

Legal Structures in Master Planned Estates: Focusing on the Consumer

Abstract

The growth in master planned estates (MPEs) has been significant in Australia in the last ten years. Commonly, MPEs utilise a variety of legal structures to hold assets for an estate. These structures are often bodies corporate, now known as owners corporations in Victoria. These legal structures hold a range of assets including life-style enhancing facilities such as swimming pools, tennis courts and gymnasiums. Less commonly, but importantly, MPE legal structures can include sensitive environmental assets.

In this paper we consider some of the potential problems with the adoption of these kinds of legal structures. In a small research project we investigated a sample of five MPE websites in order to determine what level of publicly available information potential consumers can access about these structures and the consequent legal obligations.

Our research found that in the small sample of MPEs websites investigated information about legal arrangements was insufficient and unclear.

We consider in this paper other approaches to asset ownership and the need to provide consumers, at an early stage of engagement, with more detailed information about legal structures and obligations.

Introduction

Australian research has indicated a significant increase in master planned estates (MPEs) as a form of urban development. These developments occur often in new sites on the urban fringe and can also be found in many infill sites, on land reclaimed for urban development from defunct industrial or other private or public uses. Particularly in urban fringe sites, some developers seek to offer more than house and land packages or land alone and are now producing residential estates with additional attractions suggesting an increased sense of community, security, a resort lifestyle or a combination of all three.

This approach suggests a more comprehensive “place making” development than was offered in the past by developers and is arguably part of a trend that caters for the more affluent on the urban fringe (Gwyther 2003; Dodson and Berry 2004; Randolph 2004). Such estates can include golf courses, country clubs, wetlands and landscaped open spaces. Increasingly environmental assets such as retained native vegetation, water sensitive urban design, or energy efficient buildings are included.

However, with these additional features can come private ownership arrangements for the assets of the MPEs, which may mean that owners of homes also become members of legal entities such as corporations, unincorporated associations or, the most frequently used legal structure, owners corporations. These entities were previously known in Victoria as bodies corporate and have been used for many years in multi-unit developments where there is shared property, such as driveways or stairwells, in common (Consumer Affairs Victoria 2006).

Bodies corporate have been renamed following the introduction of new legislation, the *Owners Corporation Act 2006*. This legislation came into force on 31st December 2007 and represents an attempt by the Victorian state government to overhaul legal obligations arising from communal living because of the significant growth in developments utilising these legal entities (McPhee 2008).

Internationally, there has also been growth in the use of owners corporations or like structures. In New Zealand their use has increased significantly in housing developments and in England similar legal arrangement of leases to hold communal assets have been utilised in MPE arrangements (Blandy et al 2006). Concerns have been expressed regarding the advisability of these legal structures and the range of assets held in common in developments in which they are utilised. Some of the issues raised include the complexity of the legal structures, the information made available to consumers prior to purchase, the management of assets, the relationship with local councils, and consumers' lived experience of residing in estates that adopt complex legal structures, including potential conflicts regarding the assets (Blandy et al 2006; City Futures Research Centre 2008; Goodman and Douglas 2008).

In this paper we identify some of the key issues surrounding these forms of ownership, report on the state of current research and undertake an investigation into the information made available to consumers prior to purchase in a sample of five MPEs in and around Melbourne. We confined the research described in this paper to the initial information available to potential consumers through MPE development websites and sales offices. In addition to investigating this information our research documents the legal structures utilised in the selected estates and considers the type of assets held by these entities. Our methodology focussed upon publicly accessible information largely through a content analysis of the five developments' websites with additional information sought verbally and in writing from the MPEs' sales offices. To begin our discussion of the project we provide an overview of the growth of MPEs in Australia and some of the issues currently being raised regarding these developments.

Master planned estates in Australia: An Overview

Most scholars writing on MPEs in Australia utilise the definition provided by Minnerly and Bajracharya (1999). They refer to master planned communities (MPCs) and define them as large scale, private sector driven, integrated housing developments on greenfield suburban sites, which usually include a mix of housing types, open space and recreational, commercial and service facilities and sometimes employment opportunities. McGuirk and Dowling (2007) draw a distinction between master planned estates and communities defining the former to be "large scale, integrated housing developments produced by single development entities that include the provision of physical and social infrastructure, and that are predominantly located on the growth frontier or city fringe" (2007 p.22).

Master planned communities are similarly large scale but with a greater emphasis on comprehensive planning. Freestone (2003 p.1) defines them as "forms of development usually organised around a complete and manicured living package of house, land, open space and community facilities". Gwyther (2005) refines the definition by noting that

there is a spectrum that can range from those with more orientation on actual facilities such as the golf course estates - aimed at people looking for a lifestyle rather than community as such - to the comprehensive master planned community with greater 'value adding' beyond simply the design and layout. Gwyther (2005 p.59) considers that "value adding refers here to the additional capital investment in design features and community facilities often absent in more conventional residential developments". She includes in this elements such as ostentatious entry points, artificial lakes, community gardens and open space, bike tracks, community centres, tennis courts, golf courses, community newsletters and community development programs.

Arguably, the most significant difference from the traditional suburb is the conscious attempt to create community. Eves (2007 p. 165) considers that this new form of estate can comprise some or all of the following: security services, including in some cases full gates and restricted access; recreational facilities such a golf course, gyms, swimming pools etc; and natural or man-made surroundings such as bushland, parks or water features. The cost of these services is borne by the purchaser with the developer providing a 'lifestyle' as well as a home.

Much of the literature on MPEs has explored issues of community creation and social exclusion. Not all of this literature is critical of the current approach to the development of MPEs. For example, Minnery and Bajracharya (1999 p. 41) consider that there are substantial advantages to this type of development in that it enables orderly growth, private funding for infrastructure, security, certainty for investors and economies of scale. Costley (2006) although not entirely uncritical, sees MPEs as an opportunity to ensure better planned and integrated communities with a greater degree of social coherence.

However, other writers critique MPEs in relation to the issue of social coherence and community as they may encourage an exclusivity and lack of integration with the wider and more diverse community. Kenna (2007) found evidence of deliberate encouragement of socio-spatial polarisation in her case study of a Sydney MPE. She suggests that the exclusivity of some of these developments is driven more by security concerns than race or ethnic segregation as it might be in the United States. McGuirk and Dowling (2007) have also focussed on MPEs in Sydney. They consider that Sydney has relatively few truly gated communities and that those that do exist are probably more motivated by a sense of status aspiration than a true fear of crime. Bosman (2003) also expressed concerns about exclusion with her work on a South Australian MPE.

The degree of control exercised by developers over form and function of their estates can be criticised for the propensity to lead to a repressive degree of uniformity. Gwyther (2005) sees the origins of these types of developments in the garden city movement. She considers that they involve an anti-urban romanticised view of social harmony and a compulsory adherence by residents to a set of social standards determined by the developer. "These standards implicitly include notions of civil behaviour, pride in housing and in the estate, and most importantly, abiding by the estate's restrictive covenants, regulations and social norms", (2005 p. 57).

Gleeson (2003) provides a scathing critique of these developments labelling them 'privatopias'. He contends that the prevalent general preference for private facilities over the public is fed by a combination of both security concerns and aspirations in potential

buyers. He is concerned about the perpetuation of a culture of anxiety that “might well be dissipated if we were to re-establish public spaces, facilities and services that invite participation and interaction by all” (2003 p. 232). Following her identification of the range of assets and facilities ‘value added’ by developers, Gwyther (2005 p. 59) points out that this practice is “an appropriation of the role of local government by MPC developers, and is indicative of the ‘privatism’ underpinning such developments”.

In some circumstances assets and facilities that would normally be in council hands are actually owned by a private company. This choice of legal entity appears most commonly when the asset can be run on a commercial basis for profit, such as a golf course. In other estates however owners’ corporations are created to hold title of the communal assets. Usually, purchase of a property where an owners corporation exists involves compulsory membership of the owners corporation, for which an annual fee is required. This trend in shared property in MPEs appears to be an expansion of this role involving more complex and valuable assets, and covering a range of property that is traditionally managed by councils. In the next section of this paper we consider issues pertaining to the use of the legal entity, owners corporations, in MPEs and other developments.

Legal Issues: The Owners Corporation Act 2006 (Vic)

In Victoria the significant growth in apartments, medium density developments and MPEs that utilise legal structures for the ownership of common assets (Consumer Affairs 2006) has prompted a review of the regulation of the management and the powers and functions of these entities. New legislation in Victoria, the *Owners Corporations Act 2006*, was passed last year and became operational in late 2007. Originally, legal entities of this kind were predominantly used for residential purposes. However, assets in owners corporations may now also include commercial elements such as “office blocks, hotels, retirement villages, farms and shopping centres” (Graham 2008, p. 2). The functions of an owners corporation is to manage and administer common property, carry out maintenance on the common property, ensure adequate insurance, keep a register and provide certificates regarding the owners corporations when requested. Under s.5 of the legislation the owners corporation must carry out its functions and exercise its powers honestly and diligently (McPhee 2008, p. 39).

Importantly, there are new methods of dealing with disputes that allow for a three-tiered approach. If a lot owner or the manager of the owners corporation believes that there has been a breach of the Act regulations or rules then they may make a complaint (s 152(2)). After making a complaint the legislation requires that parties participate in the first tier of dispute resolution, an internal dispute resolution scheme. This scheme may include mediation, that is the facilitation of conflict by an independent third party, or it may be simply a meeting with a grievance committee. The grievance committee procedure is provided for as the default option in the regulations for the legislation. The model rules provide, under regulation 6, that internal dispute resolution in the model rules should be a scheme of meeting with the owners corporation or an appointed grievance committee.

A large development, such as an MPE, or a high rise apartment building, may choose to design a dispute resolution system to deal with the disputes in their community (Douglas, Goodman and Leshinsky 2008), but smaller developments, due to cost factors, may

choose to utilise the model rules. In the second tier if the internal dispute resolution scheme is unsuccessful then a party may apply to the Director of Consumer Affairs to have the dispute mediated or conciliated by a Consumer Affairs employee (see s. 161). In the third tier a party may apply to the Victorian Civil and Administrative Appeals Tribunal (VCAT), who ultimately have the power to make a determination (see s. 162). The opportunity to go to VCAT is only available where parties have exhausted the internal dispute resolution scheme (s. 153).

Conflicts regarding the management of assets can occur due to disagreements about the maintenance of common property (including cost) and possible extensions of the common property. There may be disputes with the owners corporation manager or there may be interpersonal disputes between lot owners, between lot owners and the management committee or between management committee members (Consumer Affairs 2006). In MPEs there may be covenants relating to housing design issues, such as the architectural theme of the estate and palettes appropriate for housing and medium density developments in the estate, which may cause conflict amongst residents in the estate (Blandy et al, 2006).

The wide variety of conflict that can arise regarding the holding of joint assets prompted the Victorian government to introduce the three-tiered scheme of dispute resolution. Clearly, this dispute resolution system is applied in developments other than MPEs, but unlike unit or town house developments MPEs do not necessarily need to hold joint assets. An additional rationale for an owners corporation, other than the holding of joint assets, might be to provide the mechanism for architectural controls for the community past the involvement of the developer. Many of the possible disputes described regarding assets would traditionally be matters to be raised with, and determined by, the local council, which has the experience and infrastructure to deal with them. The infrastructure ownership arrangements of MPEs not only privatises, but also in many cases duplicates, these processes.

Once in place owners corporations are difficult to alter. The legislation requires special resolutions for any major decisions outside the established rules of the entity and these require 75 per cent of the lot owners to agree. To sell an asset would require 100 per cent agreement from owners. In MPEs in particular the likelihood of achieving these levels of agreement, once the developer's large holdings of lots has been sold, is small. Under the new legislation, as an alternative to gaining high percentage levels of owners' agreement, owners corporations can pass interim special resolutions (see s.97). However, the gaining of an interim special resolution is no easy task and requires a complex procedure. Graham interprets the provision in following way:

If, at a meeting or by ballot, the vote in favour of a special resolution is at least 50 per cent of the total votes for all lots and the vote against the resolution is not more than 26 per cent of those votes, the resolution is taken to be passed as an interim special resolution. Notice of the interim special resolution (and a copy of the minutes of the meeting) must be forwarded to all lot owners within 14 days. The notice must state that the interim special resolution will become a special resolution upon the expiration of 29 days after it was passed unless lot owners who hold more than 25 per cent of the total votes petition against the resolution

(2008, p. 9)

The legislation now allows for an application to VCAT to be granted to gain an exemption from the requirement for an unanimous resolution (see s. 170 (c)), but only in circumstances where the vote indicates at least 75 per cent of the total members are in favour of the resolution and there are no votes against the resolution (see s. 171 (4)). Arguably, the new interim special resolutions are complex to secure and the exemption category to circumvent the requirement for 100 per cent agreement would require litigation as an application must be made to VCAT.

When dealing with the assets of owners corporations the government has attempted to introduce some flexibility. However these attempts have been only partly successful. In the new legislation there is now the opportunity, not provided for previously, to significantly alter or upgrade common property (see s. 52), but such actions require special resolution where the amount spent is more than twice the total amount of the current annual fees, except in circumstances where it is for repairs and maintenance that are urgent to ensure safety or prevent loss or damage (see s. 53). In contrast councils are clearly not constrained in the same manner in their maintenance, improvement and provision of assets for the communities they serve. The provision of privatised assets in MPEs, however inadequate in the long term, may mean that councils do not provide these residential areas with facilities, or alternatively do not upgrade or contribute to these private assets.

An important change brought about by the new legislation is the requirement that a Vendor's Statement include an owners corporation certificate (see s. 219). This certificate requires a great deal of information that will inform purchasers, including information about fees and charges, repairs and maintenance and legal proceedings. This certificate is required to be accompanied by a copy of the rules of the owners corporation, a statement in the prescribed form providing advice and information to prospective purchasers, a copy of all resolutions made at the last annual general meeting and any other documents of a prescribed kind.

In summary, the degree of difficulty in making changes in an owners corporation suggests a degree of caution should be exercised before entering into this kind of legal structure. The policy problem is that developers, by the nature of their work, aim to sell all lots and leave the estate as quickly as possible. It is the consumers who perhaps are unaware of the legal complexities of being members of owners corporations and are left to manage the entity. Under the new legislation consumers must now be advised of costs and liabilities arising from membership of an owners corporation at the time of contract exchange. Some educative material must also now be provided.

However, it seems likely that consumers would be ignorant of the potential conflicts that can arise from membership. Additionally it can be difficult for consumers, who have made an emotional as well as rational commitment to the purchase, to be dissuaded by the legal documentation received close to time of finalising their purchase. Rosenblatt (2005) notes that housing choices can be linked with our sense of identity and status. Blandy et al (2006) found in their research with English and New Zealand purchasers that consumers in these kinds of estates were largely naïve regarding legal issues. Prospective purchasers may 'fall in love' with an MPE and their potential home and thus be slow to

realise the implications of entering into unfamiliar legal structures such as an owners corporation.

Our concerns regarding legal structures, and in particular owners corporations, led us to try to ascertain the kinds of legal structures currently being utilised in MPEs in Victoria, including the assets that they hold. We also investigated whether potential consumers, at an early stage of engagement, were being made aware of these structures and all the implications for them as owners. In the next section we outline the methodology for our research project.

Investigation of information available to consumers

The methodology chosen to investigate the question of the kind of information contained on MPE websites dealing with legal structures and in particular owners' corporations was a content analysis of websites, as the web is increasingly utilised as first point of information for consumers. Bryman (2004, p.183) defines content analysis as, "an approach to the analysis of documents and texts that seeks to quantify content in terms of predetermined categories in a systematic and replicable manner".

Our research focussed on an early point in the decision making process to purchase property within an MPE. In our view it is reasonable to suggest that information might be most useful to the decision making process at this early stage as by the time a contract of sale is viewed potential consumers are likely to be emotionally committed to the purchase of the house and land or land and thus less likely to be able to appreciate possible disadvantages of legal structures. Advertising for MPEs is often aimed at engendering an emotional response, promoting not only the product, i.e. the house and land, but a particular lifestyle which might be assumed to come with them and we wished to investigate whether consumers were forewarned of the nature of the legal obligations of these estates.

The MPEs were chosen firstly on the basis of the developer providing a detailed website (a common occurrence in Victorian developments). Secondly, prior scoping research had established that assets, including facilities and open spaces, were included in MPEs in Victoria and that these assets were commonly held in owners corporations (Goodman and Douglas 2008). The five were selected from a wider group of 12 identified in the scoping exercise. In addition to website content analysis we contacted the sales offices of the five MPEs in our sample by telephone and or email, in order to ascertain what further information about the legal structure of each development is given out to the public. In relation to research findings reported upon in this paper the research period for the gathering of data was January to March 2008 inclusive.

The research questions to be answered included:

1. What discussion of 'lifestyle' assets (particularly resort style) held by the owners corporation or other legal entity appear on the websites of the selected MPEs?
2. What are the legal structures utilized for ownership of the community assets in the selected MPEs?
3. What information of these legal ownership structures is available on the websites of the selected MPEs or provided by a follow up contact with the MPE sales office by telephone or email?

The investigation reported on here is necessarily limited by the small sample size, and therefore the results must be regarded as indicative rather than conclusive. This is part of a larger investigation we are undertaking which has seen us initially scope the extent of the use of owners corporations in and around Melbourne (Goodman and Douglas 2008), investigate information available to consumers (as discussed in this present paper) and interview developers and local government planners on the use of these structures. This final part of the project involves a larger data collection and involves analysis of qualitative data that explores participants views relating to, amongst a number of issues, alternative strategies for developers who are considering the inclusion of owners corporations in their estates.

Findings

The five MPEs consisted of a variety of assets including golf courses, open space facilities, gyms and a marina. Notably, we found that a variety of different assets were held by the owners corporations and other legal options such as a private company. One MPE, Eynsbury, included a body corporate and an incorporated association.

Unsurprisingly, the community assets which could be seen as lifestyle enhancing within the case study estates were described in very favourable terms in the text and visual documents stored on each website. The lifestyle and resort living promoted on the MPE websites generally identified improved living arrangements through resort, or in one instance 'escape', facilities.

For example, Sanctuary Lakes Resort, an MPE that includes a golf course, swimming pool, tennis courts, gym and restaurant, describes itself as providing a 'lifestyle opportunity' in the western fringe of Melbourne in Victoria. In the Sands, on the urban fringe near the beach area of Torquay in Victoria, the opening page of the website proclaims it as 'a stunning new resort located in Torquay, at the Gateway to Victoria's Great Ocean Road.' Sandhurst estate in the south east of Melbourne (approximately 35 kms from the CBD on the urban fringe) also promises resort-style enjoyment for those who purchase. One estate, Eynsbury, promoted a focus upon improved lifestyle as an 'escape' from conventional urban living largely through a return to a notionally 'country' lifestyle. Here the natural environment was promoted as the vehicle of escape, and environmental features were highlighted prominently on the website. This estate includes the holding of a sensitive environmental feature, a Grey Box forest and grasslands.

The arrangement in this estate is that the original pastoral company continues to own the forest and grasslands, at least for the present time and there is also an incorporated association, which pays for the upkeep of this environmentally sensitive asset.

An incorporated association is an entity that can include a wide range of members and is used formed for a common purpose such as a social or recreational purpose. The incorporated association at Eynsbury is made up primarily of representatives of the owners corporation and the local council, although this entity may also include members drawn from the wider community. The owners corporation of the estate contributes to the incorporated association money for the upkeep of the forest and grasslands. This estate had the most unusual legal structure of the MPEs investigated. Other estates in the study

combined owners corporations with other legal entities, such as a private company that held the asset of the golf course, but no other estate included an incorporated association.

It was also interesting to note the high cost of some of the fees in the owners corporations, for instance the marina development at Mt Martha included costs of \$5,000 or higher annually. Below we provide detail of the findings of the research.

Table 1 Summary of information on privatised assets in five case study estates

Local Government	Wyndham
Estate	Sanctuary Lakes ¹
Developer	LinksLiving
Size (when complete)	2,700 lots
MPE characteristics	Lifestyle orientated including security emphasis, 24 hr security guards, golf course and lake, gated sections.
Legal Structures (gained through perusal of websites and contact with Sales Offices)	
Owners corporation for recreational facilities and corporation for the holding of the golf course. From the Sales Office telephone enquiry: The body corporate includes maintenance the natural feature of the lake, access to facilities (including pool) including the golf club which allows restaurant, function room and bar access but not fees for playing golf. Fee for body corporate \$1500 annually. This fee also includes security, but if part of the section of the estate that is gated the fee is \$2800.	
Local Government	Melton and Wyndham
Estate	Eynesbury
Developer	Eynesbury Development Joint Venture
Size (when complete)	2,900 lots
MPE characteristics	Lifestyle oriented recreation and open space facilities, golf course, equestrian facilities. Presented as a complete new town.
Legal Structures (gained through perusal of websites and contact with Sales Offices)	
Incorporated Association as mechanism for contributions from body corporate to the upkeep of environmental areas including Grey Box forest and grasslands. From the Sales Office telephone enquiry: The body corporate is for the upkeep of common reserves and nature areas and a shuttle bus which will run until a commercial bus company provides transport. The fee is \$1300.00 annually. When queried regarding the incorporated association the response was that the incorporated association was the body corporate.	
Local Government	Bass Coast
Estate	The Sands
Developer	Mirvac
Size (when complete)	200 lots and proposed 168 apartments and 112 apartments in residential hotel ¹
MPE characteristics	Lifestyle orientated resort-style facilities: gym, pool, tennis courts, security patrolling. Golf course with own club house including gym, pool, practice facilities, bar and restaurant. Hotel complex as part of the development.
Legal Structures (gained through perusal of websites and contact with Sales Offices)	
Body corporate for leisure facilities and corporation for the holding of the golf course. From the Sales Office telephone enquiry the body corporate fees outgoing for apartments are more expensive membership to golf and gym as well as covering the above. The fee is \$4800.	
Local Government	Frankston
Estate	Sandhurst
Developer	LinksLiving
Size (when complete)	Not listed on the website http://www.sandhurst.com/
MPE characteristics	Lifestyle orientated resort-style leisure facilities: gym, pool and tennis club. Two golf courses with clubhouse including health club, pool, tennis courts, café, bar and restaurant, golf shop and headquarters of Australian PGA.
Legal Structures (gained through perusal of websites and contact with Sales Offices)	
One body corporate. Two public corporations, Sandhurst Holding Company and Sandhurst Club. From Sales Office telephone enquiry: The body corporate fee is \$2300 per annum which includes and covers gym, pool, tennis, golf club but not gold membership, access to recycled water, and a levy to general maintenance.	
Local Government	Mornington Peninsula
Estate	Martha Cove ¹¹

¹ These are offered to the public for investment and leased back. Owner can stay in investment property for only a few weeks of the year.

Developer	City Pacific Limited
Size (when complete)	1,000 lots
MPE characteristics	Lifestyle orientated, luxury resort style development, including gym, pool and waterfront marina Some freehold marina berths for purchase or lease.
Legal Structures (gained through perusal of websites and contact with Sales Offices)	
Bodies corporate for Marina development waterways, boardwalk, roads, landscape and conservation areas. Swimming pool, bocce and yoga lawn. From Sales Office telephone enquiry: Fees start at \$5000 per year for a \$310,000 property - through to \$9000 per year for a \$3.5m development property.	

We noted a discrepancy in most websites between the degree that they reported upon these benefits of these facilities and the degree that they provided detail of the legal structures that held these assets. In contrast to the primacy given to a description of facilities that enhance lifestyle, the legal structure information was either absent from the websites or minimal information was provided.

The exception was Eynesbury, which provided considerable detail and placed this information behind a button on the first page of the website where an extensive fact sheet was located. This sheet explained the difference between the legal structures of an incorporated association and an owners corporation and further advised that prospective purchasers should seek legal advice. The heading given on the web page however was not legal structures but instead the button was termed ‘owners association’ arguably making it harder to identify the information. Notably, with the information provided verbally by the sales office of the Eynesbury estate gave the least accurate detail as the owners corporation and the incorporated association were referred to as being the same legal entity, while information from the website suggests this is incorrect.

This small sample of MPEs demonstrates the complexity of legal structures being adopted, the wide range of assets being held in these structures and the small amount of information being provided at an early stage to purchasers.

In the next section of this paper we suggest that there are a number of alternative means of providing the facilities in MPEs that developers, planners and council managers should consider.

Alternative means of suppling lifestyle assets

There is a range of other options for legal structures that ensure developers could still supply the extra assets that apparently the market is requesting. The traditional method of supply of recreational and community facilities is simply that they are provided and owned by local government.

However, developers utilise these new and more complex ownership arrangements because they wish to provide additional facilities beyond that which the council would normally provide, or assets or facilities to a higher standard than the council are prepared to fund or maintain (City Futures Research Centre 2008, p. 16). This may result in better design than what might otherwise be provided, due to in some part to the integrated design attributes of MPEs (City Futures Research Centre 2008, p. 19).

However, as developers finance and build these facilities themselves, they pass the cost onto purchasers and then transfer ownership to an owners corporation as the lots are sold. When all lots are sold and the developer leaves the estate the assets are completely owned

by the residents, and they are responsible for all ongoing costs and maintenance and the risks associated with public liability issues of these assets (City Futures Research Centre 2008, pp. 14-18).

It is this responsibility, combined with the limited ability of owners corporations to provide maintenance funds and an inevitable variation in the commitment of different residents to the various assets, which is likely to lead to conflict and problems.

One option is for the developer to provide the assets to the level and type that they prefer, passing the cost of these onto the consumer, but ultimately transferring them to council rather than private hands. This means that the assets are contributed by the developer to council. The council can then own and administer them on behalf of the community. Currently in Victoria developers are required to make either a financial contribution to public open space, or a contribution of land. There are examples however of a developer contributing more than this. At Laurimar, in the City of Whittlesea in Melbourne's north, for example, the original developer *Drapac* provided a community centre and small convenience store and café for the development. This created a sense of community in the new estate which is geographically quite isolated from other urban centres, as well as a place to buy essential goods close by, and was then handed over to the council.

One issue here is that councils can simply refuse to accept gifts of land or other assets. They might do this on the basis that the ongoing maintenance costs are too high. Alternatively the council might accept ownership of the property but then due to financial constraints fail to maintain it in the manner or to the standard that the community have come to expect. In this situation there could be a role for an owners corporation to provide extra funds and management directly through its fees, without taking on the burden of direct ownership. We are unaware of any examples of such a partnership between the owners corporation and the local council, and therefore cannot gauge how successful such arrangements might be. There is some appeal in the notion that if residents in a particular estate want facilities beyond those that the general population in their area are entitled to, they ought to finance these themselves.

However, that is accomplished at the time of purchase as developers pass on the costs of these additional facilities. One of the major objections to the continued private ownership of these facilities is that they increase the social exclusion generated by many MPEs as the general public are often discouraged or prohibited from accessing them. This situation can be prevented by the assets being placed in public hands. We would suggest that councils have some obligation to come to a negotiated arrangement with developers over proposed assets and facilities at the time of planning approval. They ought not simply refuse to accept assets but come to some arrangement regarding ongoing maintenance before approval is given.

Conclusion

The legislative changes which have been introduced in Victoria to govern owners corporations are an acknowledgement that such structures can be problematic, and that conflict within them may be difficult to resolve. Owners corporation structures are inflexible and difficult to alter once set in place. The legal ownership structures currently being adopted in MPEs in Victoria are complex and the information available regarding the legal obligations that will accrue subsequent to purchase is, at an early stage of purchase, minimal and may be difficult for potential purchasers to fully understand.

In research in NSW, conducted recently by the University of New South Wales for the Urban Development Institute of Australia, it was found that there was confusion over legal structures and their obligations in estates with community title (a legal arrangement similar to Victoria's owners corporation) and it was recommended that there should be efforts made to clarify the purchasers legal obligations at the point of sale (City Futures Research Centre 2008, p. 20). It would appear from our small research project that the situation in Victoria may be similar. At least at the initial contact stage through websites potential consumers of these estates appear to be given limited information.

We therefore advocate that websites include more detailed information regarding legal structures and the obligations for consumers after purchase. It may be the case that consumers gain this information closer to purchase through the viewing of contracts however, as we have noted, potential consumers may already be emotionally committed to their purchase and may not at contract stage being willing to fully engage with the implications of being part of a owners corporation.

Further research in this area is required in order to ascertain the experience of consumers in these estates and what steps need to be taken to ensure that purchasers are fully informed in all stages prior to purchase.

Because of the complexity of legal arrangements presently being adopted and the difficulties that these present to consumers, we suggest that developers and councils consider alternative strategies, such as adopted in the estate of Laurimar.

In any event, in our view more consideration needs to be given to the information provided to potential consumers at an early stage of their exploration of MPEs to ensure that the 'dream lifestyle' so often described on MPE websites is not marred by the legal obligations that consumers find they are involved in through their compulsory membership of an owners corporation once they have purchased in an estate.

References

- Blandy, S., et al. (2003), "Gated Communities: A Systematic Review of the Research Evidence", ESRC Centre for Neighbourhood Research
- Blandy S., J. Dixon and A. Dupuis, (2006) "Theorising Power Relationships in Multi-owned Residential Developments: Unpacking the Bundle of Rights." *Urban Studies* 43(13), 2365-83.
- Bosman, C. (2003), "A District Package: Constituting Community - Golden Grove: 1984-2002." *Journal of Australian Studies*: 17-27.
- Bryman, A. (2004), *Social Research Methods*, Oxford, Oxford University Press.
- City Futures Research Centre, UNSW, (2008), *Common Ground - The Costs and Provision of Community Infrastructure in Community Title Schemes in NSW*, City Futures Research Centre, UNSW, on behalf of the Urban Development Institute of Australia, Sydney.
- Consumer Affairs Victoria (2006), *Final Report of the Body Corporate Review*, Department of Consumer Affairs Victoria, Melbourne.
- Costley, D. (2006), "Master Planned Communities: Do They Offer a Solution to Urban Sprawl or a Vehicle for Seclusion of the More Affluent Consumers in Australia?" *Housing, Theory and Society* 23(3): 157-75.
- Dodson, J. and M. Berry (2004), "The Economic 'Revolution' in Melbourne's West." *Urban Policy and Research* 22(2): 137-55.
- Douglas K, R. Goodman and R. Leshinsky. (2008) "Models of Mediation: Dispute Resolution Design Under the Owners Corporation Act 2006 (Vic)." *Australasian Dispute Resolution Journal* 19(2): 95-103.
- Eves, C. (2007), "Planned Residential Community Developments: Do They Add Value?" *Property Management* 25(2): 164-79.
- Freestone, R. (2003), *The Australian Dream: Is It Sustainable? City Living: Creating Sydney's Sustainable Communities*, Museum of Sydney, Centre for Sydney, UNSW.
- Gleeson, B. (2003), "Australia's Suburbs: Aspiration and Exclusion." *Urban Policy and Research* 20(3): 229-32.
- Goodman, R. and K. Douglas (2008), "Privatised Communities: The Use of Owners Corporations in Master Planned Estates in Melbourne," *Australian Geographer*, Vol 39(4): 521-36.
- Graham T. (2008), "The Owners Corporation Act: An Overview: All That Glitters is Not Gold", Paper Presented to the *Law Institute Continuing Professional Development Seminar*, Melbourne.
- Gwyther, G. (2003), "Paradise Planned: Socio-economic Differentiation and the Master Planned Community on Sydney's Urban Fringe", *State of Australian Cities*, Carlton Hotel, Paramatta, University of Western Sydney.
- Gwyther, G. (2005), "Paradise Planned: Community Formation and the Master Planned Estate." *Urban Policy and Research* 23(1): 57-72.

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Kenna, T. (2007), "Consciously Constructing Exclusivity in the Suburbs? Unpacking a Master Planned Estate Development in Western Sydney." *Geographical Research* 45(3): 300-13.

McGuirk, P. and R. Dowling (2007), "Understanding Master-Planned Estates in Australian Cities: A Framework for Research." *Urban Policy and Research* 25(1): 21-38.

McPhee, N. (2008) "Big Changes For the World of Communal Living." *Law Institute Journal* 82 (172) 38-41.

Minnery, J. and B. Bajracharya (1999), "Visions, Planning Processes and Outcomes: Master Planned Communities in South East Queensland." *Australian Planner* 35(1): 33-41.

Randolph, B. (2004), "The Changing Australia City: New Patterns, New Policies and New Research Needs." *Urban Policy and Research* 22(4): 481-493.

Rosenblatt, T. (2005), "Lakeside Living: Commodifying Community in a Master Planned Estate", 2nd *State of Australian Cities* Conference, Griffiths University, Brisbane.

ⁱ Additional information obtained from <http://www.sanctuarylakes.com.au/default.aspx>

ⁱⁱ Additional information obtained from <http://www.marthacove.com.au/>