

ARTICLE

Compensation Thresholds for Collective Sales: Singapore & Australia Compared

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(Received 4 June 2022; revised 18 August 2022; accepted 27 September 2022; first published online 25 August 2023)

Abstract

Strata titles are a critically important Australian legal export. New South Wales' (NSW) strata legislation has been particularly influential, having been adopted in numerous jurisdictions, including Singapore in 1967. As a statutory framework, strata law solves the problem of 'floating freeholds' by creating indefeasible ownership of individual units in a building, guides owners in managing the development, and sets out the dispute resolution process when disagreements occur.

In an increasing number of jurisdictions (including Singapore and three states in Australia), strata legislation also enables the strata scheme to be terminated and sold for redevelopment where the requisite majority, as opposed to an unanimity of subsidiary proprietors' consent to the sale. Strata law imposes compensation thresholds that must minimally be paid to dissenting owners. In Singapore, the rule is that no minority owner should suffer a 'financial loss,' while in NSW and Western Australia (WA), this amount is pegged to what the owner would theoretically have obtained had the unit been acquired compulsorily by the state. In this article, I compare strata law in Singapore, NSW, and WA in relation to compensation thresholds and explain why the Australian market value standard should also be adequate to compensate unit owners in Singapore.

Keywords: Urban renewal; urban rejuvenation; planning

Introduction

Globally, burgeoning urban populations in all major cities have led to a proliferation of apartments and other variations of high-rise developments.¹ As a platform to democratise the city by reducing barriers to entry and fostering socioeconomic integration,² multi-owned dwellings increase accessibility of landownership while providing the entrenchment of title security.³ In the Australasian and Singaporean context, such multi-owned dwellings are generally⁴ strata-titled and like all other registered land, confer Torrens indefeasibility⁵ on unit owners. Under a strata scheme, each unit owner is

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¹Edward SW Ti, 'Collective Best Interests in Strata Collective Sales' (2019) 93 Australian Law Journal 1025.

²Edward SW Ti, 'Comparative Lessons in Sectional Title Laws: Mitigating Urban Inequality in South Africa' (2022A) 42(4) Oxford Journal of Legal Studies 1012-1039.

³Chen Lei & Hanri Mostert, 'The Unavoidable Necessity of Formalizing Condominium Ownership in China: A Pilot Study' (2007) 2 Asian Journal of Comparative Law 1.

⁴Company title, community title (ie, Community Land Development Act 2021 (New South Wales ('NSW'))) or simply a long lease are other possible manners of holding.

⁵In NSW, the paramountcy of the registered title under section 42 of the Real Property Act 1900 (NSW) applies to strata developments by virtue of section 8 of the Strata Schemes Development Act 2015 (NSW). Similarly in Singapore, indefeasible

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the registered proprietor⁶ of her own dwelling and is regarded⁷ as an equitable tenant-in-common⁸ of the land on which the building is constructed on. Alice Christudason notes that ‘purchasers of units sought the twin benefits of an indefeasible title under the Torrens system and a full statutory scheme regulating the respective rights and duties of unit owners in a particular development’.⁹ The ‘bundle of rights’ a strata owner procures is thus the unit in question coupled with shared ownership of the common property.

In densely occupied Singapore, more than 95% of households reside in non-landed dwellings, of which nearly 80% live in non-strata public flats established by the Housing and Development Board (HDB).¹⁰ A significant proportion of Singaporean resident households – 16.5% overall or 77% of private property owners, thus reside in strata dwellings.¹¹ Despite cultural preferences for stand-alone homes, a rising proportion of Australians and New Zealand urbanites have little choice but to embrace apartment living due to rising land costs.¹² In Australia, 25% of Sydneysiders live in strata properties, and estimates are that by 2040, half of Sydney’s residential accommodation will be strata titled.¹³ In absolute terms, this translates to more than 1 million people in Sydney living in multi-owned dwellings, and ‘both the number the proportion are only going to increase.’¹⁴ In Auckland, one in four residents are expected to live in apartments by 2050.¹⁵ Not being confined to only residential buildings, and coupled with growing urbanisation, the typology will certainly grow in global importance in the years ahead.

The problem of holdout

As is often the case when property has features of a commons, problems of decision deadlock sometimes arise. Unit owners must elect committee members from among themselves to organise the management of the strata development. As a micro-democracy, lived outcomes range dramatically. In some cases, a sense of enlightened neighbourliness ensues and given aligned interests, owners work harmoniously in the best interests of all residents. Less happy outcomes arise from apathy where individual owners have no interest to take responsibility for the development, to outright politicking, where neighbours unwittingly find themselves factionalised along lines of petty power struggles. The belief that owner disagreements leading to holdout results in suboptimum urban

title upon registration conferred under section 46 of the Land Titles Act 1993 applies to strata title properties pursuant to section 4 of the Land Titles (Strata) Act 1967.

⁶In Singapore unit owners are described as ‘subsidiary proprietors’ (Land titles (Strata) Act 1967, s 3) while ‘owners of the lots’ is the preferred nomenclature in NSW (Strata Schemes Management Act 2015, s 8).

⁷In New South Wales (NSW), technically it is the body corporate of the owners, the statutorily created owners corporation (OC), which in its capacity as agent for the lot owners, holds the common property on their behalf: Strata Schemes Development Act 2015, s 28(1). While the equivalent of NSW’s OC is Singapore’s management corporation (MC), the latter is not regarded as the notional owner of the common property. Subsidiary proprietors instead directly hold the common property as tenants-in-common proportional to their share value: Land Titles (Strata) Act 1967 (Singapore), s 13(1).

⁸*Carre v Owners Corp – Strata Plan 53020* (2003) 58 NSWLR 302, 311.

⁹Alice Christudason, ‘Subdivided Buildings – Developments in Australia, Singapore and England’ (1996) 45 *International & Comparative Law Quarterly* 343, 346.

¹⁰Edward SW Ti, ‘Big Houses on a Small Island: Legislating Singapore’s ‘Good Class’ Bungalows’ (2022) *International Journal of Housing Policy*, DOI: [10.1080/19491247.2022.2105193](https://doi.org/10.1080/19491247.2022.2105193).

¹¹Department of Statistics Singapore, ‘Households’ (28 May 2022) <<https://www.singstat.gov.sg/find-data/search-by-theme/households/households/latest-data>> accessed 19 Jan 2023.

¹²Edward SW Ti, ‘Strata Plan Cancellations: A Comparative Analysis of Nine Jurisdictions’ (2022B) 48(1) *Monash University Law Review* 209, 211–213.

¹³New South Wales, *Parliamentary Debates*, Legislative Assembly, 14 Oct 2015, 4305 (Victor Dominello, Minister for Innovation and Better Regulation).

¹⁴Justice Mark Leeming, ‘Launch of *Strata Title Property Rights: Private Governance of Multi-Owned Properties* by Cathy Sherry’ (Speech, University of New South Wales, 2 Aug 2017) 3.

¹⁵New Zealand, *Parliamentary Debates*, House of Representatives (Unit Titles Bill (25 Mar 2010) 9864 (David Shearer, MP)).

outcomes is part of the reason why a growing number of jurisdictions now permit a strata development to be collectively sold and redeveloped, even in the absence of unanimity. Ultimately, collective sales are justified on the grounds of resolving the problem of dilapidated buildings, and the need for urban renewal.

Thomas Miceli¹⁶ and Richard Posner¹⁷ explain the problem of holdout and why the power to acquire compulsorily is needed: when the state endeavours to acquire land for a public project, individual owners whose land is necessary for the project acquire monopoly power in their dealings with the government. An unconditional reliance on the free market does not promote an optimal level of land assembly.¹⁸ Similarly, without supermajority sanctioned collective sales, unanimity would mean that even a single owner wields veto rights vis-à-vis unlocking the site's development potential and consequently, increasing the housing stock. In some ways, a collective sale and compulsory purchase are similar in that both are urban planning tools which are meant to rejuvenate cities and increase land use efficiency, and are justified even when not all affected owners agree.¹⁹ As incursions to property, both forms of takings lie outside the ambit of the common law.²⁰ Thus, while compulsory acquisition is state-led, a collective sale of strata property is market-led, albeit state-supported. Ter Kah Leng observes that a collective sale is akin to compulsory purchase except that the State is not involved in the forced sale or acquisition.²¹ In *Ng Swee Lang v Sassoon Samuel Bernard*, the Singapore Court of Appeal remarked that 'due to rapid changes in the economic and environmental landscape of Singapore, the Government decided to modify its policy on collective sales by relaxing the strict statutory conditions applicable to such sales.'²² Thus, public interest prevailed over the principle of ownership rights as the objective was to allow for more optimum utilisation of land.²³

The underlying tensions between requiring unanimity to protect property rights on one hand and not requiring unanimity considering broader community gains on the other, have been set out previously.²⁴ What is patent however is that a regime that presumes the need for unanimous consent to dissolve strata property creates a different conception of ownership and establishes different social purposes for ownership than one based on supermajority approval.²⁵ An examination of the underlying purposes and policies in the Singaporean and Australasian contexts shows that urban planning needs are the justification for permitting non-unanimous strata terminations and sales. In Singapore, maximising land use to produce more housing units, as well as urban rejuvenation are cited as the policy rationale for empowering majority owners in strata developments to sell the property.²⁶ One parliamentarian has even stated that failing to provide the enabling legislation for a non-unanimous collective sale would 'not be the responsible approach in land scarce

¹⁶Thomas Miceli, *The Economic Theory of Eminent Domain, Private Property, Public Use* (Cambridge University Press 2011) 138.

¹⁷Richard Posner, *Economic Analysis of Law* (9th edn, Wolters Kluwer 2014) 70–71.

¹⁸Melissa Pocock, 'Compulsory Acquisition, Public Benefits and Large-Scale Private Sector Redevelopments: Can Australia Learn from the United Kingdom?' (2014) 19 *Local Government Law Journal* 129, 141.

¹⁹Edward SW Ti, 'Towards fairly apportioning sale proceeds in a collective sale of Strata property' (2020) 43 *University of New South Wales Law Journal* 1494, 1498.

²⁰Blackstone said that the common law would not authorise the 'least violation' of private property notwithstanding the public benefit that might follow, though he was of the view that the legislature could compel acquisition: William Blackstone, *Commentaries on the Laws of England* (Clarendon Press 1765) bk 1, ch 1, 135.

²¹Ter Kah Leng, 'A Man's Home is [not] his Castle – En Bloc Collective Sales in Singapore' (2008) 20 *Singapore Academy of Law Journal* 49.

²²*Ng Swee Lang v Sassoon Samuel Bernard* [2008] 2 SLR(R) 597, 601 ('*Ng Swee Lang*').

²³Tang Hang Wu & Kelvin Low (eds), *Tan Sook Yee's Principles of Singapore Land Law* (4th edn, LexisNexis 2019) 821.

²⁴Ti, 'Towards fairly apportioning sale proceeds' (n 19) 1497–1501; Ti, 'Collective Best Interests in Strata Collective Sales' (n 1); Ti, 'Strata Plan Cancellations' (n 12).

²⁵Doug Harris, 'Owning and Dissolving Strata Property' (2017) 50 *University of British Columbia Law Review* 935, 944.

²⁶*Singapore Parliamentary Debates*, Official Report (31 Jul 1998) vol 69, col 601–607 (Ho Peng Kee, Minister of State for Law).

Singapore.²⁷ The Singapore High Court has observed that ‘the provisions relating to collective sale in the [Land Titles (Strata)] Act was to make it easier for collective sales to go through ... to promote ... urban redevelopment.’²⁸ As Teo Keang Sood rightly notes, if zoning laws enhance a site’s development potential, it would ‘defeat national objectives if [these changes] cannot be translated into better utilisation of scarce prime land resources in Singapore to meet a growing population.’²⁹ In the context of New Zealand, the government has observed that requiring unanimity is ‘cumbersome, time-consuming and impractical,’³⁰ and often led to holdout situations which prevented the body corporate from acting in the interests of the majority owners.³¹ All four of the Australasian jurisdictions permitting strata collective sales by a supermajority justify their decisions based on the closely related goals of preventing holdouts³² and providing more housing.³³

Singapore has enabled the collective sale of strata developments via a supermajority of 80% or 90% since 1999.³⁴ New South Wales (NSW) itself only permitted non-unanimous collective sales in late 2016,³⁵ though it was NSW that provided Singapore with the initial legislative blueprint for strata law.³⁶ In the rest of Australasia, the Northern Territory (NT), Western Australia (WA), and New Zealand also provide for termination of the strata scheme and subsequent sale via a non-unanimous supermajority.³⁷ Elsewhere, numerous states in the United States,³⁸ several provinces in Canada, Japan, Dubai, as well as Hong Kong SAR have also been observed to enact laws allowing for the non-unanimous collective sale of strata developments.³⁹ As non-unanimous collective sales enable the forced sale of minority owners’ units, the statutory framework in both Singapore⁴⁰ and NSW⁴¹ rightly articulates how the respective sale committees must conduct themselves. These issues have been discussed elsewhere.⁴²

In this comparative paper, I consider another important rule that has parallels in Singapore, NSW, and WA strata law – the right for a collective sale to be set aside if the compensation received by an owner is below that of a certain threshold. This is a relevant comparison considering the close

²⁷*Singapore Parliamentary Debates* (31 Jul 1998) vol 69, col 607 (Chng Hee Kok).

²⁸*Mohamed Amin bin Mohamed Taib v Lim Choon Thye* [2009] 3 SLR(R) 193, 201 (‘Mohamed Amin’).

²⁹Teo Keang Sood, ‘Collective Sales in Singapore: Selected Issues’ (2010) 22 *Singapore Academy of Law Journal* 66, 71.

³⁰Department of Building and Housing, ‘Department Report to the Social Services Select Committee on the Unit Titles Bill 2008’ (Jul 2009) 21.

³¹*ibid.*

³²New Zealand, *Parliamentary Debates*, House of Representatives, 5 Mar 2009, 1715 (Phil Heatley, Minister of Housing): ‘This... will make it easier to redevelop a unit title property... [i]t will also prevent hold-outs.’ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 26 Nov 2014, 5608 (Peter Chandler, Minister for Lands, Planning and the Environment): ‘This legislation is aimed at those who constantly undermine the wishes of the majority of property owners in an old and devalued unit block.’ Western Australia, *Parliamentary Debates*, Legislative Assembly, 21 Aug 2018, 4941 (Liza Harvey, MLA): ‘I live in an area undergoing significant revitalisation, and under the existing legislation if there is not 100 per cent agreement on the termination of the scheme, it cannot progress – and it can just be one person holding out.’

³³New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 Oct 2015, 4305 (Ray Williams MP): ‘[there is] great need across the Sydney Metropolitan area to provide housing.’

³⁴*Singapore Parliamentary Debates* (31 Jul 1998) vol 69 col 62 (Ho Peng Kee, Minister of State for Law). The higher percentage, rarely adopted in practice, applies to developments less than 10 years old.

³⁵The Strata Schemes Development Act 2015 (NSW) came into force on 30 November 2016.

³⁶Strata law was first conceived in Victoria in 1960: Transfer of Land (Stratum Estates) Act 1960 (Vic) followed shortly by New South Wales (NSW) in 1961: Conveyancing (Strata Titles) Act 1961 (NSW), and quickly adopted by the rest of Australia thereafter: Brendan Edgeworth, *Butt’s Land Law* (7th edn, Thomson Reuters 2017) 952. The NSW model has proven globally impactful, being adapted in several jurisdictions, including Singapore in 1967, just two years after independence.

³⁷Ti, ‘Strata Plan Cancellations’ (n 12).

³⁸See in particular Uniform Common Interest Ownership Act 2021 (UCIOA), §2-118, and Uniform Condominium Act 2021 (UCA), §2-118 which provides that a scheme may be terminated by agreement of unit owners holding a 80% majority. Approximately half the states in the US have enacted these uniform laws.

³⁹Ti, ‘Collective Best Interests in Strata Collective Sales’ (n 1) 1026.

⁴⁰Land Titles (Strata) Act 1967 (Singapore), s 84A(9) (duty of good faith).

⁴¹Strata Schemes Development Act 2015 (NSW), s 165 (duty to avoid conflicts of interest).

⁴²Teo, ‘Collective Sales in Singapore’ (n 29) 81–89; Ti, ‘Collective Best Interests in Strata Collective Sales’ (n 1) 1025–1039.

historical links between Singaporean and Australian strata law. As Bram Akkermans states, the foremost reason to compare aspects of property law is to 'learn from other systems and see if one's own system can be improved.'⁴³ In Singapore, the threshold requirement is that the collective sale does not cause unit owners to suffer a 'financial loss' considering the price paid by the affected owner. In the two Australian states of NSW⁴⁴ and WA,⁴⁵ the rule is that unit owners must minimally receive market price compensation following a collective sale. Not satisfying these thresholds are grounds to preclude the collective sale. Indeed, adopting NSW's 'compensation value' standard in Singapore to better facilitate collective sales is particularly justified given the problem of land scarcity in Singapore. The remaining two Australasian jurisdictions which permit terminations by a supermajority (NZ and NT) do not have a similar rule,⁴⁶ and rely instead on the court's general discretion to order a sale only when it is 'just and equitable'⁴⁷ to do so. It is argued that the Australian rule requiring unit owners to be minimally compensated at market price is preferable to the 'no financial loss' rule adopted in Singapore. I outline some problems that could arise under the current position in Singapore and explain why the Australian framework better facilitates the underlying policy of fostering urban renewal, by not unduly hampering collective sales, while at the same time ensuring that all unit owners are at least guaranteed market price compensation for their unit. Indeed, as the NSW legislation states that the amount paid for the sale of the lots and common property 'must be apportioned among the owners ... in the same proportions as the unit entitlements of the owners' lots,⁴⁸ there is an implied prohibition that additional payments by developers are not prohibited. Following this preface, I briefly outline how collective sales are administered in the Singaporean and Australian context before explaining the statutory 'threshold' rule and applicable case law in some detail. Before concluding, an analysis of the comparisons is made, which explain why the Australian position may be preferable.

Outline of Collective Sales in Singapore and Australia

In Singapore, a two-step process is needed to commence a collective sale. At the first stage, at least 20% by share value⁴⁹ or 25% by number of strata owners seek an extraordinary general meeting for the purposes of constituting a collective sale committee.⁵⁰ At the second stage, the convened meeting needs at least 30% by share value of the strata owners to form the requisite quorum. If quorum is met, a simple majority of attendees may elect from amongst themselves a sales committee numbering from three to 14 persons.⁵¹ It is the Collective Sale Committee (CSC) distinct from the Management Committee (MC)⁵² that administers the collective sale. Section 84A(1) of the Land Titles (Strata) Act 1967 (Singapore) states that the requisite majority of strata owners (80% or 90%) makes an application for the sale of the whole strata property in an agreement that 'specifies the proposed method of distributing sale proceeds'. The approval for apportionment is done at a general meeting of the management corporation,⁵³ with the rules requiring that the general meeting

⁴³Bram Akkermans, 'The Comparative Method in Property Law', in Susan Bright & Sarah Blandy (eds), *Researching Property Law* (Palgrave 2016) 91.

⁴⁴Strata Schemes Development Act 2015 (NSW), s 182(d).

⁴⁵Strata Titles Act 1985 (WA), s 183(9B).

⁴⁶I refer to the respective statutory instruments in Australia which permit a collective sale by a supermajority (NSW, NT, and WA) as well as New Zealand.

⁴⁷Unit Titles Act 2010 (NZ), s 188(2) and Termination of Units Plans and Unit Title Schemes Act (NT), s 17(1).

⁴⁸Strata Schemes Development Act 2015 (NSW), s 171(1).

⁴⁹The share value of a lot determines each subsidiary proprietor's quantum in the undivided share of the common property: Building Maintenance and Strata Management Act 2004 (Singapore), s 62(1).

⁵⁰Land Titles (Strata) Act 1967 (Singapore), sch 2. In practice, this is done by interested strata owners collecting the requisite number of signatures.

⁵¹Land Titles (Strata) Act 1967 (Singapore), sch 3.

⁵²Though there is no prohibition against double-hatting.

⁵³The body corporate of all the strata owners: Land Titles (Strata) Act 1967 (Singapore), s 10a.

must be convened before any strata owner signs the collective sales agreement.⁵⁴ An application for a collective sale is made to the Strata Titles Board in the first instance and if a stop order is issued due to objecting owners, the matter is heard by the Singapore High Court.⁵⁵ It has been held by the Singapore Court of Appeal that a collective sale is not a typical contractual sale of land, but a form of statutory sale which binds all owners once the requisite formalities and supermajority owner support is achieved.⁵⁶

Under NSW law, a strata renewal proposal (suggesting either a collective sale or redevelopment) must first be presented⁵⁷ to the Strata Committee, which then decides whether to present the proposal to the Owners Corporation (OC) at a general meeting for further consideration. Section 158 (2) of the Strata Schemes Development Act 2015 (NSW) nevertheless provides for the convening of a general meeting if a 'qualified request'⁵⁸ consisting of at least 25% of owners by unit entitlements⁵⁹ have requested for the proposal to be considered, regardless the view of the Strata Committee. The purpose of the general meeting is for the OC to determine whether the strata renewal proposal warrants investigation by another committee called the Strata Renewal Committee (SRC); at the general meeting, a simple majority determines whether a SRC is established.⁶⁰ The SRC is tasked to translate the strata renewal proposal into a strata renewal plan and it is the strata renewal plan which gets put to the vote by the OC.⁶¹ The renewal plan that has to be prepared by the SRC is required to be comprehensive,⁶² and in respect of a collective sale, cannot recommend that any strata owner receive less than what they would theoretically have obtained under the Land Acquisition (Just Terms Compensation) Act 1991 (NSW), ie, market value. At least 75% of the strata owners must support the collective sale or redevelopment for the plan to take place. Once the requisite majority of strata owners support the collective sale, an application to dissolve the strata scheme is made to the NSW Registrar-General⁶³ and a petition to the NSW Land and Environment Court to terminate the strata scheme is made.⁶⁴ The court has the ultimate power to approve the renewal proposal on grounds that the proposal be 'just and equitable in all the circumstances'.⁶⁵ The position in WA is similar to that of NSW, save that the strata scheme must have five or more lots otherwise unanimity is needed; the requisite supermajority threshold is otherwise set at 80%.⁶⁶

A point that should be highlighted is that grounds for any objections are raised only after a supermajority of owners support the sale. In other words, for a collective sale to succeed, it must engender the requisite percentage of owners in support of the sale *and* not be subject to any valid objections. Compensation thresholds are one such ground for objectors to raise.

⁵⁴Land Titles (Strata) Act 1967 (Singapore), sch 3, r 7(2).

⁵⁵Land Titles (Strata) Act 1967 (Singapore), s 84A(2A).

⁵⁶*Ng Swee Lang* (n 22) 602.

⁵⁷The person making this written proposal need not be an owner of a strata lot, ie, A developer: Strata Schemes Development Act 2015 (NSW), s 156(1).

⁵⁸Strata Schemes Development Act 2015 (NSW), s 154; Strata Schemes Management Act 2015 (NSW), s 19(4).

⁵⁹Unit entitlements under NSW law carry the same meaning as share values do under Singapore law. See Strata Schemes Development Act 2015 (NSW), s 28(1).

⁶⁰Strata Schemes Development Act 2015 (NSW), s 158(3).

⁶¹Strata Schemes Development Act 2015 (NSW), s 164.

⁶²It must include, among others, the purchaser/developer (if known), the proposed/reserve price, timelines, planning approvals, construction details, relocation arrangements and the nature of the proposal: Strata Schemes Development Act 2015 (NSW), s 170.

⁶³Strata Schemes Development Act 2015 (NSW), s 176(2).

⁶⁴Strata Schemes Development Act 2015 (NSW), s 179.

⁶⁵Strata Schemes Development Act 2015 (NSW), s 182(1)(d). See also New South Wales, *Parliamentary Debates*, Legislative Council, 21 Oct 2015, 4639 (Niall Blair).

⁶⁶Strata Titles Act 1985 (WA), ss 182(7)(b) and 183(9).

Compensation thresholds as grounds of objections – Singapore and Australia compared

Singapore

Even where a transaction is conducted in good faith, an application for a collective sale will not be approved if an objector, bring a unit owner, will incur a financial loss or the proceeds of sale to be received by any objector, being a unit owner or mortgagee, are insufficient to redeem any mortgage in respect of the unit concerned.⁶⁷ Section 84(8)(a) of the Land Titles (Strata) Act 1967 (Singapore) states that a subsidiary proprietor 'is taken to have incurred a financial loss if the proceeds of sale for the subsidiary proprietor's lot, after such deduction [as the Court may allow], are less than the price the subsidiary proprietor paid for that lot.'⁶⁸ 'Deductions' refer to the arithmetic exercise of setting off certain permitted expenses in determining whether an owner made a financial loss. In other words, if the net proceeds payable to a unit owner from a collective sale would be less than what the subsidiary proprietor paid for the lot, there are *prima facie* grounds to resist the sale. Under the Fourth Schedule to the Land Titles (Strata) Act 1967 (Singapore), permitted deductions allowable by the Court include stamp duties, legal fees and costs incurred pursuant to the collective sale. Ter states that this is not an inclusive list but provides some indication to owners intending to make financial loss claims.⁶⁹ There is authority that expenses such as mortgage interest⁷⁰ and renovation costs are not deductible. In *Yeo Loo Keng v Tan Yew Lee Kevin*,⁷¹ one issue before the Singapore High Court was whether the anticipated shortfall following a collective sale to a minority owner's Central Provident Fund (CPF)⁷² account may be regarded as a deductible expense to determine if that owner suffered a financial loss. Including CPF imputed interest,⁷³ the owner in that case had drawn down S\$407,598.82 from his CPF account but after paying off the bank mortgage, would only be able to return S\$319,258.45 to CPF, resulting in a shortfall of S\$88,340.37.⁷⁴ Although the CPF Board itself described the shortfall as 'a financial loss to [the unit owner's] CPF accounts',⁷⁵ the Singapore High Court rightly held that just as payments of a mortgage principal and interest are not regarded as allowable deductions, any shortfall to an owner's CPF account is not deductible in determining whether that owner suffered a financial loss.⁷⁶ To hold otherwise would result in double-counting.⁷⁷ In so ruling, Belinda Ang J endorsed the view that having too expansive a list of deductible expenses would defeat the underlying statutory purpose of facilitating collective sales.⁷⁸

Thus, assuming a buyer purchased a strata unit for S\$2 million, spent S\$100,000 on renovations, S\$100,000 on mortgage interest, and incurred stamp duty fees of \$500,000 in its acquisition and/or disposal, he would be able to object to a collective sale if the proceeds payable to him were less than

⁶⁷Land Titles (Strata) Act 1967 (Singapore), s 84A(7).

⁶⁸Subsection (b) clarifies that there is no financial loss simply because the net gain by some owners are more than others while subsection (c) states that the concept of 'financial loss' does not apply if the subsidiary proprietor purchased the lot after a collective sale committee has signed a sale and purchase agreement to sell all the lots and common property to a purchaser.

⁶⁹Ter, 'A Man's Home' (n 21) 93. This is a reasonable interpretation considering the wording of section 84A(8) of the Land Titles (Strata) Act 1967: '...is taken to have incurred a financial loss if the proceeds of sale for the... lot, after such deductions... [as the court] may allow (including all or any of the deductions specified in the Fourth Schedule), are less than the price the subsidiary proprietor paid for that lot.'

⁷⁰*Gong Ing San v Questvest (S) Pte Ltd* [2005] SGSTB 4.

⁷¹*Yeo Loo Keng v Tan Yew Lee Kevin* [2007] 3 SLR(R) 455 ('*Yeo Loo Keng*').

⁷²CPF is Singapore's compulsory savings and pension plan. Part of CPF members' moneys can be used to finance residential property.

⁷³Interest accrues when members' use part of their CPF funds to purchase a residential property and must be repaid if the property is sold; this is to ensure that members' have adequate savings for retirement.

⁷⁴*Yeo Loo Keng* (n 71) 469.

⁷⁵*Yeo Loo Keng* (n 71) 464.

⁷⁶*Yeo Loo Keng* (n 71) 469.

⁷⁷*Yeo Loo Keng* (n 71) 469.

⁷⁸*Yeo Loo Keng* (n 71) 470.

\$2.5 million; the renovation and interest expenses would be ignored. A developer could however simply compensate such a buyer so that he or she would not suffer any loss. This is principally what happened in *Mohamed Amin*,⁷⁹ where Prakash J held that it was permissible for a developer to compensate two dissenting owners for their anticipated loss of about S\$94,000 each, according to the distribution of the collective sale's proceeds. As the requisite majority threshold was satisfied, the fact that the two dissenters preferred not to be compensated, and thus have the sale halted, was irrelevant. As rightly observed by the Singapore High Court in that case, '[the Act] does not require that all the subsidiary proprietors should make a profit from the *en bloc* sale. It only mandates that no one should make a financial loss.'⁸⁰ As these additional payments were made by the developer to the minority owners with the knowledge and consent of the majority owners, *Mohamed Amin* is not a controversial decision.

Under Singapore's strata framework, there are two ways the defect of having an owner suffer a financial loss, and hence precluding a collective sale, may be cured. First, the Singapore High Court may, with the consent of the CSC,⁸¹ increase the proportion of sale proceeds to owners who suffered a financial loss.⁸² This is capped to the *higher* of the aggregate sum of 0.25% of the proceeds of sale for each lot or S\$2,000.⁸³ It is rationalised that consent of the CSC is needed in this regard because the minority owners are compensated from the sale proceeds, ie, the compensation directly affects the sums received by the rest of the owners. Second, a developer may make additional payments to the dissenting owners who suffered a financial loss, as was the case in *Mohamed Amin*, and in so doing, such owners would no longer have a basis to claim a loss. Both options are reasonable outcomes given the statutory framework.

Perhaps more controversially, the Singapore Court of Appeal has held that it is permissible for a developer-purchaser to make *selective* payments to non-signatories to induce them to sign a collective sale agreement (CSA), even where this is without the consent or knowledge of the other owners. In *Chua Choon Cheng v Allgreen Properties Ltd (Allgreen)*,⁸⁴ the decision 'to save a mere sum of S \$11,000'⁸⁵ on architect fees⁸⁶ led the CSC with the support of a majority of owners, agreeing to sell the strata development 'Regent Garden' at S\$34 million, significantly below the subsequently discovered market value of between S\$40 million to S\$42 million.⁸⁷ Additional payments approximating S \$2 million⁸⁸ were offered by Allgreen (the developer-purchaser), to the six objectors to secure their consent to the sale, and so obviate the need for the matter to be heard by the Singapore Strata Titles Board.⁸⁹ So induced by the payments, the objectors withdrew their objections and unanimous consent was achieved as the majority had already signed the CSA at the earlier agreed price of S\$34 million. Ironically, it was therefore the majority owners who sought to have the sale set aside. In dismissing their appeal, VK Rajah JA – for the court – held that there would be no implied term prohibiting a purchaser from making additional payments to minority unit owners,⁹⁰ as a purchaser will usually do whatever it sensibly takes to finalise a sale transaction after an agreement has

⁷⁹*Mohamed Amin* (n 28).

⁸⁰*ibid* 203–204.

⁸¹The CSC is a sub-committee of the owners, distinct from the management committee (MC), who are appointed to manage the collective sale. The equivalent under NSW is the strata renewal committee. There is no equivalent in the other jurisdictions in Australasia, and the sale is simply managed by the Owners Corporation.

⁸²Land Titles (Strata) Act 1967 (Singapore), s 84A(7A).

⁸³Land Titles (Strata) Act 1967 (Singapore), s 84A(7B).

⁸⁴*Chua Choon Cheng v Allgreen Properties Ltd* [2009] 3 SLR 193 paras 27–28 ('*Allgreen*').

⁸⁵*ibid* para 90.

⁸⁶*ibid* para 6.

⁸⁷*ibid* para 15.

⁸⁸*ibid* para 16.

⁸⁹Pursuant to clause 3(5) of the collective sale agreement.

⁹⁰*Allgreen* (n 84) para 45.

been entered into.⁹¹ The apex court also held that there was no continuing duty of good faith or disclosure on the part of the purchaser toward the majority owners requiring the purchaser to inform the latter about the additional payments made.⁹² While Rajah JA held that the practice of developers making direct payments to minority owners may be divisive and unethical, there was nothing legally improper about such incentive payments.⁹³ In short, the court endorsed the sale as it did not find that the payments made by Allgreen to the minority owners was illegal, even if this led to unequal treatment vis-à-vis the majority owners. It should be noted that the minority owners in *Allgreen* did not suffer a financial loss and the aggregate sum of S\$2 million was not to compensate, but to induce a change of behaviour. Notwithstanding, I will explain in the next section why the contentious outcome in *Allgreen* could have been avoided if Singapore adopted NSW's 'compensation value' standard.

New South Wales (NSW)

In NSW, the 'financial loss' threshold is not used. Instead, section 170(3) of the Strata Schemes Development Act 2015 (NSW) states that the purchase of each owner's lot must be 'not less than the compensation value for the lot. 'Compensation value' means 'the compensation to which the owner of the lot would be entitled as determined under section 55 of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW)'.⁹⁴ This refers to 'the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer'.⁹⁵ While observing that a collective sale will typically reap more than the sum of the market values of the individual lots,⁹⁶ NSW Minister Victor Dominello explained that the compensation value principle 'is a safety net, ensuring that no owner can receive less than the market value of their unit'.⁹⁷ In determining market value, the hypothesised buyer and seller are assumed to take into account the highest and best use of the building and its site, with the valuation date taken to be not more than 45 days before the day on which the OC meets to consider the strata renewal plan.⁹⁸ Thus, unlike the position in Singapore, the NSW framework can endorse a collective sale even if a unit owner makes a financial loss, so long as the compensation received by the owner at the relevant time reflects the property's fair market value.

Because the phrase 'of the lot' circumscribes the 'compensation value' standard, it could be said that the applicable minimum threshold valuation referred to under the NSW Act is how much each lot owner would have obtained had their lot been compulsorily acquired, rather than how much each lot owner would proportionately have obtained from the collective sale assuming the development was sold at market value. Indeed, this was the approach adopted by the NSW Land and Environmental Court in *Strata Plan No 61299*.⁹⁹ In that case, Pain J accepted Savills' assessment that the *market value* of the development was A\$81.8 million¹⁰⁰ but that the *compensation value* for the building when determined on a per lot basis was A\$64.16 million.¹⁰¹ While the former essentially considers how much the underlying land is worth upon redevelopment or refurbishment, the latter is simply an additive exercise after valuing each unit. Indeed, it is reasonable to assume

⁹¹*Allgreen* (n 84) para 63.

⁹²*Allgreen* (n 84) paras 85–89.

⁹³*Allgreen* (n 84) para 91.

⁹⁴Strata Schemes Development Act 2015 (NSW), s 154.

⁹⁵Land Acquisition (Just Terms Compensation) Act 1991 (NSW), s 56.

⁹⁶New South Wales, *Parliamentary Debates*, Legislative Assembly (Strata Schemes Development Bill 2015), 14 Oct 2015 (Victor Dominello, Minister for Innovation and Better Regulation).

⁹⁷*ibid.* There was no further explanation in the NSW Hansard explaining why the State chose to adopt this standard.

⁹⁸*Strata Schemes Development Regulation 2016* (NSW), r 27.

⁹⁹*Application by the Owners – Strata Plan No 61299* [2019] NSWLEC 111 (*SP 61299*).

¹⁰⁰*ibid* para 89.

¹⁰¹*ibid* para 97.

that the sum is greater than its parts because if units were worth more individually than collectively, a supermajority would not have the strata scheme terminated, as unit owners could simply sell their own units.¹⁰²

Arguably, however, the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) may have intended for ‘compensation value’ to actually refer to the proportionate share of the development’s market value. In determining a lot’s compensation value, ‘the buyer and seller... are to be assumed to take into account the highest and best use of the land.’¹⁰³ This exhortation is similarly found in the determination of the development’s market value.¹⁰⁴ The words ‘highest and best use’ mean ‘the lawful, physically possible and financially feasible use that maximises the value of the land.’¹⁰⁵ Since strata units and common property do not have any independent redevelopment utility, it is difficult to imagine what the regulation means when it says that the parties are assumed to take into account the highest and best use of the land, other than meaning that each lot owner should be minimally compensated at market price, in proportion to the collective sale proceeds. The legislation could not have meant that ‘highest and best use’ simply refers to the development value of the site attributable to a particular strata unit because that inherent value would already have been captured in the unit’s market price. In *Strata Plan No 61299*, the important detail whether ‘highest and best use’ in relation to the development and in relation to each strata unit mean the same appears to be glossed over: while the market value assessment proceeded on the basis that the ‘highest and best use’ of the building was to be sold to a hotel organiser that would refurbish and operate it,¹⁰⁶ there is no mention how the valuers applied the ‘highest and best use’ test when computing compensation value even though the court explicitly cited the relevant regulations mentioning this.¹⁰⁷ The apparent omission of the ‘highest and best use’ standard when computing each lot’s compensation value may have arisen because as a valuation convention, ‘highest and best’ use typically refers to the site as a whole. For clarity, the reference to ‘highest and best use’ should thus be deleted in relation to compensation value, or as in my reading of the regulations, the provisions should make it clear that compensation value minimally means a proportion share of the collective market value of the development.

Western Australia (WA)

A termination proposal in WA can only be confirmed if owners who do not support the termination receive ‘fair market value,’¹⁰⁸ or interestingly, a ‘like for like exchange for the lot.’¹⁰⁹ This means that the acquiring developer may compensate the dissenting owner *in specie*, with the legislation directing the tribunal to consider the value of what is offered in exchange in relation to the lot in question, as well as how the location, facilities and amenity of what is offered in exchange compares to that of the lot.¹¹⁰ Fair market value means that the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under section 241 of the Land Administration Act 1997 (WA)(LAA) and the dissenter will not be disadvantaged financially as a result of the termination of the scheme,¹¹¹ taking into account

¹⁰²Ti, ‘Towards fairly apportioning sale proceeds’ (n 19) 1518.

¹⁰³Strata Schemes Development Regulation 2016 (NSW), r 27(c).

¹⁰⁴Strata Schemes Development Regulation 2016 (NSW), r 28(2).

¹⁰⁵Strata Schemes Development Regulation 2016 (NSW), r 26.

¹⁰⁶SP 61299 (n 99) para 86.

¹⁰⁷SP 61299 (n 99) paras 9–10.

¹⁰⁸Strata Titles Act 1985 (WA), s 183(9)(b).

¹⁰⁹*ibid.*

¹¹⁰Strata Titles Act 1985 (WA), s 183(11).

¹¹¹Strata Titles Act 1985 (WA), s 183(10)(a).

expenses such as moving costs, business disruption, and any tax burdens.¹¹² While the respective statutes in WA do not define what ‘value’ mean, the Supreme Court of Western Australia held that pursuant to the LAA, ‘value is determined by identifying the price of a notional bargain between hypothetical vendor and purchaser who are willing, but not anxious; prudent; and well informed.’¹¹³ This statement is consistent with Griffith CJ’s test of value in the High Court of Australia;¹¹⁴ it can be concluded that in both NSW and WA, a uniform definition of what ‘value’ in the context of land compensation has been adopted. The provision that a strata owner may receive in lieu of financial compensation, a ‘like for like exchange for the lot’ allows a developer to essentially compensate a strata owner *in specie*, by providing the owner a replacement property of equivalent value. In this respect, the statutory provisions direct the Tribunal to consider the fair market value of both properties, as well as ‘how the location, facilities and amenity of what is offered in exchange compares to that of the lot.’¹¹⁵

The position in WA is akin to NSW in that both states adopt a value pegged at compulsory acquisition as opposed to Singapore’s ‘financial loss’ test. While NSW does not mandate the method adopted by the valuer,¹¹⁶ the sales comparison approach is the only acceptable valuation methodology under the WA regulations.¹¹⁷ Importantly, WA also differs from NSW because while the latter requires that *all lots* are to receive ‘compensation value’ minimally, the LAA only concerns itself with ensuring that owners of lots *who do not support the termination* receive fair market value or a like for like exchange. The WA regulations appear to be still undergoing refinements because while the Act states that the regulations must prescribe matters relating to the ‘highest and best use of the lot’¹¹⁸ the regulations do not do so. However, because a developer could provide an objecting owner a ‘like for like’ replacement property, it appears that ‘market value’ refers to how much that owner would have received if that particular strata unit was compulsorily acquired by the state, rather than a proportionate share in the collective sale of the development. There is no case law in WA dealing with disputes regarding the ‘fair market value’ or ‘like for like exchange’ threshold in a collective sale.¹¹⁹

For convenience, the key points of this comparative overview have been tabulated:

Jurisdiction			
No.		Compensation threshold adopted	Key details
1	Singapore	Objectors are not to suffer a ‘financial loss’	a. Permissible for a developer-purchaser to

(Continued)

¹¹²Strata Titles Act 1985 (WA), s 183(10)(c).

¹¹³*McKay v Commissioner of Main Roads [No 7]* [2011] WASC 223, para 2213 (Beech J).

¹¹⁴*Spencer v Commonwealth* (1907) 5 CLR 418, 432 (Griffith CJ): ‘The test of value of land is to be determined, not by inquiring what price a man desiring to sell could actually have obtained for it on a given day, ie, whether there was in fact on that day a willing buyer, but by inquiring ‘What would a man desiring to buy the land have had to pay for it on that day to a vendor willing to sell it for a fair price but not desirous to sell?’ It is, no doubt, very difficult to answer such a question, and any answer must be to some extent conjectural. The necessary mental process is to put yourself as far as possible in the position of persons conversant with the subject at the relevant time, and from that point of view to ascertain what, according to the then current opinion of land values, a purchaser would have had to offer for the land to induce such a willing vendor to sell it, or, in other words, to inquire at what point a desirous purchaser and a not unwilling vendor would come together.’

¹¹⁵Strata Titles Act 1985 (WA), s 183(11).

¹¹⁶*SP 61299* (n 99) para 87: the valuer adopted three methods of valuation – discounted cashflow, capitalisation of income and the direct comparison method.

¹¹⁷Strata Titles (General) Regulations 2019 (WA), r 117. This essentially uses sales of similar properties recently sold to estimate the property’s market value, after making any necessary adjustments to account for differences in the comparables.

¹¹⁸Strata Titles Act 1985 (WA), s 179(4)(b).

¹¹⁹Based on Westlaw and Austlii searches (as at 26 May 2023).

(Continued.)

Jurisdiction			
No.		Compensation threshold adopted	Key details
			<p>compensate unwilling dissenters so they do not suffer a financial loss (<i>Mohamed Amin</i>).</p> <p>b. Permissible for a developer-purchaser to make payments to non-signatories to induce them to sign the CSA without informing the other owners (<i>Allgreen</i>).</p>
2	New South Wales	All strata owners must minimally receive 'compensation value' for their lots	<p>a. No valuation methodology mandated</p> <p>b. Arguable whether 'compensation value' refers to the market value of a particular strata unit or the proportionate share of development sold at market value.</p>
3	Western Australia	Objectors are to minimally receive 'fair market value' for their lots	a. Only sales comparison approach may be used to conduct valuations.

Analysis of the 'no financial loss' and 'compensation value' rules

The 'compensation value' rule better promotes equal treatment among owners

As discussed above, *Allgreen* stands for the proposition that a developer-purchaser is permitted to make secret incentive payments to non-signatory minority owners in order to induce them to sign the CSA, unless there is an express contractual term to the contrary. While the developer in *Allgreen* paid all six minority owners to obtain unanimity in the collective sale, it is not difficult to imagine a scenario where a potential buyer is only seeking to cross the 80% threshold and therefore only needs to incentivise some, but not all the non-signatories. The same reasoning in *Allgreen* could be used to endorse this even less desirable scenario where even minority owners are selectively enriched. *Allgreen* was not about minority owners suffering a financial loss. Nevertheless, the case illustrates why NSW's universal 'compensation value' standard achieves a more palatable outcome. In the first place, if NSW's 'compensation value' rule were adopted in Singapore, the situation in *Allgreen*, where the majority of owners who had already signed the CSA and ultimately receiving below market value compensation, would not have arisen. Under NSW law, the strata renewal plan 'must provide for the purchase of each owner's lot at not less than the compensation value for the lot.'¹²⁰ Judicially preventing undisclosed payments would address some, but not all the disquiet highlighted. It should be noted that the financial loss rule in Singapore only applies to objectors and earlier signatories are not protected by this rule, even if the context of their signing – ie, they were financially induced – may be questionable. In *Allgreen*, a supermajority of owners who signed the CSA did so despite the sales committee's failure to engage an architect to compute the base development value of the site at the material time. By ensuring that the division of proceeds gives market value transactions to all units, the 'compensation value' rule ensures that all owners get at least fair market compensation even where, for instance, a sales committee was found wanting in its duty of

¹²⁰Strata Schemes Development Act 2015 (NSW), s 170(3).

care. Strata owners should not be in a worse position than landowners subject to a compulsory acquisition. Finally, as noted above, the NSW rule differs from WA which requires that only dissenting owners who do not support the termination receive fair market value.¹²¹ It would thus be interesting to see whether a WA court would similarly adopt *Allgreen's* logic if a similar factual matrix arose there.

In their analysis of *Allgreen*, Kelvin Low, Wan Wai Yee, and Alvin Chan highlight the lack of parity in treatment between majority and minority owners, making comparisons between collective sales and takeover bids for securities.¹²² Under the takeover codes of several jurisdictions, including Singapore and Hong Kong as the authors point out,¹²³ but also under Australian,¹²⁴ English,¹²⁵ and American¹²⁶ securities law, the equal treatment rule requires bidders to pay the same price to all shareholders wishing to accept a tender offer. This duty to treat all shareholders equally is found pursuant to rule 10 of Singapore's Takeover Code (the 'no special deal' rule). In Australia, the Treasury stated that 'considerable emphasis is given in Australian law to ensure that all shareholders are offered an equal price for their shares in takeovers.'¹²⁷ While the differences in an acquirer collectively buying securities and strata units may of course be highlighted, it is puzzling why the justice considerations of equality and fairness so jealously guarded in the context of takeovers in the capital market should not apply *mutatis mutandis* in a collective sale of strata property as well.

One of the points canvassed by the majority in *Allgreen* was that condoning additional payments would encourage subsidiary proprietors to hold out in hope of receiving a premium for their units later, and this could frustrate the intent of the collective sale regime which was to facilitate urban renewal. While VK Rajah JA acknowledged that this was not an 'altogether improbable concern'¹²⁸ he nevertheless declined to imply a contractual term prohibiting a purchaser from making incentive payments to non-signatories, in the main because he was of the view that the collective sale framework was meant to especially protect minority, rather than all owners.¹²⁹ With respect, that aspect of the judgment was tepid at best, and given ministerial opinion that the legislative intent of the Singapore Land Titles (Strata) Act 1967 was for the protection of all unit owners,¹³⁰ controversial. While Teo Keang Sood reasons that it is the minority who needs protection because they are the ones who lose their homes as a result of the majority's decision to enter a collective sale,¹³¹ there is a counterpoint to consider. In cases involving incentive payments, one is dealing with minority owners who simply want more money to change camp to be part of the majority – they are happy to lose their homes, if the price is right. Thus, as Kelvin Low, Wan Wai Yee, and Alvin Chan rightly observe, 'unless legislatively reversed, [*Allgreen*] provides perverse fiscal incentives for individual owners to hold out against agreeing to collective sales, since only holdouts stand to gain from potential additional payments.'¹³² Different owner factions should not be unequally enriched simply because some owners signed earlier while others decided to holdout.

¹²¹Strata Titles Act 1985 (WA), s 183(9)(b).

¹²²Kelvin FK Low, Wan Wai Yee & Alvin Chan, 'Private Takings of Land for Urban Redevelopment: A Tale of Two Cities' (2021) 69 *American Journal of Comparative Law* 295, 317–318.

¹²³*ibid* 318.

¹²⁴Corporations Act 2001 (Cth), s 602.

¹²⁵Emma Armson, 'Evolution of Australian Takeover Legislation' (2013) 39 *Monash University Law Review* 654, 681.

¹²⁶John Armour & David A Skeel Jr, 'Who Writes the Rules for Hostile Takeovers, and Why? The Peculiar Divergence of US and UK Takeover Regulation' (2007) 95 *Georgetown Law Journal* 1727, 1737.

¹²⁷House Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Corporate Practices and the Rights of Shareholders* (1991) xv, 60.

¹²⁸*Allgreen* (n 84) para 71.

¹²⁹*Allgreen* (n 84) para 77.

¹³⁰Singapore Parliamentary Debates, Official Report (31 Jul 1998) vol 69, cols 604, 635–636 (Ho Peng Kee, Minister of State for Law).

¹³¹Teo, 'Collective Sales in Singapore' (n 29) 96.

¹³²Low, Wan & Chan (n 122) 318.

The *Allgreen* court rationalised the statutory need to obtain the sales committee's consent before the court is allowed to increase the sale proceeds of an objecting minority owner¹³³ because such additional payments are to be made from the sale proceeds due to all the owners from the agreed sale price.¹³⁴ Indeed, VK Rajah JA was of the view that because Parliament only imposed the requirement that the sales committee's consent is needed in this particular instance, there could be no term implied at law from making additional payments to non-signatory minority owners where the additional payments came directly from the developer-purchaser. This technical reading of the law arguably fails to realise that from the purchaser's perspective, there is an absolute upper limit they would be willing to pay for the site; incentive payments are part of the developer's cost price for the land. Prohibiting secret payments and requiring all owners to obtain at least compensation value for their units, as is the rule in NSW, reduces the likelihood of unequal outcomes. Transparency and competitiveness in land bids are enhanced as that would require owner-developers to ensure that all unit owners minimally receive a proportionate stake of the fair market value of the development at its highest and best use. Conversely, the current rule in Singapore may incentivise developer-purchasers when making bids, to keep something 'in the tank', in order to account for the possibility of making 'incentive' payments to non-signatories. Such payments should rightly be distributed to all property owners. Differentiations between collective sale proceeds and incentive payments are thus more apparent than real.

Viewing unit owners binarily as either being in the 'majority' and 'minority' camp – and holding that those in the minority particularly need judicial protection, is a jejune paradigm. It is more realistic to recognise that the motivations of strata owners whether in consenting or objecting to a sale are multifaceted and nuanced. In holding out for incentive payments, minority owners may at times simply be more sophisticated than those in the majority who initially signed the CSA. In sum, I argue that NSW's 'compensation value' rule better promotes equality between all owners.

The 'compensation value' rule better facilitates collective sales

The 'no financial loss' and 'compensation value' tests may in different contexts, be sometimes more and sometimes less generous than one another. In *Allgreen*, the majority owners evidently profited from the collective sale even though the development was sold below its market value, ie, the 'compensation value' standard may have been breached. Conversely, in *Mohamed Amin*,¹³⁵ there was nothing raised about the development being sold below market value, but the two minority owners who would otherwise have made a financial loss from the collective sale were required to be compensated by the developer. As noted by the court in *Mohamed Amin*, property prices rise and fall over time and it is conceivable that in any development there would be at least one unit owner who had purchased his unit when the price was much higher than at the time of the collective sale and would therefore suffer a financial loss if the development was subject to a sale.¹³⁶ Singapore's 'no financial loss' standard is questionable because it unnecessarily gives more protection to strata owners than to landowners subject to compulsory acquisition, even though the political cost of an acquisition is significantly higher. Many strata developments in Singapore are leasehold estates, and as time passes, the lease decay will naturally place downward pressure on the unit's value. To require developers to indemnify unit owners who purchased their property when it had its long (initial) tenure against any loss despite the development's current obsolescence or current short leasehold tenure may prove inimical to the broader policy goal of urban rejuvenation. It would not be unjust to simply require that as is the case in NSW, strata owners be assured of market price compensation at the time of a collective sale.

¹³³Land Titles (Strata) Act 1967, s 84A(7A).

¹³⁴*Allgreen* (n 84) para 82.

¹³⁵*Mohamed Amin* (n 28).

¹³⁶*Mohamed Amin* (n 28) 203.

In the NSW case of *SP 61299*,¹³⁷ Pain J dealt with a case where there was a conflict between the requirement to ensure that each lot receive compensation no less than what it theoretically would have under compulsory acquisition with the general rule that each lot was to receive a share of the collective sale proceeds proportional to its unit entitlement. In other words, adhering to the proportionate share of proceeds would have led to some lot owners receiving below market compensation. To adhere to the ‘just compensation’ threshold, the NSW court thus increased the proportional share entitlements of the affected lots.¹³⁸ Adopting a threshold pegged at what the unit owners would have obtained had their unit been compulsorily acquired by the state, as is the case in NSW and WA results in a more coherent view of the social obligations of property, than one that requires all owners not to make a financial loss. Given the similar policy concerns undergirding compulsory acquisitions and collective sales, it is reasonable to expect strata owners to yield their property for broader urban needs, on the same compensation threshold yardstick as landowners subject to compulsory acquisition. Just as there is no implicit price guarantee provided by the state when a property is compulsorily acquired, minority owners whose units are sold in a collective sale should not legally expect to be compensated at more than market value.

Sarah Hamill observes that while there is significant disagreement over what exactly ‘property’ is, ‘it is generally accepted that property law is a way of managing resources.’¹³⁹ In this respect, the privileges of ownership have always been curtailed intrinsically by community-orientated obligations.¹⁴⁰ Kevin Gray notes that ‘deep at the heart of the property concept lies a fusion of individual right and social responsibility’, as ‘the purchase of a bundle of rights necessarily includes the acquisition of a community-oriented obligation’.¹⁴¹ The justification of this perspective is that regulatory control of land use represents ‘part of the burden of common citizenship’,¹⁴² and the ‘give and take of civil society frequently requires that the exercise of private rights should be restricted in the general public interest.’¹⁴³ As a planning tool, compulsory acquisition allows for land, where taken *in specie*, to be forced exchanged by the State for its equivalent in money value. Inherent to property ownership, all landowners can thus be said to owe a social duty to be subject to the risk of *market price* compulsory acquisitions. Collective sales are also a planning tool which has emerged because numerous jurisdictions, including those in Singapore and Australia, acknowledge the urban disamenities and wastefulness of not using land efficiently, and have thus deviated from unanimous consent in terminating a strata scheme. Should minority owners in a collective sale somehow owe any less of a duty than landowners subject to a compulsory acquisition in Singapore? Currently, this curious proposition may be implied given the statutory indemnity against financial losses for minority owners in a strata collective sale while limiting compensation for compulsory acquisition to fair market value.

It is not the case that compulsory acquisition is for necessarily more pressing social ends than a collective sale. Sherry remarks that the protection afforded to private property from expropriation in the Anglo-Australian legal tradition is extremely thin.¹⁴⁴ In *Griffiths v Minister for Lands, Planning and Environment*,¹⁴⁵ the Australian High Court held that the compulsory acquisition of native title for any purpose whatsoever, including the granting of the land to other citizens, is permissible. Even in the United States, thought to be the bastion of rights, the American Supreme Court in *Kelo v City*

¹³⁷*SP 61299* (n 99).

¹³⁸*SP 61299* (n 99) paras 100–101.

¹³⁹Sarah Hamill, ‘Common Law Property Theory and Jurisprudence in Canada’ (2015) 40 *Queen’s Law Journal* 679, 682.

¹⁴⁰Anthony Honore, ‘Ownership’, in *Making Law Bind* (Clarendon Press 1961) 144–145.

¹⁴¹Kevin Gray, ‘Equitable Property’ (1994) 47 *Current Legal Problems* 157, 188–189.

¹⁴²*Keane and Naughton v An Bord Pleanála* [1998] 2 *ILRM* 241.

¹⁴³*Grape Bay Ltd v A-G of Bermuda* [2000] 1 *WLR* 574 (per Lord Hoffman).

¹⁴⁴Cathy Sherry, ‘How Indefeasible Is Your Strata Title? Unresolved Problems in Strata and Community Title’ (2009) 21 *Bond Law Review* 159, 160.

¹⁴⁵[2008] *HCA* 20.

of *New London*¹⁴⁶ held that the city of New London in Connecticut was permitted to condemn 15 residential properties and transfer them to the pharmaceutical giant, Pfizer, even though there were no immediate plans for redevelopment. The court there held that although the takings clause in the 5th Amendment only permits the taking of private property for ‘public use,’ the transfer of the acquired land to Pfizer was for legitimate economic development, even if the government cannot prove that the expected development will ever actually happen. In this regard, the case law in Singapore is similarly deferential to the Executive. In interpreting the phrase ‘public purpose’ as required to justify a compulsory acquisition under section 5 of the Land Acquisition Act 1966, the Singapore High Court in *Galstaun and another v Attorney-General* held:¹⁴⁷

The Government is the proper authority for deciding what a public purpose is. When the Government declares that a certain purpose is a public purpose, it must be presumed that the Government is in possession of facts which induce the Government to declare that the purpose is a public purpose.

Of course, it could be argued that *all* landowners are subject to the risk of compulsory acquisition while strata owners are subject to the additional risk of a forced acquisition via a collective sale. While strata owners indeed have less autonomy in this regard, an owner’s property rights vary according to the property ownership he possesses as different types of ownership confer different property rights.¹⁴⁸ Subsidiary proprietors can thus be said to have purchased their units with the deemed knowledge that their unit is subject to sale by majority consensus.¹⁴⁹ Sale by a supermajority can thus be seen as a statutory covenant which the owner consented to. Indeed, the right to possess and occupy a strata unit, as well as the right to have it sold via a collective sale, are both inherent property rights contemplated within the strata framework.¹⁵⁰

Under section 84A(8)(c) of Singapore’s Land Titles (Strata) Act 1967, a subsidiary proprietor is *not* to be taken to have incurred a financial loss if that owner purchased the lot *after* the sales committee signed a SPA to sell the development to a purchaser. This is a generous provision, because it allows for financial losses incurred should a subsidiary proprietor purchase a unit even after the sales committee is formed, and when votes are being collected, right up to the time before the SPA is signed. By that stage, prices would have run up significantly, and there is no guarantee that the actual sale proceeds will exceed the purchase price paid by the speculator. The current framework thus indemnifies a strata purchaser from making any loss, notably including the significant stamp duties imposed on residential property investors, even if the purchase was made amidst bullish enthusiasm at the peak of the market. It is also theoretically possible for a subsidiary proprietor perhaps owning many units, to intentionally buy an additional unit at a price significantly above market, and so have a means to frustrate a collective sale. It has been observed that minority owners sometimes infiltrate a sales committee by feigning support while secretly sabotaging the sale; there is no duty of care expected of minority owners not to act unethically.¹⁵¹ Again, this problem would not have arisen under NSW or WA law, which has rightly adopted fair market value as the threshold standard.

That in increasingly crowded urban cities ownership comes with responsibilities is a given. Notwithstanding, no broader duty to ‘common citizenship’ is justified or applicable to compulsory acquisition if the same does not apply to a collective sale. There are thus cogent reasons why like its

¹⁴⁶545 US 469 (2005).

¹⁴⁷[1979–1980] SLR(R) 589 para 9.

¹⁴⁸Harold Demsetz, ‘Toward a theory of property rights’ (1967) 57 *American Economic Review* 347–359.

¹⁴⁹Admittedly, this argument would not be applicable to owners who purchased their units before non-unanimous collective sales were permitted by the statutory framework.

¹⁵⁰Ti, ‘Collective Best Interests in Strata Collective Sales’ (n 1) 1038.

¹⁵¹Ti, ‘Collective Best Interests in Strata Collective Sales’ (n 1) 1037.

Australian counterparts, market price compensation, rather than obviating financial loss for minority owners, should be adopted as the threshold standard for collective sales in Singapore.

Conclusion

For a collective sale of strata property to succeed, it must engender the requisite percentage of owners in support of the sale *and* not be subject to any valid objections. Compensation thresholds are one such ground for objectors to raise. In this article, I have compared the threshold standards to minimally compensate unit owners under Singapore, NSW, and WA law. As collective sales are said to ‘strike raw nerves’¹⁵² among owners, solutions which reduce frictions in this regard aid intensification of land sites to build more housing and promotes urban rejuvenation, vital needs especially given Singapore’s small land mass. Real estate markets are cyclical and a collective sale should not be hampered just because a minority owner has made a financial loss – like compulsory acquisition, it is sufficient to set the minimum compensation threshold at the unit’s market value, and have this rule apply to all unit owners.

Requiring all owners to obtain at least compensation value for their units, as is the rule in NSW, reduces the likelihood of unequal outcomes, because it ensures that all unit owners receive at least market value for their lots. The *Allgreen* case is controversial because it permitted the majority to unwittingly sell their units at below market price while enabling the minority owners to receive ‘incentive payments’ by the developer-purchaser and so consent to the sale. While it is unknown how a WA court would decide if the same facts from *Allgreen* were before them, it seems unlikely that a similar outcome would have arisen under the NSW framework, which requires all owners to minimally receive ‘compensation value’ for their units. Adopting the NSW rule also results in a more coherent view of the social obligations of *property*, than one which indemnifies all owners from making a financial loss. Given similar policy concerns undergirding compulsory acquisitions and collective sales, it is reasonable to expect strata owners to yield their property for broader urban needs, on the same compensation threshold yardstick as landowners subject to compulsory acquisition. In sum, NSW’s ‘compensation value’ rule better promotes equality between all owners and better facilitates collective sales than the ‘no financial loss’ standard currently adopted by Singapore’s Land Titles (Strata) Act 1967.

¹⁵²*Sim Lian (Newton) Pte Ltd v Gan Beng Cheng Raynes* [2007] SGHC 84 para 101.