SUCCESSFUL APARTMENT LIVING

CONTENTS

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1. Executive Summary

Introduction

In light of the City's ambition for more sustainable urban densities it is both inevitable and appropriate that apartments will become the dominant housing form for Dublin in the future. This paper is intended to stimulate discussion about Dublin City Council's role and contribution, to making apartment living more attractive. The paper is separated into three topics; (a) management of apartment developments, (b) factors other than management that impact on successful apartment living and (c) privately managed conventional housing estates.

Management of Apartment Developments

Apartment living necessarily involves a high degree of interdependence between unit owners, who own and share the communal spaces and the external structures of their apartments. This interdependence is the reason why some form of overarching body is needed to own, manage and maintain these shared areas. Residential management companies hold the lease to the common areas in both apartment developments and privately managed estates. They also hold the lease to the external structure of apartment buildings.

The most common legal form of management structure in apartments is a company limited by guarantee. This format was borrowed from the commercial and industrial property sector, with some minor adjustments. The company limited by guarantee structure is a development of companies limited by shares. The regulation, and reporting requirements for a guarantee company are the same as for a company limited by shares. Both are subject to the requirements of the Companies Acts, and are regulated by the Companies Office, whose sanction is to strike off the company, if it becomes non-compliant.

The company limited by guarantee structure is two-tiered, consisting of members and the directors they appoint at the Annual General Meeting. The company needs to be in place when the units are sold, so the developer sets it up and appoints the first members, directors and managing agent. The purchasers become the owners of the residential management company and as such, they become members of the company, able to replace the developer's directors, company secretary and agent with their own appointments.

Management Agents

Managing agents are not licensed or regulated and there is insufficient competition. Three or four big agencies hold the lion's share of the market in Dublin, with only small schemes falling to other agencies.

Most large developments employ managing agents, and there have been calls to have agents licensed and regulated to achieve more consistent standards. The Government recently announced its intention to establish a National Property Services Regulatory Authority, in advance of legislation. The authority's remit is not yet fully public, but it does include licensing and regulating property management agents.

Many social housing providers are concerned at the impact of private management on their finances, tenants and property and are not convinced that the system is sustainable. One option for social housing organisations (public and voluntary housing) is to take on the role of managing agent in mixed tenure developments and this should be provided for in the proposed new licensing system.

Service Charges

With more and more apartment developments under construction, the affordability of service charges is now a serious issue for ordinary people. The greater the extent of services and infrastructure that are privately managed, the more expensive the apartment development is for owners. Some owners will have received assistance from capital housing subsidies to help them to buy their homes.

Dublin City Council should review the extent to which it may be desirable to take-in-charge some areas/services in large apartment developments in exchange for greater public access and public utility.

In theory, since the apartment owners own the company, they have the power to establish the level of service charge, the way services are provided and which agent they employ.

Since most of the costs arise from services provided by agents, in reality, the agent sets the service charge. The only effective option available to the management company is to put in place a system of competitive tendering for agency services and to ensure that this is filtered down to the employment by the agent of sub-contractors. Value for money tends to depend on the maturity, control and competitiveness of the market. The type of services that make up the charge include:

- Sinking fund contribution towards major capital expenditure,
- Payments to contractors for repair, cleaning, maintenance and improvements to infrastructure, lifts, gates, doors, building fabric and landscaping. Management costs for common areas including car parking, open spaces and specialist areas including play areas, recreational,
- Structural and public liability insurance,
- Professional fees (auditors, lawyers, accountants),
- Management agent's fees and administration costs,
- Costs associated with the Companies Office,
- Bank Charges,
- Energy costs for lighting and other electrical services.

Misconceptions

There are evident and somewhat understandable misconceptions about the rights and obligations of members, agents and developers both among the general public but also among apartment owners. This leads to the perception that owners (despite being members) are not in control and not involved in the decisions affecting their homes. This is heightened if the:

- Developers hold onto voting rights through the original members or through weighted share arrangements for commercial or residential units,
- Developers' original directors are not replaced at the Annual General Meeting (or even worse if an AGM is not held),
- Common areas and external structures are not vested by the landlord/developer in the management company.

As well as, addressing these issues and introducing a licensing system for agents, an awareness raising and skills training programme is required, to support and empower owners, to take control of their homes and management companies.

There are a number of bodies looking at issues that are relevant for residential management companies and apartment developments: -

- The Company Law Review Group is considering a new, simplified structure for "Mom and Pop" type companies limited by shares, to be known as Designated Activity Companies. There may be some scope for residential management companies to change over to this new form. But there will always be concern when a structure designed for one purpose is used for another purpose. Limited companies may have been acceptable when there were very few apartment developments but the situation now is that the majority of new dwelling units provided in Dublin City are apartments. This growing sector needs a secure and appropriate legal framework to provide for its specific requirements, (information, accountability, transparency, governance, legal remedies, licensing and regulation of agents, registration, training and support for the management body and templates for reporting, and comparative analysis). Instead of this it is trying to adopt and adapt a model designed for commercial trading needs, which does not meet its needs and is relatively expensive to operate.

- The Charities Regulation Bill 2006 will introduce a mandatory registration, regulation and supervision of organisations working for "charitable purposes". The proposed reform is partly a response to the problems charities experienced in using the company limited by guarantee. Not all charities use the structure and there is no single register of charities. In both residential management companies and charities there is concern about a lack of transparency and accountability, in Companies Office returns. While there are significant differences between charities and residential management companies, there are similarities too i.e. between voluntary housing associations (usually registered charities) and non-profit, management companies in apartment developments.

- The Auctioneering and Estate Agency Review Group queried the appropriateness of the company limited by guarantee as a vehicle for residential management companies in their July 2005 report to the Minister for Justice. While they made no proposals for a new legal form, they did suggest the establishment of an independent, statutory body to regulate property services including agents involved in management and lettings.

- The Law Reform Commission are examining the legal issues in relation to multi-unit developments and their paper is expected in 2006.

- The Dáil and Department of the Environment, Heritage and Local Government have raised the issue with local authorities, particularly in relation to privately managed conventional housing estates.

- The City and County Managers Association have asked the Local Government Management Services Board for a report on residential management companies.

Remedies for Non Compliant/Failed Companies

When a limited company fails it is liquidated and when it does not comply with the requirements of the Companies Acts, the Companies Office can strike it off the register of companies, from this point onwards it is no longer a legal company and has to cease to operate as such. When the company is struck off or liquidated the dwellings cannot be sold because the company has no legal standing. This means it cannot enter into contracts for insurance, agency or other services, or become involved in legal transfers of ownership of common areas to purchasers of apartments.

A central assumption in limited companies is that the assets of the company can be liquidated and sold off to pay creditors, lenders etc. In the case of an apartment development, (or housing estate) the assets are; the sinking fund/bank balance, the common areas and external structure of the buildings. Clearly there a few (if any) circumstances when dissolution/liquidation/strike

off are desirable remedies. Owners would find it difficult to find a buyer solely for the common areas, even if they wanted to sell it, e.g. a long-term investor to buy the lease in return for a ground rent type income and ownership of land when the lease expires. Without the ability to realize the value of the assets limited liability cannot be implemented in the way envisaged in the Companies Acts. Particularly when the amount guaranteed is nearly always nominal and is usually a single euro.

Needs of Apartment Owners

The reporting requirements of limited liability companies are geared towards protecting the interests of lenders, creditors and external funders. These are not critical issues for apartment developments; rather it is apartment owners who are themselves in need of protection since they can even lose the right to sell their homes.

Owners, need access to management accounting information for decision-making, they do not obtain this information from the annual reports filed in the Companies Office. Frequently all they receive is a one line invoice from the agent, showing the total amount payable, with no detail of the makeup of the items or report on how the company fared in previous years. The only formal occasion when members meet the directors (as a body), is at the Annual General Meeting when they are presented with the annual report and accounts before they are filed in the Companies Office.

If a new legal vehicle is developed for residential management companies, the needs of owners should be central:

- Service Level Agreement should be developed, showing key indicators against which performance can be measured and reported.
- Owners need to know how service charges are calculated and distributed among units. They need information about the composition of service charges including an itemised budget showing breakdown between contractors, agents, other professional fees, administration, insurance and sinking fund and charges such as waste management/utility bills.
- They need to be able to review the factors and variables affecting service charge levels including those which can be remedied, but also those which cannot be changed because they were determined at design, planning and construction stage.
- They need to see a variance analysis showing actual spending against budgeted, with explanations for over or under spending. They need an analysis of debtors and creditors showing actions taken and proposed.
- Owners need information about how expected useful live of major items of plant, equipment and infrastructure are determined, and how often they are reviewed and compared to existing provision.
- Disbursements from the sinking fund need to be the subject of a separate system of authorisation. The funds should be held separate to the revenue bank account where the money, for day-to-day payments, is held. The sinking fund account should be held in the name of the management company or in a managed client account held on their behalf by the agent. Each year this account should be audited and a report provided to members.
- Owners need assurances that the contracts for annual services are awarded competitively both to the agents and to their subcontractors. The tendering procedures, used for contractors, including the number of quotations needed should be agreed with the members. In cases where the agent has a conflict of interest, this should be disclosed to the members before the decision is made. Conflicts could include relationship with subcontractors or developers.

- There should be a separate system to authorise extraordinary items such as breakages and consideration should be given to making provision for items in subsequent years' budgets.
- Regular reports are needed showing how one apartment development compares to other similar ones, so owners can assess the impact of service charges, sinking fund levels and quality of management on property prices in their scheme relative to others in the area. The new property authority could provide this type of comparative analysis for existing owners and purchasers.
- The management body should put a system in place to enforce agreed "house rules" including enforcing conditions in the lease relating to sub-letting apartments and commercial units.

Obsolescence

Apartment developments have a finite life expectancy and most will need refurbishment within a few decades. Expected useful life will depend on:

- Quality of applied, cyclical maintenance
- Initial design
- Construction methods, quality and finishes
- Degree of flexibility in the scheme to facilitate refurbishment/redevelopment

In some cases demolition and redevelopment will be the most economic and effective solution. The management company needs to take a decision in an agreed manner, e.g. voting at an Extraordinary General Meeting. The method of agreement can be set out in the constitution or Memorandum and Articles of Association. If a procedure is agreed in advance and it forms part of the legal documentation it will speed up the process, even if, disgruntled owners take their objections to the Courts.

Successful Apartment Living

If Dublin is to remain relatively compact it cannot expand any further, so new accommodation must be provided in apartments in the City, both inner city and suburbs. Cities need a mix of tenures, incomes and households and cities need families. Developers prefer to build apartments for single people and couples without children in inner city locations, and houses for families in suburban locations. As a result apartments are generally designed for single people and childless couples rather than for families. Dublin City Council is committed to taking a lead in ensuring that apartment living becomes a successful housing form, for a diverse range of people. Effective management is necessary for apartment developments to succeed, but other issues influence families in choosing whether to live in conventional housing away from the city or in apartments within the city. The debate needs to focus on why families find it hard to live in existing apartments and the importance of issues such as:

- Design of the apartment and layout of the scheme,
- Facilities for children and young people,
- Standard of construction,
- Quality and cost of management,
- Location factors e.g. schools, parks and other amenities,
- Concern about crime and fear of crime, vandalism and anti- social activity,
- Local management including cleanliness, litter and graffiti.

Design Issues

Apartments will be and easier to manage and live in if the design provides for:

- Greater internal storage space and storage space for bulky items outside apartments, e.g. in lock up area in basement.
- Families, especially those with young children, need frequent access to laundry facilities and these should be provided in a separate area away from the kitchen, particularly in apartments with open plan layouts.
- Both kitchens and bathrooms need to be designed with families in mind.
- Children's bedrooms need to cater for play and study to take the pressure off the living space.
- Terraces that can be enclosed create more flexibility, particularly in cold or wet weather.
- Balconies need to be large enough to be useable by a number of people simultaneously.
- Carefully planned treatment of the transition from public to semi-public and private open space is important to create privacy, but also to minimise anti-social behaviour and manage the shift of uses from public to private. Semi-private and private open space can be provided through roof terraces; semi-private gardens can be at first floor level over shopping. Both options would restrict casual trespass in private areas.
- Open space needs to be landscaped with a diverse range of households in mind. It needs to be viewed as a place to use as well as to look at. In particular there needs to be outdoor play /recreational provision for children and young people. This can either be in nearby facilities or built into the scheme itself. Young children have to be catered for on site and must be able to play and socialise in the open space provided. Design should allow children to use all the open space including recognising that they will use the car parking area and that it is impossible to effectively restrict this use, so it needs to be catered for in the design e.g. visibility around corners, exits and layout that reduces driver speed.
- Insulation is important to minimise the nuisance caused by internal noise (adult parties and children's play), music, TV, lift vibrations and traffic noise from outside.
- Mechanical and passive ventilation to counteract condensation particularly since most units have double and some even have triple glazing.

On-Site Management

Building supervisors (either residential or during office hours) will improve management and be cost effective in larger schemes. Full time building supervision would permit an atrium design for the entrance area with benefits for supervision and monitoring, but it is also a good way to provide an informal area where social mixing can occur. The capital cost can be shared and service charges reduced so that the "pay back period" would justify it over time. Dublin City Council should consider its ability to promote building supervision through the planning system and through its own and voluntary housing associations' involvement in mixed tenure apartment developments.

Social Cohesion

One criticism of Irish social housing supply, in the past has been its geographic concentration in specific locations and its lack of social mix. Recently, due to scarcity of supply but also to increase social cohesion, social housing units (both public and voluntary) have been provided in privately developed apartment schemes. Mixed tenure is now built into regenerated local authority estates.

Social mix will achieve social cohesion most effectively if tenures are spread throughout the scheme. If there are obvious separations or differences, between social and private units in a development, social mix will not improve social cohesion since social mixing will tend not to occur. The tendency to separate social and private tenures into separate blocks may reduce management costs but if it undermines social mix it will not be beneficial in the long run.

Therefore, if voluntary and local authority housing bodies, find it expensive to pay service charges from rental income, then this needs to be addressed rather than risking compromising the achievement of social cohesion, to save on management costs i.e. by clustering instead of pepper potting to save money.

Part V apartment developments need to be managed well and need to be financially efficient. Where there is concern about affordability in developments with significant mixed tenure, it would be appropriate for voluntary housing associations and/or local authorities to establish arms length management wings to provide management services to the entire scheme. In other cases they can act as expert advisors and sit as directors on boards of management companies.

Sustainability Interventions

- Housing authorities appreciate the importance of providing support to tenants to maintain their tenancy. This should be extended to mixed tenure apartment developments. Support for vulnerable and/or chaotic households including families, improves the lives of the families being supported. It also provides a way, to tackle poor behaviour towards neighbours by these households.
- Generally, communities take a long time to develop social and support networks. Communities develop different patterns of mixing. Networks will eventually grow up among people who live together for a long time. They grow more quickly when there is an intervention to promote community activism. Often a starting point is to focus on the needs of children. The strength and speed with which networks grow is less important in conventional housing estates. Proximity and interdependence in apartment developments can heighten sensitivities that need to be diffused in constructive ways.

  Effective management companies need strong activists and volunteers. An added advantage is that motivated people will promote voluntary activity and create opportunities for social mixing. It is important to offer supports to residents, who want to become involved in management companies, as committee members or directors. People often need to be mentored to overcome their nervousness and worry about lack of experience, before they will take an active role.

Family supports and interventions to promote community activism need to be provided in apartment developments, particularly those with mixed tenures.

The most easily recognised benefits of apartment living are proximity and convenience to amenities, work, city centre, and transport systems. While apartment size and design are important, amenities in a neighbourhood significantly influence people's perception of apartment living. Families with children will be concerned about schools and most people worry about crime and personal safety. Standards of management in the physical environment e.g. cleaning, litter and graffiti management are associated in people's minds with crime and cause worry about personal safety. These issues take precedence over design, location and convenience, particularly for families. People who can most easily afford to move away from perceived problematic areas will tend to lead the way. Service providers in education and policing need to be aware of their sector's impact on successful apartment living.

Privately Managed Conventional Housing Estates

Dublin City Council has some conventional housing estates that are not taken-in-charge. They are mostly located on marginal lands and infill sites. Both developers and consumers created a

demand for privately managed conventional housing estates. Consumers were worried about property values and developers were pushing for innovative designs and layouts that permit higher density. Developers will generally have used materials, designs, layouts and construction standards, which are likely to present a challenge for current taking-in-charge standards within Dublin City Council.

Owners have begun to query the equity and affordability of privately managed housing estates. As a housing authority, Dublin City Council is concerned about the affordability of service charges, particularly for people who needed capital housing subsidies to purchase their homes in the first place.

Section 180 Planning Act 2000 provides a mechanism for taking-in-charge following a plebiscite request by residents. Section 180 does not exclude estates that are not to existing *taking-in-charge* standards. Aside from the any potential impact that S180 might have, the standards need to be reviewed and new ones agreed.

The functional areas that Dublin City Council that are involved include planning, roads, water, parks, drainage, public lighting, sewerage although housing, waste management and fire services should be included in developing new standards and procedures for taking-in-charge. The Department of Environment, Heritage and Local Government want the Construction Industry Federation consulted about taking-in-charge standards, this should happen after a City Council standard has been agreed internally.

In addition to agreeing new taking-in-charge standards, a review of the procedures is required to ensure that regular quality control inspections occur and that there is a timely process for completed estates to be taken-in-charge.

In general, gated housing estates and apartment developments should be discouraged at the planning stage; they operate against social cohesion at community and urban level. In principle, external areas in housing estates should not be privately managed. Existing estates need to be taken- in-charge on an incremental basis, as and when, requested by the residents and provided the owners of the land are in agreement (Section 180, Planning Act 2000).

Some developments have development potential and if these are taken-in-charge with a transfer of ownership rather than only control it could reduce the development potential. The different options for taking-in-charge in relation to ownership and control need to be considered from the perspective of the local authority and the owners.

Summary of Recommendations	
5.1	Dublin City Council should actively promote a new legal and operational framework for management companies in apartment developments to increase the sustainability and chances of success of the apartment development sector.
5.2	Dublin City Council should establish its role in registering**,** regulating, monitoring, supporting and strengthening management and sustainability of apartment developments. This role should include registration of management companies, licensing managing agents and supporting apartment owners. It could be provided by the local authority as an agent of the new national property services authority. Interim arrangements should be put in place as soon as possible, pending the establishment of the national authority.
5.3	Dublin City Council should develop a coalition of stakeholders, to improve the design, construction, quality and cost of management and maintenance of apartment developments. The group should include representatives of management companies, agents, developers, local authorities, research and review groups and professional and educational bodies. It should aim to develop a better understanding of how the sector is operating through research, feasibility studies and surveys. It should consider how obsolescence in apartment developments would be dealt with when the time arises.
5.4	Dublin City Council should extend interventions for family support and community activism to privately provided apartment developments, particularly those with mixed tenures. Dublin City Council should consider ways in which it can influence education and policing, to improve the perception of neighbourhoods where family apartments are being provided. It should focus on activities within its own remit that affect perceptions of the area. The City Council should work to resist school closures in established areas and in inner city locations where apartment developments are proposed.
5.5	The development of apartments for a range of household sizes and types needs to be encouraged. Dublin City Council can provide demonstration projects on land, which it controls or has influence over, to show that there is a market for family apartments across all tenures including market-rate owner/occupiers.
5.6	Dublin City Council should decide to reduce the number of privately managed conventional housing estates by a programme of taking-in-charge and insisting on new estates being publicly managed and taken-in-charge. It should review the extent to which areas within apartment developments can be taken-in-charge. It should develop new agreed taking-in-charge standards that recognise the importance of sustainable urban densities and customer demand for high quality open space in all types of housing developments.

2. MANAGEMENT OF APARTMENT DEVELOPMENTS

Background

Apartment developments can be a mix of residential, commercial and recreational. They can be entirely apartments or a mix of duplex and apartments. Some developments have gates, usually for cars and they are more commonly kept locked in inner city locations.

Apartment living entails a high degree of interdependence through shared services, common areas and access, as well as structural and public liability insurance. Interdependence creates a requirement to manage and regulate usage. This is done through a system of mutual obligations and rights. Rights ensure full enjoyment of the property, obligations include contributing to the cost of maintenance and management. There is an obligation on owners and tenants to abide by an agreed set of "house rules" to minimise the more challenging aspects of high-density living e.g. noise, anti-social activity (either active such as vandalism and or passive such as leaving doors open or bypassing security arrangements). Poor behaviour is magnified in apartment developments through reduced private open space and because the boundaries that separate dwellings in apartments, are usually less obvious and less effective than in conventional housing.

Importance of Apartments for Dublin

Ireland's population is expected to rise to 4.5m by 2010 (1.8m for Dublin) and to 5m by 2015. The 25 to 45 year old group is Ireland's fastest growing age group. Most demand for new housing comes from this age group which includes many foreign nationals.

Currently housing supply in Dublin is lagging behind demand. In 2005 demand was 24,000 with completions of 18,000. Demand for 2006 is forecast at 26,000 with expected completions of 18,000. Apart from population increase, there is pressure from young people wanting to get onto the property ladder and a general, increase in demand due to a fall in average household size to 2.9 people.

The Hooke and MacDonald Property Outlook Summer 2006 predicts that based on current planning density levels, there is only enough supply of housing development land, between the canals, for another six years.

The only way to meet projected demand within a reasonable city footprint is by ensuring apartment developments remain the dominant form of new housing. Compared to other European countries, Ireland has very few large apartment complexes, 1% in Ireland compared to 4% in the UK, 19% in Denmark, 18% in the Netherlands and 28% in Austria. There are strong correlations between home ownership in conventional housing and lower levels of apartment developments.

The 2002 census showed that more than 110,000 households lived in apartments. Urban Harmony's research (2005) found that since 1994 approximately 30,000 apartments were built in Dublin. This increased to 42,500 between 2002 and 2004. This research showed, that close to 200,000 people live in apartments, helping to confirm that more single people and childless couples live in apartments than families.

Management – Overview of Existing System

Because apartment living arrangements are complex they need an overarching legal body. The most common form of management body in apartment developments is company limited by guarantee, which is very similar to a company limited by shares. Other legal vehicles exist but they are not commonly used, mostly due to a lack of confidence towards them in the market. Limited companies are regulated by the Companies Office and are governed by the Companies Acts 1963 to 2004. Limited liability was designed to regulate the nation's trading life. The regulation was designed to instil confidence by reducing trading risks for creditors and

investors. The "guarantee version" is a later development and is used by non-profit organizations including some charities. Apartment management companies could be described as non-profit since they do not distribute dividends and operate in the interest of their "community". In developments with more than one apartment building, there can be a different management company for each building. This adds another layer of complexity and requires extra coordination, but it is a way to deal pragmatically with a cumbersome legal structure not designed for the use to which it is being put.

Role of Management Company

A residential management company, belongs to the apartment owners and as such it:

- Holds the lease to the external structure of the apartment buildings and the common areas, thus allowing individual apartments to be bought and sold. Apartment owners hold leases to the interior of their apartments as well as owning part of the management company.
- Provides for management and maintenance of the communal areas covered by the lease.
- Creates and maintains a sinking fund for major capital works.
- Takes out insurance (public liability and structural) and manages claims.
- Procures an agent to provide services unless it decides to use direct provision. Direct service delivery requires committed, experienced and knowledgeable volunteers. The complexity of living and legal arrangements particularly in large schemes of several hundred flats usually makes a managing agent the most attractive and realistic option.
- Collects service charges from owners and sues for non-payment. Usually the agent issues invoices in the name of the company and is authorised to sue for non-payment as a simple contract debt on behalf of the company.
- Complies with the relevant regulatory framework under which it operates. In the case of limited companies this is the Companies Acts and Companies Office. Each year the directors are required to file audited accounts and reports, in a prescribed format with the Companies Office.

Limited companies have two tiers, members and directors. Members appoint directors (usually from among their own members). The Memorandum and Articles of Association specify how directors should be appointed, and when they should be rotated and retired. The memo and articles can be amended at a general meeting of the members. Directors run the company for the members and take care of the day-to-day business of the company between Annual General Meetings. Directors meet regularly, the minimum frequency of meetings is set out in the Memorandum and Articles of Association. Directors are responsible for ensuring proper books of account and financial records are maintained, and for ensuring that appropriate systems of internal control are in place. Directors present the annual accounts to the members at an Annual General Meeting before they are filed with the Companies Office. Limited companies appoint a Company Secretary, who is responsible for keeping the company's legal affairs in order, including calling meetings of the members and directors. Some managing agents fulfil this function as part of their service to the company.

Auditors, officers, members and directors are entitled to attend Annual General Meetings (or Extraordinary General Meetings) but only members can vote. An agent who is the Company Secretary has a right to attend the AGM otherwise the agent can be asked to attend for only part of the meeting. The AGM is an important opportunity for members as a group to question the directors and appoint new agents, auditors and directors. Auditors are licensed by the Department of Trade, Enterprise and Employment and are part of the Company Law system of checks and balances. They are appointed by members and cannot be removed by the directors. As part of the audit process auditors carry out tests designed to see if the company should

continue as a "going concern" i.e. if it is financially healthy enough to keep going for at least another year.

In order to be able to sell the apartments and commercial units, developers need to first set up and register the company with the Companies Office. The developer finds seven people to act as subscribers and appoints some of them to be the first directors and officers including the Company Secretary. The developer provides the company with its constitution through "Memorandum and Articles of Association". These determine how the company will operate, including how directors will be appointed and removed and establish the voting arrangements for members at the Annual General Meeting.

The most important function of the management company for the owners is that it manages and maintains the communal parts of the development, using income from service charges paid by the owners. This means that the management company is responsible for the quality of services it provides through its agent. Clearly, it must maintain its own legal status with the Companies Office to be able to continue to fulfil this role.

The developer engages a managing agent for the company before the units are occupied, usually for the first year. Managing agents come from an auctioneering and estate agency background. Some agents provide letting services to landlords. Facility management agents in office blocks and shopping centres are becoming interested in apartment developments, particularly those with mixed commercial and residential uses.

After the units are sold, the only directors who are not members will be those appointed by developers, when the company was set up. The owners should replace the original directors, company secretary and subscribers, after they occupy their units. This should form part of the process of the owners taking responsibility and control of their company. The owners should review the managing agent's contract too.

The first year's service charge is based on an estimate agreed between the agent and developer (through the management company). It is normally much lower than subsequent years and is paid by purchasers when they sign the contract to buy their units. Service charges cover items such as fees and costs of day-to-day maintenance, cleaning, management, and minor repairs, they cover insurance both public liability and structural.

Annual contributions to a sinking fund form part of the service charge. The sinking fund provision is money that is set aside for specific and identified capital assets such as roads, drains, lighting, lifts, roofs, gates, windows and other equipment, and for new floor coverings and external painting. Money should be set aside from year one so that all owners contribute to the fund.

An important task of the Management Company, before the owners move in, is to employ consultants to snag the common areas and subsequently ensure that the developer completes the snag list. The management company should ensure that developers complete the snag list at their own expense, and that the defects period should take account of the completion of major snag items.

Dublin City Council's traditional involvement in the private sector has been the enforcement of standards in private rented properties. The Rental Accommodation Scheme gives the City Council new responsibilities to provide for the long-term housing needs of people in receipt of rent supplement for 18 months or more. This is involving the Council in contractual relationships with landlords to secure long-term availability of private rented accommodation. Dublin City Council continues to have responsibility for enforcing housing standards in private rented housing. The registration of rented properties by landlords is now enforced by the Private Residential Tenancies Board, which also deals with complaints and disputes between landlords and tenants.

From January 2007, a legal management body will be needed in Dublin City Council apartment schemes where there is a right-to-buy. This body will hold the lease to the shared areas and will allow the apartments to be sold, first to the tenants by Dublin City Council and then by the tenants to other purchasers.

Factors Impacting on Effective Apartment Management

Commercial enterprises can afford to employ professional staff and pay directors to protect shareholders' interests, the complex set of checks and balances including the two-tier structure (members and directors) evolved to meet the needs of a commercial trading environment. These are not operating effectively in apartment management companies. This is a serious matter since urban and community sustainability will be damaged if apartment living fails to gain the confidence of society, particularly in inner city and marginal locations.

The report of the Auctioneering and Estate Agency Review Group (July 2005) highlighted an apparent lack of understanding, among owners of the respective roles of agents, companies and developers, it raised concerns too about the timely vesting of common areas by developers and the appropriateness of companies limited by guarantee for apartment management companies.

The inexperience and relative youth of many first time apartment buyers and the lack of professionalism of many small-scale landlords are apparent in their approach to corporate governance and control in their management companies.

When the members replace the subscribers and appoint their own directors, they should review other appointments, including the auditor, legal advisor, bankers, accountant, Company Secretary and most importantly the managing agent. Often the agent provides more than one service and some apartment owners allow managing agents to take greater control of the development and the company, than is appropriate for a successful outcome for owners, in particular sometimes managing agents are appointed to provide company secretarial services.

Vesting of communal areas occurs when the lease for the common areas and the external structure is signed over by the developer to the management company. The developer is not obliged to vest until the last unit is sold but until vesting occurs the company has no substance or assets of its own. One reason vesting does not take place is that the developer may believe there is further development potential in the site e.g. the planning authority may allow higher density with reduced open space or it may become economically viable to substitute underground car-parking for surface car parking with apartments over. These remain options that the owners of the development can pursue, but it should be the new owners rather than the original developer who benefits. Sometimes vesting does not take place because of inefficiency or apathy by the developers and managing company.

As each unit is sold the owners should become members with one vote per unit purchased. The developer, as the designer of the company, may have arranged in the memo and articles, that some members/subscribers hold weighted or "golden shares". These effectively give them control of the development and this can be copper-fastened in the lease. Weighting of shares can occur for different reasons.

- Potential for more development on the site, which is easier to take advantage of if voting arrangements are weighted in favour of units controlled by the developer. It can be a way to delay vesting of communal areas.
- Perception that commercial rights need to be specifically protected. While there needs to be a balance between the rights of apartment owners/residents and those of commercial users it should not occur through weighted shares that impact on the rights of the residential elements.
- Developers may want to protect the value of that development if they retain ownership of some units i.e. they may consider that they are best placed to ensure good management

contracts. Some developers may have developed or acquired an interest in a management agency and may wish to retain the contract for their agency; perhaps believing it will provide the best service.

- Developers may need to retain control of the development to ensure ongoing access to adjoining lands, that they want to develop in the future.
- Long term redevelopment potential of the scheme may be a reason to retain control either through the members and directors or through retaining ownership of the land.

In some instances, owners' failure to take control can be due to a lack of interest/understanding of their role. Without control owners will find it hard to ensure that snagging is completed and funded by the developer and not their own service charges. It is harder to have the scheme finished and documented properly with adequate sinking fund levels, if the owners are not in control. The issues affecting owners' effective control are:

- Being outnumbered at the AGM, through weighted voting arrangements (provided for in the Memo and Articles and lease documentation), or through poor attendance or lack of participation at AGMs by owners.
- Directors who are not owners remaining in place on the board
- Original subscribers not resigning and continuing to take part at AGMs
- Company Secretary not being independent of the agent or developer
- Lack of competition for management agency services due to small number of providers
- Vesting of communal areas not occurring or being delayed.
- Developers may have appointed an agent for longer than a year, or there may be onerous contract conditions related to termination that owners are not in a position to challenge.
- Lack of understanding or apathy among owners

Confidence that apartment living can offer an attractive alternative to conventional housing (for all tenures and households) depends on how well the sector is functioning. Despite the buoyancy of the housing market, if the sector is seen as operating poorly with perceptions of uncertainty and bad practices, the marketability of individual developments and the sector in general will be damaged.

Purchasers' solicitors will seek to protect their clients from the risk of unsustainable developments (shortfalls in sinking funds, expensive service charges, poor quality services, weak and inexperienced management companies).

A management company remains viable by complying with the companies acts, filing annual audited returns, staying financially healthy through the collection of service charges etc. If it is not viable it cannot provide the legal security necessary for conveyancing and to contract for annual services and insurance.

Each year during the audit, the auditors should test for going concern to determine whether in their opinion, the company is viable and financially healthy, or whether it should be given a qualified audit opinion. Issues which the auditor examines to determine going concern include:

- Non-payment of service charges and failure to pursue debtors,
- Failure to pay creditors,
- Failure to hold Annual General Meeting or calling frequent Extraordinary General Meetings,
- Frequent changes of directors or company secretary,

- Frequent changes of agent and/or sub-contractors,
- Board minutes that show a record of disagreements or concerns,
- The physical environment looking neglected,
- Bank balances that are low relative to creditors,
- Sinking fund depleted and capital work postponed,
- Inability/failure to put adequate insurance in place for structural and public liability protection,
- Problems with security, vandalism, fire safety and waste management can indicate problems.

Usually there is a build up to a problem with going concern/viability and the audit opinion will have flagged the concern in previous years. This should act as a warning to potential purchasers and to existing owners (provided they know what to look out for).

A qualified audit opinion (i.e. a negative opinion) will usually require an extraordinary general meeting of the members to decide what should happen to the company and how the problem can be sorted out. Failure to cease trading when the auditor finds that there is a going concern problem will leave the directors open to charges of reckless trading. This is an offence under the Companies Acts. Directors of residential management companies should be aware that if their company is struck off, the directors cannot continue to act as directors, in any other company in which they may be directors, whether commercial, professional, social or charitable. A person's willingness to go forward as a director of a management company can be tempered by such considerations.

Generally, not filing annual returns forms part of a pattern of neglect and can result in the company being struck off the company register, meaning it ceases to exist legally. This is serious since:

- Units cannot be sold without a management company to hold the lease. Mortgage lenders and purchasers will not wish to invest in an apartment development with a failed management company. They will be nervous of companies that have a history of missing deadlines and being struck off, even if later reinstated.
- Agents will not be able to sue for arrears of service charges in the name of the management company or enter into contracts on its behalf. Indeed they are most unlikely to want to continue to provide services themselves.
- Because the company no longer exists to hold the lease to the common areas and external structure it will not be able to obtain insurance for structural and public liability.
- The directors should not continue to hold meetings of the company.
- Creditors will not provide credit and will provide services for cash only. Contracts with agents including managing agents cannot be signed on behalf of the company since it no longer exists.

Reinstatement by the Companies Office is possible if the application is made quickly. If months have elapsed then an application to the Courts is necessary. Reinstatement can only happen if all the arrears of returns, fines and fees including reinstatement fees are made. The backlog of returns can only be cleared if the auditor can provide an audit opinion on the missing years' accounts. It is complex and expensive to reverse a company strike-off. It may be an effective remedy for the company office to deal with non-compliant companies but it is very drastic treatment for homeowners. The system incorporation is expensive and cumbersome to operate and the remedies were not designed to protect peoples' rights and investment in family homes,

and actually undermine them. One advantage to the limited liability model is that it is an existing and accepted legal vehicle; despite its stability it is no longer suitable.

While limited liability may be good for regulating trading companies it is not proving effective for apartment companies. The needs of a residential management company are different to that of a trading company and the structure and rules need to take this into account. It may have been acceptable to adapt an existing format when there were very few apartment developments. But, in Dublin alone, there are now many hundred management companies. They form an important element of housing in the city and they need to be appropriately regulated and supported. It has already been accepted that limited liability does not suit charities, which are often limited by guarantee, the arguments are similar, in both cases, they relate to accountability, transparency and effectiveness.

The reasons why the company limited by guarantee model is unsuitable can be summarised as follows:

- Limited liability is the main benefit of incorporation under the Companies Acts. It is not much use to a residential management company since they generally do not incur material liabilities to third parties. The liability envisaged in the acts is to creditors and lenders. In apartment companies, the main creditors are the agents and their sub-contractors, as well as the accountants, auditors, lawyers etc. All these services can be withdrawn speedily in the event of non-payment, whereas in a trading company creditors supply raw materials and goods, and their risk is significant, since the goods become the property of the purchaser even if payment has not been made.
- Liability is limited to the guarantee (usually nominal) provided by the original subscribers appointed by the developers. The ultimate sanction for failing or non-compliant companies is that they cease to exist as registered companies. In an apartment development this is an extremely drastic outcome and is much more harsh to members than was envisaged in limited liability.
- Annual returns are prepared in a standard format with some written commentary by the directors and auditors. In trading companies filing annual returns allows investors to assess the potential profits available for distribution as dividends. A residential management company operates as a non-profit organisation, so any surplus is reinvested in the development and not distributed as dividends.

For apartment companies filing returns is a pro-forma legal exercise, which is useful for the discipline it imposes in ensuring that accounts are prepared, audited and filed annually. The information owners really need cannot be provided in the accounts filed with the Companies Office. Standard reports are required to follow a tightly prescribed format designed to provide information about going concern, profits and dividends for portfolio investors and creditors. Limited liability is a trade off, which companies make for the disclosure of trading information. Creditors and investors, use the information to inform their investment and trading decisions with the company. The information that is sent to the Companies Office is not designed to provide management information. Apartment owners have a different emphasis to trading companies and it is management information that the owners and potential purchasers need. They need this information to help them improve the way the company operates. The cost to the owners of providing information to the companies office including the accounting, audit and legal costs is significant, yet the information is of little use to the owners. The cost of incorporation is therefore not justified. Purchasers are advised to read the minutes of the board meeting and AGMs for clues about the development's company, so the accounts are clearly not answering their needs either.

Apart from company failure the most serious risk to an apartment scheme is failure to manage and maintain the common areas. Complaints about management agents relate to cost and

quality. Concerns about quality relate to standards of security, cleanliness, repairs, response times and how often services are interrupted. The cost of service charges and sinking funds is a concern and equally important is the way they are calculated and the extent to which future charges can be predicted or appear inherently uncertain. Uncertainty about future management costs and poor quality management will undermine purchasers' confidence in apartment living. Other factors that affect quality of management include:

- Inappropriate design or construction standards that make management difficult and expensive.
- Service charge levels that are set too low to enable the agents to deliver the quality of services that the owners say they want.
- Finally, the quality and cost of services may not be good value-for-money and this may be hard to change, due to lack of competition and lack of regulation of managing agents. This is not unexpected given that the market is relatively young and immature.

In many apartment developments too much decision-making is left to agents whose role should be to implement the decisions of the board of directors, who act for the members. Many new owner-occupiers and small-scale landlords find it hard to challenge managing agents about the quality and cost of services. Most members/owners appreciate that their apartment development would operate more effectively, if they were involved in decision-making but they seem powerless to change the situation.

Unfortunately, a common response to poor quality services is for the owners stop paying service charges, in the mistaken belief, that it will provoke an improved response from the agents, this is too simplified an analysis. Agents are authorised by the directors (appointed by the owners) to sue for non-payment as a simple contract debt in the name of the management company. If there is a concerted move towards non-payment the agents will withdraw their services when the funds are depleted including the sinking fund. They can do this because in most cases, they manage the bank accounts and collect the charges.

Non-payment by a majority (or even a significant minority) of owners will lead to organisational chaos and causes more damage to the apartment development, than it does to the agent. The physical appearance of the development will start to look neglected, beginning a spiral of decline. Creditors will withdraw credit when cash flow problems begin to impact, if they provide services at all, it will be on a cash only basis. If significant amounts of money are owed to creditors, they can seek redress through liquidation. In some cases, owners see dissolving the company as a solution, presumably without realising that they are putting the value and marketability of their property in jeopardy. More knowledgeable and/or experienced owners realise that it is counterproductive to stop paying service charges to the company. Rather they need to examine the problems and determine the causes and solutions including recognising the agent's role in relation to both. If no other way is found to improve performance they can replace the agent. The lack of competition in the market, the strength of the contract with the agent and the remedies in the contract for non-performance will all affect the ability of the owners to effect change quickly.

It is more effective and easier to complain about price or quality as a group rather than as an individual. Despite this most owners are not organised, and do not seek advice or discuss issues among themselves before meeting the agent.

If the directors who were originally appointed by the developers still control the board, owner-occupiers and small investors can feel outnumbered. Youth, lack of confidence and organisational inexperience, often cause owners to allow the managing agents to assume an inappropriate level of power and control. This extends to levels of services and charges, as well as sinking funds and the management and organisation of the scheme in general.

Under the current system, managing agents effectively determine service charges levels with owners having little input. The market is relatively immature and there is no regulation and insufficient competition for people to be confident that they can obtain good value for money, particularly in small schemes. There is very little quantitative data available about service charge levels on which to make comparisons. They appear to range from 1,500 euro to 1,700 euro in year one rising to 2,000 euro to 2,500+ euro from year two onwards. Purchasers pay the first year's service charge when signing for their apartments and many appear unaware that the charge is an estimate and very likely to change (increase) in subsequent years.

Service charge levels affect the marketability of apartments. Year one charges reflect this sensitivity, as developers like to pitch the charge at a level that is seen by purchasers as affordable. It is rarely a realistic price. The charge is lower in first year for a number of reasons; warrantees and defect periods mean maintenance costs are lower in year one than in the following years. These are reasonable approaches, however the absence of a sinking fund provision in year one is not justified. The key variables affecting management, repair and maintenance costs include:

- Automatic gates are easily broken and expensive to fix.
- Communal access door arrangements can be expensive. Access codes have to be changed frequently which is expensive and inconvenient for residents. Keys can be lost and replacement locks and keys are expensive in large schemes. Fobs and sensors need to be robust and ideally the sensors should be recessed, so that they cannot be easily ripped out.
- A lot of glass in communal areas at ground level can prove expensive if easily broken. Panes of glass should not be so large that they are prohibitively expensive to replace or need to be ordered specially with long lead times.
- Windows at upper levels, which although they may open for ventilation, do not open enough to allow owners to clean their own windows, without the agent employing expensive hoists or cranes.
- Mechanical ventilation systems in underground car parks are expensive to maintain. Developers use underground car parks, in areas where high land costs justify the substantial additional construction costs. Surface car parking is used in low-density areas with lower land values, as the city expands land values change and with them land uses. The ongoing annual cost of maintenance and management of mechanical ventilation is obviously not a concern to developers; it should be a concern to purchasers, who have to pay the extra annual costs.
- The number of units sharing a lift is related to height and density. If more units are served by the lift the cost per unit is reduced.
- 24/7 security is usually not provided unless there are commercial elements or underground car parking, drive by and mobile systems are more common and while cheaper they are less effective and can impact on levels of breakages, vandalism.
- Intensity of landscaping – water features, play or recreation areas, intensive planting, and areas of decking or hard landscaping affect costs.
- Public lighting – number and efficiency of lamps will impact on energy costs.
- In year one structural insurance costs are affected by the methods of construction, materials used and expected useful life. The claims history will affect the policy cost in subsequent years. Normally a risk assessment will be undertaken by the insurance company prior to issuing a quotation.
- Public liability insurance costs are affected by the reputation of the area and the ease with which non-residents can gain access. It will also be affected by security arrangements. Few

insurers will quote for public liability unless they already have the insurance policy for structural insurance. Apartment contents insurance for individual apartments can be difficult to obtain in parts of the City with a poor reputation, this is worse in rental sectors, particularly social rented. Claims history is an important determinant in each subsequent year's costs. Normally, a risk assessment will be undertaken by the insurance company, prior to issuing a quotation.

- A significant reduction in service charges and sinking funds can be obtained if the developer applies good construction standards and uses low maintenance materials and design features. Savings in construction costs will usually impact on maintenance costs down the line. In the current housing market it is probably unlikely that this is a consideration for developers or purchasers, it will become an issue when units come onto the second-hand housing market.
- Significant additional management and repair costs, arise from crime and vandalism, in schemes with poor layouts, where informal supervision by residents (either from the scheme itself or from adjoining areas) is absent. It happens in gated estates where non-residents can gain access unobserved and where there is no public right-of-way to encourage "benign", external use and hence supervision by pedestrians walking dogs or taking a short cut etc.

Unexplained cost increases cause uncertainty and loss of confidence in apartment living, they are seen as uncontrollable by the owners. It is an area where the inexperience of young first time buyers is most apparent. Many do not appreciate the true cost of management and maintenance. They compare their service charge costs to those of owners in conventional housing, which they calculate as zero. They do not take into account DIY costs or time, or the cost incurred by a householder in employing tradesmen to undertake work done for them by the agent's subcontractors. In effect they are not comparing like with like. They may even overlook costs like insurance that householders in conventional housing also have to pay.

The uncertainty facing apartment owners about increases in service charges levels does not apply to owners of conventional housing, who have more discretion and autonomy about spending on maintenance, repairs and replacement of major items in their homes. This does not mean that conventional housing does not cost money to maintain and insure, but owners can undertake work to suit their finances and can use DIY to save money. These choices are not open to apartment owners and in addition they have to fund infrastructure that in conventional housing is taken-in-charge and paid for by the local authority.

Apartment owners cannot refuse to pay service charges and sinking fund contributions. At least, if apartment developments have realistic sinking funds then apartment owners are protected against roof repairs, external repainting and landscaping in ways that house owners are not. A major concern is that the contributions to the sinking funds are not adequate, or have been used up on routine work that should be funded from other parts of the budget. When this happens apartment owners are doubly exposed. They have paid money into a sinking fund, and then they need to use savings or borrow money, to finance work, that should have been paid for, from the sinking fund.

Service charge levels and quality vary. There is very little information available to owners about what a competitive charge for their type of scheme should be, even in general terms. A sense of control over spending is not helped when the budget is a one line item without details of what is included or what was spent last year on the same items. Interestingly, this is an issue for social housing landlords as well as individual apartment owners. Cyclical maintenance spending is compulsory in privately managed apartment developments, whereas most social housing landlords can prioritise maintenance spending to suit their current annual budget and may concentrate on one scheme this year and another next year, postponing investment in new properties to concentrate on older ones.

It is worrying that the evidence of realistic and robust sinking funds is so sketchy. From the information available they appear to be pitched at affordability rather than a realistic, professional estimates of the expected useful life and likely replacement costs. While there is universal agreement that they are a good idea, like pensions people want to postpone setting money aside for them for as long as possible. Without sinking funds that are adequate and properly ring-fenced and managed; owners face the prospect of borrowing or using savings to finance essential works that should have been funded from sinking funds, built up over a long period and ideally from year one. Depreciation and provisions for replacement of capital assets are commonplace in trading companies but are not embedded in the culture of apartment development management. There are no guidelines to advise owners about best practice. Developers do not provide management companies with adequate information about recommended maintenance approaches showing expected useful lives.

Owners who see their apartments as the first rung on a property ladder, will allow themselves, to postpone investing in sinking funds, in exchange for reduced annual service charges. After all they do not expect to be around to need the sinking fund and the absence of sinking funds has not yet begun to impact on property prices. Yet it is clear that purchasers of second hand apartments will bear the burden of inadequate sinking funds later on.

If the apartment market was more mature and less buoyant, apartment property prices would be more determined by factors such as:

- Adequacy of sinking funds,
- Impact on annual service charges, of design that does not facilitate effective management – e.g. additional security and vandalism to areas not supervised/overlooked by residents, need for specialist window cleaning of upper floors because apartment windows do not open enough to allow residents to clean them without specialist equipment, or windows at ground level which are easy to break and expensive to fix,
- Impact on service charges and sinking funds of poor standards of construction with expensive to maintain finishes or features e.g. equipment which breaks down frequently and rendered walls which need to be repainted frequently,
- Poor maintenance in the early years leading to a run down appearance and necessitating remedial works to bring the scheme back up to standard,
- Problems with poor quality management,
- Weak management companies that are unable to enforce “house rules”,
- Dominance of social housing tenure whether SWA, RAS, Voluntary Housing or Public Housing, particularly where vulnerable/chaotic tenants are unsupported.

Some solicitors are not deducting arrears of service charges from the purchase price when apartments are sold on. In any event, while collecting arrears of invoiced and unpaid amounts is important, it does not take into account that service charges often did not provide for adequate levels of sinking fund, and this shortfall clearly cannot be demanded in retrospect. The arrears collected when the second hand apartment is sold will be in respect of the amount invoiced and not the amount, which should with hindsight have been demanded.

If, as should happen, separate sinking funds exist for specific items, there can be a temptation to raid one provision to shore up another when a shortfall occurs and the need is urgent e.g. repair the lifts with the money set aside to paint the exterior or pay a public liability claim where insurance cover does not cover the amount claimed.

Under current accounting arrangements, owners do not get regular or adequate information about sinking funds. There is no requirement for the agent to keep the sinking fund in a separate bank account. Disbursements from the sinking fund are not adequately controlled to

protect the owners from unnecessary future exposure. The sinking fund can even be used to make up shortfalls in current spending that should be funded from service charges.

There is concern among owners that their service charge money is used to pay contractors to complete snags and remedy defects that should be a cost to the developer. A further concern is that the wording of documents certifying external works does not facilitate challenging developers to remedy construction defects. Once work is signed off, by the consultant, the remedies that the owners can use are limited; the assumption is that they employed the consultant via the management company. The objectivity of technical advisors, appointed by the management company while it is still under the control of the developers, can contribute to this concern e.g. potential conflicts of interest. Furthermore, the remedies under Home Bond and other insurance products such as Premier Guarantee have not been found to be effective, there are complicated proofs required about whether it is a design or construction defect and some timeframes are too short to allow the defect to become apparent to owners.

Accessibility

Dublin City Council has concerns about the accessibility of developments with gates. These concerns range from the impact of gated communities on the social sustainability of the city by reducing pedestrian and vehicular access, to problems in gaining access to provide services, enforce standards and monitor physical conditions. Locked gates require keys/codes or residents must open gates for officials. Inevitably enforcement and monitoring activities are curtailed.

Few if any developments have building supervisors to manage access and many have erected gates for security reasons that present problems to non-residents seeking to gain access for legitimate, often urgent reasons e.g. emergency services, waste management services, and Environmental Health Officers.

It makes canvassing, surveys, compiling electoral registers/census data more difficult. There must also be implications for policing if access is restricted and it certainly reduces opportunities for community police to get to know the residents of an area.

Obsolescence and Redevelopment

The need to obtain legal agreement from all the owners of an apartment development to proposals to refurbish or demolish and rebuild is a significant factor for all multi-owner apartment developments. There has been very little thought given to how the redevelopment and demolition of apartment developments will be arranged when they become obsolete and the only economically effective solution is to start again. Inevitably some owners will disagree with the proposals.

While the proposed "right to buy" of local authority flats will bring immense benefits to tenants and will increase social sustainability by introducing social mix, it will bring into play more complicated legal arrangements than with a single owner, (whether this is a private or social landlord). The demolition of obsolete apartment schemes such as O'Devaney, Dominick Street and Bridgefoot Street, Ballymun or Fatima would have been much more difficult, if some flats had been owned by the residents. The consultation process would have had to extend to seeking legal agreement from each owner to the demolition or refurbishment.

It is inevitable that at some future point the new private, mixed tenure and former local authority flats will need to be refurbished or demolished. The management company as the ownership vehicle can take the decision by voting at the AGM (or use any other means specified in the memo and articles of the company or in the lease). Even so any individual who opposes the idea can challenge it in the Court.

Apart from complete obsolescence there may be instances where agreement will be sought by the majority of owners to increase the density of the development by putting on additional floors or by providing additional blocks of apartments in the grounds of the scheme.

Urban Sustainability

For the city to achieve sustainable urban densities it needs apartment living to be successful for a majority of people. Therefore it must support apartment developments and help to level the playing field between apartments and conventional housing. Affordability of service charges particularly where there is extensive and/or expensive to maintain infrastructure, is an issue for people on low and ordinary levels of income.

In conventional housing, owners do not have to pay service charges or sinking funds in order that the public realm outside their homes can be maintained, repaired and managed. Sinking funds and charges, for external lighting, drains, roads, footpaths, public liability insurances, car parking, landscaping and watermains, are significant elements of the service charges that apartment owners have to pay each year. There are many small cul-de-sacs in the city, which are maintained and managed by the local authority, that have less public usage and utility than the roads and open space areas, in large apartment developments particularly in suburban areas. For example, there are less people using the public road in these cul-de-sacs, than are using the "private" roads in the large apartment developments. The tighter design of open space layouts in inner city developments will tend to reduce the cost of sinking funds for external areas, and in addition, unit costs will be reduced due to higher densities.

Problems in the sector will affect owners who are on lower incomes most acutely, while those who are better off are likely to leave the sector (or a particular scheme) if it becomes problematic. This will put extra strains on the sustainability of the entire development/sector. Until right-to-buy for local authority flats is introduced there will be no need for management companies in these schemes. As soon as local authority flats can be sold, a legal body needs to be created to share ownership of the communal areas and external structure. Tenants considering purchasing their flats need to take into account the cost of paying service charges as well as mortgage payments.

From the City's perspective, the affordability of apartment living is related to its long-term success and to perceptions about whether apartments offer an attractive alternative to conventional housing. Affordability has two facets; the ability of ordinary people, on average or low incomes to pay service charges, and whether the cost of service charges can be reduced. They can be reduced by relieving large schemes of the burden of maintaining and replacing infrastructure, that in a typical "cul-de-sac" would be in public ownership i.e. taken-in-charge. Taking-in-charge elements of the external areas of larger apartment developments will de-facto increase permeability and reduce the negative impact of gated estates on social sustainability. It will also increase the affordability of apartments thus removing a likely constraint to the achievement of the City's objective of more sustainable urban densities.

Regulation

The Government recently announced that it proposes to introduce a new system of licensing for property management agents. There are no proposals to reform the overall regulatory framework for the apartment sector or to reform companies limited by guarantee other than the proposals for charities.

By the end of the decade, there will be very few single tenure apartment developments, yet the regulation systems affecting apartments is fragmented.

- There is no single register of management bodies for apartment developments. Those which are companies limited by guarantee are registered with the companies office but their

function is not identified within that system, so it is impossible to easily compile a list of management companies/bodies.

- Private landlords and tenants are regulated by the Private Residential Tenancy Board.
- Voluntary Housing Associations operate in an unregulated sector, yet their tenants often live in developments along side tenants in the private rented sector who have a right of redress to the PRTB. Although, it is unclear if this extends to problems with the management of the apartment, which are not within the effective control of the landlord, except that the landlord is a member of the management company.
- Local authority tenants in mixed tenure developments cannot bring their complaints to the PRTB. They will seek redress for poor management from their landlord who will then contact its representative on the management company.
- Managing agents are not licensed and although they generally come from the auctioneering and estate agency background there is no professional qualification necessary to set up as a managing agent.
- Owner/occupiers must use the Courts or their representative on the management company if they have complaints about management.

An overabundance of regulatory bodies is neither efficient nor effective e.g. three different regulatory systems - local authority, voluntary and private housing. It would not even end with three systems since within a tenure there can be variations and complexities:

- Shared ownership has a rental element,
- Voluntary housing can be RAS (formerly SWA) or Differential Rent
- Private rented tenants can be subsidised by RAS or SWA or they can be market rate rental
- Part V and Affordable apartments can be found in apartment developments.

For the sector to operate successfully it needs a regulatory framework that meets its specific concerns and risks.

Another problem for social housing landlords is that their rental income is not sufficient to cover the cost of service charges for the units they own in privately managed apartment developments. Landlords are worried that if management and maintenance by the management company is substandard it will cause conflicts between them and their tenants. These conflicts will be hard to resolve given the loss of control by landlords and their own dependence on the management company to deliver.

Research undertaken by Susan Glennon, of Urban Harmony, for the Housing and Residential Services Department in 2005, showed that many of the issues raised here were causes for concern among owners and occupiers.

Improving Management of Apartment Developments

New Legal and Regulatory Framework

A specially, designed legal body for management companies within an integrated regulatory framework for agents, landlords and companies is necessary to allow the apartment sector to mature and become stable and predictable. Provided the elements are integrated, the regulatory framework could comprise different bodies to (a) licence agents, (b) register, regulate and support management bodies and (c) provide advocacy and complaint procedures for landlords and tenants of all tenures. The role of the local authority could vary from local authority to local authority. Given the importance to the City of apartment living, it makes sense for it to be involved in licensing managing agents and in the registration, regulation and support of management bodies,

Such a system could address the enforcement of building standards in apartment developments and the extent to which areas within apartment developments can be taken-in-charge to reduce service charges and sinking fund contributions. Raising buyers' awareness of the importance of taking more control and responsibility for their management bodies is an essential aspect of helping the sector to mature successfully.

Increasingly, social housing policy is promoting mixed tenure apartment developments to achieve social cohesion through social mix. There is no regulatory body for voluntary housing associations and with the increasing mix of tenures in apartment developments it is opportune to consider a regulatory system for all housing management organisations and all tenures.

The proposed National Property Services Regulatory Authority offers an opportunity to provide a seamless regulatory body for housing irrespective of tenure. Such a system would mirror the housing provision in mixed tenure apartment developments.

Social housing agencies (voluntary and public) have an expertise in housing management and a track record in acting for the common good. This expertise and ethos can become beneficial to all apartment developments, particularly those with mixed tenure, in a variety of roles including managing agents.

The housing expertise and local knowledge of local authorities makes them eminently suitable to monitor, support and regulate management companies as well as being involved in the system of licensing residential property managing agents. This could be in partnership with or as an agent within a national property services system. Management companies could be required to register with the local authority who would then be able to link the development back to other local authority systems affecting the development; planning, fire safety, environmental health, waste management, voters registration, water, sewerage, roads, lighting etc. It would facilitate a greater integration and support for apartment developments with mixed tenure, SWA, RAS and social rented, through the development of residents' associations and family support systems for tenants and vulnerable households generally.

Regulatory Reform

The remedies and supports within the companies' office are not designed to meet the needs of residential apartment developments. The differences between trading companies and non-profit residential management companies are extensive. Ideally, as is proposed for charities, they should be moved away from the remit of the companies' office.

Interim arrangements should be provided until a new legal framework replaces company limited by guarantee. A separate registration system with the new property authority or the local authority in partnership/as agent of the authority, should be established.

Initially the system could be voluntary registration with the local authority. If and when the companies office regulatory role is replaced by a specific regulatory system for management

companies, the registration function can become part of that regulatory authority's function. Local authorities could operate the system locally within a national framework of registration, regulation and support for owners and their companies, which could include the system for licensing property managing agents.

The long term objective should be to extend the remit of the local authority and national body beyond licensing agents and registering companies to undertaking research, support, training and promotion of best practice. It should include acting as watchdog to protect the consumer in relation to housing.

Reforming companies limited by guarantee, or at least those that operate as management companies for apartment developments is an option. Currently there are no proposals to reform or change the company structure for management companies. The Company Law Review Group (Department of Enterprise, Trade and Employment) are reviewing companies limited by share for smaller companies and are proposing a new form - Designated Activity Companies. There appears to be nothing in their work programme to suggest that a review of companies limited by guarantee will take place in the foreseeable future. Designated Activities Companies are intended to simplify the code of practice for small companies that are limited by shares, while leaving the existing system in place for large companies. While new apartment management companies could use DAC structures, it is still designed for a trading company.

The Law Reform Commission is currently reviewing the system of legal conveyance for multi-unit developments. This would be a good opportunity to examine the need to change the management structure too and replace it with another more suitable form of management. A new structure should provide for greater accountability to owners and tenants. It should cater specifically for management in apartment developments, including an option for existing developments to transfer to the new system.

The reform of the statutory framework for charities came about because charities and their funders argued that the structure did not meet the needs of its stakeholders. It is proposed to remove them from the remit of the Companies Office and establish a separate regulatory body for them. This option should also be taken for management companies in apartment developments.

Dublin City Council should seek to further the case for a separate regulatory system for apartment development management, including making submissions to:

- Company Law Review Group
- Law Reform Commission
- Department of Environment, Heritage and Local Government
- Department of Justice, Equality and Law Reform

The new framework should take account of the concerns of owner-occupiers as well as private and social landlords and tenants generally.

Registration

A register of residential management companies would help local authorities to enforce standards and would make it easier to effectively monitor and support apartment developments. The new property services authority will no doubt want to take the lead in developing systems of regulation and control of agents and hopefully it will see a role in relation to registration of management companies too (either by themselves or in partnership with local authorities). In the absence of a new legal vehicle for management bodies it will be necessary to put in place co-ordination between the Companies Office and any other body involved in the sector, particularly if a registration system is to be implemented. It will be more difficult to implement a registration system that is voluntary, and there will be resistance to

duplication between a new registration system and the registration within the Companies Office, despite the differences in purpose.

In any proposed registration system (voluntary or mandatory) management companies should be asked to provide details of the apartment development including:

- Company name and registered address – until a new legal form is introduced. In the event that the body is not a limited company, similar details should be supplied in respect of the alternative form, e.g. co-operative or mutual benefit.
- Names of the officers including contact details, particularly the company secretary or person responsible for filing returns showing compliance with regulation.
- Details of the managing agents (or details of other forms of service delivery if an agent is not employed)
- Details of sinking funds and service charges, including itemised budget
- Copies of constitution and annual returns
- Issues and problems which need to be addressed
- Data on tenure

The new property services authority should also invest in advocacy, support and awareness raising among existing and potential apartment owners, and again this is something that is of interest to the local authority.

Advice and Support for Owners

Over time owners will gain experience and will take control so that a better system of reporting and accountability will develop. As an interim measure external agencies such as the local authority could provide information, support and advice to improve the system.

Apartment owners as members and as directors of management companies need advice and support (particularly in the first few years) to develop internal control systems that can achieve the necessary levels of protection and reporting to improve accountability and transparency. As part of the system of registration the local authority could provide assistance, advice and support to the companies on its register to help them to become more sustainable and to operate more effectively.

A standard national programme of education, and awareness raising is needed to reduce the gap in understanding between developers, agents and owners regarding the role and responsibilities of each participant.

The new property authority could develop programmes that could be delivered by local authorities in partnership with existing information providers e.g. Citizens Information Centres.

If the legal structure is changed and limited companies are replaced a similar piece of work is needed for the new system. In the interim the operation of the existing system needs to be improved and supported.

Residential management companies can learn from each other, meetings between different management companies need to be facilitated for effective exchanges of learning and experiences to occur. There are opportunities to use web based support systems to provide standard information, answer questions and put companies in touch with each other to share experiences and improve their expertise. This is something which the local authority could provide and support until the system is self-sustaining.

The aim should be to establish a network of management companies who would work together to represent their sector and who would provide online support to each other through an Association of Residential Management Companies. Such an association should be funded initially from the new property services authority, and organised by the local authority. There are models in other countries that could provide ideas about how it might work.

Corporate Governance

Decisions taken by directors, need to be made within a system of checks and balances both to protect the membership and to demonstrate due diligence and protect the directors from unwarranted criticism. This is particularly important when the decisions taken are not agreeable to all the members. Regulatory systems should not assume that all board decisions are made in the interest of the common good. During the life of an apartment development, major decisions will be taken about spending from the sinking fund and down the line decisions will be about demolition and redevelopment when schemes become obsolete. Owners particularly those who are not directors need to have confidence in their board so that they:

- Believe their apartment development is well maintained and managed and their investment protected.
- Understand how their money is being spent and feel that they are getting good value-for-money.
- Are confident that there is sufficient provision in the sinking funds to meet both anticipated and unexpected expenditure.
- Have a Service Level Agreement in place, showing key indicators against which performance can be measured and reported.
- Know how service charges are calculated and distributed among units. They need information about the composition of service charges including an itemised budget showing breakdown between contractors, agent, professional fees, administration, insurance and sinking fund and charges such as waste management/utility bills.
- Are able to review the factors and variables affecting service charge levels including those which can be remedied, as well as those which were determined during design, planning and construction.
- Can see a variance analysis report showing actual spending against budgeted, with explanations for over or under spending. They need an analysis of debtors and creditors showing actions taken and proposed.

The Company Secretary should be independent of the agent and should ideally be one of the owners, who can if necessary, then engage the company's accountants, or lawyers to provide assistance and advice about company secretarial duties.

Minutes of meetings and records of decisions taken should be available for inspection by directors, auditors and members at the registered office of the company. They are useful to prospective purchasers wanting to understand what the issues are in the apartment development. Prospective purchasers can carry out a search in the Companies Office to ascertain how the company is performing; they are likely to find the information disappointingly opaque.

A system of standardised accounting, reporting and registration within residential management companies should be developed to meet the regulatory and information needs of apartment developments. If some changes were made to the existing accounts they could be made to recognise the main objectives and concerns of the owners as well as comply with the reporting requirements of the Companies Acts. The sensitivity regarding trading information that determines how much information is made available in annual returns filed with the

Companies Office is not a concern to apartment owners. Managing agents may prefer not to have the detail of their service charges levels widely know, but in the long run wider awareness of the "going rate" for different services within the budget will improve competitiveness in the sector for owners. The existing reticence and uncertainty about the composition and detail of charges is part of the problem the sector faces in gaining acceptance by owners of the necessity for service charge increases. Owners need to be able to assess how one apartment development compares to another similar one, and to assess if the level of service charges, sinking fund and quality of management affects property prices in their scheme relative to others in the area. The new property authority could provide this type of comparative analysis (league table) for existing owners and purchasers.

Owners should receive information from their agent each year that shows:

- Annual service charges, showing detailed budget, outlining how the charge was calculated and apportioned among units (commercial and residential).
- Variances in service charges from year-to-year, and why these occurred.
- Details of major debtors and creditors, including proposals to collect debts and pay creditors.
- Depreciation/appreciation of common areas and their anticipated life cycle. Level of sinking funds for each major class of plant and equipment, fixed assets (roads, paths, sewers, drains, water mains). The information should provide bank details of where the sinking funds are invested. Movements in the sinking funds during the period should be explained. The policy for disbursement from sinking funds and tendering for major capital works should be shown.
- Information on the cost and procurement process of professional services, including agents.

This sort of approach would improve accountability, probity and transparency in the budgeting and accounting process and would restore control to the owners.

Service Charges

Year one charges are kept artificially low and year two budgets are based on an estimate. The year two budgets should be seen as a quotation and there should be an opening balance from year one showing the balance on the current account and the balance in the sinking fund. It should be based on the experience in year one plus the extra cost of maintaining items on which the warranties have expired and of providing additional services not provided in Year One. It should be informed by the experience and expectations formed by owners in the first year.

Owners need to know how service charges are calculated and distributed among units. They need information about the composition of service charges including an itemised budget showing breakdown between contractors, agent, professional fees, administration, insurance and sinking fund and charges such as waste management/utility bills.

They need to be able to review the factors and variables affecting service charge levels including those, which can be remedied, and those that are determined at design, planning and construction stage.

They need to see a variance analysis showing actual spending against budgeted, with explanations for over or under spending. They need an analysis of debtors and creditors showing actions taken and proposed.

Owners need information about how the expected useful lives of major items of plant, equipment and infrastructure are determined, and how often they are reviewed and compared to existing provisions.

Disbursements from the sinking fund need to be the subject of a separate system of authorisation. The funds should be held separate to the revenue bank account where the money for day-to-day payments is held. The sinking fund account should be held in the name of the management company or in a managed client account held on their behalf by the agent. Each year this account should be audited and a report to members provided.

Owners need assurances that the contract for annual services is awarded competitively both to the agents and to their subcontractors. The tendering and quotation procedures, used for contractors, including the number of quotations needed should be agreed with the members. In cases where the agent has a conflict of interest, this should be disclosed to the members before the decision to employ is made. Conflicts could include relationship with subcontractors or developers.

There should be a separate system to authorise extraordinary items such as breakages etc and consideration should be given to making provision for items in subsequent years' budgets.

When people get the bill for year two and realise that the charge is subject to annual changes/increases, they often object. Especially when they feel that the service charges are already too high. Poor and sketchy information is a major factor in creating dissention about levels of service charge. Clearly problems with the quality and reliability of management will affect the attitude of owners too.

A table of charges showing typical charges would help to dispel some of the myths and would help to increase competitiveness among managing agents. It could be a web-based support maintained by management companies themselves. It should show how this apartment development compares to similar ones so owners can assess the impact of service charges, sinking fund levels and quality of management on property prices in their scheme relative to others in the area. The new property authority could provide this type of comparative analysis for existing owners and purchasers.

The division of service charges should take account of different usage patterns between commercial and residential occupiers, but people who chose to buy an apartment over a shop, pub or other business, cannot then impose unreasonable restrictions on commercial users.

Capital housing subsidies need to be followed through with affordable service charges, both for social landlords and for owner occupiers in receipt of so called "shallow, homeownership subsidies" (shared ownership, affordable housing). In addition Part V and Right to buy discounts will be less effective if people find that they cannot afford the annual service charges.

Apartment developments have a finite life expectancy and most will need refurbishment within a few decades. Expected useful life will depend on:

- Quality of applied, cyclical maintenance
- Initial design
- Construction methods, quality and finishes
- Degree of flexibility in the scheme to facilitate refurbishment/redevelopment

In some cases demolition and redevelopment will be the most economic and effective solution. The management company needs to take a decision in an agreed manner, e.g. voting at an Extraordinary General Meeting. The method of agreement can be set out in the constitution or Memorandum and Articles of Association. If a procedure is agreed in advance and forms part of the legal documentation it will speed up the process, even if, disgruntled owners take their objections to the Courts.

Sinking Fund

A separate fund is required for each major item of infrastructure or equipment (e.g. lifts) as well as a fund for the maintenance of finishes (including painting and new floor coverings).

As built drawings, specifications for equipment and plant, guidelines for maintenance and servicing should form part of the hand over to the management company from the developer. Once these documents are mislaid they are almost impossible to replace and in the confusion of moving in, they can often be overlooked and not provided to the management company.

Sometimes these documents as well as certificates of compliance and fire safety files are given to the initial managing agent, whereas the originals should go to the management company and only a copy should be given to the current managing agent.

Developers should be required to provide an independent assessment of each major capital item including a recommended depreciation and replacement policy. Such an assessment would highlight issues of concern to owners. It could be linked to Home Bond, Premier Guarantee and other similar insurance products, designed to protect owners against construction defects.

The calculation of sinking fund contributions should be based on these assessments of life expectancy of materials and finishes as well as plant and equipment. In addition, to expected useful life, owners need to have a realistic estimate of likely replacement cost, when the useful life is over. This should be based on historic costs with a professional assessment of pricing trends and inflation.

Expected useful life can only be relied on if the recommended maintenance routines, that are designed to prevent accelerated depreciation, are applied. If cyclical maintenance is not in place then the sinking fund calculation needs to shorten the expected useful life accordingly. It is important that owners take responsibility for decisions about sinking fund provision and that they understand the concepts of expected useful life, replacement costs and the impact of maintenance on sinking fund provisions, these matters are too important to be left to the agents to decide. They need to monitor the performance of the assets and review the provisions regularly to ensure they are still appropriate, e.g. plant can become obsolete and when parts are no longer available it will have to be replaced sooner than expected. Consider the impact of providing for the replacement cost of a lift in 15 years only to find out it has to be replaced in half that time, when it breaks and parts cannot be found to have it repaired because that model of lift is no longer being manufactured.

Instead of pitching sinking fund contributions at a notional amount, based on affordability, they should be based on professional assessments. A relatively pessimistic view of replacement costs and expected useful life should be adopted. It is too easy for agents to allow sinking fund contributions to lapse, it makes service charge figures appear more attractive and less difficult for them to collect and defend. Regular annual sinking fund contributions are the only way to avoid individual owners being forced to take out loans to finance major essential repairs due to shortfalls in sinking funds.

In a less heated housing market, purchasers would take account of assessments by developers and would understand their impact on sinking fund and service charge levels. Over time, this would influence developers and cause them to use higher quality materials and construction standards with lower maintenance costs and longer expected useful lives. As part of an awareness raising process owners should be informed of the issues affecting service charge levels, including the quality of design and construction and their impact on the cost of management and maintenance.

Already it is common practice that year one service charges are pitched low to make the apartments appear more affordable and thus easier to market for the developer. The

justification is that many components are covered by warranties in the first year and the defects period for the development is in place for the first year. Inevitably service charges rise in year two to take account of the real costs of management, maintenance, insurance and repairs. The proper level of sinking fund should form part of this calculation. Sinking fund contributions should be charged in year one.

Owners who sell after one year often make the most significant profit relative to original investment; it is reasonable for them to contribute to the cost of the depreciation of the asset they have used for the first year.

The adequacy of sinking fund provisions in mixed tenure developments is a major concern for social housing landlords. They have invested for the long haul and need to know that they will not be hit for shortfalls in sinking funds due to inadequate management and sinking funds, in the early years. As professional landlords, they will be aware of the increased cost, in service charges and sinking fund provisions, of infrastructure that is poorly designed or constructed. In time other owners and directors will come to value the expertise of social housing landlords in mixed tenure developments, and will seek to have them take an active role in the management company.

Redressing Balance of Power

Between developers remaining in the picture and agents taking on roles, which are more appropriate for members/directors, it is understandable that some owners might feel that they are not in control. The situation can be improved by:

- Adopting a standard lease document giving each owner a single vote per unit purchased and precluding other forms of distortion in the distribution of rights and obligations. The lease needs to provide for the particular needs of commercial units in mixed developments.
- Adopting a standard form of constitution for the company, which sets out how directors and officers are to be appointed and removed, including compulsory rotation and resignation protocols. This should provide for appropriate representation from different buildings and uses in the development.
- Requiring subscribers and directors, who are not owners, to resign when the development is substantially occupied.
- Vesting common areas and external structures in the management company after a specified time or when a specified percentage of units are occupied. This would then require the management company to provide the developer with a building licence to complete the development, and undertake snagging and remedial works where applicable, since the development would no longer be within the developer's control.
- The current two-tier structure in use in limited companies does not have to be replicated in a new organisational framework. A single tier with officers responsible for different aspects would work and might be better understood and hence more comfortable for owners. It could provide for the involvement of residents who are not owners.

Managing Agents

To be successful management companies (in whatever form) require commitment and work by the owners. Some people must be willing to step forward and assume the responsibilities of directorships and take on the Company Secretary role. Given that Company Law is intended to be the vehicle for regulating and monitoring the commercial life of the country, these duties and responsibilities are justifiably onerous, particularly for inexperienced first time buyers who become company directors, without much experience of company law.

A management company can employ a managing agent or can undertake the co-ordination role itself by employing the contractors directly. Agents engage subcontractors to undertake specialist work and provide other services directly (cleaning, landscaping, accounting, administration).

Dispensing with a managing agent will involve additional time and commitment from owners. It is really only workable in small schemes, which in any event tend to attract less professional agents. Owners in small schemes might be well advised to develop voluntary committees to organise services. Economies of scale favour large schemes as the unit costs of fixed cost items drop with higher density. Agents are useful and even necessary in bigger apartment developments where the volume and scale of work justifies the expenditure on agency fees. Small schemes use agents too where the owners prefer to delegate the role. Sometimes as owners gain confidence and experience they realise that they can provide the coordination and administration themselves; they dispense with the agents and engage contractors themselves.

There is increasing focus on the need to regulate and license managing agents, and on the need for transparency, accountability and clarity in service charge budgets. The Auctioneering and Estate Agents Review Group Report to Minister for Justice Equality and Law Reform (July 2005) recommended the establishment of a statutory agency to regulate their sector, including property management and letting services. During a debate in the Dail on 29th November 2005 the Minister for Justice, Equality and Law Reform (Mr. McDowell) said:

"Following Government approval, the Department is preparing legislation to give effect to the new National Property Services Regulatory Authority. In the interim, I am proceeding with arrangements to facilitate the establishment of the new authority at an early date. The new regulatory authority will be responsible for the licensing and regulation of a range of property services including auctioneering, estate agency, property letting and property management agencies."

In a Dáil debate, on 30th March 2006, the Minister for the Environment, Heritage and Local Government confirmed that the Department of Justice, Equality and Law Reform would establish a National Property Services Regulatory Agency. It is proposed that the new authority will regulate the operations of managing agents and deal with complaints about property management service providers or agents. Its full remit and implementation date has not yet been made public.

Management companies are specific to their own apartment development and as such are tied to a single local authority's area. Agents operate nationally and should be licensed nationally, although with input from the local authority about quality of performance. This could be in the form of a Certificate of Value issued to the agents by the local authority in the area in which they operate. The national authority would then only issue licences to agents who held a Certificate of Value or Quality Assurance from the local authorities in whose areas they operate or want to operate.

Voluntary housing organisations and public housing authorities, could establish arms length management organisations to enable them to provide managing agency services. These could compete with private management agents in schemes where affordability is a concern. New licensing arrangements for management agencies should provide for voluntary housing associations and local authorities becoming management agents, particularly in developments with mixed tenure.

Building Supervisors

Building supervisors or some form of on-site presence during the day is a good option for large schemes. A resident or full time building supervisor would bring undeniable benefits in improving accountability and performance of most management tasks. In larger schemes a management suite in a foyer/atrium/courtyard or an apartment assigned to a building supervisor would be justified economically. The capital cost could be shared between the other

units, as part of the capital cost of purchase. Service charges would have to be lower to take account of accommodation provided either for daytime management (office area) or full time if it was a resident building supervisor for whom a flat was provided rent-free or at a reduced rate.

Small schemes located close to each other could co-operate by sharing building supervisors. In large schemes a management unit should become a condition of planning. The location of a management suite or apartment close to communal spaces (meeting room, laundry, storage, recycling area etc) would improve the quality of management and supervision.

There are at least two scenarios,

- The managing agent would reduce the charge because of the provision of office or apartment space for his employees

Or

- The building supervisor could become the "agent" for the development and provide the administration and co-ordination services needed, including calling in specialist contractors from time to time.

Apart from a reduction in agency administration and overhead costs, there would be savings due to reductions in vandalism and improvements in management efficiencies.

Service Level Agreements (SLA)

Service Level Agreements are commonly used to improve quality and accountability of agency services in other sectors. They specify the type, frequency and quality of services that the employer is paying the agent for. Regardless of how management agency services are procured, there needs to be a mechanism of improving and maintaining quality. Service Level Agreements in apartment developments would improve the quality of services and empower owners to take effective control. They would reduce the information deficit and be a way to go to the next stage i.e. reporting against Key Performance Indicators.

A good working relationship between owners and agents/building supervisors can be developed if it is defined by a service level agreement that provides for:

- Detailed, itemised and agreed budgets for revenue spending with variances reported on and explained.
- Options for savings in spending presented and agreed, if the owners find the service charge too expensive.
- Disbursement of sinking fund amounts strictly controlled by the directors not the agent.
- Procurement and appointment of contractors should involve the directors particularly for large capital works through an agreed tendering/quotation system. Owners should see three quotations for sinking fund payments and for repair works that are not provided for in the annual budget.
- Formal reporting to the membership of achievement of objectives set out in key performance indicators, which would relate back to budget headings
- Response times for routine complaints or requests for repairs and clean ups
- Response times in emergency situations
- Standard of services to be achieved, frequency and quality.

Section 180

Section 180 Planning and Development Act 2000 provides for circumstances where developments can be taken-in-charge at the owners request. This is generally seen as only relating to conventional housing, but apartment developments have not been excluded because a house is defined in the Planning Act 2000 as:

"House" means a building or part of a building which is being … occupied as a dwelling … and where appropriate includes a building….designed for use as…..a flat, an apartment or other dwelling within such a building."

If the planning legislation is taken to mean that private estates are to be taken-in-charge when requested by the owners, then possible future interpretations of the act could include elements within an apartment development i.e. infrastructure, car parks, open spaces and roadways. Dublin City Council needs to review the extent to which taking-in-charge may become applicable to apartment complexes, and whether this should mean control and/or ownership. There might be public health benefits and it would encourage greater permeability and integration of the open spaces in apartment developments into the city.

Construction standards and layouts in apartment developments should be more closely prescribed, monitored and enforced as part of the planning process to take account of possible S180 implications. The layouts of apartment blocks, within the apartment development, should try to facilitate some of the major elements of infrastructure, being able to be taken-in-charge by the local authority including; access road, public lighting, drains, water-mains, landscaping.

The affordability of service charges would be addressed by a programme of taking-in-charge of appropriate elements of the external environment of apartment developments, which would significantly reduce the cost of sinking funds. Apart from improving the chances of apartment living becoming a successful alternative to conventional housing, it would serve to improve urban sustainability through increasing permeability by reducing the impact of gated housing developments.

Private Residential Tenancies Board

It has been suggested that the remit of the Private Residential Tenancies Board could be extended. A single body to address the complaints of all tenants regardless of tenure is worth considering. The extensive regulatory requirements for the management of apartment developments goes beyond the remit of the PRTB as currently constituted. There would be concerns that in trying to adapt the PRTB to meet the needs of apartment developments, the board would be weakened and its own vital work affected, without necessarily improving the regulation of apartment management.

The successful implementation of the pilot Rental Accommodation Scheme (RAS) will provide new opportunities for the City to engage with private sector apartment management companies and agents. RAS negotiations present valuable occasions to improve apartment developments management by seeking greater involvement of landlords in the management and control of their investments.

Right-to-Buy Local Authority Flats

The sale of Dublin City Council flats will require the creation by the Council of management companies in the relevant schemes, so that the ownership of the common areas and external structure can be transferred to the tenants, as they buy the apartments. These schemes including the common areas will be privately owned and managed through their management company. Initially, the City intends to provide management services, at least until the majority of the units have been sold. This is an opportunity for City Council to develop expertise and pilot models of service delivery in mixed tenure developments. This experience should prove useful to private apartment developments, particularly those involving social or quasi-social

housing (e.g. shallow housing subsidies such as shared ownership, affordable housing initiatives). It facilitates the establishment of arms length management organisations in both local authorities and voluntary housing associations. Such models can be applied first, to smaller developments, which managing agents tend not to be interested in and in mixed tenure blocks where affordability and quality of services is of grave concern. Currently a pilot service delivery model is being tried in Ballymun in three mixed-use developments, which includes a small number of apartments as well as retail, community and childcare.

In the sale of local authority apartment schemes, consideration should be given to retaining some title to the redevelopment rights of the site in the event of the demolition of the scheme. Alternatively the lease periods in right-to-buy could be set at a period to take account of likely obsolescence and the units sold at a discount to take account of the shorter lease period. This could be applied to all schemes and would be a way of providing land banks for social housing for future generations.

Obsolescence

The right of a single individual should not hold sway over the greater agreed common good, although people have a right to due process. A balance is needed between these rights and the inevitability of obsolescence in apartment developments. A new regulatory system should recognise that there is a strong probability that agreement about the best course of action, will difficult to reach and design systems which include protocols and best practice guidelines for management companies facing this stage in their development's life cycle.

Research

Many sections within Dublin City Council including architects, planning, engineering, housing maintenance and environmental health have useful data and views on issues about housing standards and management in apartment developments. Many of these views have informed this paper.

An extensive round of internal reviews and discussions have taken place within Dublin City Council and has raised some concern about the sustainability of apartment developments generally. The factors that affect apartment living need to researched, monitored and improved, from design to construction and management. Dublin City Council need to find out more about the efficiency and effectiveness of the sector to inform its strategy properly and this process will be facilitated by the current survey.

An important outcome of the inspection of private rental units and in particular the Rental Assistance Scheme (RAS) inspections is that there is more information available about the quality of apartments currently in the market, particularly purpose built apartment developments.

A survey of the apartment developments in the city area is underway, the intention is to gain a better understanding of the sector. At the moment, both quantitative and qualitative data is insufficient for a reliable analysis of apartment living and until more information is available only general interventions can be proposed. With more detailed information a more targeted system of support, advice and training can be provided. A spreadsheet from TCD Urban and Regional Studies has provided a starting point for the survey.

In relation to enforcement of standards there should be some legislative and regulatory changes to take account of difference between houses and apartments when serving notices.

There is concern that self-certification has not maintained standards as envisaged and that the wording in certificates needs to be tightened up to place the responsibility on the certifier to ensure that the standards are appropriate and achieved.

3. OTHER FACTORS AFFECTING APARTMENT LIVING

Introduction

The long-term effectiveness of apartment living, as a desirable alternative to conventional and often, lower density housing, depends on how it is perceived by owners, investors and tenants. For investors (including owner-occupiers) perceptions will be influenced by the capital appreciation of apartments relative to houses and the day-to-day costs of apartment living. Ultimately quality of life, including control and certainty over costs and management, will determine the long-term urban sustainability of apartments for residents and particularly families. Apartment living requires owners to agree to abide by a set of agreed "house rules" to minimise the negative impact of high density living such as noise, anti social activity.

Urban Sustainability

The success of the city's aspirations towards a more sustainable density on a continental European model, depends on apartment living being considered a successful form of housing, for a range of households and tenures. This will be judged by how apartment developments operate in the marketplace (owner occupier and rental). Good estate management will contribute to preferences for one development over another, and will affect market prices between schemes. The overall perception of the apartment sector will be formed by the accumulation of perceptions.

Many developers and housing practitioners continue to believe that Irish people find it hard to adapt to living in apartments. Regardless of design there are reasons to do with autonomy and independence, why people prefer conventional housing to apartments. In addition apartments can be problematic from a design, cost and management viewpoint. Apartments spell loss of independence and create interdependence which must be managed. There are benefits to apartments which are well designed and managed, they reduce the need for owners to be involved in DIY and can be cost effective if well managed. If managed and designed properly, apartments can compete favourably with conventional housing. Or at least they can compete in most aspects other than interdependence of communal areas and independence of decision-making, in both these characteristics apartments cannot match conventional housing.

Until the 1950s many people including families lived in private rented accommodation. Developers support their view of family apartments by pointing to the experience of Ballymun and other apartment developments. They have concluded that in cultural and social terms Irish families do not favour high rise apartments. This view is not sufficiently informed about the inherent flaws in those old developments. Flaws related to amenities, transport and facilities or the inadequacies of management of high rise (mostly local authority) developments. As well as cost, design and quality of construction, the issues of amenity and neighbourhood management need to be addressed as well, if the outcome is to be different this time around.

Irish demographics have changed in the last decades.

- There are many people living in our cities who come from places where apartment living for families is the norm.
- The overall population is increasing particularly on the east coast.
- The size of Irish households has decreased to 2.9, still large enough to require family homes despite its decrease compared to past figures.
- Household formation and household numbers are increasing more rapidly than the population is increasing, partly due to the relative youth of the population.
- Many foreign nationals are young.
- Single people are less willing to share and want their own place at a younger age.

- Students live away from home and want their own place.
- Relationship break-ups are becoming more common.
- Young people expect to be able to move out of the family home before marriage and neither do they expect to live with the in-laws after marriage.
- Young people are being encouraged to get a foot on the property ladder at a relatively young age.

All these factors have resulted in greater numbers of smaller households. Rather than viewing ourselves as a society unable to live successfully in apartments we need to consider how the design, management and environment of apartment developments needs to adapt to the needs of a variety of the household types. The current apartment market is generally designed to cater for childless couples, empty nesters and single people.

In Dublin, many families in social housing live in apartments. Apartment living for families needs to be extended beyond social and affordable housing to include "market-rate" families. If the only children living in apartment developments are children of households in receipt of housing subsidy then "social mix", will be achieved although social mixing will not have been achieved. Apartments and conventional housing should be available to all income groups, household types and tenures.

Successful areas of Dublin traditionally had a wide variety of income types, tenures and housing forms; as a City, we should aspire to returning to this tried and tested model of living.

"A Good Place for Children"

A Rowntree Report (Jan 2006) entitled "A Good Place for Children" stressed the importance of attracting and retaining families for the sustainability of cities. The paper argued "*that cities need families, across the income spectrum, and that new mixed income developments represent a new opportunity to attract and retain them.*" The paper examined four high-density developments; Greenwich Millennium Village and Britannia both in London, as well as Hulme in Manchester and new Gorbals in Glasgow. All four are largely composed of apartments although with some duplex.

The report found that the attractiveness of apartment developments for families will ultimately be the deciding factor in whether apartments as a housing form become accepted as a viable and attractive alternative to conventional housing. The quality of external amenities for children (clean, safe physical environment, with managed traffic) and facilities (crèches, schools, parks) while important will not be sufficient unless the design of the apartment development allows the creation of a good home environment for the diverse needs of a family, one where children's ages can range from babies to teenagers.

Apartment Design

Developers are not providing or marketing apartment developments with families in mind. Even three bedroom "family sized" apartments appear to be designed for three single people as evidenced by the lack of family bathrooms and kitchens and the inadequacy of storage. Their perceptions of the market determine their approach. Something more far-sighted is required from public policy, particularly housing policy makers and urban designers. The Royal Institute of Architects in Ireland, recently suggested that design for family apartments should address issues such as:

- internal and external storage,
- family sized bathrooms and kitchens,
- meeting rooms, open space and play areas.

A combination of internal and external environmental factors is needed to encourage parents to view apartments as compatible with good quality family life.

Issues raised within Dublin City Council include:

- Laundry facilities/area set apart from the kitchen, it could be a combination of guest WC and laundry area. Leases typically specify that laundry should not be visible to other residents from the courtyard or street. Designers should consider people's aspiration and financial reasons for wanting to dry clothes naturally. They should look at practical ways this can be accommodated without creating breaches of lease conditions. Design solutions could include screens of opaque glass, or wood or partially covered areas on terraces or balconies where clothes can be dried in the open air without detracting from neighbours use and enjoyment of their open space areas.
- Bathrooms, kitchens and areas where clothes are laundered need good ventilation, including mechanical ventilation. Most modern dwellings are designed to be virtually draught free, through insulation and double and even triple glazing. Increasing awareness among residents of the causes of condensation is worthwhile, but designers cannot rely on improved patterns of usage and consumer understanding alone to manage condensation. Designers and planners need to promote passive ventilation as standard.
- Lack of adequate storage is a constant source of irritation for all households, particularly families. This applies to internal storage space for vacuum cleaners and other household items but it also applies to storage for bulky items. These need to be easily accessible, so an on-site, lockup storage in a basement area would be best. This could accommodate bikes, leisure and sports equipment (skies, canoes) children's' buggies and cots, Christmas decorations, winter clothes. Basically all the items which householders in conventional housing store in garages, garden sheds, basements and attics.
- Neighbour noise and noise from open space and play areas causes tension impacts on social cohesion.
- Traffic noise suppression for heavily trafficked or noisy streets.
- Vibration from lifts can be an issue particularly at night.
- Space in children's bedrooms for study and play to reduce pressure on living areas which are often open plan, and sometimes include the kitchen.
- Useable balconies and terraces which do not overlook neighbouring gardens and which are not the only storage or clothes drying area. Ideally terraces and balconies should have the capability to become closed in during cold and wet weather.
- Generous landscaped areas designed to cater for a diversity of uses and household types including children and teenagers. Careful treatment of the transition space between public and semi-private, so that the transition is managed, perceptible and gradual.
- External play areas that facilitate creative play and encourage the development of social skills are necessary. Places where children have a "right to play" and where they are not seen as a nuisance by other occupiers. Supervision of play areas can serve to legitimize play and prevent interference from other residents, who might otherwise characterize play in the open space areas as undesirable. A successful play area is about more than play equipment in primary colours on soft pour, surrounded by fencing in a flat, sterile, albeit bright area. Play space needs a more creative approach to land forms, trees and vegetation. Formal play areas have their uses, as meeting or rendezvous places and for short spells of play. They are inadequate substitutes for "real play" areas, where there is sufficient space for children to run, play and create their own games.

- Children want to play and socialize around their homes, they will not see the car park as out-of-bounds. Designers need to take this into account when designing traffic routes so as to avoid hidden exits, sharp corners and opportunities for speeding. They need to provide for ball games either on the scheme or nearby, otherwise ball games will be played on any flat surface and against gable walls, despite a plethora of ugly signs forbidding them.
- The rights of teenagers to congregate and socialise is a design and management issue, they must be facilitated and allowed to use the external space without their presence being characterized as nuisance and/or anti-social behaviour.
- In large schemes where an apartment or management suite is set aside for management purposes it could be attached to a multi-purpose informal meeting/entrance area.
- The benefits of designing out areas of crime, should be measured against the reduced opportunities for informal social interactions, something along the continuum between fortress and "crime hot-spot" is required to facilitate informal socializing and social mixing.
- Fuel poverty is often seen as a problem facing the elderly in older buildings, it can be a problem in new apartments for older people and for families too. Many apartment developments use electric storage heaters, these are not sensitive to unexpected changes in weather and are prohibitively expensive for people on low incomes.
- Few apartment developments provide for recycling, and particularly organic waste. Few use innovative technologies to reduce energy costs and emissions.

Housing developers believe they know the market and are responding to it, they are unlikely to respond positively to simply being told to build family apartments. Neither is a system based solely on penalties and obligations, likely to prove popular or effective, particularly if it is attempted in one local authority area and not another.

If supply is not responding to what public policy makers think is needed then public policy can develop a range of interventions and use an approach which accepts that risk must be shared. Government needs to intervene, and in this case it needs to demonstrate that demand for apartments by families is affected by the poor quality of supply. Developers need to be convinced by demonstration projects that apartments can provide successful homes for families and that there is a demand for them at market-rate prices. The Rowntree Report suggests a range of incentives to make apartments "A Good Place for Children", some of which could be tailored to the Irish situation. There are negative aspects and benefits to apartment living which people consider when choosing between apartments and conventional housing.

In many apartment developments the greatest advantage is location, transport and that maintenance is taken care of by the company. The biggest disadvantage is loss of control and autonomy over spending and behaviour, largely due to the interdependence inherent in apartment living. Many people feel that the cost of management is uncontrollable and uncertain, making it difficult to budget for charges, there are known to be substantial variances between schemes and from year to year. These disadvantages can be weighed against the advantages, before considering the impact of poor design, size of rooms, storage capacity, quantity or quality of landscaped areas and open space.

The conventional wisdom is that apartments are unsuitable for families. While this view may be changing slowly, most apartments are still not catering properly for families. Until these supply factors improve households with children will be wary of them. Despite this many families will live in them because they have no viable alternative. They have been priced out of the conventional housing market in areas where they were brought up and unless they wish to move to distant suburbs or commuter towns they will live in apartments.

The City can specify standards for better design through building codes; the risk is that the minimum standards in the code could become the norm or maximum provided by developers. Another approach is to require developers to demonstrate how their proposed development will accommodate a diverse range of household types.

"Property Ladders"

Community sustainability is undermined when apartments are seen as a "rung on a property ladder", a capital asset to be traded up, something temporary, before the children arrive and the family moves to a conventional house to set up "home".

Apartment owners who buy intending to move within a few years will not be inclined to put down roots in the area. People need a sense of permanency to involve themselves in community networks. They will see an absence of amenities, as a reason to leave rather than trying to lobby for improved amenities. A public policy that implicitly or explicitly views apartment living, as the first rung on a property ladder risks unintentionally encouraging transience.

Of course when a family outgrows its existing accommodation it needs to trade up or in some cases trade down. Then it is important to have affordable options in larger apartments in the same area (where their children attend school). Price is a factor in trading up. Even without a price barrier, it is hard to find suitable family apartments in the inner city. This lack of availability forces people to move to suburban locations or to commute long distances to suitable accommodation.

When an apartment development looks like becoming problematic, the people with most choice will most often be the first to leave. In many cases these are the very people who might be able to influence change and improvements if they stayed. The reputation and stability of a development will be damaged if turnover is rapid with "*for sale*" or "*to let*" signs occurring too frequently. In time, the only families remaining will be those who cannot afford to leave, including people in receipt of housing rental subsidy or capital subsidies to purchase, which are subject to claw back arrangements. There will also be some owner-occupiers struggling with mortgage and childcare payments who cannot afford to move.

Apartment living is unlikely to be successful if it is seen as marginal (economically or socially) either in a single scheme or generally as a housing form. If apartments become the dominant form of social housing or quasi-social housing for families and only social housing families live in apartments, then this is doubly damaging, both to apartments as a housing form, and by exacerbating the existing residualisation of social housing tenure.

Social Mix and Mix-ing

Public policy makers, have been promoting using social mix to counter social exclusion and improve social cohesion in unsuccessful social housing flat schemes and estates. This is a return to older patterns, cities have always been mixed socially, and the most successful areas in Dublin are still mixed. Housing people by tenure in specific locations happened on a large scale with new social housing provision in the 1960s and 1970s. Returning to an older tradition of diversity is a valid option and worth trying as a way to improve social cohesion. It has already happened naturally, or at least through "right to buy" in conventional local authority housing estates, although not in local authority flats where ownership schemes will not be introduced until 2007.

Social mix is not an end in itself, it is a tool to achieve social cohesion through social mixing. To achieve social mixing in apartment developments, people need to meet each other informally, and this needs to be a consideration in the design.

Designing out areas of crime can result in designing out opportunities for people to meet and interact informally in ways that are important to social mixing. In many newer apartment schemes there are no shared entrance ways or atriums where informal meeting might happen.

There is an increasing tendency to cluster social tenants away from other residents and tenures for ease and efficiency of management and to reduce the costs of management.

Right-to-buy in local authority flats will create social mix and social mixing. This will occur primarily, when the flats are sold on as second hand units, creating if you will organic pepper potting of tenures.

It is important to recognize and accept that social mix is expensive to achieve and that the benefits will accrue relatively slowly across the city and in local areas. The impact of restricting or clustering social housing tenants into defined areas within apartment developments needs to be reviewed for its affect on the speed and nature of the social mix it achieves and the consequent impact on social cohesion. The concern is that in apartment schemes where tenures are not spread social mix without social mixing will not improve social cohesion.

If the primary motivation behind clustering is financial then the increased cost to social housing bodies should be weighed against the benefits forgone of returning to tried and tested models of maintaining social cohesion. In conventional housing delays in social mixing is less critical, the level of interdependence is low compared to apartments, where residents' behaviour and adherence to rules about how communal space is used and shared is important to everyone's quality of life. Social mixing encourages the type of co-operative behaviour which mitigates the disadvantages of interdependence.

Without social mixing at local level, tension between different income groups, tenures and household types will cause people to move back to the areas and attitudes where they feel more comfortable. If people do not gain a sense of common cause through shared experiences they will continue to identify more with their differences than with their similarities.

On the other hand, if apartment dwellers use local services together, social mixing will happen unobtrusively; in local schools, crèches, sports clubs, laundry, internet cafés, local shops, local library, cinemas, coffee shops or pubs. Social mixing happens most easily around children, through home work clubs, pre-school and after-school activities, summer camps, birth parties and festival holidays. By separating children into different parts of the development on the basis of tenure the differences will be emphasized not minimised.

Schools

Even within developments, where design and management is suitable for families, there are still reasons why "market rate" families will not see an apartment as their long term home. Once people have children they will move unless the schools in the area have good disciplinary and academic records. Even if parents have settled into the area and developed social networks, schools hold the key to retaining them. Secondary schools with poor reputations, prevent market rate families from staying in an area where they were happy to live without children or when the children were very young. The availability of good childcare, crèche and pre-school facilities will affect families. In the UK, the Rowntree report confirmed that parents of teenagers are constantly worried about who their children are associating with and influenced by. Unless social mixing has occurred from a very early age, and unless the local schools have a good reputation for discipline and for academic standards, it is unlikely that parents will stay. Unlike the UK, enforcement of whether local children go to local schools is not strictly enforced in Ireland. There are more options about affordable private schools in Ireland than in the UK where there is no state subsidy for private schools.

But it is salutary to remember that, if parents in the UK are moving from good quality housing to areas with better schools, then parents in Ireland will hardly stay in apartments which are not particularly suitable, in areas where the schools are of poor or uncertain quality.

The message in Rowntree should not be ignored, since parents here may not want to bus their children to schools outside their home area indefinitely. Logically they will chose to live in the suburbs if the schools and the design of the apartments are better there, or if they can afford to buy a house there instead.

It is worrying that existing schools in areas of low child density are closing at the very time when new apartment developments are being built in their catchment areas. Schools in inner city areas and established areas should not be permitted to close due to falling numbers without taking account of new residential developments under construction or planned in the area. The Government should acquire the building and install new school bodies to run them. Surely, the capital costs to the tax payer of maintaining these schools over the years must allow the state to have first refusal.

Social Sustainability Supports

The experience from other countries is that mixed income and mixed tenure apartment developments can be made to work with proper design and good management, and that this will create sustainable communities.

Good management means more than good physical management, although this is a prerequisite to successful apartment living. The Rowntree report points out "*income mix does not alleviate the need for public funding*" for support services, this ties in with the Irish experience that some people need to be supported with a range of interventions if they are to maintain their tenancies. Blurring the distinctions between tenures will increase rather than reduce the need for support systems for vulnerable people within mixed tenure apartment developments.

Social housing agencies, (voluntary housing and local authority) particularly in urban areas, have gained valuable expertise in design, management and tenancy support. They were forerunners in recognizing the need to reduce and manage anti-social behaviour in housing estates. This corporate learning will be valuable in private and mixed tenure apartment developments.

Irish social housing experts hold the view that is confirmed by the Rowntree Report, that as well as support services for vulnerable families and individuals "*there are also specific services that may be particularly required in order to make the social mix work, such as community development, on site estate wide management, schools with extended hours or community outreach and play wardens or parks staff.*"

Lack of involvement has been identified as a weakness in many existing management companies where owners and residents are inexperienced and lack the confidence/motivation to become more involved. Voluntary activity needs to be supported in the initial stages and requires positive interventions.

Family Apartments

The Irish social housing experience has tended to give apartment living a poor image. Now the cost of housing and the demographics have changed, and people seem willing to give apartment living another chance, particularly when the household has no children. Market rate families, who ultimately have more choice than social housing tenants, will be harder to satisfy and will chose to leave the sector, if their needs are not met.

A report dated November 2005 from the UK Urban Task Force chaired by Richard Rogers shows that UK cities are experiencing similar situations, "*middle class families are moving out of*

towns and cities in search of better schools, less congestion and a safer environment. In 2001, only 28% of people in inner London were aged 45 or older compared to 40% across the UK as a whole."

Furthermore as the Rowntree Report points out "*House builders are skeptical about the market for inner urban family accommodation, and given the high value of inner urban land, and the need to build more units at increasing densities they often prefer to build smaller more profitable homes."* It is a classic "*chicken and egg problem of developers not designing homes for families and families not demanding any change in prevailing market norms*" and "*Attempts by Government to tell developers what kind of homes to build are unlikely to be well received*." The report was referring to UK developers but Irish developers are likely to feel the same. The Urban Task Force Report authors believe "*that new measures are needed to ensure that private house builders – despite their best intentions – do not build a new generation of mono-functional enclaves based on the lowest common denominator design."*

The challenge they say is to produce urban environments that are as good as those in leading cities such as Amsterdam, Copenhagen, Freiburg or Strasburg. In the context of the UK, Richard Rogers says "*there is no reason why we should lag so far behind the best practice of our neighbours*" this comment is equally applicable in Ireland.

The average family size in Ireland is now 2.9 people so there continues to be a need for family accommodation. The Rowntree Report maintains that there is a need "*to encourage developer interest in the family market, by "questioning the assumption that families, flats and higher density are incompatible".*

The report maintains that this should be by way of demonstration projects working with developers and local authorities to highlight how family accommodation can be provided successfully. Many former local authority flat complexes are being redeveloped and they offer a perfect and opportune chance to provide a demonstration that families will buy apartments at market rates, if the area is regenerated, schools are of good quality and the interior and exterior of the development is designed with families in mind.

Crime and Fear of Crime

Neighbourhoods need to be clean, safe and well managed with high standards in both public and private areas. This cannot be over emphasized as failure will result in "market rate households" returning to the safety of their own suburbs or preferring to commute from distant towns rather than take the risk of living in the city. Fear of crime is as debilitating as actual crime to a community. Perceptions of safety and security are fragile and can be undermined if the area does not present a physical appearance of safety and order.

The UK, Urban Task Force report found "*crime prevention and increased supervision measures are having a positive impact – visible growth in street policing and the number of neighbourhood wardens makes people, particularly mothers with children, feel safer.*"

Open spaces need to be supervised and public parks need to have locally based park superintendents. Good management of public open spaces is critical to the success of apartments for families. This belief is backed by the UK, Urban Task Force report "*Well designed and maintained public spaces should be at the heart of any community. They are the foundation of public interaction and social integration, and provide the sense of place essential to engender civic pride.*"

Case for Building Supervisors

The sustainability of apartment living depends on whether the market believe they are:

- good investments,
- suitable homes for families,
- well maintained, managed and regulated.

Continuing controversies about service charges and failures of management companies will make the market pull back, and will risk a renewed growth of commuter towns and sprawling suburbs. Ironically even the attractiveness of apartments as "rungs on the property ladder" will be undermined.

Places that are known for successful apartment living in continental Europe, USA and London have a tradition of on-site apartment managers, including concierges, caretakers and building supervisors.

The cost of providing either residential or non-residential building supervision is affordable in large schemes. A large scheme can afford to spread the cost of a management suite or caretaker apartment over the capital cost of the other units, in exchange for cheaper and better management services.

Small schemes would be suitable for resident co-op models rather than employing agents who are not really interested in tendering for small schemes (i.e. less than 100 units). Small schemes located near to each other could share the services of an individual or couple to provide building supervision.

Some housing associations are considering establishing "arms length operations" to provide management services to private apartment developments especially those with mixed tenure. There will be further opportunities after January 2007 with the introduction of Right-to-Buy in local authority flats. Initially it is likely that the local authority will be the provider, eventually the number of units that are privately owned will exceed those owned by the local authority and alternative arrangements will be required.

4. Privately Management Housing Estates

Introduction

Privately managed housing estates are those where the infrastructure has not been taken-in-charge by the local authority. They are more common in rural and suburban authority areas than in the city, where they occur mostly in marginal districts and infill housing developments. They can have a mix of conventional housing and apartments.

Planning System and Privately Managed Housing

The process by which a local authority assumes responsibility for infrastructure and services is referred to as '*taking-in-charge*' and is covered by the Section 11 of the Roads Act 1993. In some unusual cases control but not ownership can pass to the local authority, and this is an issue when it comes to the demolition of developments that are obsolete and in schemes where owners want to increase density by new build. Section 180, Planning and Development Act 2000 contains provisions relating to taking-in-charge. When it is agreed between the developer and the planning authority that an estate is not to be taken-in-charge, a planning condition is imposed requiring the establishment of a management company. Because the common areas in these housing estates are vested in a management company and not owned or controlled by the local authority, there is an ongoing legal requirement for the management company.

Conveyancing

Unlike apartment developments, there is no legal need for a management company in a conventional housing estate. Where they do exist, it is most often due to a decision not to transfer ownership/control for the common areas to the local authority. It can be an interim arrangement pending the estate being completed satisfactorily. Management companies make more sense for apartment developments although they are rarely sustainable in conventional housing estates.

Management Companies in Housing Estates

Privately managed housing estates were a response to a number of inter-related and complex issues. Both developers and the local authorities were responding to a demand among homeowners for private, resident-controlled housing estates, where the owners could determine how their developments were to be managed and maintained.

As well as a general demand for privately managed housing estates, developers sought to make marginal areas more attractive to homebuyers concerned about property resale prices and whether marginal areas would hold their value. Privately managed estates were marketed as exclusive and high quality to make such areas seem less risky. Security gates, landscaping, high quality paving and other finishes provide signals that were designed to reassure purchasers, that these new schemes would prove to be high quality, attractive, well managed housing estates where residents were in control. Often standards of finishes were pitched to appeal to buyers as being of a higher quality.

Apart from making marginal lands more attractive to prospective home buyers, developers also aspired to higher densities and appealed to the City Council's aspiration for more sustainable urban densities, by proposing a more creative use of land, involving designs featuring non-standard layouts for roads, car parking and footpaths. Such innovative approaches were easier to facilitate if the estates were private and not intended for taking-in-charge.

Sometimes in a mixed scheme of apartments, houses and commercial, private management is a simpler solution than designing a layout to allow for part of the development to be taken-in-charge and other parts to be privately managed.

Where the intention is that the estate will remain privately managed, the developer and local authority agree at planning stage that the housing scheme will not be taken-in-charge. The planning permission contains a condition requiring the establishment of a management company. Some local authorities inspect management agreements as part of planning enforcement, yet the system is not robust and companies can fail without the local authority being aware of it.

Some housing estates have management companies not imposed by planning conditions. They can be an interim measure pending the estate being finished; or it can be because the estate is not to taking-in-charge standard, and so the local authority has not agreed to take-it-in-charge. In the absence of a management company the developer remains responsible for maintenance and management, in the period between completion and eventual taking-in-charge.

An interim management company reduces developer costs, since owners pay service charges towards the cost of management and maintenance instead of the developer. It removes the incentive for the developer to realise taking-in-charge in a timely manner, because. delays do not have the same cost implications. Traditionally the local authority obtained a bond as security to be used in the event that the taking-in-charge standard was not reached. The local authority could then use the bond to carry out the work itself. Interim management companies do not preclude a security bond, although bonds are harder to justify if the intention is that the management company is a long-term measure where the estate will remain privately managed. Section 180, Planning and Development Act 2000 changes the ground rules for privately managed estates, since it seems to propose a mechanism by which private estates can be taken-in-charge at the petition of the owners, regardless of standards. This applies when the local authority has not initiated planning enforcement proceedings.

Self-Certification

In privately managed estates, the local authority's quality control and inspection role is reduced; the system of inspections used in ordinary estates (which are expected to be taken-in-charge) is curtailed.

The advent of privately managed estates and management arrangements coincided with a move from bye-law inspection regimes to self-certification by external consultants, under Building Control Regulations. Building Regulations apply to all housing, the quality control mechanism is self certification rather than the bye-law inspections, which were formerly undertaken by the local authority. The Royal Institute of Architects in Ireland contract does not require architectural services to cover certification of external works. Engineers who certify external works use wording agreed with the Law Society that allows wide interpretations and does not refer to taking-in-charge standards.

A variety of standards are applied in private developments, many very different to the taking-in-charge standards of the relevant local authority. These differences arose because developers were responding to changes in consumer taste and expectations for a greater variety of finish and layout, they also occurred due to cost savings and increased speed of delivery.

The use of Home Bond, Premier Guarantee and other similar products show that the market has picked up on consumer concerns (usually mortgage lenders' concerns) about quality control. These products relate to construction standards in the buildings themselves rather than the external works. They also exclude defects due to design. They provide a warranty period usually for ten years, although it can be less. Attempts to claim under these products often show up their limitations and exclusions. While they appear to meet the concerns of mortgage lenders these insurance products appear to most people who try to claim against them to be largely cosmetic.

Risks of Management Company Structures

As well as the cost of incorporation limited liability companies carry risks related to dissolution, liquidation and have onerous responsibilities for director and officers. Limited liability companies need to comply with the requirements of the Companies Acts in relation to going concern, corporate governance and timely filing of annual returns to stay in business. Failure to satisfy these requirements can and will result in the company being struck off the companies register. This means it cannot continue to operate. This is a serious risk for a residential management company because it removes the necessary mechanism by which the dwellings in the estate can be sold.

These costs and risks are necessary in the case of apartment developments. They are an artificial requirement for conventional housing estates that should be taken-in-charge by the local authority rather than being privately managed.

Attitudes to Privately Managed Conventional Housing

Although there is uneasiness about the risks of company failure, the main reasons for the shift in demand from privately managed estates to the traditional taking-in-charge approach relates to equity and cost: -

(a) Equity - Service charges, including a contribution towards sinking funds are payable by owners when their estates are not taken-in-charge. There is an increasing focus on the equity of home owners paying for services in privately managed estates when other estates "down the road" get these services for free. More correctly they are paid for in their income tax and remitted to the local authority through Government funding of local government.

These arguments are particularly resonant, when the taken-in-charge estate is in a wealthy area and the privately managed estate, includes housing that was partly funded through capital housing subsidies e.g. shared ownership or affordable schemes.

Problems with traffic and car parking in privately managed estates are coming to the fore. The traffic authority has no remit in these areas and so cannot put resident-only parking or other traffic systems in place to regulate the behaviour of drivers.

(b) Service Charges - Depending on the characteristics of each estate, owners will need a variety of services, from car parking management to landscaping. A typical budget will include:

- **Contractors' payments** – Contractors are engaged either directly by the company or by an agent on behalf of the company. Contractors undertake maintenance and management of hard and soft landscaping; they repair, maintain and if necessary replace footpaths, roadways, drains, watermains, lighting standards. They may provide cleaning, and specialist services such as play ground maintenance, security and car parking management and clamping systems.

- **Audit, accounting, legal professional and agency fees** are components of the service charge. Economies of scale are particularly important in relation to professional fees since there is usually a fixed rate fee for such services particularly audit and legal services.

- **Insurance** - Public liability insurance should be provided in all private housing schemes. In some cases there may be costs associated with claims not covered or inadequately covered by public liability insurance. Public liability insurance is required whether the development is gated or not, given that the public have access; and trespassers can sue under common law, since a duty of care applies even to trespassers. The comparison can be made with farmers in right-of-way cases where claims led to barriers being erected and calls for extinguishment of rights-of-way.

The implications for estates with a high claims history will be felt in both increased premiums and in requirements for owners to demonstrate that they have taken adequate precautions, as specified by insurance risk assessors. Increases in premiums and claims will impact on service charge levels, and again the comparison may be made with housing estates which are taken-in-charge, where public liability rests with the local authority. Failure to take out PL insurance, or set aside funds by way of a claims provision could present problems for auditors, who need to assess provision for contingent liabilities as part of their audit tests for Going Concern.

- **Energy Costs –** costs associated with public lighting.

(c) Sinking Funds - Sinking funds are necessary to fund capital repairs, renewals and replacement of broken, obsolete or defective infrastructure. When sinking funds are inadequate or non-existent alternative funding such as loans will be necessary. Personal loans are more likely than a loan to the management company. Given that it is unlikely that any lender will lend to a management company that cannot dispose of its assets to pay off the loan if it defaults. While a personal loan by the homeowner is the most likely way that a shortfall in a sinking fund will be financed, a guarantee by each individual homeowner might improve the credit rating of the management company, if a loan was applied for in its name.

The adequacy, control and existence of sinking funds should be a matter of concern to purchasers and mortgage lenders. Depending on the age of the estate, second hand house purchasers may find themselves with the responsibility for replacing infrastructure, that is nearing the end of its useful life, without an adequate sinking fund. In time the degree to which earlier owners did or did not pay into the fund will impact on market prices and should be a factor in purchasers' decision making about the price of houses in private estates.

Non-payment of service charges should be sorted as part of the selling process by the purchaser's solicitor. If the sinking fund is inadequate there is no recourse against the vendor who has paid the service charge demanded. If the management company did not establish the appropriate amount of sinking fund it cannot be demanded and collected at the date of sale.

While, in theory, people realise that sinking funds are a good idea, they are not embedded in people's understanding of standard practice for private homes and home ownership. Some people may have calculated that there is no benefit to them personally of investing in a sinking fund, since they plan to have sold up and moved away before the sinking fund is called upon.

Urban Sustainability

Permeability is an aspiration of the City Development Plan. The City should aspire to reduce privately managed external areas particularly in conventional housing estates and as far as possible in apartment developments too, in order to bring these residential areas into the public realm. This can be in exchange for negotiated taking-in-charge of some elements of the external environment of apartment developments. More flexible consideration is required about the role and approach of the city to the purely public and the de-facto public areas that are being created. It is not sustainable that there are two public realms, each defined not by use but instead by whether it is taken-in-charge by the local authority or not.

Allowing the creation of gated housing is undesirable for social cohesion, and it has serious implications for the affordability of housing. Over time, annual service charges (in housing and apartment developments) create an affordability gap for people, particularly those on low incomes, who have received capital subsidies towards the purchase of their homes e.g. shared ownership, affordable.

Consumer Awareness

Consumers rely on the advice of solicitors and professional certification of external works. They are provided with nominal assurances from Home Bond/Premier Guarantee insurance products too. The housing units themselves are subject to certification by the architects about compliance. Construction Industry Federation guarantees are designed to ensure that the estate is finished but "finished" is not the same as taken-in-charge. Consumers in private estates are now very aware of the extra obligations and liabilities they incur when their estates are not taken-in-charge.

Triggering taking-in-charge

The mechanism for triggering taking-in-charge under the provisions of the Planning and Development Act 2000 relates back to the provisions of Section 11 of the 1993 Roads Act for taking a road in charge. Section 11 states "*A road authority may, by order, declare any road over which a public right of way exists, to be a public road and every such road shall be deemed to be a public road and responsibility for its maintenance shall lie on the road authority*." Section 11(1) b (ii) states that "*where a road authority proposes to declare a road to be a public road it shall – consider the financial implications for the authority of the proposed declaration*."

Section 180(iv), Planning Act 2000 states that " *where an order is made under Subsection 11(1) Roads Act 1993, in compliance with this section, the planning authority shall, in addition to the provisions of that section, take-in-charge any open spaces, car parks, sewers, water mains, or drains within the attendant grounds of the development*."

DoEHLG Circular Letter PD1/06

The Department of Environment, Heritage and Local Government, Circular Letter PD 1/06 states that "*Section 180 Planning & Development Act 2000 places a legal obligation on local authorities to take-in-charge housing estates, finished or unfinished, where certain conditions have been met*." The mechanism for *taking-in-charge* is Section 11 Roads Act 1993 which stipulates that a road can be taken-in-charge if there is public utility and public right of way but that financial implications can be taken into account by the local authority. Section 180 provides that if the residents request it a plebiscite can be held to ascertain if the residents are in agreement to a road being taken-in-charge. There are two scenarios one where the financial implications apply (where the estate is satisfactory on completion) and one where they are put aside if enforcement proceedings under the planning acts have not been taken within a specified timeframe (7 years). This relates to estates that were not completed satisfactorily.

Some local authorities, at least initially, held that the presence of a management company required by a planning permission, excludes an estate from the provisions of Section 180, Planning and Development Act 2000. Section 180(i) states that where an estate is finished to the satisfaction of the planning authority (presumably this refers to both the physical infrastructure and the establishment of a management company) the owners may, if they so wish, request that it be taken-in-charge by the local authority under the 1993 Roads Act.

Section 180(2) states that if the estate is not completed satisfactorily, and no enforcement proceedings are initiated within 12 years (5 to complete development and 7 to take proceedings afterwards), then the owners can use the plebiscite procedure as before. The financial provisions of Section 11 Roads Act 1993 cannot be invoked as a reason for the local authority to refuse to take the estate in charge. In the latter case, the Act provides that the local authority can use the security bond under Section 34. In most cases, estate owners could argue that Section 180(2) applies if no enforcement procedures were taken.

Section 180(i) does not state that the financial implications cannot be invoked; perhaps an estate that was satisfactorily completed was not seen as having any financial implications for the local authority. In cases where the estate was satisfactory at time of completion, and becomes

unsatisfactory, due to wear and tear combined with poor maintenance, Section 180(i) can be used. If it is argued that there was a breach of planning conditions in not maintaining the estate adequately, then enforcement procedures should have been initiated. On balance it is difficult to see how a local authority can avoid Section 180 being interpreted in the way the Department of Environment, Heritage and Local Government, have done.

The circular continues "*the existence of a management company to maintain elements of common buildings, carry out landscaping etc., must not impact upon the decision of the local authority to take-in-charge roads and related infrastructure, where a request to do so is made*". It further states "*nor is it acceptable that the local authority should put forward the existence of a management company for a housing estate as the reason for refusal to take-in-charge*."

The circular letter states "*sufficient funding will be made available from local authority resources to address problem or longstanding cases on a phased basis*." This may be a reference to security bonds and is of no help in cases where the estate has become unsatisfactory due to wear and tear, since the security bond (if it existed) will have been released. The circular does not elaborate on the sources of the funding, it does say "*timeframes for taking-in-charge such cases will be communicated to local residents and adhered to. Particular priority will be placed on resolving those estates that have been left unfinished/not taken-in-charge for the longest period*."

Taking-in-charge

In reality, an estate can be finished to all intents and purposes, and still not be to taking-in-charge standards. If the planning permission did not require private management, then the estate should be built to the local authority standards for taking-in-charge. Failure to achieve this standard should be prevented by the local authority's system of quality control inspections. The system of inspections is designed to monitor compliance and it tends to concentrate its inspectorate resources on areas where private management is not proposed or required, by planning conditions.

Estates where the infrastructure is not to "taking-in-charge standards" may be built with materials that are not standard either because the standard; was too low (tarmac) or too high (granite setts). Apart from finishes and materials, there will be issues related to non-standard designs and layouts.

In tandem, with an increased role in inspections of all new housing areas, a new taking-in-charge régime is needed, which brings together good technical and construction standards, within a context of innovation in design and sustainable land use. Appropriate standards of construction and design are necessary to facilitate and encourage sustainable higher density. Infill and mixed use developments provide a good use of scarce land resources and thus help to curtail urban sprawl. The new standards for taking-in-charge need to be agreed by an interdisciplinary team representing roads, parks, drainage, water, planning, waste management and housing. The standards should balance utility and durability with aesthetics and good urban design and planning principles.

The DOE circular letter dated Jan 2006 suggests that there should be consultations with the Construction Industry Federation about appropriate standards for taking-in-charge. Prior to discussions taking place with the Construction Industry Federation, an agreed approach to taking-in-charge standards should be reached within Dublin City Council itself.

Taking-in-Charge Funding

In an estate which was conditioned at planning to be privately managed, there should be a sinking fund that could be used, to bring the estate closer to a taking-in-charge standard. In interim management company cases a sinking fund may exist that could be used by the developer. This should not be necessary if the planning process did not condition a management company, since the estate should then have been built to taking-in-charge

standards. The developer may argue that the sinking fund should be available to repair damage caused by fair wear and tear, and to some extent this is reasonable, but it should not be used to correct defects in construction. A counter argument is that delays in taking-in-charge, (affecting wear and tear) may have come about due to inappropriate standards by the developer, rather than having been caused by local authority delays. Delays can be due to problems with the standard of finish and design as well as administrative delays. If delays were caused by the developer, then the developer should bear the costs of repairs due to wear and tear, rather than the sinking fund. Where estates were intended to be taken-in-charge, a security bond can be used by the local authority to bring the estate to the required standard if the developer defaults.

Depending on the final interpretation of S180, it may be possible to ask owners to contribute the sinking fund amount towards the cost of taking the estate in charge. If no sinking fund exists then a contribution from residents, either up front or as a charge on the property to be paid when the property is sold could be sought. There may be some scope to levy a contribution payable when further planning permissions are sought in any of the affected units e.g. for domestic extensions, porches, new buildings etc.

If it is not possible to pass on any of the costs to the owners, the cost needs to be assessed and budgeted for over time from revenue sources. A capital grant application from the DOEHLG could be justified in certain cases and could be part of the discretionary funding provision in the Local Government Fund. This could be based on the number of units taken-in-charge per year, nationally.

Plebiscite Issues

The plebiscite provisions of Section 180 state that "*the authority shall, when requested by the majority of qualified electors who own or occupy the houses in question, comply with Section 11, Roads Act 1993 except that Subsection 1(b)(ii) of that section shall be disregarded*." The effect of this would be to allow tenants, as the residents, to vote to have their landlords' property taken-in-charge.

Before undertaking a plebiscite, or asking the home owners/residents if they wish to initiate taking-in-charge procedures, it will be necessary to verify that the owners of the land have no objection to the land being vested in the local authority.

The Auctioneering and Estate Agents' Review Group in their July 2005 report to the Minister for Justice pointed to instances where developers failed to vest control of common areas in the management company, or were tardy in so doing. The owners may be the developers, rather than the management company, if the vesting process has not occurred.

5. Recommendations

5.1	**Dublin City Council should actively promote a new legal and operational framework for management companies in apartment developments to increase the sustainability and chances of success of the apartment development sector.**

(a) Dublin ***City Council should promote the development of an alternative to company limited by guarantee for residential management companies. A new framework for residential management companies should provide for:***

- Registration and monitoring of residential management bodies as a specific grouping
- Standard templates for title/lease documents and constitutions of management bodies. *Planning conditions should insist that these are the ones used unless there is agreement in exceptional cases to use alternative forms.*
- Prohibition on weighting of votes, but it should balance the commercial rights of retail units against those of residents.
- Recommended approach to splitting service charges between different sizes and uses of units
- Templates for detailed budgetary systems and variance analysis reports
- Template/formula for calculating sinking fund provision for each type of asset based on an independent professional assessment of life expectancy, maintenance regime and quality of asset e.g. lifts, roads, open space, external painting, floor covering, gates, doors, windows. The useful life and adequacy of the provision to be reviewed at regular intervals.
- Separate bank accounts for sinking funds and service charges, held in either separately managed client accounts held by the managing agent or bank accounts held in the name of the management company itself.
- Template for a generic Service Level Agreement between agents and management bodies including key performance indicators.
- Recommended tendering procedures for all contractors including managing agents.
- Decisions taken by the board of directors and members should be recorded. The minutes form an important record of decisions and actions and should be available for review by potential purchasers. New purchasers should be advised to review copies of minutes prior to signing contracts to ensure that there are no contingent liabilities outstanding which would reduce the value of their investment.
- Development of standard "House Rules."
- The regulatory framework should cater for a range of management provisions; direct owner provision, use of building supervisors, use of outside agencies, private, voluntary housing or local authority subsidiaries.

Simple and inexpensive remedies are needed to identify and rectify flaws in title and other legal documents in existing developments. The promotion of the take-up of these remedies could form part of the advice and support work of local authorities in strengthening the sector. Dublin City Council should discuss possibilities for research with the Law Society

and with Legal Departments in third level institutions in relation to the issue of flaws in legal documents relating to residential apartment management companies.

All management bodies should have a set of documents relating to the apartment development and should provide information to visitors about managing agents, management company, house rules and other useful information including fire evacuation procedures.

A schedule of documents needs to be specified for management companies. The Construction Industry Federation, Royal Institute of Architects in Ireland and other professional bodies should promote this approach as best practice. The following is an indicative schedule of documents that could be required; a complete list should be agreed by CIF and RIAI:

- As built drawings
- Warranties and other guarantees
- Fire Safety Certificate
- Practical Completion Certificate
- Agreed snag list at completion
- Certificate of Compliance with Planning
- Planning Application and Decision to Grant
- Schedule of plant, equipment and infrastructure, showing expected useful life, recommended maintenance regimes and where replacement parts can be obtained and name of subcontractors who undertook the work.

Developers should be required to provide this documentation to the management body that should in turn provide a copy to their current managing agent. The company secretary/ responsible officer should retain the originals in a secure location i.e. safe deposit box in bank or with solicitors for the management company.

Inspection of documentation could form part of the function of the new property authority or the local authority as agent of that authority.

The name of the management company and its directors and officers should be displayed in the foyer or lobby area, accompanied by a copy of the company's certificate of incorporation, the name and contact details of the management agent and residents representative. Notices about fire safety, health & safety notices, and details of waste collection procedures and emergency numbers and a copy of the agreed and up to date "house rules" should be displayed. In large complexes information maps with directions to different blocks and pedestrian/vehicular exits should be provided by way of signposting.

(b) Commercial Units

The balance of power between apartments owners and commercial occupiers needs to be described in principle in the lease and/or other legal document. Provisions need to be included for mediation and dispute resolution in the event that agreement cannot be reached when there is a conflict or a difference of opinion.

(c) Role of Developer after Completion

A specific time limit must be set for the transfer of control of the management company from developers to the owners of units. The effectiveness of the management company after control passes to the owners of units is an important but separate issue. Vesting of the common areas in the management company should occur when the development is complete and the majority of the units occupied. This may need to happen on a phased basis in some developments although it should not be delayed unduly because of this.

There should be a default time limit for transfer and exceptions to this time limit should be subject to review by a regulator.

The Management Body may need to provide a building licence to the development to complete the development including snagging if there is a delay between majority occupation and completion. *It should be a condition of any disposal of land by a public authority that vesting is completed as soon as a specified percentage of the units are occupied.*

(d) Long Term Land Use and Obsolescence

The title documents and lease agreements for individual apartments as well as those for the common areas and external structure should provide for options for redevelopment of the site when the development becomes obsolete. *Dublin City Council to consider the implications of this issue for its own apartment developments when they are sold under the Right to Buy and should examine options such as lease periods which coincide with the expected useful life of the development, and options to acquire the site (at nominal value) in the event that demolition occurs prior to the expiry of this period.*

5.2	**Dublin City Council should establish its role in registering, regulating, monitoring, supporting and strengthening management and sustainability of apartment developments. This role should include registration of management companies, licensing managing agents and supporting apartment owners. It could be provided by the local authority as an agent of the new national property services authority. Interim arrangements should be put in place as soon as possible, pending the establishment of the national authority.**

(a) Dublin City Council, in partnership with other advice and support agencies, should develop a programme of support and assistance aimed at residents of apartments to ensure they become better informed and capable of taking control of their own apartment developments.

- *A review of the existing education, advice and information agencies is recommended to identify partners who could work with the City to provide the necessary support locally, this should include a review of the capacity of the City's own local area offices to provide some of the necessary input. Local authorities should arrange to provide housing advice and advocacy training for community groups and voluntary and national statutory bodies who provide advice and advocacy to consumers.*

- Training should be provided to directors of management companies explaining how budgets should be worked out and what information they should seek about tenders, sinking funds, etc. Comparative data from within the sector would help to reassure members about charges, sinking funds etc. This should include information and training about the role of the Company Secretary. Training in the basics of operating a management company limited by guarantee should be provided to management company members. *Dublin City Council should develop and promote training programmes.*

- A publicity campaign to raise awareness and create greater understanding about the need for and role of management companies and the rights and obligations of homeowners is recommended. *Dublin City Council working with the other advice and support bodies should undertake to begin the process. The local authority should develop an information booklet or website which outlines what should be required from agents by owners.*

- A meeting between Dublin City Council and the legal profession especially the Law Society could be arranged to review how purchasers can be given better information in

a simpler format earlier in the process. This would help identify the areas where input is required, in particular in relation to consumer protection. When closing sales, solicitors need to make it clear to clients that they are now a member of the company that owns the common area and external structure. This could be reinforced by way of a simple explanatory document so that people understand better what they are undertaking before they sign the contract to purchase.

- *Dublin City Council should work with the legal profession to promote the use of an appropriate format for both lease documents and the memo and articles of association for a standard company limited by guarantee established as a residential management company.*

- Developers and estate agents should be required to provide information and guidance in a simple but comprehensive way, to prospective buyers before contracts are entered into and signed. This can be by way of a standard set of agreed documentation published jointly by those involved.

- Programmes of education should be quality controlled e.g. FETAC accreditation.

(b) Licensing Managing Agents

Dublin City Council should institute a voluntary licensing system for managing agents that would then be replaced by the statutory agency when it is established. The voluntary licensing would provide a quality assessment through a Certificate of Value for Managing Agents who have reached the required standard. The agents would be required to register with Dublin City Council. The Construction Industry Federation should be approached to support this proposal since the developers appoint the agent initially. An independent assessment should be provided of the quality of agent's services and this eventually would take account of feedback from members of management companies. When the new authority becomes operational The City should seek to retain the licensing role under contract from the authority for the Dublin region.

(c) Rental Accommodation Scheme (RAS)

Dublin City Council should use the RAS system to emphasise the importance of improving the management of apartment developments, including promoting the concept of licensed agents. It should seek to involve private landlords in the management of apartment developments.

(d) Responsibility of Owners for Management and Maintenance

- *It should be made clear to owners and management companies that the planning acts cannot offer a mechanism for passing responsibility for the maintenance and management of their apartment/homes to the local authority.*

- *During the planning application process for apartments and mixed developments the layout of large schemes should be reviewed to determine whether it is in the interest of urban sustainability to extend taking-in-charge to aspects of the external environment in apartment developments e.g. access roads, lighting, open space and drains. This could be contingent on the design allowing and facilitating general public access. The elements to be considered for taking-in-charge need to be capable of being separated from completely private areas. This may also apply to some small schemes where the design permits and encourages permeability and where there is a desire or facility for pedestrian access or a through route.*

- *A review of existing large apartment developments should be undertaken to determine the potential for taking-in-charge of the more public areas and main infrastructure in such schemes.*

- *In return for taking some infrastructure in charge the public open space areas in apartments should become general public areas where the public have a right of access and use.*

5.3	**Dublin City Council should develop a coalition of stakeholders, to improve the design, construction, quality and cost of management and maintenance of apartment development. The group should include representatives of management companies, agents, developers, local authorities, research and review groups and professional and educational bodies. It should aim to develop a better understanding of how the sector is operating through research, feasibility studies and surveys.** **It should consider how obsolescence in apartment developments would be dealt with when the time arises.**

(a) Research and Information

- *A survey of apartment developments in Dublin is recommended to provide quantities and qualitative information and analysis on which to base future policies and strategies to improve the sustainability and success of apartment living.*
- *Dublin City Council should seek to become the regulator of management companies within its area, developing a model that can then be used at a national level and working in co-operation with the new authority when it is in place. Initially the registration can be voluntary but the City should seek mandatory registration including seeking changes in legislation if required. The register of apartment developments should show information and documentation including fire certificates, details about the management company and managing agent, and emergency contact details. Ideally it would be accessible via the web using passwords. It would be useful to other agencies including the Private Residential Tenancy Board.*
- *Dublin City Council should work with the new national property services authority prior to its operational start date and should provide information and input into this new body's role in relation to issues which are of concern to the local authority. These include registration of companies but also providing information, support and training to management companies.*

(b) Management Services.

- Directors and members should review the performance of agents regularly. The contract should be reviewed and tendered at regular intervals but not less than three year intervals. References from other companies should be sought by the board when appointing a new agent. *Dublin City Council should offer to assist and advise owners to strengthen their management body.*
- *A comparative study of apartment service charge levels and services is required to provide information to owners about competitive levels of service charge, and the types of services included at that price.*
- *Dublin City Council should commission a feasibility study for direct provision of services by owners and for a legal structure other than company limited by guarantee for small schemes. This should include an exploration of the attitudes of the legal profession and mortgage lenders to alternative options.* Alternative legal mechanisms for management bodies might include co-ops and mutual benefit systems. In large developments, management companies with active owner-members may decide to contract the required services directly and not utilise an agency. *These should be supported with advice and information by the local authority.*
- *A feasibility study should be commissioned to establish how an arms length organisation could be developed in Dublin City Council and voluntary housing bodies to increase the options for management in mixed tenure and ex-local authority flat blocks. It should look at opportunities to pilot direct provision by owners in small schemes and to establish what level of support and intervention would be required initially to get such a system up and running. These options*

would be particularly relevant for mixed tenure apartment schemes where affordability is an issue in respect of service charges.

- *Ballymun Regeneration Limited is currently implementing alternatives to managing agents in three small mixed-use schemes; the effectiveness of these pilots should be monitored to see if they offer a viable alternative for smaller developments.*

(c) Caretaker/Building Supervisor

- *A feasibility study to determine the additional capital costs and revenue savings should be commissioned to establish the net cost or saving and the timescale for return on investment.*
- *This should then be used as a tool to determine future policy in relation to planning conditions requiring on site supervision facilities either residential or 8 to 6 pm etc.*
- *The study could determine the scale of development that would benefit from the different options.*
- *The study should look at a shared service for small developments, which are in close proximity to each other and are too small for individual building managers.*
- *The study should consider the promotion of voluntary schemes for existing developments.*

(d) Service Charges and Sinking Funds

- *The local authority should develop an information booklet or website showing comparative studies of service charges and sinking fund provisions from scheme to scheme, to establish and provide information about average charges.*
- A summary of the arrangements for managing the relationship between commercial and residential users should be provided to the local authority and/or the new property authority as well as to owners prior to contracts being agreed. This should include information about the allocation of service charges between units and between residential and non-residential.
- The local authority should seek the co-operation of developers and CIF to the provision of the information necessary to provide a more comprehensive approach to sinking fund provision. In addition it should open discussions about the finishes, materials and standards of construction that would help to keep costs reasonable and which promote longer useful lives.
- Documentation should be provided by developers to facilitate decision making about service charges and sinking fund contributions based on construction methods, materials and finishes.

5.4	**Dublin City Council should extend interventions for family support and community activism to privately provided apartment developments, particularly those with mixed tenures.** **Dublin City Council should consider ways in which it can influence education and policing, to improve the perception of neighbourhoods where family apartments are being provided. It should focus on activities within its own remit that affect perceptions of the area. The City Council should work to resist school closures in established residential areas and in inner city locations where apartment developments are proposed.**

(a) Dublin City Council needs to influence how statutory service providers meet the needs of apartment dwellers so as to maximise the chances of apartments being regarded as a successful housing form.

- *A programme of support for individuals and households who are vulnerable and in danger of homelessness should be put in place in mixed tenure apartment developments; provision can be bought in or provided directly.*
- *Dublin City Council need to ensure that service providers, such as schools, are made aware of projected population changes and may need guidance about the importance of attracting and retaining the children of market rate families, new to the area.*
- *A "Safer Dublin" scheme could be used to promote greater awareness of safety around apartment schemes in high-risk areas. This would tie in with the Government's proposals to establish Joint Policing Committees.*
- *Cleanliness, graffiti and litter are important influences in people's perceptions of an area and will affect willingness of families to move into and stay in an area.*
- *A review of the amenities and facilities in an area which are provided by or supported by the local authority should be undertaken in areas of high density where purpose built apartment developments are located.*

(b) Social Cohesion

- *Research should be undertaken to examine the benefits and effectiveness of social mix on social cohesion and social mixing.*
- *Community activism can be improved by targeted interventions and the use of asset based community development approach should be piloted in apartment developments, particularly those with mixed tenure.*
- *Revenue budgets need to recognise that as well as the capital cost of providing social housing in mixed tenure apartment developments there is a need to provide revenue budgets for interventions to fast track community activism.*
- *Support services could extend to mediation services using community mediation service models where they exist. The local authorities area offices could work with these groups as part of a community development intervention for mixed tenure apartment developments.*

5.5	**The development of apartments for a range of household sizes and types needs to be encouraged. Dublin City Council can provide demonstration projects on land that it controls or has influence over, in order to show that there is a market for family apartments across all tenures including market-rate owner/occupiers.**

(a) Family Apartments

- Developers need to be convinced by demonstration projects that apartments can provide successful homes for families in all tenures and that there is a demand for them when they are properly designed and managed. *Opportunities to provide such demonstrations should be taken in redevelopments of local authority lands.* A range of incentives should be developed to fast track a change in supply to meet the likely pent up demand for family friendly apartments.
- *A review of the planning and building standards is required to ensure developers build apartments for families with the types of amenities and facilities that will make apartment living an attractive option for families while at the same taking account of market realities*

(b) Standards of apartment design, site layout and construction

- *Many sections within Dublin City Council including architects, planning, engineering and environmental health have useful data and views on issues about housing standards in apartment developments which need to be documented.*
- *Dublin City Council to work with the Royal Institute of Architects in Ireland, DoEHLG and CIF to establish the best approach, one which takes account of the experience and practice in other countries where apartment living for families is more mature and successful.*
- *Research to be undertaken to pull together the information available from within the City's enforcement and inspection sections for Environmental Health and Fire as well as Planning and Housing so as to input and inform the existing forums reviewing standards. In addition Dublin City Council should co-operate with Cluid Housing who are currently undertaking research into the design of apartment schemes.*

(c) Local Facilities for Individuals and Families

- Landscaping design proposals need to be examined closely in apartment and high-density housing developments to ensure that they address the needs of a diverse community. *Planning conditions requiring changes to the design, layout and standard of finish in landscaped areas should be monitored and enforced, maturity of vegetation and management of the land during construction to avoid problems with planting later should be addressed in these conditions.*
- In apartment developments both internal and external communal areas need to be designed to be easily supervised without interfering with children's/teenagers' developmental needs. Internal communal areas should be provided and made available for homework clubs, play areas and teenage socialising in schemes that have family apartments. *It may be more appropriate to upgrade or refurbish existing community facilities than to build new ones. In which case a quality audit of the management and facilities is required to ensure that it is adequate, service level agreements and management structures need to be reviewed to establish suitability.*
- *Car parks, footpaths and roadways around apartment developments need to be regarded as the home environment for children and designed and laid out accordingly. This should be a consideration at planning.*
- *Local and neighbourhood parks should cater for the needs of all the community. Larger neighbourhood and regional parks need to be supervised by wardens. In addition areas where there are high ratios of children to adults need to have supervised play areas with trained play development staff.*
- *Neighbourhood parks need to revise their operations to take account of increased densities and new apartment developments in their areas.*

5.6	**Dublin City Council should decide to reduce the number of privately managed conventional housing estates by a programme of taking-in-charge and insisting on new estates being publicly managed and taken-in-charge. It should review the extent to which areas within apartment developments can be taken-in-charge. It should develop new agreed taking-in-charge standards that recognise the importance of sustainable urban densities and customer demand for high quality open space in all types of housing developments.**

(a) Conventional housing developments in the future

- *DCC should adopt a corporate strategy of minimising privately managed estates, through the planning process. In future and in general, management companies should not be permitted for*

conventional housing estates. The local authority should not grant planning permission unless the estate is to be taken-in-charge, unless a very compelling argument is made.

- *Interim management companies should not be permitted since they act as a deterrent to speedy resolution of taking-in-charge issues with the local authority.*
- *If in exceptional circumstances, a management company system is allowed in a conventional housing estate, the planning process should insist that sufficient evidence is produced by the developer that the future owners are fully aware of what they are getting themselves into and that the provisions in relation to sinking fund and maintenance are adequately addressed in the lease documentation.*
- *Dublin City Council should insist on a taking-in-charge standard being achieved in all housing estates regardless of stated intention at planning application stage regarding privatisation.*

(b) Existing Privately Managed Conventional Housing Estates

- *For existing estates a definitive legal interpretation of S180 should be sought which should be made in conjunction with the circular letter from the DOEHLG. This will facilitate an informed decision about future actions in relation to management companies in conventional housing estates.*
- *DCC should establish how many privately managed estates. DCC should establish whether the owners of the houses in these estates wish them to be taken-in-charge.*
- *It is recommended that estates be taken-in-charge on a piecemeal basis as and when requested and that only urgent work be undertaken immediately but that a schedule of works should be drawn up for estates which have been taken-in-charge.*

(c) Cost of Taking-in-charge under S180

- *DCC need to establish the cost of taking a private housing estate in charge including:*
  - ⇒ *Private Drains for sewerage*
  - ⇒ *Water mains*
  - ⇒ *Roads and Footpaths*
  - ⇒ *Lighting – fittings and energy cost*
  - ⇒ *Play areas or other specialised spaces*
  - ⇒ *Landscaping – hard and soft*
  - ⇒ *Car parking schemes*
- *The formula for calculation of a bond in a residential scheme is 1000 euro per residential unit. Clearly this is less than would be required in some cases and there is a need to review the formula on the basis of experience of taking-in-charge.*
- *Future schemes irrespective of developer's proposals for taking-in-charge should have condition that requires a security bond. The bond would be held until the estate is taken-in-charge or finished to taking-in-charge standard. The calculation of the bond should be reviewed to take account of the cost of taking-in-charge defective estates.*
- *If the estate is finished to taking-in-charge standard (and the bond released) but the estate is not actually taken-in-charge because the owners wish to keep it private, then a contribution from the owners should be required if (when) they request that it be taking-in-charge at some future date, particularly where they have failed to maintain the estate to taking-in-charge standards.*
- *Where the act provides for financial contributions these should be sought from owners, either up front or in stages triggered by events such as sale, new planning application etc. Specific grants from the Department of Environment, Heritage, and Local Government should be sought in extreme cases.*

(d) Taking-in-charge in Mixed Use and Apartment Developments

- *In mixed developments (apartments and houses) the use of a management company should be confined to the immediate curtilage of the apartment buildings and should not extend to include the car parking area, roads and the general open space. This should be considered at planning and should be known to developers prior to design work commencing.*
- *The layouts of new and eventually existing apartment developments should be reviewed with a view to taking some elements in charge. This would reduce the burden of sinking funds on owners, since this component should be a major element in service charge budgets.*
- *Provision for taking-in-charge of areas of public utility and access should avoid creating problems for redevelopment and demolition, e.g. ownership and control issues in taking-in-charge.*

(e) Develop and agree new taking-in-charge standards that facilitate sustainable urban densities while ensuring that physical sustainability in design and construction standards.

- *DCC need to review its regime for taking-in-charge and establish a more effective streamlined approach. An external works strategy should be agreed with developers for schemes to ensure they meet taking-in-charge standards while meeting market expectations for landscaping and design generally. This is particularly important for the city In light of the possible implications of the 2000 planning act.*
- *An interdisciplinary team should be established within DCC with members from planning, housing, roads, drainage, parks, water and waste management. It should report to a joint meeting of the relevant Strategic Policy Committees of Dublin City Council. This team should agree a standard informed by the experience of privately managed estates. It should take account of the need to achieve a more people friendly public realm within the context of the more sustainable density objectives of the City.*
- *Apart from standards there is a need to achieve a more integrated approach to external works generally. This approach needs to take account of the different needs of older and newer parts of the city while providing clarity and certainty to developers about what will be acceptable.*
- *The relevant professional bodies and the Law Society should be approached to tighten up the wording for certificates for external areas. Construction Industry Federation and the Insurance Industry should be asked to review their products to improve consumer confidence in them. The effectiveness and costs of Home Bond and other similar Insurance Products such as Premier Guarantee should be examined to determine if their contribution to quality control could be strengthened.*
- *All housing estates should be subject to systems of inspection and quality control during construction irrespective of the stated intention in relation to taking-in-charge.*

(f) **Sanctions**

- *Dublin City Council should proactively engage in the process of developing a statutory basis for sanctions, which is workable and addresses the concerns of the Planning Authority about the constitutionality of the existing and proposed legislation.*
- *Dublin City Council should commission a study into the effectiveness of self-certification and products such as Home Bond in consumer protection for homeowners, and should assess the impact of self-certification on the achievement of taking-in-charge standards in housing estates and apartment developments.*

(Items in italics are those over which the local authority has the most control or influence)

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