New ways to think about conflict resolution for more harmonious strata living

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The case results from communal living, not that a luxury high-rise apartment building in Spring Street can be compared with an ashram or a kibbutz, both those seem to operate more harmoniously.¹

Introduction

It was pleasing to read the article in the October copy of Planning News on strata. Despite the growing importance of strata title in meeting future housing demand and in achieving planning objectives, there is a dearth of Australian research into strata matters.² Australia’s future lies in medium and high density urban housing as a key response to urban planning challenges in most capital cities.³ High on national and local government agendas, urban consolidation is now seen as being “…critical to maintaining and improving the quality of life enjoyed by our communities and to help secure the nation’s productivity into the future”.⁴ As more Australian households move into apartment developments, there is urgent need for more sophisticated analysis of urban consolidation provision, location, and demand: of the housing we need and want.⁵ There is an under-examined corresponding need to find fresh ways to think about conflict resolution in strata developments that promote harmonious living in these developments and community planning more generally.

Apartment living creates private communal living where there is a sharing of space, albeit, at the exclusion of others, but this still encompasses a form of communal living. Belonging to a community requires the input from individuals as well as the constant shaping of that community. To belong means a desire to be part of a sum of a whole where individuals share time and space. Apartment living, particularly where there is a high dense environment, will inevitably result in disagreement and governance strategies on how to allocate and manage communal spaces and resources. This involves priorities for maintenance, sharing of communal car spaces, decisions regarding landscaping and so on.

Conflict is inevitable in such communal living, and a recent study indicates that both managers and owners corporation committees have few skills to deal with internal disputes.⁶ Sometimes, the owners’ corporation can navigate through these disagreements and the magnitude of dispute escalation may be dependant on the working relationship of the Owners Corporation committee of management. On other occasions, disagreements erupt into conflict and at times, there may be a need to call upon facilitators or mediators to assist with dispute resolution, particularly where committee members and property managers lack the requisite skills to assist with conflict management.⁷

We can and must learn local lessons, and there is merit in looking abroad for techniques and models on communal living. In the first instance, we should take pride in that the Australian
experience with strata title has influenced the development of regulatory regimes in a number of other countries including Malaysia, Indonesia, South Africa and Singapore. Reciprocal lessons include conflict prevention, uniform legislation, variant schema and to a lesser extent, provision for dispute resolution. Ultimately, Victorians, and Australians more generally, need alternative dispute resolution strategies for strata conflict resolution to be modeled, debated, enacted, and practiced as part of social learning and urban vitality.

Conflict prevention and containment is a priority for all communities. The size of the community may, in itself, not be significant when it comes to proposing preventative dispute resolution strategies, as these strategies are relevant to all communities, regardless of size and diversity. Shared communal facilities and spaces may, however, increase the propensity for disputes. Community engagement and public participation are also relevant to apartment communities, as this can encourage transparency and accountability in communal decision-making and empower lot owners and occupiers. It is here too, where strata could draw on planning theory and practice to assist with how communities can navigate better through consensus-building, and conflict in environmental affairs and urban development.

In Victoria, to accommodate issues arising from the new forms of residential living, new legislation, the *Owners Corporation Act 2006* (the Act), came into being on 31 December 2007. This statute was passed to deal with a range of concerns related to communal living and the shared ownership of assets. The legislative changes dealing with owners’ corporations in Victoria (formerly known as bodies corporate) include issues relating to the functions, powers, rights and responsibilities of these legal entities.

**Dispute resolution and the Owners Corporation Act 2006**

The use of dispute resolution schemes in OCs or similar legal structures is growing both in Australia and internationally. By requiring early participation in forms of dispute resolution, there is the opportunity to deal with conflict in these legal entities before the dispute escalates. Additionally, dispute resolution schemes can assist with governance concerns in OCs, thereby helping committees to run more smoothly. Internal disputes in OCs can be emotionally charged resulting in disharmony and unhappiness in the residential community. Examples of disputes that can arise include: owners dissatisfied with managers; arguments with the manager that may result from the initial contract entered into by the developer; OC committees hindered in their decision-making by incompetent or recalcitrant members; OC committees taking action against individual occupiers for breach of rules; disagreement over OC fee levels. To date, there has been little research or critique in Victoria of the kinds of dispute resolution schemes set up to deal with conflict in these types of legal entities.

New strata legislation was enacted in Victoria in 2007. The *Owners Corporation Act 2006* (OC Act) provides a better process than was previously available to deal with owners corporation
matters including conflict resolution. There is no simple solution as to how to best deal with conflict that involves complex human interactions. Disputes between neighbours in an apartment block for example may involve emotional concerns and that could impact on an entire building. Many of these matters cause tensions that may build up over a long period and it may be years before conflicts are discussed openly. The OC Act provides a method to deal with disputes that allow for a three-tiered approach. Under s 152(2) a lot owner or an OC manager may make a complaint if they believe that there has been a breach of the Act regulations or rules. After making a complaint the legislation requires that an OC participate in the first tier of dispute resolution, an internal dispute resolution scheme.

Mediation or conciliation (third party facilitation of conflict processes) offers the opportunity for parties to engage with issues in a less stressful manner. These processes provide the option of disputants telling the story of their conflict and having more control regarding the outcomes. A decision is not imposed on the parties but is reached through consensus. In particular conciliation may be useful as the legislation circumscribes some of the agreements that can be reached by parties and the conciliator is a third party who can advise on the provisions within the Act. A similar approach in mediation is known as evaluative mediation. In an OC, it may be especially important to deal with a dispute in a holistic manner that engages with interpersonal issues due to the ongoing nature of relationships within a residential setting. However, many OC committees may not understand the benefits of using third party facilitation. Committees may have little experience with conflict or conflict resolution.

A grievance committee procedure is provided for as the default option in the regulations for the legislation where an OC has not crafted its own dispute resolution scheme. The grievance procedure applies to disputes involving a lot owner, manager, an occupier or the OC. According to the rules the party making the complaint must prepare a written statement in the approved form. If, as part of the structure of the OC, there is a grievance committee, the committee must be notified of the dispute by the complainant. Where there is no grievance committee in place the OC must be notified of any dispute by the complainant, regardless of whether the OC is an immediate party to the dispute.

In the second tier, under s161 of the OC Act, if the internal dispute resolution process 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. Under s162 in the third tier of dispute resolution under the Act a party may apply to the Victorian Civil and Administrative Tribunal (VCAT) which has the power to make a determination. According to the Act under s153(3) an OC must not take action under the Act, or apply to VCAT for an order in relation to an alleged breach, unless the dispute resolution process under the rules has been followed and the OC is satisfied that the matter has not been resolved through that process. If a matter
is litigated at VCAT the dispute may be sent to mediation prior to a hearing under the legislation dealing with VCAT.

**Dispute resolution for strata – new thinking about a different approach**

Thinking differently about small scale (i.e. OC) communal living, has repercussions for wider community living and collaborative planning. Besides the immediate benefits of changing the culture of place, the benefits of challenging the prevailing culture of conflict also has promise. The avoidance of conflict and confrontation until crisis or until formal dispute resolution procedures are invoked is seen as central to the problem. So an alternative approach to dispute resolution would need to start by taking a wider brief; one that includes socializing the expectations for collaborative participative democracy that productively uses and allows dissent as part of healthy planning and decision-making in communal living.

The conviviality of higher density living in the Australian context has had variable attention from exclusive homogenous high-rises or exclusive gated communities\(^{16}\) to unsociable even disabling interior design, to social equity and environmental qualities\(^ {17}\). From a culture that is stereotypically characterized as valuing individual suburban “McMansions”, and social capital accruing from well-designed community infrastructure, the interrelations of communal living are often cast beyond the conventional realm of planning, even diminished as social work.\(^ {18}\) We have a professional and personal responsibility to rethink our role in building strong community through planning and community development.\(^ {19}\) Specifically, the capacity for people living in strata title developments to harmoniously coexist might be enriched through reviewing alternative dispute resolution and participative engagement. The weight of much-rehearsed evidence shows that collaborative decision-making promotes wider buy-in and adherence to decisions than those that are imposed or unfairly contested. Dispute resolution ought to be seen as a forum of last resort at the end of a process of communication, trust, relationship-building as part of the ethics of neighborliness. Whereas it appears to be a procedural instrument used in dealing with familiar conflicts in the absence of this prior ethics.

In the residential setting, owners, investors, and managers cannot merely presume upon the happy convergence of like-minded people to preempt or resolve conflicts. Equally, moving in and OC membership are not automatic capacities for harmonious living. While there is no conceivable requirement for permanent state of neighbourliness or public-mindedness in communal or non-communal living, the era of collaborative planning and citizen-governance lends itself to revising the excesses of Neoliberal individualism and anti-collectivism in public and private affairs. There is scope for more interdisciplinary research projects to gain benchmarks and law reform for alternative dispute resolution and harmonious strata living. Projects of this nature require attention to the interpersonal issues due to the ongoing nature of residential relationships. In signally we are undertaking such research, we welcome constructive feedback and experiences to enrich our ongoing investigations.
1. Body Corporate Strata Plan No 1578 v Perry, Supreme Court of Victoria, 3 May 1996 (unreported).
5. J-F Kelly, P Breadon, and J Reichl, "Getting the Housing We Want," (Melbourne: Grattan Institute, 2011); J-F Kelly, B Weidmann, and M Walsh, "The Housing We’d Choose," (Melbourne: Grattan Institute, 2011).
6. Leshinsky, R., Douglas, K., & Goodman, R. Appropriate dispute resolution for Owners Corporation internal disputes – a case study from Victoria, Research project 2011 funded by the Legal Services Board of Victoria and is being undertaken as a joint Swinburne and RMIT project.
17. H Easthope and S Judd, "Living Well in Greater Density," (Sydney: City Futures Research Centre, University of New South Wales and Shelter NSW, 2010).
19. Ibid.