corporation to make a fully informed assessment of the proposal.

If any disclosures are made under s.161(2) regarding a conflicting pecuniary or other interest of anyone elected to the strata renewal committee, the regulations should provide that details of this disclosure be included in the notice to owners about the establishment of the committee.

6. Clarify the scope of the Land and Environment Court to consider hardship in deciding to approve a plan.

Most interview participants believed that a range of hardships (including financial and non-financial) should be taken into consideration when the court decides whether to accept or reject a plan. For example, someone who is elderly and frail with limited life expectancy should not be expected to move, and no amount of money could compensate for this hardship. A large majority of survey respondents felt it was important that they could complain to the court if hardship was not taken into account appropriately (92% of owner-occupiers; 91% of investors). Given the desirability of ensuring equitable social outcomes, a range of hardships ought to be considered as part of termination proceedings.

Some workshop participants were concerned that having hardship and other non-procedural or non-financial issues considered during the court review would create procedural uncertainty for owners trying to finalise a plan. So long as there is clear guidance provided to the court about when it should withhold approval for a renewal plan on hardship grounds, applicants should have a reasonable level of certainty about the likely outcome of an application.

7. Provide clear guidance on the appropriate timing of 'compensation value' and 'market value' valuations.

As noted above, workshop participants were concerned about any uncertainty associated with strata renewal, which could be exacerbated by the fact that the process may take a number of years to complete. The timing of valuations in either an increasing or declining market will be critical for owners being able to purchase a new unit, and for prospective developers to feasibly redevelop. If not already addressed elsewhere, the regulations should offer clear guidance on the timing of when in the renewal process these values (defined under s.154) are to be quantified, as the quantum of these values could change significantly depending on when they are assessed.

8. Require the proponent of a renewal plan to provide the renewal proposal and plan in other languages if required by an owner.

A fear of misunderstanding the process or the offer was widespread among research participants who do not speak English as a first language. Where a proposal is made to redevelop a property (s.156) with owners who do not feel comfortable transacting in English, it seems reasonable that the proponent bear the cost of providing all information about the renewal proposal in additional languages, if required.

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.

Some tenants expressed a sense of powerlessness in response to the proposed renewal process, and indicated that receiving clear information about timing would help to alleviate this. The regulations should require that all renewal plans outline as clearly as possible how the renewal will affect tenants, including how and when tenants will be informed of the decision, and the date by which tenants will need to vacate the building (s.170(1)(d)).

10. Require that tenants be notified of key dates once the renewal plan has been approved by the owners corporation.

Information detailed as part of Recommendation 9 should also be made available to tenants at the time the renewal plan is approved by the owners corporation. Since the plan will still have to receive court approval, there should be sufficient time to allow tenants to search thoroughly for a new rental property, but the renewal process will also be far enough advanced for the odds to be in favour of the renewal going ahead. This would give tenants more time in the process, which is valuable: as one participant observed, being able to move on your own terms gives you a greater sense of control, emotionally, over the whole experience.

11. Require more detailed information in proposals and plans for collective redevelopments.

Under the legislation, owners retain a property right in the block as tenants in common during a collective redevelopment process, which creates legal complexities that do not arise for a collective sale to a single developer. Given that owners expressed concerns about any uncertainty associated with renewal, the regulations should require more information be included in a redevelopment plan than a collective sale plan (s.170(1)(d)). This could include details on issues like allocating costs and resolving disputes, or even full development management contracts, to ensure the participants have fully appreciated the implications of this approach.

12. Clarify the responsibilities for payment of court review costs.

The potential cost of the court review process was of concern to many research participants, particularly executive committee members. It would be helpful to provide more certainty in the regulations about which parties will be liable for costs (both administrative and legal) associated with the court review process (s.188(2)). This would give owners comfort in deciding whether to proceed, particularly for developer-initiated renewal plans.

Recommendations beyond the scope of the strata legislation

The following recommendations have been separated in two parts, the first addressing process issues, and the second addressing planning issues.

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.

Feasibility modelling undertaken as part of the first stage of this project identified the potential feasibility of a not-for-profit redevelopment to renew strata schemes. Under a private market driven renewal scenario, facilitating the involvement of the not-for-profit housing sector in an active role in strata renewal may help to mitigate the potentially negative impacts on housing affordability.

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.

Retention of existing affordable housing under the *NSW Affordable Rental Housing State Environmental Planning Policy* (AHSEPP) is currently not required in cases involving strata titled property. Consideration should be given to extending this to apply to strata titled buildings in cases of termination to ensure

retention of affordable rental housing in the area. In addition, consideration should be given to extending the AHSEPP to cover the loss of all low value rental housing.

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.

The potential of strata renewal to radically change existing communities, the kinds of land use outcomes that might result and the implications for housing supply and housing affordability are important matters that planners need to be fully aware of and incorporate into both planning policy and practice. A new Strata Renewal SEPP could require these broader issues to be considered in planning decisions about strata renewal at both the strategic and local level, and help to ensure other community members are not negatively affected by the renewal of other blocks in their neighbourhood.

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.

Significant and widespread concerns were voiced by research participants about the perceived quality of new apartment buildings and the reliability of developers. This seems likely to be a real impediment to renewal occurring, particularly in cases where owners wish to remain involved or buy back into the new building. Efforts to strengthen the regulation of developers and quality controls on new developments may help to reduce these concerns.

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.

Similar concerns were expressed by research participants about the independence of property valuers. Efforts to strengthen the regulation of valuation providers would give additional comfort to owners that the renewal process will be both clear and fair.

18. Government produce information packs in multiple languages on how to draft a renewal plan.

The development of a strata renewal plan is likely to be a challenging process for a committee of lay people, and the cost of obtaining expert advice may quickly become prohibitive. Research from this project and previous research (Easthope *et al.*, 2012) shows that committee members would often like more information and guidance on these matters than is currently available. Any extra documentation (guides, checklists, model contracts etc.) that can be provided will help to allay uncertainty and ensure that renewal committees are not overly reliant on information provided by developers, thus minimising the risk of conflict at a later point in the process. Providing this (and any other guidance for owners and tenants) in multiple languages would also help overcome the concerns of participants who are not native English speakers.

19. Industry bodies provide renewal guidance and training for strata managers with appropriate government support.

Many research participants noted that strata managers were the main point of contact for property issues, rather than the owners corporation. Although they are not involved in renewal, it may be helpful to offer

guidance to help strata managers direct owners to the information they need if a renewal proposal is received.

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.

While many respondents noted the desirability of accessing mediation prior to voting, others had little awareness of the possibility of mediation or where to find these types of services. The availability of mediation services should be made known to all residents and owners, potentially through the information packs developed as part of Recommendation 19 above.

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.

Expert advice obtained during the research project indicated that the earlier mediation is attempted, the more likely it is to succeed and for a dispute to be avoided. The legislation currently provides for mediation ordered by the Court after an application for review has been made. It would be helpful if owners could also access the existing strata mediation service offered through Fair Trading's mediation services if they want mediation before a vote.

22. Mediation providers train accredited mediators on the additional complexities of strata termination.

Strata renewal projects involving dissenting owners have rarely been approved in the past, and this possibility raises a number of complex issues. Accredited mediators will likely need further training on the intricacies of strata termination and renewal. Given that Fair Trading already offers an affordable strata mediation service, the best approach may be to train these mediators to deal with the additional complexities of a renewal negotiation.

23. Government implement a waiver of stamp duty in cases of unit replacement on the same site.

Under the renewal model advocated in Chapter 5, where existing owners were able to receive a new unit in the redevelopment, it is likely that they would be required to pay stamp duty on the new unit because of the title transfers required to implement this model. This scenario has been likened to a house being knocked down and rebuilt, where the owners effectively end up with a new house, but do not pay stamp duty. Implementing a similar outcome in the case of strata renewal would remove what would likely be a barrier for many owners.

24. Government explore implementing Capital Gains Tax roll-over relief in cases of unit replacement on the same site.

Under the renewal model advocated in Chapter 5, where existing investor owners were able to receive a new unit in the redevelopment, it is likely that these owners would also be required to pay capital gains tax on the old unit because of the title transfers and payments required to implement this model. This scenario has again been likened to a house being knocked down and rebuilt, where owners effectively end up with a new house, but do not pay capital gains because they retain ownership. Implementing a similar outcome in the case of strata termination would remove what would likely be a barrier for many investor owners.

25. Banks develop new models for financing owner-led collective redevelopment with appropriate government support.

One of the key barriers to owner-driven renewal proposals was the possibility of obtaining financing for what could be a large financial undertaking. Ensuring existing owners can remain part of the renewal process throughout will be critical to ensuring equitable solutions in some cases. Some attention needs to be dedicated towards developing acceptable models for financing owner-led redevelopment options.

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.

Under current residential tenancy legislation, existing tenants may be liable to pay penalties if they end their fixed term tenancy in the event of a renewal plan proceeding. Many tenants argued that it would be unfair if they decided to leave, knowing a termination was occurring, and were still expected to pay compensation for breaking a lease. This issue is exacerbated by the fact that it would be very difficult to find a replacement tenant in these circumstances. In order to give tenants a greater capacity to adapt, ensuring that they are not financially penalised through a renewal process is critical. By including a further ground for the termination of a fixed term lease by tenants after a renewal plan has been approved, they will be able to vacate their dwelling without being penalised.

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.

Changes to voting thresholds are relatively new in the Australian context, with only the Northern Territory having reduced the unanimous voting requirement for termination. Because of this there is no precedent in a comparable jurisdiction to evaluate the outcomes of a termination process with dissenting owners. Because of the complexities of the issues involved, the government should establish a clear programme for monitoring and evaluating termination under the revised voting requirements.

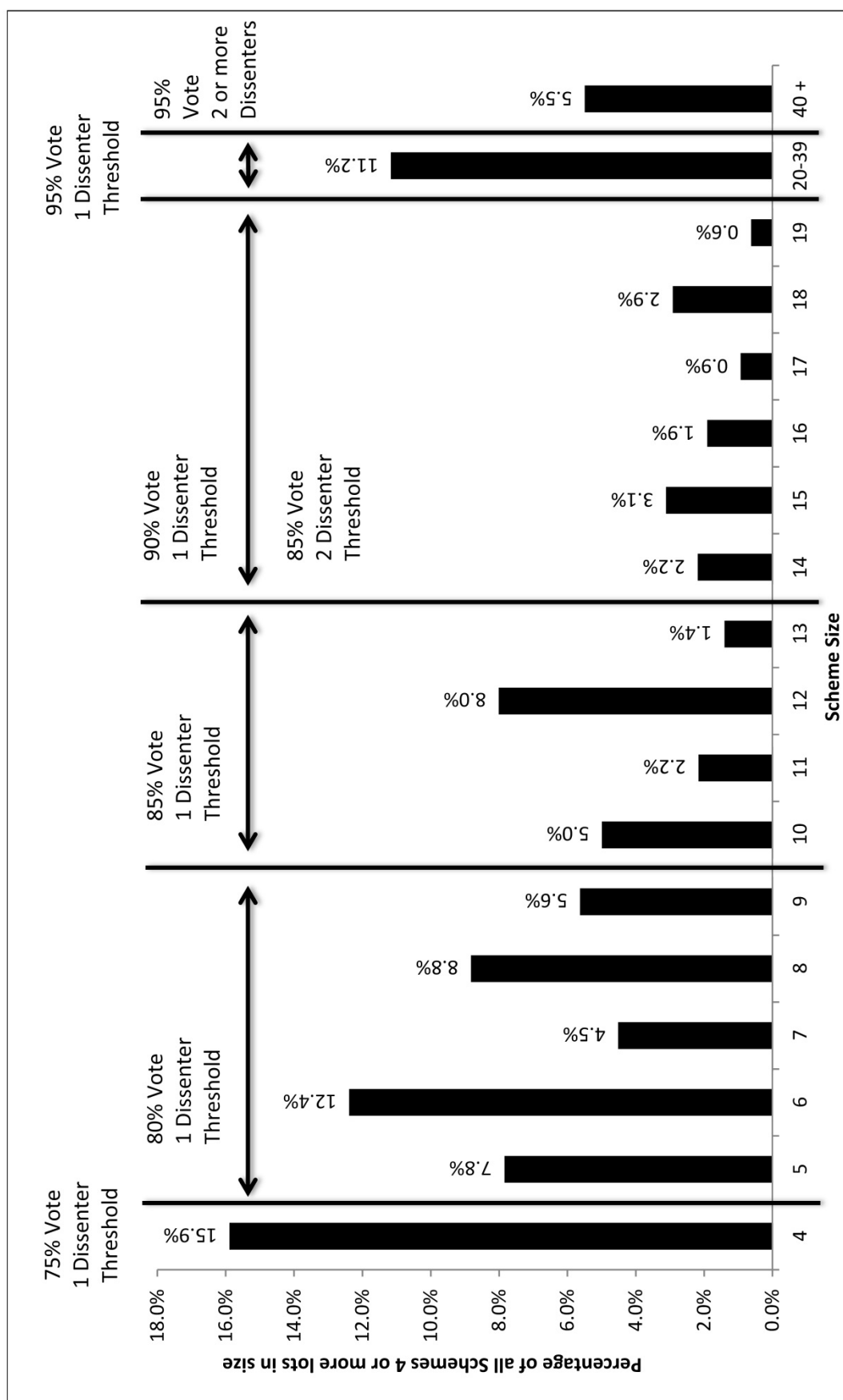


Figure 8.1 Distribution of strata schemes by strata scheme size as at 31/12/2013 with variable voting proportions (excluding two and three lot schemes)

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Appendix 1: List of contributing organisations

AC Valuers
Anka Property Group
Australian College of Community Association Lawyers
Australian Resident Accommodation Managers' Association NSW
Better Planning Network
Bridge Housing
CHU Underwriting Agencies
City of Sydney
Combined Pensioners and Superannuants Association of NSW
Committee for Sydney
Department of Planning and Environment
NSW Fair Trading
Fairfield City Council
Holman Fenwick Willan
Hornsby Shire Council
Insurance Council of Australia
Irvine Strata
Lannock Strata Finance
LJ Hooker Parramatta
Macquarie Bank
Master Builders Association of NSW
McCullough Robertson Lawyers
Mirvac
Mosman Council
NSW Fair Trading
NSW Property Council
NSW Land and Property Information
Owners Corporation Network
Property Owners Association
Randwick City Council
Real Estate Institute of NSW
Save Our Suburbs
Shelter NSW
Strata Choice
Strata Community Australia NSW
Tenants' Union
TM Advisory
UrbanGrowth NSW
Urban Taskforce
Westpac

Appendix 2: Survey sampling and response rate

The strata community survey was a mail based survey, with the option to complete online. Survey packages with reply paid envelopes were sent to 15,000 addresses across the Sydney Greater Capital City Area (GCCA) and supplemented through advertising to obtain additional responses. The intention was to survey strata owners, both resident owners and investors, and strata rental residents. Whilst it was possible to identify the address of non-resident owners (i.e. investors) through the strata ownership database, there was a restriction placed on the use of this information for privacy reasons. As a consequence, only the address of the strata unit itself was known. This effectively meant there was no systematic way to survey investor owners as a distinct cohort through the design of the survey sampling methodology.

A total sample of 15,000 addresses were used as the basis of the mail based survey, which was supplemented by advertising through partner organisations, the 'Flat-Chat'¹ column published online and in the property section of the Sydney Morning Herald. Sampling of investor owners relied entirely on advertising mediums, and the number of respondents who nominated that they were investors suggested that advertising was not particularly effective at targeting this group.

Each printed survey was coded to enable the location to be identified and indicate respondents who had received a survey invitation through the mail, as distinct from those who had responded to the various advertisements. In completing the online version, entering the coding was optional which means there is the possibility that some respondents who received mail based surveys cannot be identified as such. The following section contains an overview of the survey sampling methodology, response rate and basic characteristics of survey respondents.

Sampling

The sample of addresses was selected from LPI's database of strata properties based on size and the date of registration of the strata schemes. Only schemes registered prior to 1990 were included in the sample and all schemes of fewer than 3 lots were excluded. There are 17,324 unique schemes that were registered prior to 1990, which accounts for 240,162 individual lots.

Table 1 shows the distribution of schemes according to scheme size and date of registration and the relative proportion of schemes in each size category. More than half the schemes have 10 lots or fewer.

Table 2 shows the distribution of lots according to scheme size and date of registration and the relative proportion of lots in each size category. When the proportion of lots is considered, the largest share of units is in schemes of between 11 and 50 lots in size.

¹ <http://www.flat-chat.com.au/>

Table 1 Distribution of strata schemes by size and date of registration

| Registration Date | Scheme Size | | | | | | Total |
|-------------------|-------------|-----------|------------|------------|-------------|-----------|--------|
| | 3-5 Lots | 6-10 Lots | 11-20 Lots | 21-50 Lots | 51-100 Lots | 100+ Lots | |
| Pre-1970 | 313 | 1,297 | 1,440 | 788 | 92 | 12 | 3,942 |
| 1970-79 | 1,205 | 2,754 | 2,689 | 1,072 | 107 | 25 | 7,852 |
| 1980-89 | 1,505 | 2,105 | 1,278 | 509 | 97 | 36 | 5,530 |
| Total | 3,023 | 6,156 | 5,407 | 2,369 | 296 | 73 | 17,324 |
| % Total Schemes | 17.4% | 35.5% | 31.2% | 13.7% | 1.7% | 0.4% | 100% |

Table 2 Distribution of strata lots by size and date of registration

| Registration Date | Scheme Size | | | | | | Total |
|-------------------|-------------|-----------|------------|------------|-------------|-----------|---------|
| | 3-5 Lots | 6-10 Lots | 11-20 Lots | 21-50 Lots | 51-100 Lots | 100+ Lots | |
| Pre-1970 | 1,290 | 9,911 | 20,403 | 22,799 | 6,270 | 1,690 | 62,609 |
| 1970-79 | 4,918 | 21,624 | 38,272 | 31,376 | 7,107 | 4,054 | 107,967 |
| 1980-89 | 5,917 | 16,201 | 18,152 | 15,121 | 6,432 | 5,920 | 69,586 |
| Total | 12,125 | 47,736 | 76,827 | 69,296 | 19,809 | 11,664 | 240,162 |
| % Total Units | 5.0% | 19.9% | 32.0% | 28.9% | 8.2% | 4.9% | 100% |

In order for the survey to reflect of the whole strata sector within this age band, a random sample of 15,000 units was taken across the total 240,162 lots. This was done to avoid an over-representation of smaller strata schemes, however, it means that not every strata scheme was sent a survey, and some schemes would have received more than one survey. A total of 8,700 unique strata schemes were sampled across Greater Sydney. Table 3 shows the distribution of units by scheme size that formed the survey sample, with the percentage distribution of lots sampled by scheme size being broadly similar to that shown for the entire strata sector.

Table 3 Survey sample distribution

| | Scheme Size | | | | | | Total |
|---------------|-------------|-----------|------------|------------|-------------|-----------|--------|
| | 3-5 Lots | 6-10 Lots | 11-20 Lots | 21-50 Lots | 51-100 Lots | 100+ Lots | |
| Total | 796 | 3,139 | 4,909 | 4,363 | 1,211 | 582 | 15,000 |
| % Total Units | 5.3% | 20.9% | 32.7% | 29.1% | 8.1% | 3.9% | 100% |

The LPI strata database was geocoded using the Geocoded National Address File (GNAF) which contains the street address and coordinates of all properties across Australia. All geocoded strata properties were used to extract postal address information from GNAF, which formed the basis of the survey sample. Figure 1 shows the distribution of the survey sample across Greater Sydney.

Response Rate

Of the 15,000 surveys that were posted, 929 were returned to sender indicating an incorrect address. This usually related to an incorrect unit number rather than street address, as it is possible for there to be more

lots in a strata plan than actual residential units, while still registering a unit number with the strata database and GNAF. This resulted in a total sample of 14,071 units across the Greater Sydney Statistical Region (see Table 4).

A total of 1,261 surveys were completed either using the online survey tool or using the paper version. This number includes responses from strata residents and owners who have responded to the various advertisements by partner organisations and through the Flat Chat web forum. Residents who received an invitation to complete the survey through the mail were given a reference number and asked to input this into the online form. While some respondents may have deliberately chosen not to input the code, it can be assumed that responses without a reference number were not part of the mail out sample.

Due to the low initial response, a follow up letter was sent to the initial sample to remind residents to complete the survey. The letter was not sent to those addresses where a response had already been registered or those that were returned to sender. A total of 13,281 follow up letters were sent out which resulted in an additional 288 survey responses, with most of these responses completed online (see Table 5).

Table 4 Survey response rate

| | Number | Response Rate |
|--------------------------|---------------|---------------|
| Total Mail Out | 15,000 | |
| Return to Sender | 929 | |
| Total Sample | 14,071 | |
| With Reference Number | 1,126 | 8.0% |
| Without Reference Number | 135 | |
| TOTAL Responses | 1,261 | |

Table 5 Distribution of responses after follow up letter

| | Number | Percentage |
|------------------------|------------|-------------|
| Total Paper | 47 | 16.3% |
| Total Online | 241 | 83.7% |
| TOTAL Responses | 288 | 100% |

The distribution of respondents broadly reflects the distribution of strata residents across Sydney with both gender and employment being representative based on the 2011 census. The comparison to the 2011 census was made with residents in occupied private dwellings¹ that are flats, units and apartments (higher density) in the Greater Sydney Statistical Region. The confidence interval for this survey is calculated to be $\pm 2.76\%$ at 95% confidence at 50% based on a total adult population of 620,038.

However as the survey asked specific questions based on the reported tenure of residents, and we are interested to understand the views of both tenants and owners separately, confidence intervals were also calculated for tenant and owner sub-samples. As the survey requested one response per address or per household, the confidence interval was established based on total counts of higher density households. The confidence interval for renters is $\pm 5.66\%$ at 95% confidence at 50% based on a population (total households) of 199,133. The confidence interval for owners is $\pm 3.23\%$ at 95% confidence at 50% based on a population (total households) of 147,253.

¹ Private dwellings, excluding public and community housing

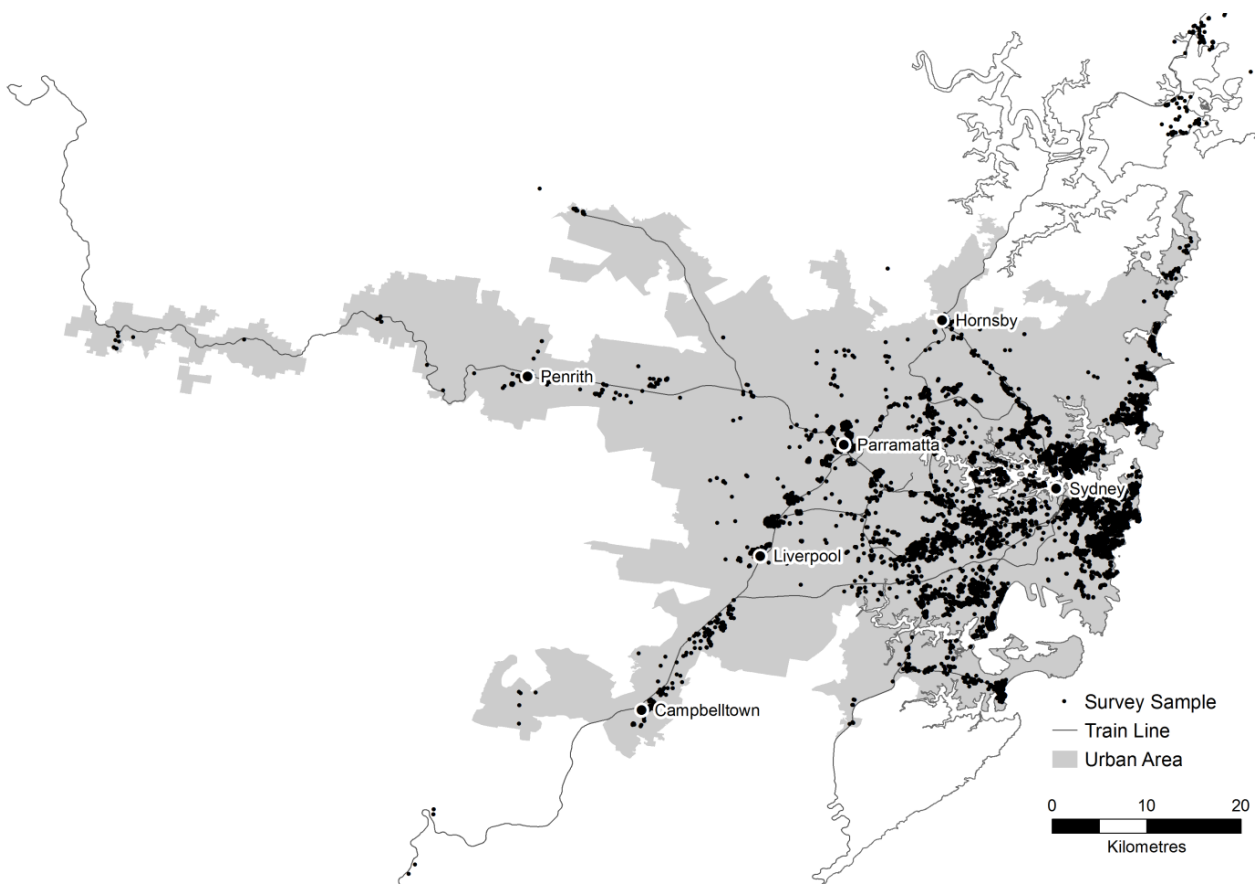


Figure 1 Distribution of survey sample

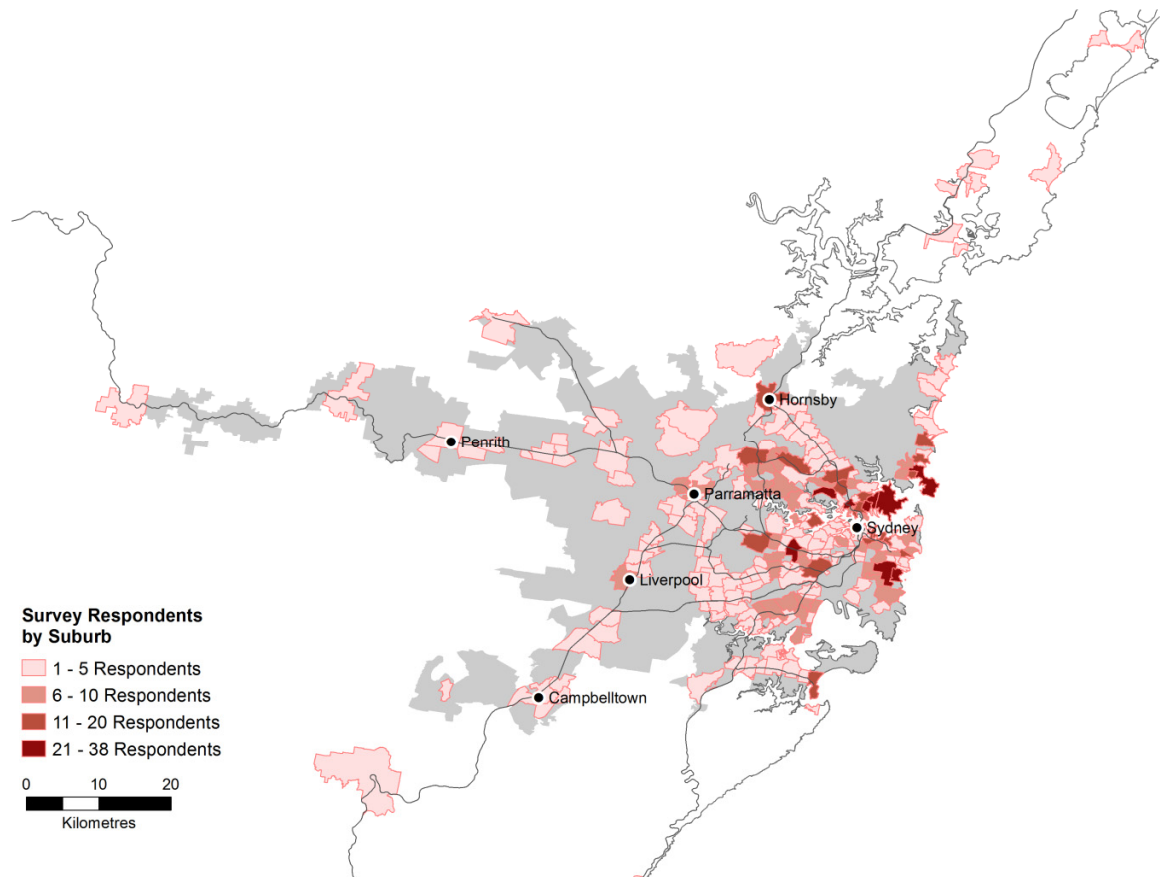


Figure 2 Distribution of survey respondents by suburb

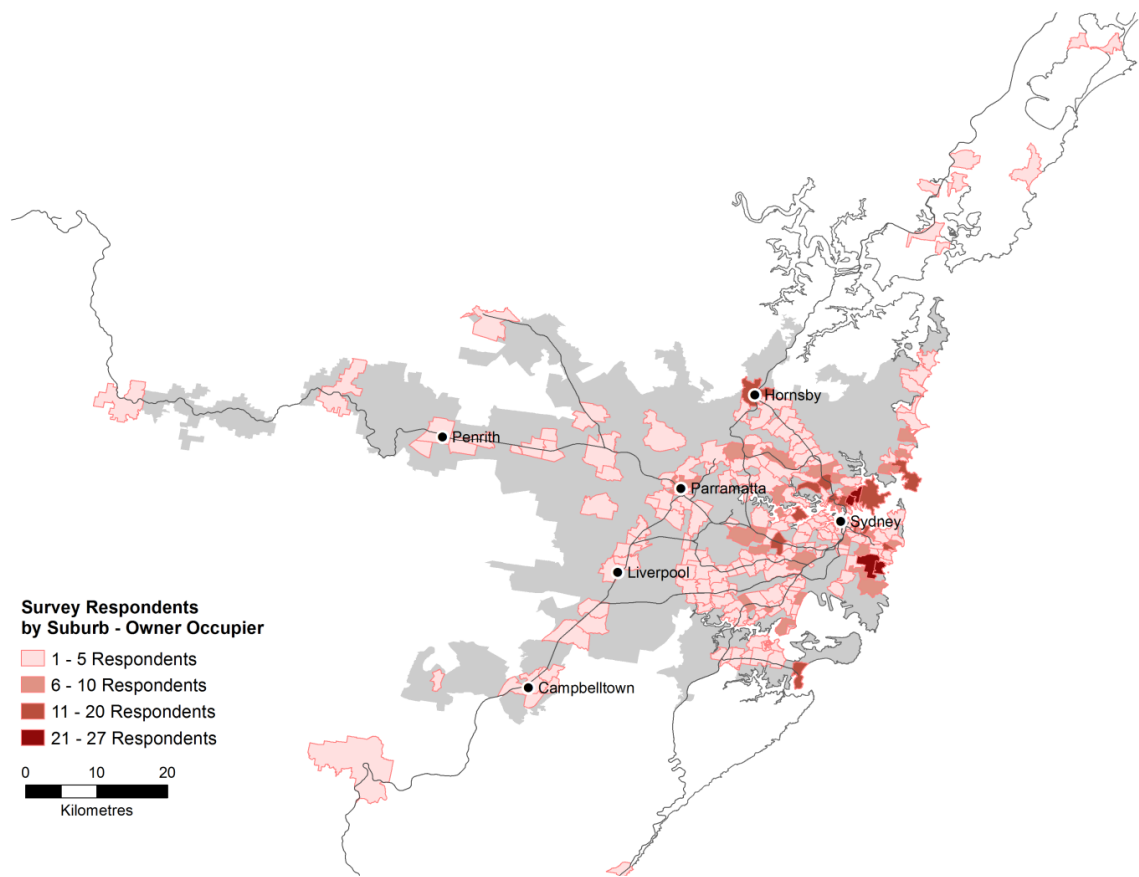


Figure 3 Distribution of owner-occupier survey respondents by suburb

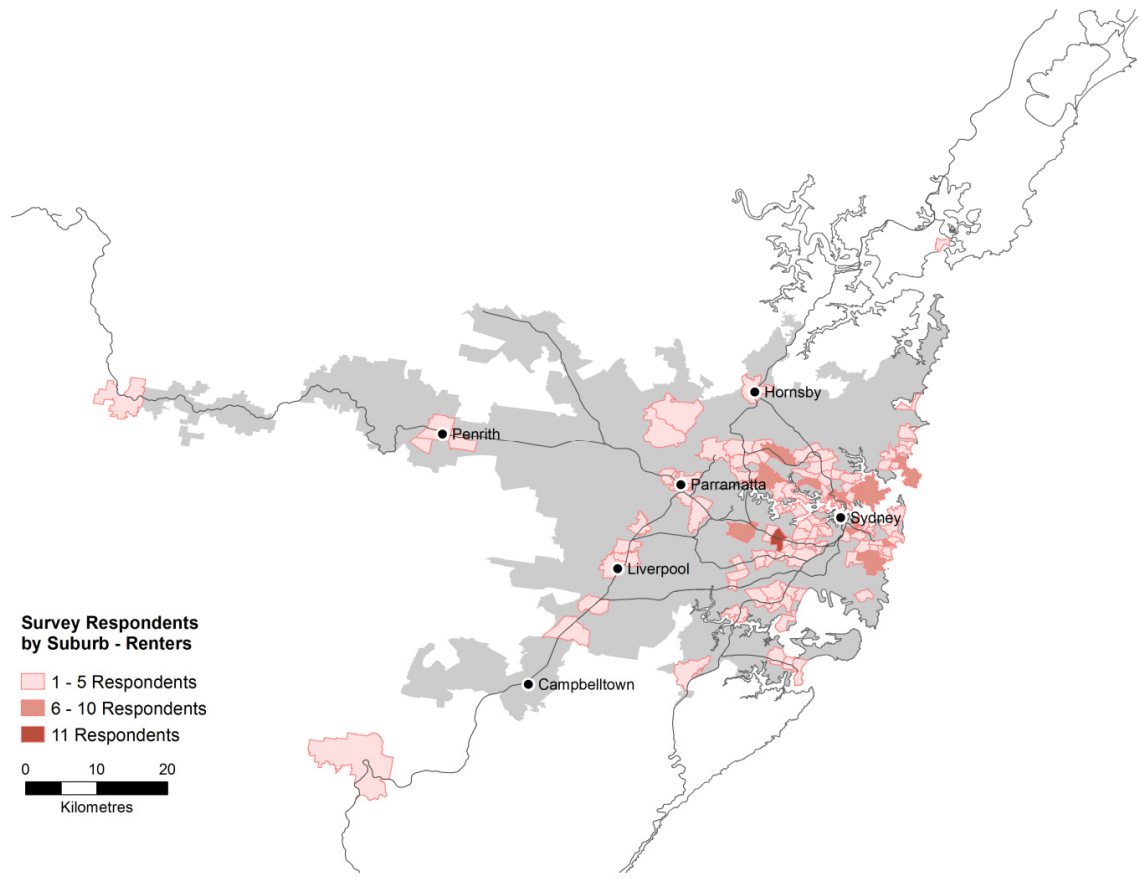
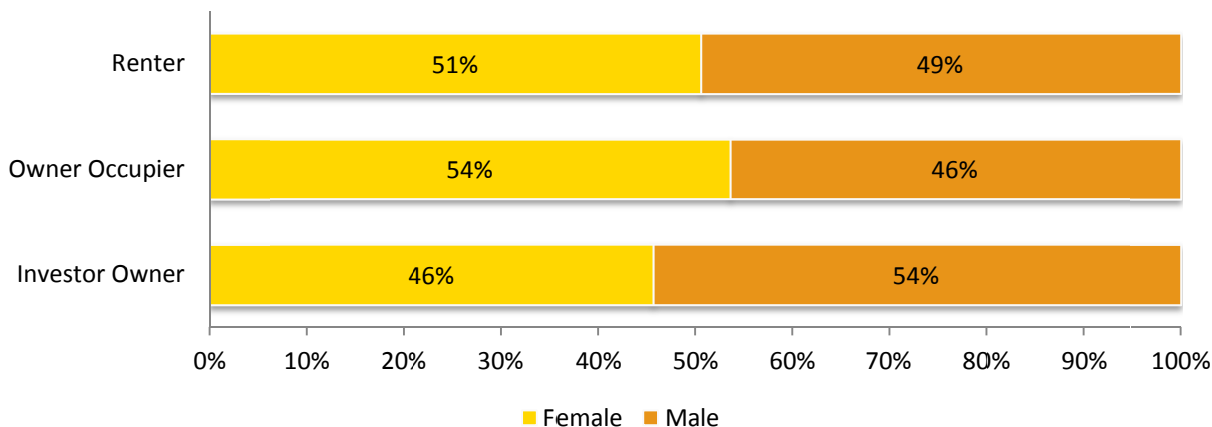


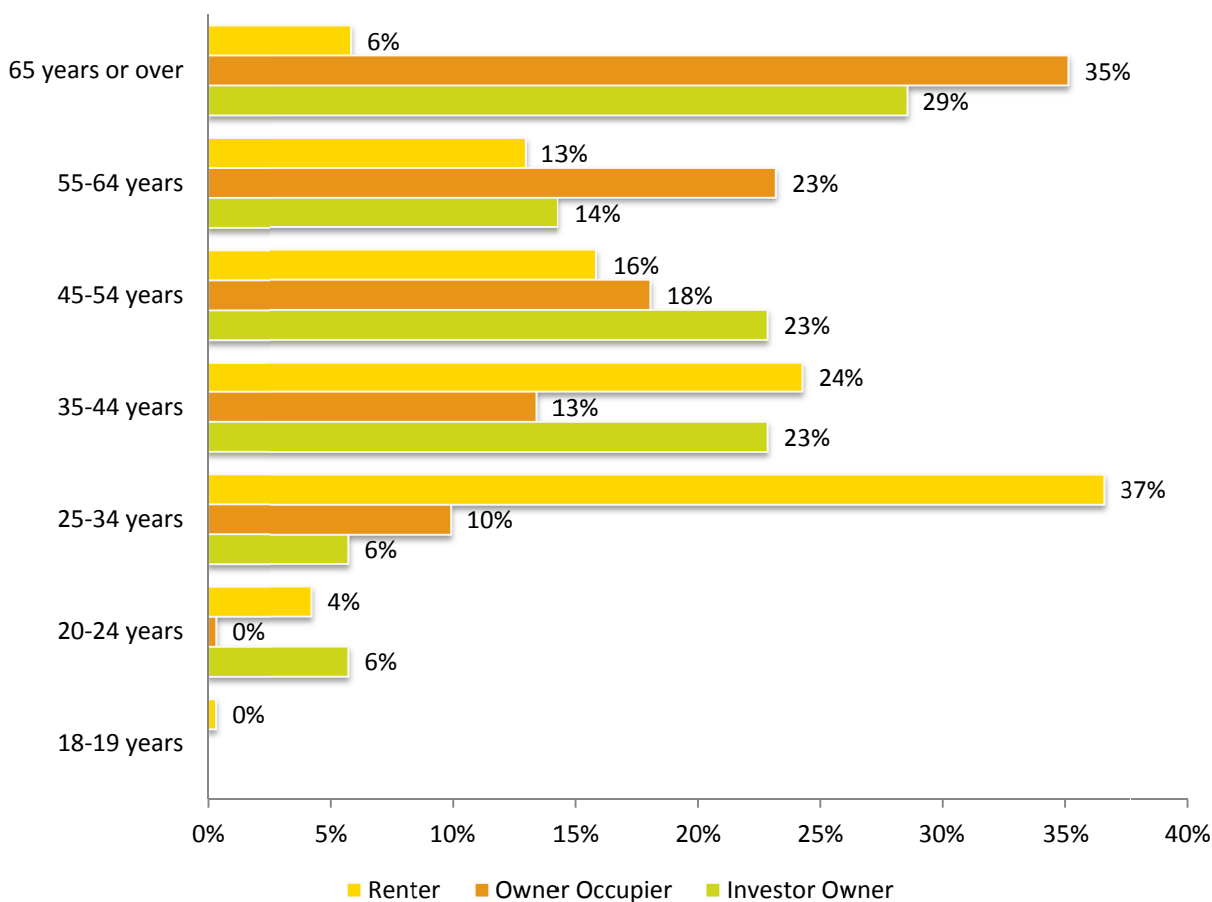
Figure 4 Distribution of renter survey respondents by suburb

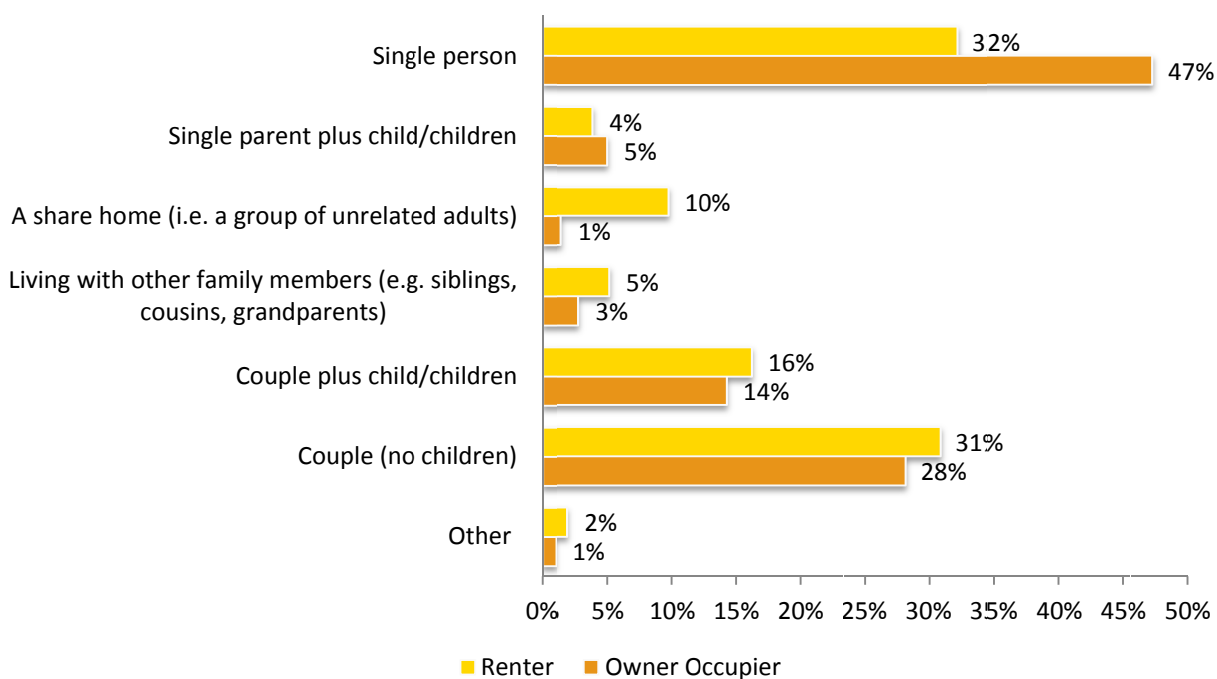
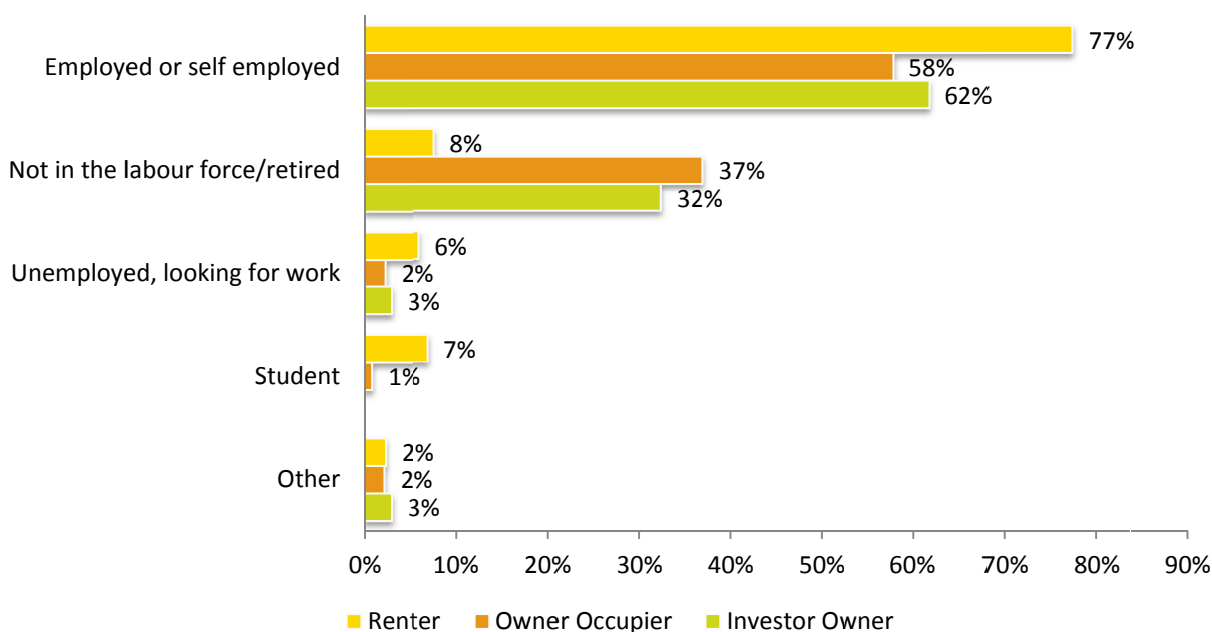
Profile of Survey Respondents

Q22. What is your gender? (n= 306 renter; 898 owner-occupier; 36 investor owner)

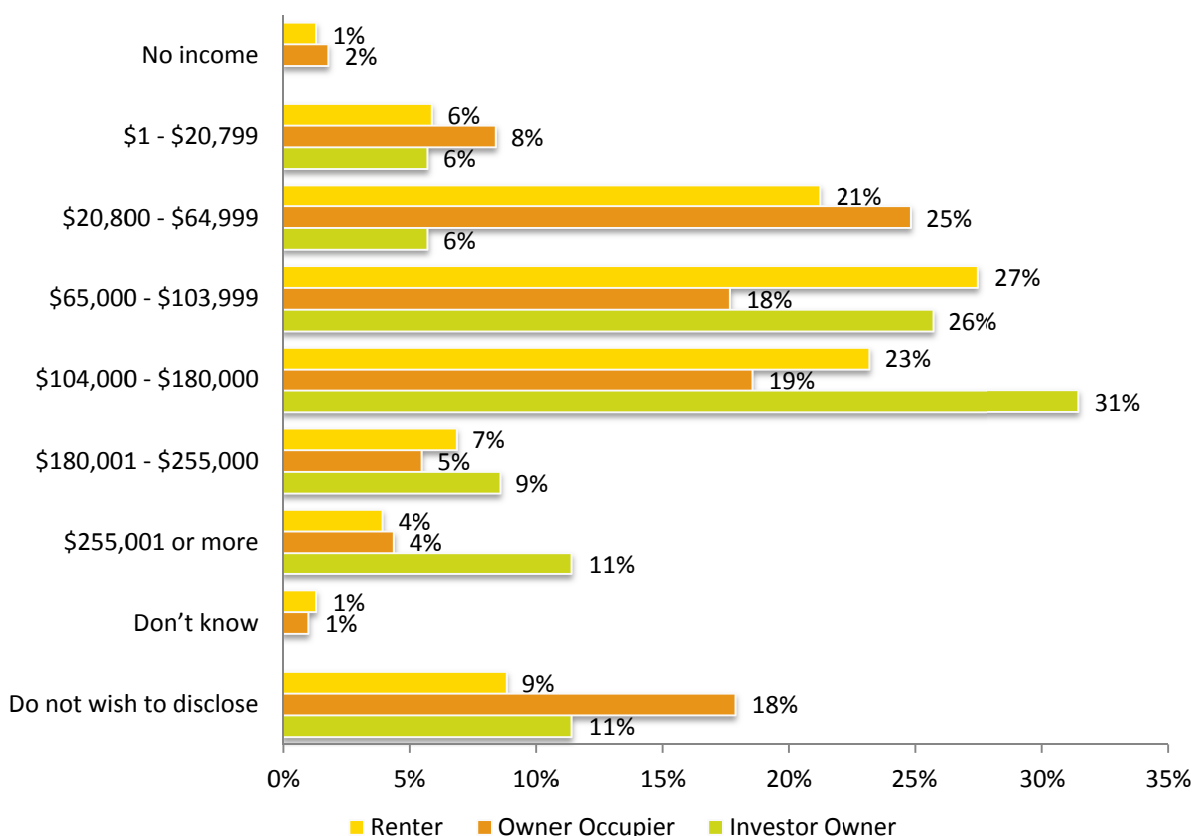


Q23. How old are you? (n= 310 renter; 913 owner-occupier; 36 investor owner)

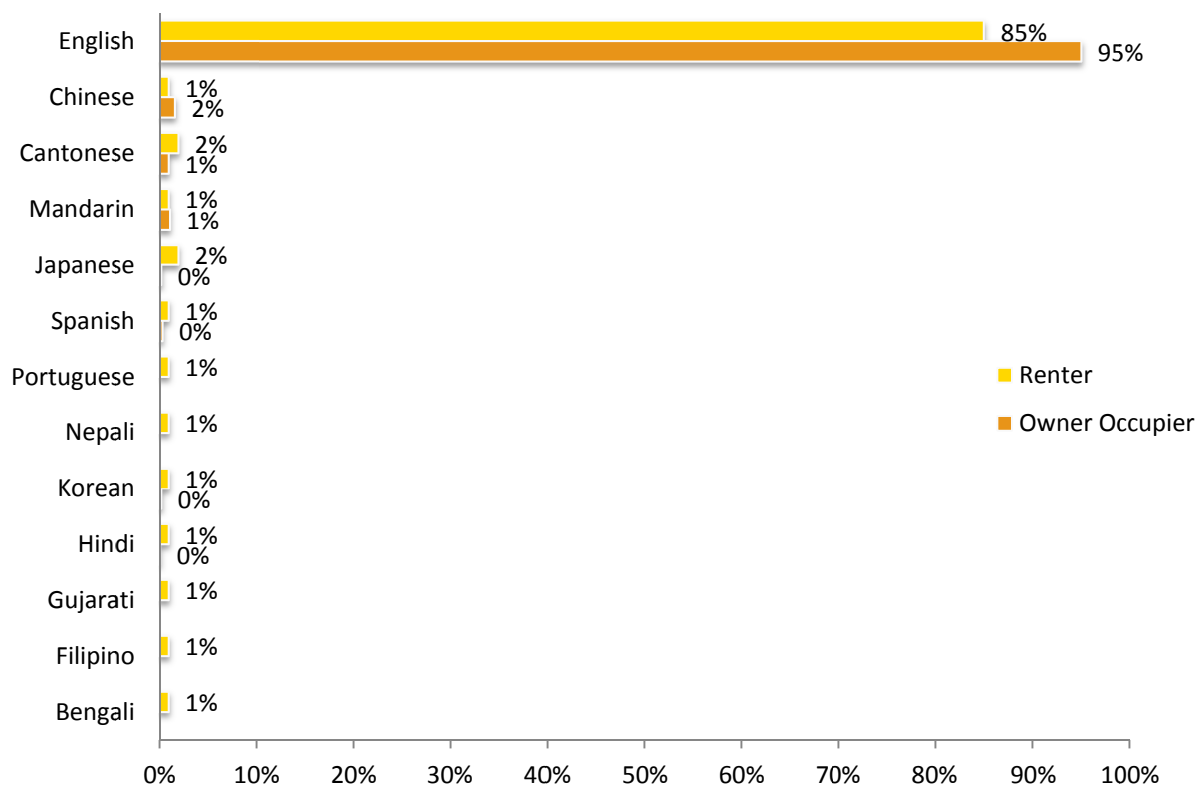


Q24. How would you best describe your household? (n= 308 renter; 895 owner-occupier)**Q25. Which of the following best describes your current employment status? (n= 305 renter; 890 owner-occupier; 34 investor owner)**

Q26. Which of the following best describes your household's current annual income (before tax)? (n= 306 renter; 894 owner-occupier; 35 investor owner)



Q27. What language do you speak at home? (n= 269 renter; 800 owner-occupier)



Appendix 3: Community Survey Questionnaire

Redeveloping Strata Schemes Community Survey



UNSW
A U S T R A L I A



Reference Number:

Redeveloping Strata Schemes Community Survey

City Futures Research Centre at the University of New South Wales invites owners and tenants of strata lots (apartments, townhouses, etc.) to share your attitudes and expectations on the redevelopment of strata schemes.

We would love to hear from you if:

1. You are over 18 years old
2. You currently rent or own/purchasing a unit in a strata scheme of 3 or more residential lots/units

The survey should take approximately 15-20 minutes to complete.

The Project Information Statement enclosed with this questionnaire provides some background to this project and outlines how the information you provide will be used and how your confidentiality will be assured. (Please keep this letter for your reference.) **Continuing with the survey indicates that, having read and understood the information provided in the information statement, you have decided to participate.**

How to complete this survey

There are three options to complete this survey:

1. Complete the survey online at www.cityfutures.net.au and follow the links to the 'Redeveloping Strata Schemes: Community Survey'. When prompted, please insert your **reference number** located on the front cover of this survey.
2. Scan the QR code using your smart phone or tablet and complete the survey online.
3. If you do not have access to a computer, complete this paper version and return using the supplied reply paid envelope to:



Dr Laurence Troy
City Futures Research Centre
Faculty of Built Environment
UNSW Sydney NSW 2052

Please complete the survey online or return this paper version by 15 September 2014.

This research is funded by an Australian Research Council Grant No. LP130100400 and is being undertaken by the City Futures Research Centre at the UNSW Australia in partnership with UrbanGrowth NSW, Strata Community Australia (NSW), Australian College of Community Association Lawyers, The Owners Corporation Network of Australia and NSW Fair Trading.

For more information, please visit www.cityfutures.net.au

Section 1 – NSW Government Strata Reform Proposal

There are many older strata apartment blocks in NSW that are reaching the end of their physical life or are located in areas which the Government has identified for urban renewal. In these circumstances, it is presently very difficult to wind up strata schemes to allow these apartment blocks to be redeveloped.

Q.1 There has been recent discussion in NSW about the issue of how to redevelop existing strata schemes. Are you aware of this issue?

☐ Yes

☐ No – **PLEASE GO TO Q.3**

Q.2 Where did you hear about this issue? (Please cross [X] all that apply)

☐ NSW Fair Trading

☐ Community Legal Centres

☐ Local Member of Parliament

☐ Local council

☐ The Owners Corporation Network

☐ Real Estate Institute of NSW

☐ Social media

☐ Can't recall

☐ My strata manager

☐ My building manager

☐ A financial advisor

☐ Strata Community Australia NSW

☐ Tenants Union

☐ Newspaper

☐ Web page

Other (please specify) _____

Q.3 Currently, 100% of lot owners in a strata scheme need to agree for a block to be demolished and redeveloped. The NSW Government has proposed to change the legislation to enable a strata scheme to be cancelled to allow the building to be demolished if a majority (possibly 75%) of owners agree. Do you agree with this proposal?

Strongly
Agree

Agree

Neither
agree nor
disagree

Disagree

Strongly
Disagree

Don't Know

☐

☐

☐

☐

☐

☐

Why do you say that? _____

Q.4 The NSW Government's proposal to make strata redevelopment easier includes a range of measures that seek to balance the interests of all owners. What is your opinion on key features of the proposed model? (Please select [X] one option in each row)

| | Support | Neither Support Nor Oppose | Oppose | Don't Know |
|---|-----------------------|----------------------------------|-----------------------|-----------------------|
| For new schemes, the proposed legislation would apply automatically once the legislation has commenced | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| For existing schemes, the legislation would only apply to schemes that have decided to 'opt-in' through a general resolution of the owners corporation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A general resolution of the owners corporation will be required to appoint a 'strata renewal committee' of lot owners to oversee the preparation of a redevelopment plan | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The developer and any supporters of a proposal will be required to declare any conflicts of interest | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Lot owners will be able to seek their own expert advice during a mandatory 60 day 'consideration period' | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Independent oversight will be provided by the Land and Environment Court who will check that the proper process has been followed and that all parties have been treated fairly in the distribution of any proceeds | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An advice and advocacy service will be set up to support both owners and tenants affected by termination proposals | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Do you have any comments on these proposals? (optional) _____

Q.5 In what circumstances would you agree or disagree to redevelop a scheme without the support of all (100%) owners? (Please select [X] one option in each row)

| | Strongly Agree | Agree | Neither Agree nor Disagree | Disagree | Strongly Disagree | Not Applicable |
|--|-----------------------|-----------------------|----------------------------------|-----------------------|-----------------------|-----------------------|
| The building/scheme is in poor physical condition | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The building does not meet current building safety standards | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The location can be put to a more profitable use | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The location can be put to public use (e.g. school, hospital, park, highway) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| I would receive a financial gain | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Other (please specify) _____

Section 2 – Redeveloping Schemes: How might it work

The redevelopment of existing strata buildings is something that already happens from time to time. This affects people in different ways. This section aims to find out what a redevelopment might mean for you and your opinion on what the most important issues are.

Q.6 If your local area was rezoned for higher densities and a larger apartment block could be built on the land on which your current block is located, how willing would you be to support the redevelopment of your strata scheme?

| Very Willing | Willing | Neither Willing Nor Opposed | Opposed | Very Opposed |
|-----------------------|-----------------------|--------------------------------|-----------------------|-----------------------|
| <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Why do you say that? _____

Q.7 Do you own or rent the unit you are living in?

- ☐ Own/purchasing – **PLEASE GO TO Q.11**
- ☐ Rent – **PLEASE GO TO Q.8**

FOR RENTERS ONLY

Q.8 If you had to leave your current apartment because it was going to be redeveloped, do you think you would be able to find an alternative place to rent in the local area of a similar size and amenity?

- ☐ Yes
- ☐ No
- ☐ Don't know

Q.9 Compared to your current rent, how much do you think it would cost to rent another unit of a similar size and amenity in the local area?

- ☐ Less than my current rent
- ☐ A similar amount or up to 5% more
- ☐ An additional 5-10% on top of my current rent
- ☐ An additional 10-25%
- ☐ An additional 25-50%
- ☐ More than 50% higher than my current rent
- ☐ Don't know

Q.10 If you had to leave your current apartment, would you prefer to stay in the area, or would you take the opportunity to move to a new area?

- ☐ Prefer to stay in the area
- ☐ Take the opportunity to move to a new area
- ☐ Not sure

NOW PLEASE GO TO Q.22, ON PAGE 8

FOR OWNERS ONLY

Q.11 If your owners corporation voted to redevelop your scheme, which of the redevelopment options would you prefer? (Please select [X] one option)

- ☐ The owners corporation decides collectively to employ a builder to redevelop the block for themselves
- ☐ All unit owners sell out to a developer who would undertake the redevelopment
- ☐ There is an agreement reached with a developer where unit owners receive either a profit share or new apartment in the redevelopment

Other (please specify) _____

Q.12 Assuming you sell out to a developer, could you afford to buy a unit of equivalent size and amenity in the local area?

- ☐ Yes
- ☐ No
- ☐ Don't know

Q.13 How much do you think it would cost to buy another apartment of a similar size and amenity in the local area?

- ☐ Less than the value of my current apartment
- ☐ A similar amount or up to 5% more
- ☐ An additional 5-10% on top of the value of my current apartment
- ☐ An additional 10-25%
- ☐ An additional 25-50%
- ☐ More than 50% higher than the value of my current apartment
- ☐ Don't know

Q.14 If you had to leave your current apartment, would you prefer to stay in the area, or would you take the opportunity to move to a new area?

- ☐ Prefer to stay in the area
- ☐ Take the opportunity to move to a new area
- ☐ Not sure

Q.15 If it came to a vote to redevelop your scheme, how important would the following issues be in deciding whether you would support a proposal? (Please select [X] one option in each row)

| | Very Important | Important | Neutral | Not important | Not important at all | Not Applicable |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-------------------------|-----------------------|
| Personal financial considerations | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Fairness and oversight of the process | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Personal attachment to my property | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Impact of the redevelopment on the local neighbourhood | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The need for more housing in this area | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

| FOR OWNERS ONLY | | | | | | |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-------------------------|-----------------------|
| Q.16 How important are each of the following issues about process and fairness in determining whether you would support the redevelopment of your scheme? (Please select [X] one option in each row) | | | | | | |
| | Very Important | Important | Neutral | Not important | Not important at all | Not Applicable |
| That I could complain to a court or commissioner if I did not feel that I had received a fair price for my unit | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| That other forms of hardship are taken into consideration (e.g. ability to purchase another property in the area; emotional ties to the property) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| That I could complain to a court or commissioner if other forms of hardship were not properly considered and compensated | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| That I could access good professional advice on the redevelopment proceedings | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| How long I am given to consider the redevelopment proposal | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| How long the redevelopment process would take | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| That any proposal is transparent as to benefits from the redevelopment | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other (please specify) _____ | | | | | | |
| Q.17 How important are each of the following financial considerations in determining whether you would support the redevelopment of your scheme? (Please select [X] one option in each row) | | | | | | |
| | Very Important | Important | Neutral | Not important | Not important at all | Not Applicable |
| The price I would receive for my unit | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Whether I would receive a higher price by selling my unit as part of a group sale with other owners, compared with selling my unit on its own to a developer | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Whether I could afford another similar unit in the area | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Whether I would be entitled to a new unit in the redeveloped building | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Future costs of maintenance or repairing my current building | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The taxation implications (e.g. capital gains tax, stamp duty) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Whether I could afford suitable temporary accommodation while the new scheme was being built | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Whether I would be able to get a new mortgage on a new property at terms as good as my current mortgage | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other (please specify) _____ | | | | | | |

| FOR OWNERS ONLY | | | | | | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-------------------------|-----------------------|
| Q.18 How important are each of the following personal considerations in determining whether to support the redevelopment of your scheme? (Please select [X] one option in each row) | | | | | | |
| | Very Important | Important | Neutral | Not important | Not important at all | Not Applicable |
| Personal attachment to my current neighbourhood | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The difficulty or inconvenience of selling and moving to another home | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other (please specify) _____ | | | | | | |
| Q.19 To your knowledge, have there ever been any proposals to redevelop your strata scheme? | | | | | | |
| <input type="radio"/> Yes | | | | | | |
| <input type="radio"/> No | | | | | | |
| <input type="radio"/> Don't know | | | | | | |
| Q.20 Have you previously considered being part of a process to redevelop your strata scheme? | | | | | | |
| <input type="radio"/> Yes | | | | | | |
| <input type="radio"/> No | | | | | | |
| Q.21 Is this something you may consider in the future? | | | | | | |
| <input type="radio"/> Yes | | | | | | |
| <input type="radio"/> No | | | | | | |
| <input type="radio"/> Don't know | | | | | | |

Section 3 – You and your unit

Q.22 What is your gender?

- ☐ Female ☐ Male ☐ Other

Q.23 How old are you?

- ☐ 18-19 years ☐ 45-54 years
☐ 20-24 years ☐ 55-64 years
☐ 25-34 years ☐ 65 years or over
☐ 35-44 years

Q.24 How would you best describe your household?

- ☐ Single person ☐ Couple (no children)
☐ Single parent plus child/children ☐ Couple plus child/children
☐ A share home (i.e. a group of unrelated adults) ☐ Living with other family members (e.g. siblings, cousins, grandparents)

Other (please specify) _____

Q.25 Which of the following best describes your current employment status?

- ☐ Employed or self employed ☐ Unemployed, looking for work
☐ Not in the labour force/retired ☐ Student

Q.26 Which of the following best describes your household's current annual income (before tax)?

- ☐ No income ☐ \$180,001 - \$255,000
☐ \$1 - \$20,799 ☐ \$255,001 or more
☐ \$20,800 - \$64,999 ☐ Don't know
☐ \$65,000 - \$103,999 ☐ Do not wish to disclose
☐ \$104,000 - \$180,000

Q.27 What language do you speak at home?

Q.28 How many bedrooms does your apartment have?

_____ Bedrooms

Q.29 How many lots (e.g. apartments, offices) are there in your strata scheme? Estimate if necessary (please do not include car parking spaces or other utilities such as garage storage).

_____ Lots

Q.30 How many floors are there in the building, including the ground floor and excluding any basement or parking areas?

_____ Floors

Q.31 When was your building constructed? Estimate if necessary.

- | | |
|------------------------------------|------------------------------------|
| <input type="radio"/> Before 1960 | <input type="radio"/> 1980 to 1989 |
| <input type="radio"/> 1960 to 1969 | <input type="radio"/> After 1990 |
| <input type="radio"/> 1970 to 1979 | <input type="radio"/> Don't know |

Q.32 In which suburb is your building located?

Q.33 Are there any non-residential uses for your building or strata scheme?

- ☐ Yes
- ☐ No – **PLEASE GO TO Q.35**

Q.34 What non-residential purposes is your strata scheme building used for? (Please cross [X] all that apply)

- | | |
|---|--|
| <input type="radio"/> Hotel | <input type="radio"/> Shop(s) |
| <input type="radio"/> Short-term holiday apartments | <input type="radio"/> Restaurant(s) or Café(s) |
| <input type="radio"/> Office(s) | <input type="radio"/> Bar(s) or Nightclub(s) |

Other (please specify) _____

Q.35 What proportion of the units in your strata scheme are being rented? (Estimate if necessary)

- | | |
|---------------------------------|----------------------------------|
| <input type="radio"/> 0% - 19% | <input type="radio"/> 60% - 79% |
| <input type="radio"/> 20% - 39% | <input type="radio"/> 80% - 100% |
| <input type="radio"/> 40% - 59% | <input type="radio"/> Don't know |

IF YOU RENT, PLEASE GO TO Q.37

FOR OWNERS ONLY

Q.36 If you own your apartment, what do you think is its value?

\$ _____

NOW PLEASE GO TO QUESTION 38

FOR RENTERS ONLY

Q.37 If you rent your apartment, how much rent does the whole apartment cost per week? (Owners skip to the next question)

\$ _____ per week

Q.38 Do you own any other residential strata units/apartments in the Greater Sydney area?

- ☐ Yes
☐ No

Q.39 Is there anything important we haven't covered that you would like to tell us about?

Q.40 Would you like to: (cross [X] all that apply)

- ☐ Receive further information about the outcomes of this research?:
☐ Be contacted to participate in a follow-up interview or focus group?
☐ Enter the prize draw for 1 of 5 \$200 Coles Myer gift cards?

If you ticked any of the above, please leave your contact details below (you will only be contacted for the purposes you have nominated above):

Phone No: _____

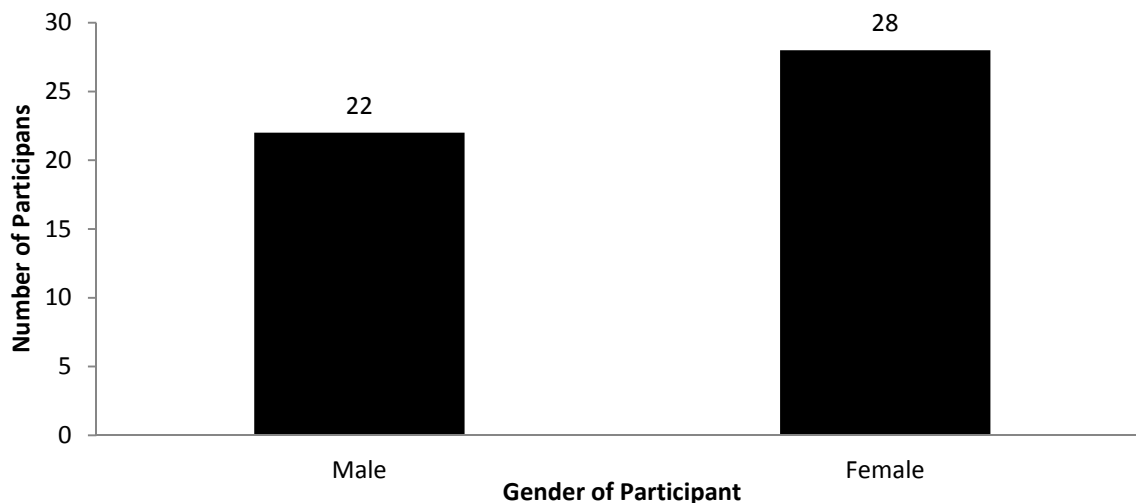
Email: _____

Address: _____

THANK YOU for participating in our survey!!

The findings will be released in a published report in early 2016 when the research is completed.

Appendix 4: Profile of community workshop participants and their units



NB: One workshop participant did not complete the anonymous information sheet distributed at the workshops, which recorded their age, gender etc. For this reason, these graphs show a total of 50 participants instead of the 51 mentioned in the report.

