

Governing the Compact City:

The role and effectiveness of strata management

Final Report



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Governing the Compact City

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Contents

Executive summary 1

The research project.....	1
Governance in strata	2
Managing buildings	3
Managing money.....	4
Managing people	4
Managing information	5
Summary	6

Chapter 1: Introduction 8

1.1 The research project	8
1.1.2 How did this research come about?.....	8
1.1.3 Why now?	9
1.2 Strata title	9
1.2.1 The rapid growth of strata title.....	10
1.2.2 The governance challenge	10
1.3 Parameters of the research	11
1.4 Structure of the report	11

Chapter 2: Some facts about the strata sector... 14

2.1 What are we talking about when we talk about strata schemes in NSW?.....	14
2.2 Data on NSW schemes	15
2.3 Legislation and planning policies that apply to strata schemes.....	18
2.3.1 Acts of Parliament	18
2.3.2 Building codes and planning policies.....	19
2.4 Peak bodies that are active in strata title in NSW.....	19
2.5 Government departments that are involved with strata title in NSW	20
2.6 Professionals working in the strata title area	21

Chapter 3: Major stakeholders in a strata scheme..... 22

3.1 The owners corporation	22
3.2 The executive committee	22
3.3 The strata managing agent.....	24
3.4 The building manager	24

Chapter 4: Significant periods in the life of a scheme..... 25

4.1 Design / development / building	25
4.2 Hand-over / initial period.....	26
4.3 In-use / building life.....	26
4.4 Termination / knocking down the building	26

Chapter 5: Research methods..... 30

5.1 Peak body interviews	30
5.2 Review of the legislation	31
5.3 Analysis of the NSW strata title database ...	31
5.4 Survey of executive committee members ..	32
5.5 Executive committee interviews	32
5.6 Survey of managing agents	34
5.7 Interviews with managing agents.....	35
5.8 Survey of strata owners	36
5.9 Interviews with strata owners	39
5.10 Stakeholder consultation and awareness raising	40
5.11 A note on reporting.....	40

Chapter 6: Governance and management..... 41

6.1 Regulation	42
6.2 Representation.....	43

Chapter 7: Governance in strata..... 46

7.1 Regulation	46
7.1.1 Who is responsible under the legislation?	46
7.1.2 Are strata owners aware of their rights and responsibilities?	46
7.1.3 Can people understand the strata legislation?	48
7.1.4 To what extent is the legislation enforced?	49
7.2 Representation	50
7.2.1 How are decisions made in a strata scheme?	50
7.2.2 Conducting meetings.....	50
7.2.3 The executive committee.....	52
7.2.4 How engaged are owners in the governance and management of their strata schemes?	53
7.2.5 What challenges can strata schemes face when making decisions?	56
7.2.6 Strata managing agents.....	58

7.3 Scheme set-up and the influence of the developer	62
7.3.1 The balance of power between owners: allocation of unit entitlements	62
7.3.2 The difficulty of managing complex schemes	62
7.3.3 The continued interest of the developer in a scheme	63
7.4 Summary	64

Chapter 8: Managing buildings..... 65

8.1 The property as built	65
8.1.1 Defects.....	65
8.1.2 Design	72
8.2 Maintaining and improving the property ..	72
8.2.1 Property maintenance.....	72
8.2.2 Property improvements and understanding the boundaries between lot and common property	72
8.3 The role of the building manager and caretaker	75
8.4 Summary	75

Chapter 9: Managing money 77

9.1 Budgeting	77
9.2 Collecting levies	80
9.3 Spending	84
9.4 Financial reporting and record-keeping	84
9.5 Summary	85

Chapter 10: Managing people 86

10.1 Disputes	86
10.1.1 Parking	88
10.1.2 Noise	88
10.1.3 By-laws and resident behavior	89
10.2 Informal dispute resolution	91
10.3 Formal dispute resolution	92
10.3.1 The effectiveness of the formal dispute resolution process.....	93
10.4 The influence of social relations.....	96
10.4.1 Living well in density	96
10.4.2 Personalities	97
10.5 Summary	99

Chapter 11 Managing information 100

11.1 Information.....	100
11.1.1 Information when purchasing	100
11.1.2 Information since purchasing the property	102
11.2 Communication	106
11.2.1 Between the managing agents and the executive committee	106
11.2.2 Between the executive committee and other owners	108
11.3 Education	110
11.3.1 Education of strata owners	110
11.3.1 Education of strata managing agents.....	110
11.3.2 Education of executive committee members	112
11.4 Summary	114

Glossary..... 115

References..... 118

Appendix 1: National Strata and Community Data 121

Appendix 2: Survey of Executive Committee Members 125

Appendix 3: Characteristics of executive committee survey respondents..... 147

Appendix 4: Strata managing agent survey..... 151

Appendix 5: Survey of strata owners 169

Appendix 6: A brief history of building certification in New South Wales..... 196

Appendix 7: Examples of information currently available to strata owners in NSW..... 197

Executive summary

An estimated three million people live in strata titled homes in Australia. The state of New South Wales (NSW) has the largest number of strata titled properties of all states and territories in the country and approximately 1.2 million people live in strata titled homes in the state. In the Sydney metropolitan area, almost a quarter of the population live in strata titled homes.

This means that for the first time in Australia's history large numbers of property owners find themselves in a legally binding relationship with their neighbours for the communal upkeep and maintenance of their property. The governance structures that mediate this community-based property ownership represent a new form of civic relationship.

With the development of increasing numbers of strata schemes, owners corporations, through their executive committees and the managing agents and other property professionals who support the sector, have become increasingly important in ensuring the maintenance and upkeep of significant parts of our cities. In effect, owners corporations act as a fourth tier of government that is democratically elected, with lawmaking, taxation and enforcement powers.

But despite the growing prevalence of strata title in our lives, relatively little is known about how well the strata system works *in practice* to meet the needs of those people who own and live in strata properties. The *Governing the Compact City* project¹ provides the first comprehensive assessment of how the strata title system is operating in regard to governance and management from the point of view of those who own, live in, and manage strata homes.

While it is focused on NSW, the report's findings have implications for the entire Australian strata market which is based on essentially the same governance and management arrangements.

The research project

The project had three major aims:

1. To explore the role, capacity and effectiveness of owners corporations as agencies of property governance and management in contemporary urban Australia.
2. To explore the capacity and effectiveness of strata managing agents as mediators of outcomes for residents and owners in the sector, and their role and function within the overall structure of management and governance.
3. To assess how well residential strata works from strata owners' points of view.

The research project focused on residential strata properties with three or more lots in NSW. The research was undertaken between 2009 and 2012 and included surveys² and interviews with strata owners, executive committee members and strata managing agents in NSW, as well as analysis of the NSW strata database and NSW strata schemes management legislation and interviews with peak body representatives around Australia. In total, the research consulted 1,550 individuals including 1,020 strata owners, 413 executive committee members, 106 strata managing agents and 11 peak body representatives.

This Executive Summary outlines the main findings of the research project and outlines five key challenges for further reform to improve the governance and management of a major form of housing provision in the 21st Century.

Governance in strata

Many people are not aware of their rights and responsibilities as strata owners.

Concern has previously been raised by the NSW Government that owners may not be aware of their rights with regard to the governance of their strata schemes³. The results of our surveys support these concerns. In the survey of strata owners, 36% of respondents said that the general understanding amongst other owners in their scheme was less than satisfactory and many respondents identified owners being unaware of their rights and responsibilities as a major problem.

Owner engagement and apathy is a problem in some schemes.

The majority of respondents to the survey of strata owners (75%) indicated that there was some, or significant, cooperation between owners in their scheme. However, a significant minority (18%) said that there was little or no cooperation, and a lack of engagement and apathy of owners was raised as a concern in both the owners and executive committee surveys.

In the survey of executive committee members, 37% of respondents said they had found it difficult to recruit people to sit on their executive committee. Common reasons given by respondents to the survey of owners who said that they did not want to join their executive committees were that they had insufficient time or competing commitments, they didn't want to get involved because of perceived problems with the way the committee operated and they felt excluded from joining the committee.

Our findings suggest that while many owners did not want to get involved in running their schemes, others were unable to exercise their right to have a say in their scheme because they did not know what their rights and responsibilities were, they had been bullied or intimidated by other owners or they felt that their vote would not make a difference.

Practical implementation of the strata schemes management legislation poses a major challenge for the volunteer committees of some schemes and existing government support is considered insufficient to support this process.

Many owners and executive committee members who were interviewed spoke about the challenges they faced in implementing the strata schemes management legislation in practice and some expressed frustration at the devolution of responsibility for representation and service delivery from government to owners corporations without sufficient accompanying governmental support.

Coming to an agreement in strata schemes can be a difficult and slow process.

Perhaps the greatest tension in managing a strata scheme is that between the individual property rights held by lot owners and their collective rights and responsibilities as members of the owners corporation. Often tensions arise between individuals and groups with different priorities. While the majority (58%) of executive committee survey respondents said there had not been any occasions where coming to an agreement regarding the running of their scheme was problematic, a significant minority (39%) said there had been problems. The most common issues resulting in disagreements were those relating to major expenditures, including major repairs. The most common explanations given for these disagreements related to personality clashes and the competing interests of individuals in a scheme.

A particular issue regarding decision-making in strata schemes then is the length of time it can take to make a decision and take action on particular issues because of the difficulties that can be experienced in getting consensus within the executive committee or between owners.

The performance of executive committees is highly variable.

Executive committees are the representative bodies of owners corporations and undertake much of the day to day management of schemes. Satisfaction amongst strata owners with the performance of their executive committees was variable. The most common reasons for satisfaction were that the scheme runs smoothly, committee members are proactive, the committee communicates well with owners, and the committee work well together and with their managing agent. The most common reason for dissatisfaction was a perception that committee members were acting in their own interest, rather than in the interests of all owners.

There is some confusion regarding the respective roles and responsibilities of managing agents and executive committee members.

The majority of strata schemes in NSW hire a strata managing agent to assist with the management of their scheme. Results of the surveys and interviews pointed to confusion amongst some owners of the roles and responsibilities of executive committees and managing agents in regard to decision-making, with a blurring of the distinction between decision-making and implementation.

Satisfaction with strata managing agents is highly variable.

Satisfaction with strata managing agents is generally positive with half (51%) the strata owners whose scheme had hired a strata managing agent saying they were satisfied with their performance. However, a significant minority (27%) were dissatisfied. The most common reasons for dissatisfaction were lack of timely responses and poor communication.

The set-up of a scheme by the developer can have significant knock-on effects on its long term management.

The way in which a strata scheme is created by the developer can have a substantial impact on the effectiveness of its subsequent governance and management. This is particularly the case in the critical areas of build quality, design and layout, allocation of unit entitlements, and the setting up of levies and sinking funds. All these can affect the long term financial viability of schemes, the balance of power between owners, the ease or difficulty of management and the incidence of disputes. Much greater attention is needed in integrating decision-making in the design and build phases of strata buildings and the long term in-use management phase to ensure management and user cost are minimised.

Managing buildings

Building defects constitute a major concern in strata schemes in NSW.

One of the most striking findings of the surveys was the extent of concerns around building defects. In the survey of owners, 72% of all respondents, and 85% of respondents in buildings built since 2000, indicated that one or more defect(s) had been present in their scheme at some stage. For owners in schemes built since 2000 that had defects, 75% said that there were still some defects in their schemes that had not been fixed. The most

common defects identified were internal water leaks, cracking to internal or external structures and water penetration from the exterior of the building.

Many respondents had experienced problems having these defects remedied. The most common problems were that the developer and/or builder held control of the scheme and was delaying the rectification of defects and that the developer and/or builder was no longer operating and therefore could not remedy the defects. It can be extremely difficult and costly for some owners to have defects problems rectified satisfactorily.

Building design problems commonly influence management decisions in strata schemes.

Almost one-third (29%) of executive committee survey respondents said that there were problems with building design that influenced management decisions in their schemes. The most commonly identified problems were the complexity of the scheme (e.g. consisting of multiple buildings), the design and placement of services and utilities, the existence of old and heritage buildings, problems with access and problems with drainage.

Concerns over maintenance often focus on long term planning and funding issues.

Beyond defects and design issues, day-to-day maintenance of strata schemes is also an important consideration. Aside from complaints about an inadequate standard of work being undertaken, the majority of concerns raised in the owners survey were regarding disagreements over whose responsibility it is to plan for maintenance and issues around the budgeting and financing of repairs works.

Many owners have difficulty getting a clear explanation of where the boundaries lie between their lot and common property in their schemes.

A key issue raised by both survey and interview respondents was the difficulty owners faced in clearly delineating lot property and common property in their schemes, and therefore their rights and responsibilities when it came to making changes to their lots.

Most owners whose schemes hire a building manager or caretaker are satisfied with their services.

As well as a managing agent, some strata schemes also hire a building manager or caretaker to help them manage and maintain the common property. Of the 22% of

respondents to the owners survey who hired a building manager or caretaker, satisfaction with their building manager or caretaker was high, with 67% of respondents being satisfied and 16% dissatisfied with their services. The most common reasons for dissatisfaction were poor communication, a lack of timely response and connections with the developer of the scheme.

Managing money

Many owners are concerned that planning and budgeting for repairs and maintenance in their schemes is inadequate.

Almost one-third (30%) of respondents to the strata owners survey were concerned that planning and budgeting for repairs and maintenance had been inadequate in their schemes. One-fifth (20%) also noted that there had been disagreements in their schemes over repairs and maintenance expenditure.

The continued influence of a developer can have a significant negative impact on the management of finances in a strata scheme.

The continued influence of a developer was identified by respondents to both the managing agents and executive committee surveys as having an impact on the budgets of a scheme. The most common types of problems identified were developers setting initial levies too low, not paying levies for the lots they owned, resisting spending on the building, misusing funds and underfunding or underinsuring the scheme.

Many owners are dissatisfied with the level of their strata levies.

While more than half (59%) of respondents to the owners survey considered their levies to be appropriate, a substantial minority (28%) of respondents did not. One area of particular concern is the confusion amongst some owners about what levies are actually spent on. Despite this, the enforcement and collection of levies was not a problem for the majority of respondents, with only 11% indicating that the enforcement of levies was inadequate.

Coming to an agreement regarding spending money can be a difficult and slow process.

The amount of time it can take to decide how to spend money on repairs and maintenance in a strata scheme

was raised by many survey and interview respondents, with disagreements about the responsibility for payment (the owners corporation or individual owners) emerging as a common issue.

There is a case for a system of indicative benchmarks to be developed regarding appropriate amounts of moneys to be put aside in sinking funds.

Such a system would help avoid the difficulties some owners find themselves in when funds for major works in their schemes are unavailable or where developers fail to adequately budget for such funds at the start of a scheme.

Managing people

Strata management is about managing people as well as buildings. Not surprisingly, many strata schemes experience disputes. The most common disputes are those over parking, noise, and adherence to by-laws.

In the survey of strata owners, 51% of respondents indicated that there had been disputes in their schemes since they had purchased their strata property. Across all three surveys, the three most common types of disputes were in regard to parking, noise and breaking by-laws. Parking disputes were most commonly caused by cars parking illegally on common property, particularly in visitor car spaces and the difficulties experienced in trying to enforce parking rules. Regarding noise, while some owners pointed to the behaviour of other residents as a reason for noise problems, many identified noise issues that resulted from the quality and design of the buildings in their schemes. As for by-law problems, the owners survey revealed that enforcing scheme rules and requirements is also a significant issue when residents ignore them.

Most disputes are resolved through informal dispute resolution.

Settling disputes does not always involve recourse to formal intervention or litigation. In fact, amongst respondents to the survey of owners who identified disputes in their schemes, 61% said that at least some of these disputes had been resolved before there was a need to take formal measures. The most common way in which disputes were resolved informally (identified in all three surveys) was through personal communication and negotiation between owners.

Some executive committees do not pursue formal dispute resolution measures, even when the dispute has not been resolved.

Amongst respondents to the survey of owners who identified disputes in their schemes, 40% said that formal measures had been taken in their schemes at some point in relation to a dispute. Of those respondents, 42% said all of the disputes in their schemes were resolved through formal measures, 31% said that some were resolved while others were not and 26% said none of their disputes were resolved.

Even when the parties in a dispute seek formal mediation, the results are not necessarily positive. Only a quarter (26%) of executive committee members whose committee had participated in mediation through NSW Fair Trading had found mediation to be successful in solving disputes in all cases. Two thirds had found it unsuccessful in at least one case. Many of those executive committee members surveyed who found that the dispute resolution process had not been successful in resolving a dispute had nonetheless decided not to continue to the next step of the dispute resolution process.

Concerns were raised about the complicated nature of the formal dispute resolution process, the speed in which disputes can be resolved and the legalistic nature of the formal processes.

The role of interpersonal relationships and skills amongst residents, owners and committee members are critical factors in determining the success or otherwise of strata living and management.

The surveys and interviews provided a lot of information about different aspects of social relations in strata schemes that can both influence, and be influenced by, governance and management of schemes. In particular, respondents spoke of their frustrations with the behaviour of residents who did not know how to live well in density, the difficulties caused by particular individuals and the importance of the personalities and characteristics of executive committee members for the successful management of their schemes.

Managing information

Some owners have experienced difficulty obtaining information at the time of purchase.

At the time of purchasing their strata property, the majority (86%) of respondents to the owners survey did

not experience any difficulties in obtaining information about their strata schemes. However, 14% of respondents said that they had experienced some problems, including that the information being provided was incomplete or incorrect, the minutes from meetings were unavailable or incomplete, and it was difficult to obtain information from the managing agent. Owners who purchased off the plan experienced additional difficulties.

The main source of information for strata owners is their managing agent.

Since purchasing their property, the main source of information for strata owners about their strata scheme was their strata managing agent (71% of respondents), followed by their executive committee (47%)⁴.

Some owners have experienced difficulty obtaining information about their schemes since purchase.

While 29% of owners survey respondents had not had any problems getting information about their strata scheme since purchasing their property, 21% had experienced problems. The most common types of information people had difficulty accessing were information about building plans, building works and the scheme's finances. Sources that respondents had the most trouble getting information from included the managing agent, the executive committee and the developer or builder. Owners survey respondents complained of incomplete, incorrect and confusing information, conflicting advice and poor record keeping.

A small proportion of owners have had difficulty accessing general information about strata schemes.

Most (84%) of the owners survey respondents experienced little or no difficulty in accessing general information about strata title ownership and management, but the other 16% had experienced some problems. The most common sources of such general information were NSW Fair Trading, the internet and members of their executive committee. Common types of general information respondents wanted (but were unable) to access were clear explanations of the strata scheme management laws; clarifications of the rights and responsibilities of owners, executive committee members and managing agents; information on how to go about different aspects of management (such as dealing with disputes and managing finances); a guide to what is common property as opposed to lot property and mechanisms to more easily access a scheme's by-laws.

Many executive committee members have had difficulty accessing the information they need to run their strata schemes.

Access to up-to-date information is essential to support good management and decision-making. More than one-third (37%) of executive committee survey respondents said that they had had difficulties accessing the information they needed to help run their schemes. The most common difficulties were getting sufficient information from their managing agents and getting high quality and consistent advice.

Good communication is the most important factor influencing satisfaction with managing agents and executive committees.

As noted above, communications between managers and strata owners is often a source of dissatisfaction for residents. Good communications between managing agents, executive committees and owners are essential for the good governance and management of strata schemes. Communication was as important reason for both satisfaction and dissatisfaction with managing agents and executive committees.

There is a willingness amongst some owners, executive committee members and managing agents to be further educated regarding the governance and management of strata schemes.

While the knowledge of owners about their rights and responsibilities in strata appears to be limited, there was a willingness amongst this group to become more educated in these matters. Over half (58%) of respondents to the owners survey said they would be interested in taking advantage of educational resources created for strata owners, and a further 25% said they might be interested.

In the survey of executive committee members, respondents were asked to identify the most important factors that influence the practice of executive committee members, other than the legislation. The most common response was the skills, knowledge and experience of executive committee members and three-quarters (74%) of respondents thought that formal training of executive committee members would be beneficial to them in their committee roles.

Strata managing agents who completed the managing agents survey were also interested in undertaking continuing professional education. The types of training

most commonly desired were legal, finance and mediation training.

Summary

The introduction of strata title in Australia opened up the possibility of home ownership for many for whom it would otherwise have been out of reach and introduced a new market for investor-owners. As well as introducing a new form of property ownership, the strata title system also introduced a new legal entity (the owners corporation) that both represents communities and delivers services to residents. Like any representative body, this system only works where services are provided, and residents are effectively represented.

While many strata schemes are run very well, and strata living meets the day-to-day needs of hundreds of thousands of NSW residents, there are some areas of strata living identified in this report that require further attention and action. Notably:

- ❑ The lack of engagement of strata owners in the operation of their schemes resulting in many cases from a perceived inability (rather than lack of willingness) to become involved.
- ❑ The high incidence of building defects and the difficulties faced by strata owners in having defects remedied.
- ❑ The inadequacy of planning for the funding of repairs and maintenance in many schemes.
- ❑ The challenges associated with the formal dispute resolution process.
- ❑ The limited knowledge of many strata owners about their rights and responsibilities.

Billions of dollars worth of assets (in the form of buildings and sinking funds) are tied up in strata schemes around Australia, which are managed by volunteer committees who have no formal training. Strata properties not only constitute the largest asset that many households will own in their lifetime, they are also people's homes. This means that it is essential that they are managed properly and that appropriate assistance is provided to those who own and live in strata properties to encourage good governance.

Endnotes

- 1 The research was funded under ARC Linkage Grant LP0989373 *Governing the Compact City: The role and effectiveness of strata management in higher density residential developments* with support from Strata Community Australia (NSW), NSW Fair Trading, NSW Land and Property Information, the Owners Corporation Network of Australia Ltd., Lannock Strata Finance and Macquarie Bank.
- 2 These surveys were self-selecting and advertised widely.
- 3 NSW Department of Planning (2007) *Improving the NSW Planning System: Discussion paper*, Sydney: NSW Department of Planning.
- 4 This was a multiple response question.



Chapter 1: Introduction

1.1 The research project

More than one in ten Australians – an estimated three million people – live in strata titled properties in Australia¹. New South Wales (NSW) has the largest number of strata titled lots in the country (see Appendix 1), and approximately 1.2 million people live in strata titled homes in NSW². In some parts of the state the concentration of strata residents is much higher - in the Sydney Metropolitan area almost a quarter of the population live in a strata titled property³.

Despite the prevalence of strata title in our lives, relatively little is known about how well the strata title system works in practice to meet the needs of those people who own, and who live in, strata titled properties. The ‘Governing the Compact City’ research project provides the first comprehensive assessment of how the strata title system is operating with regard to governance and management from the point of view of those who own, live in and manage strata homes.

The project had three main aims:

1. To explore the role, capacity and effectiveness of owners corporations as agencies of property governance and management in contemporary urban Australia.
2. To explore the capacity and effectiveness of strata managing agents as mediators of outcomes for residents and owners in the sector, and their role and function within the overall structure of management and governance.
3. To assess how well residential strata works from the point of view of strata owners.

Owners are the key actors in terms of the governance of this sector. Consequently, a key component of this research focused on the experiences of owners in relationship to the management of their buildings, their involvement in decision-making, their experience of communal ownership and the nature and extent of the issues they face in effectively governing, and managing, their strata schemes.

1.1.2 How did this research come about?

This research was initiated by an extensive consultation by the research team with government, community and industry stakeholders involved with the strata sector in NSW. The resulting collaboration led to a research proposal being submitted to the Australian Research Council by the City Futures Research Centre in partnership with Strata Community Australia (NSW), NSW Land and Property Information, NSW Fair Trading, the Owners Corporation Network of Australia Ltd., Lannock Strata Finance and Macquarie Bank⁴. The project received Federal research funding under this competitive grants process, indicating that the research was judged to be of importance not only in the State of NSW, but also nationally.

Most significantly, this project is the first time such collaboration has been established between State government agencies, the strata industry and owners in the area of strata title in Australia and represents the first major research to be undertaken on this increasingly important housing sector.

1.1.3 Why now?

While strata title has been around since the early 1960s in Australia, it is only in the last decade that the issues surrounding the efficient and fair management of strata title properties have begun to receive significant attention in the media and by government. This rise in interest and concern in the strata sector is due to a number of factors:

1. Many of those properties built under strata title in the twenty years following the introduction of the *Conveyancing (Strata Titles) Act 1961* (NSW) are now over 30 years old and require increasing attention in terms of maintenance and repairs.
2. State government calls for increasing urban consolidation in the metropolitan plans of Australia's major cities have encouraged the building of apartments, which has resulted in a significant increase in the number and scale of strata titled properties in our urban areas.
3. Accompanying this, changes to taxation and investment regulations have increased the incentives for the development of higher density strata properties.
4. The growing number of strata properties and strata residents has produced a growing market for professional support services for this sector. The industry employs an estimated 20,000 people nationally who service and manage property assets worth around \$500 billion (Strata Community Australia Victoria 2011).
5. The increasing size and complexity of the sector, with a significant proportion of key demographic groups now resident or investing in strata homes, has pushed the issue onto media and political agendas.

Together, these pressures have exposed some of the failings of the original legislative frameworks for strata governance and management and have highlighted emerging tensions between the many stakeholders involved in strata that are now the focus of concern from a range of stakeholders.

This rise in interest in the governance and management of strata schemes has come from a number of different directions:

- ❑ **From a consumer perspective:** the effective and fair management of strata schemes is an issue that influences the lives of all of those people living, and

investing, in strata titled properties. These properties are people's homes, and in many cases also their principal financial investments.

- ❑ **From a political perspective:** in some parts of Australia's major cities, strata properties make up a significant component of the built environment. As a result, the concerns of these strata residents and owners are becoming increasingly vocal in some jurisdictions, leading to increased focus of government on the issues they face.
- ❑ **From a planning perspective:** the effective and fair management of strata schemes also underpins the successful realisation of urban consolidation policies in Australia's major cities, which rely heavily on the increasing provision of strata titled properties.
- ❑ **From a business perspective:** the growing strata sector provides opportunities for specialisation and professionalisation of services and some strata management companies, for example, have begun to focusing their businesses on providing efficient management practices which suit specific property and customer types.
- ❑ **From an investment perspective:** strata owners are making vital decisions regarding the management and upkeep of many thousands of residential properties, and billions of dollars of property and infrastructure. In addition, with around half of all strata properties owned by investors, the sector represents a major asset class that both those who invest in and those who fund these investments have an increasingly important stake.

There is a need for a systematic understanding of what is actually going on in the day to day governance and management of strata schemes in order to identify what is working well, and what is not, so that governments, strata professionals, peak bodies, and strata owners and residents can consider how to improve the situation for all.

1.2 Strata title

Strata title is a type of property ownership that allows people to own their own home in a multi-unit development, as well as a share in the common property of the development. When a person buys a strata titled property, they are buying two things:

1. A strata 'lot'. In most strata schemes this is usually the airspace within the four main walls, ceiling and floor, and anything in that airspace including internal walls within the lot, floor coverings and fixtures. A strata lot may also include car spaces and other areas, or these can be registered separately.
2. A share in everything else. This includes the building(s) and the grounds. This is known as 'common property'.

Strata owners hold private property rights in relation to their lots and collective ownership of everything else. Many of the tensions that arise within strata schemes have their roots in this underlying tension between private property rights, and collective property ownership and responsibilities.

The lots, common property, and the rights and obligations of the people who have an interest in property (owners, occupiers and others) are collectively referred to as a 'strata scheme'.

Strata Titling was first introduced in Australia in 1961 under the Conveyancing (Strata Titles) Act 1961 (NSW). The 1961 NSW legislation (and subsequent legislation) has formed the basis of similar legislation around Australia, and overseas (for example: Singapore, New Zealand, Indonesia, South Africa, Brunei, Malaysia and some provinces in Canada).

Strata titling was introduced to facilitate the marketing of multi-unit housing. Prior to its introduction the main options for owning an apartment were owning the entire building and owning an apartment under company title (where a person owns shares in the property that give them the right to live in a particular unit). Strata title thus introduced a housing product that lenders could (and would) issue mortgages against. Enabling individual property rights in multi-unit developments not only opened up the possibility of home ownership to many in Australia's largest cities for whom it would have otherwise been out of reach, but also provided a significant market for investor owners.

1.2.1 The rapid growth of strata title

The introduction of strata title legislation facilitated a significant increase in the building of apartments by private sector interests. For example, during the second half of the 1960s, over half of the new dwellings constructed in Sydney were apartments (Cardew 1980).

From the late 1980s onwards, government around Australia promoted urban consolidation in response to ongoing housing shortages, and concerns about the assumed negative environmental, health and social impacts of 'urban sprawl'. In response, planning provisions were altered to facilitate higher density development, and the building of apartments was encouraged. Urban consolidation – providing additional dwellings within the existing urban area by building up, rather than building on Greenfield sites – has been achieved largely through the building of significant numbers of strata titled apartment properties in existing urban areas. For example, in the five years to 2008-09, 75% of all new dwelling approvals in Sydney were multi-unit dwellings (NSW Department of Planning, 2010: 116). So long as urban consolidation remains the dominant planning goal of Australian urban planning, we can expect a sustained growth in the number of strata titled properties in NSW and, more broadly, in Australia well into the future.

1.2.2 The governance challenge

While offering a practical solution to the marketing and sale of higher density dwellings, the longer term implications of this innovation in terms of residential property relations, social relations and urban governance have taken several decades to emerge. In fact, the implications of this form of property title for social cohesion are profound. For the first time in the country's history, large numbers of Australian property owners find themselves in a legally binding relationship with their neighbours for the communal upkeep and maintenance of their property. The governance structures that mediate this community-based property ownership represent a new form of civic relationship and a new form of urban governance at the local level, challenging conventional understandings of urban governance structures.

With the development of increasing numbers of strata schemes, owners corporations through their executive committees and managing agents have become increasingly important in ensuring the maintenance and upkeep of significant parts of our cities. Under strata legislation, owners corporations also have powers to set, revise and police the by-laws that regulate the day-to-day behaviour of, and relationships between, residents. In effect, owners corporations act as a fourth tier of government, with lawmaking, taxation and enforcement powers. In larger developments, the remit of the owners corporation can extend over significant areas, comprising several buildings, with executive committee members and their managing agents managing budgets with large annual turnovers, in some cases millions of dollars.

1.3 Parameters of the research

This research focuses on residential strata properties with three or more lots in New South Wales.

- ❑ **A residential focus:** Our interest is in the governance of strata properties that are people's homes. While some of the issues for commercial strata buildings are similar, the dynamics and decision drivers for commercial strata differ significantly from those for residential strata schemes.
- ❑ **Schemes of three or more lots:** While two-lot schemes form a significant proportion of all strata schemes in NSW (30% of all schemes) the proportion of all lots (7%) is relatively small, and the governance and management challenges are quite different in these schemes.
- ❑ **New South Wales:** NSW was the first state to introduce strata title legislation in Australia, has the most strata lots of any state or territory, and has an active and growing group of peak body and industry representative bodies (many of whom are partners on this project). While this research focuses on NSW, the similarities with Strata Title systems in other states and territories give the findings national applicability. During the first national conference on strata title held in 2005 (Strata and Community Title in Australia for the 21st Century), from which the proposal for this research evolved, delegates from around Australia explicitly noted that these issues were of central concern to the successful development of the sector, regardless of local contexts.

1.4 Structure of the report

This report is structured in three parts:

Part A provides context for the report, Part B describes the research project itself and Part C outlines the research findings.

Part A provides detailed information on the NSW strata sector (Chapter 2), the roles and responsibilities of major stakeholders within a strata scheme (Chapter 3), and significant periods in the life of a strata scheme (Chapter 4).

Part B provides information about the project methodology (Chapter 5), and the theory underpinning the research focus (Chapter 6).

Part C provides the research findings as these relate to governing a strata scheme (Chapter 7), managing buildings (Chapter 8), managing money (Chapter 9), managing people (Chapter 10) and managing information (Chapter 11).

(Endnotes)

- 1 There are an estimated 1,944,125 strata and community title lots in Australia (see Appendix 1). Approximately 81.3% - or 1,580,573 - of these lots are residential or mixed use (based on the reliable figures available for New South Wales, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory). The average household size of households living in flats, units or apartments and row, terrace and townhouses across Australia is 1.9 people (based on figures of numbers of people usually resident by property type in the 2006 ABS Census of Population and Housing). Multiplying 1,580,573 by 1.9 provides an estimated resident strata population of approximately 3 million people around Australia.
- 2 As of July 2011 there were 595,362 residential and mixed use lots in NSW (see Chapter 2). The average size of households living in flats, units or apartments and row, terrace and town houses across NSW is 2.0 (based on figures of numbers of people usually resident by property type in the 2006 ABS Census of Population and Housing). Multiplying 595,362 by 2.0 provides an estimated resident strata population of approximately 1.2 million people.
- 3 As of July 2011 there were 485,042 residential and mixed use strata lots in greater metropolitan Sydney (City Futures Research Centre, 2011). The average household size of households living in flats, units or apartments and row, terrace and townhouses in the Sydney Metropolitan area is 2.1 (from the 2006 ABS Census of Population and Housing). Multiplying 485,042 by 2.1 provides an estimated resident strata population of approximately 1,018,588 people, which is 22 percent of the population of the Sydney Statistical Division (the 2011 estimated population of Sydney SD was 4.63 million, ABS 3218.0)

- 4 ARC Linkage Grant LP0989373 Governing the Compact City: The role and effectiveness of strata management in higher density residential developments.





A
CONTEXT

Chapter 2:

Some facts about the strata sector

There are more than half a million residential and mixed used strata properties in NSW and this number will continue to increase significantly as governments and the market continue to promote higher density housing across the State.

The strata title system is not only important to those people who live in the properties, but also those who own strata titled properties as investments and those who work in the strata title sector providing services to strata title owners and residents. Strata Community Australia (NSW) estimate that approximately one-third of NSW residents either live in, own, or are employed in businesses that work in a strata titled property (Strata Community Australia, 2012).

2.1 What are we talking about when we talk about strata schemes in NSW?

There are many different types of strata schemes. Strata schemes can range from schemes made up of a few townhouses, to apartment buildings with hundreds of apartments. They can include multiple buildings (e.g. there might be two or more neighbouring apartment buildings under the one strata plan). In these cases, these buildings might have been built as part of a staged development, where one strata scheme is built in two or more stages. For example, one building may be built and the lots sold to fund the construction of a second building, both of which will be part of the same strata scheme.

As strata developments get ever larger and more complex, increasing numbers of individual strata schemes can sit within larger management structures. For example:

- ❑ Strata schemes can sit within a building that has been sub-divided into different 'Stratum Parcels'. Buildings can be subdivided into different stratum, for different uses (e.g. car parking, offices, hotels, residential). A strata scheme can then be registered within one or more stratum (also known as a 'part-building strata scheme'). Buildings like these will have a formal Strata Management Statement that sets out the provisions for the management of the whole building and a building management committee will meet to make decisions affecting the whole building.
- ❑ Individual strata schemes can be part of a larger 'Community Title' scheme. Community title is a form of land subdivision that enables shared property to be created within conventional Torrens title subdivisions. It is essentially a horizontal form of strata title. For example, a master planned estate under community title may include a number of detached houses each on their own community lots, and a strata scheme on a community lot. Community title schemes can be even more complex, with extra layers of management, called 'Precinct' and 'Neighbourhood' schemes. Community Title schemes must have Community Management Statements which set out the provisions for the management of the whole community scheme.

2.2 Data on NSW schemes

The information provided below is based on information received from NSW Land and Property Information contained in their strata database as of July 2011 and has been analysed by Local Government Area (LGA).

The data presented relates to residential and mixed-use strata schemes. Commercial schemes are not included. Some non-residential lots may be included in the presented figures, for example where they form part of a mixed use development.

Number residential and mixed use schemes

Strata schemes in NSW	67,447
Percentage of schemes located in the greater Sydney metropolitan area	65.0%

See also Figures 2.1 and 2.2

Number of residential and mixed use lots

Strata lots in NSW	595,362
Percentage of schemes in the greater Sydney metropolitan area	81.5%

See also Figures 2.3 and 2.4

Percentage owner occupied and investor-owned lots

Owner-occupation and investor-owned lots are calculated by comparing the address of a lot with the registered address of its owner. When the two addresses match, a lot is noted as owner-occupied; if the two addresses do not match, the lot is noted as investor-owned. As such, these figures should be considered an estimate only.

Percentage of owner occupied lots in NSW	47.2%
Percentage of owner occupied lots in the greater Sydney metropolitan area	48.8%
Percentage of owner occupied lots in the rest of NSW	40.1%

Scheme registration dates

Information regarding the registration dates of strata schemes can be used as an approximation for the age of buildings. However, the registration date of a scheme may be years after its construction. For example, a 60 year-old warehouse building may have only been converted into a 30-lot strata scheme five years ago.

Percentage of schemes registered prior to 1981 in NSW	22.6%
Percentage of schemes registered prior to 1981 in the greater Sydney metropolitan area	29.8%
Percentage of schemes registered prior to 1981 in the rest of NSW	9.1%
Percentage of schemes registered since 2008 in NSW	5.1%
Percentage of schemes registered since 2008 in the greater Sydney metropolitan area	4.4%
Percentage of schemes registered since 2008 in the rest of NSW	6.6%

Comparison between years 2009–2010–2011

The following compares the strata database figures for July 2011 (presented above) with comparable data for July 2010 and May 2009.

Increase in the total number of schemes registered

May 2009 - July 2010	2.5% increase (1,548 schemes)
July 2010 - July 2011	3.0% increase (1,957 schemes)

Sutherland Shire, Gosford and North Sydney LGAs maintained their position as the LGAs with the largest number of schemes during the period 2009–2011.

Increase in the total number of lots registered

May 2009 - July 2010	2.8% increase (15,649 lots)
July 2010 - July 2011	4.9% increase (27,941 lots)

City of Sydney, North Sydney and Sutherland Shire LGAs maintained their position as the LGAs with the largest number of lots during the period 2009–2011.

Reduction in proportion of owner occupied lots

May 2009 - July 2010	the percentage of investor-owned lots across NSW increased from 50.1% to 53.2%
July 2010 - July 2011	the percentage of investor owned lots across NSW decreased from 53.2% to 52.8%

During the period 2009–2011, the Sydney metropolitan area had a higher proportion of owner occupied lots than the rest of NSW. The proportion of owner occupied lots dropped between 2009 and 2011 in both the Sydney metropolitan area (51% in 2009 to 49% in 2011) and the rest of NSW (45% in 2009 to 40% in 2011).

Figure 2.1: Number of residential and mixed use schemes* for NSW by LGA, July 2011

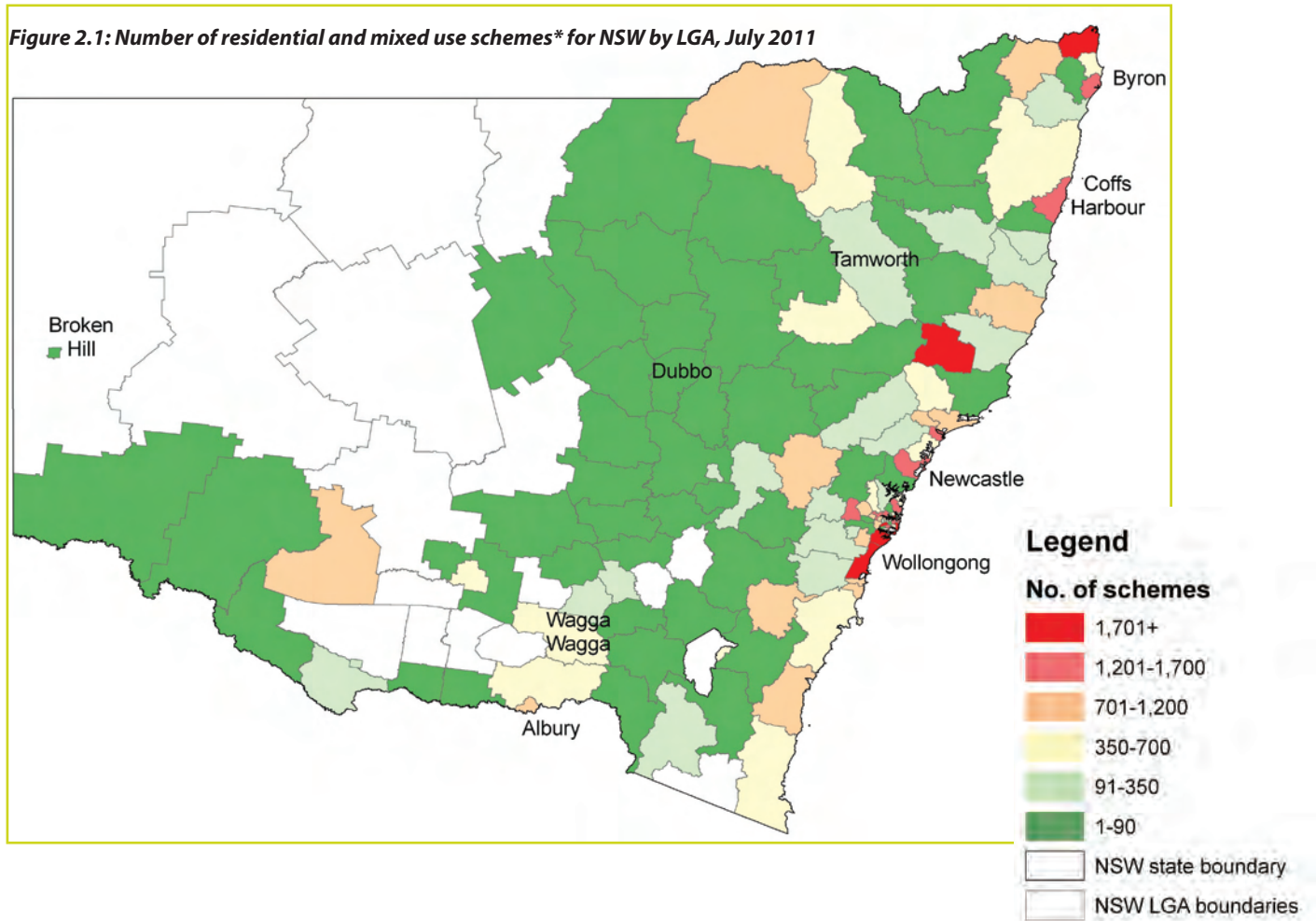


Figure 2.2: Number of residential and mixed use schemes* for Sydney by LGA, July 2011

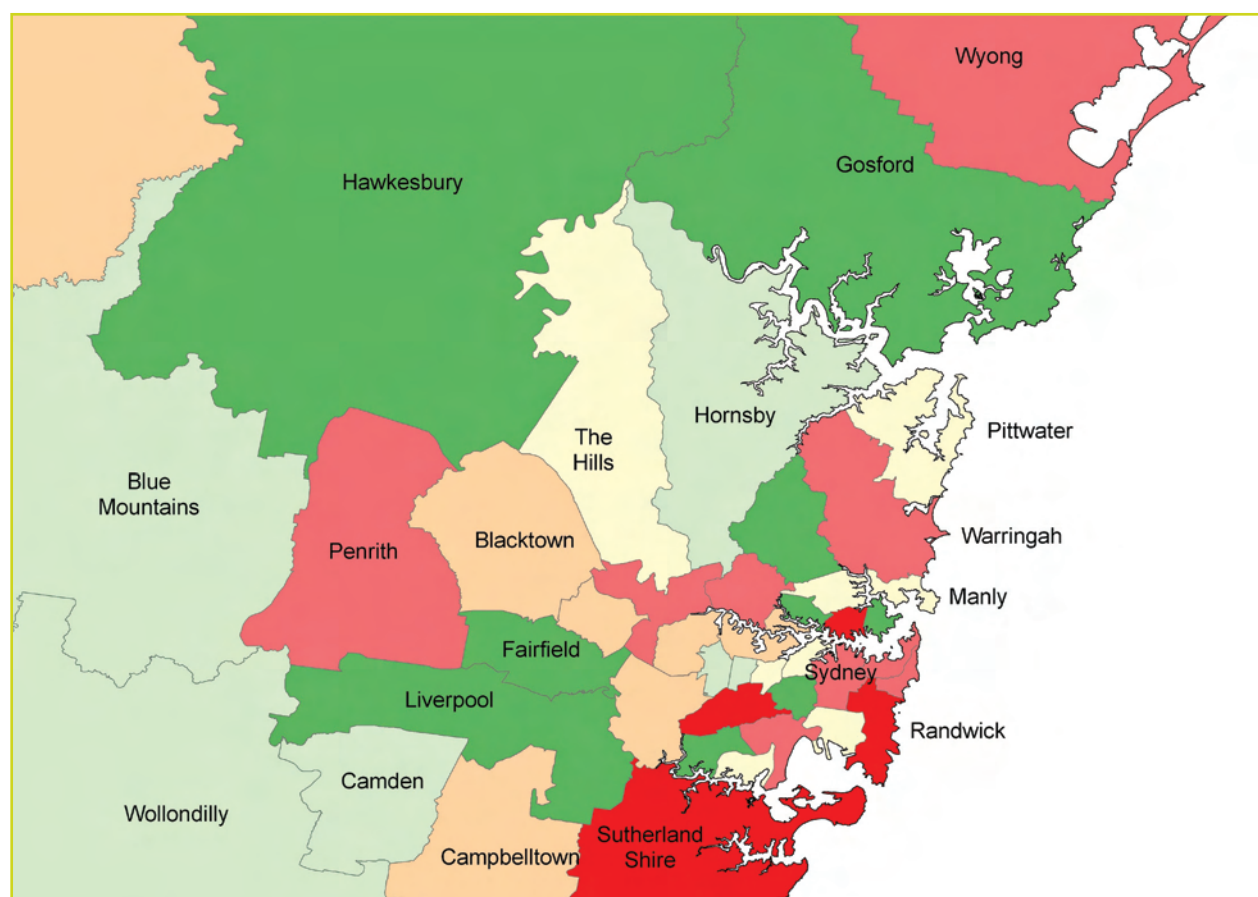


Figure 2.3: Number of residential and mixed use* lots for NSW by LGA, July 2011

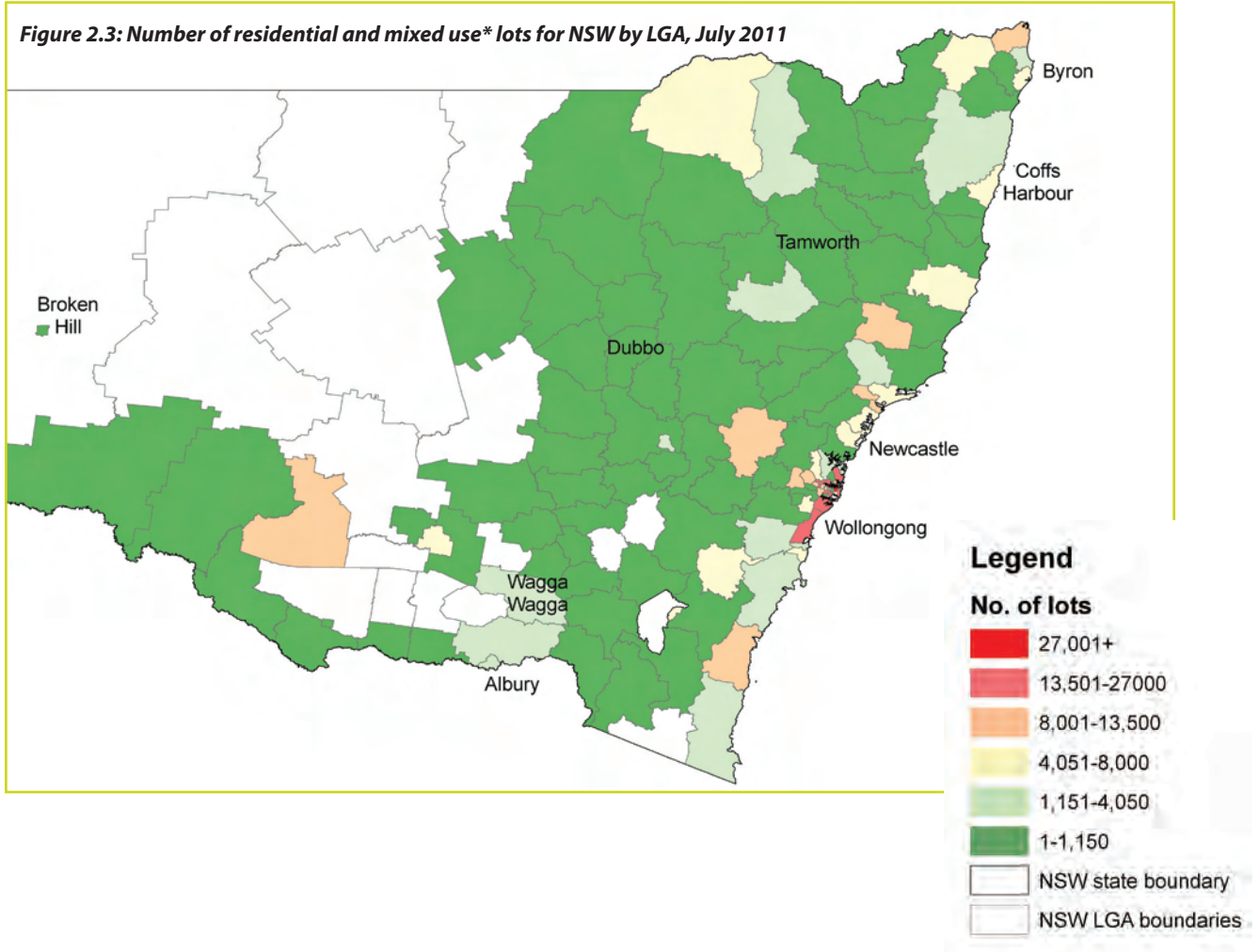
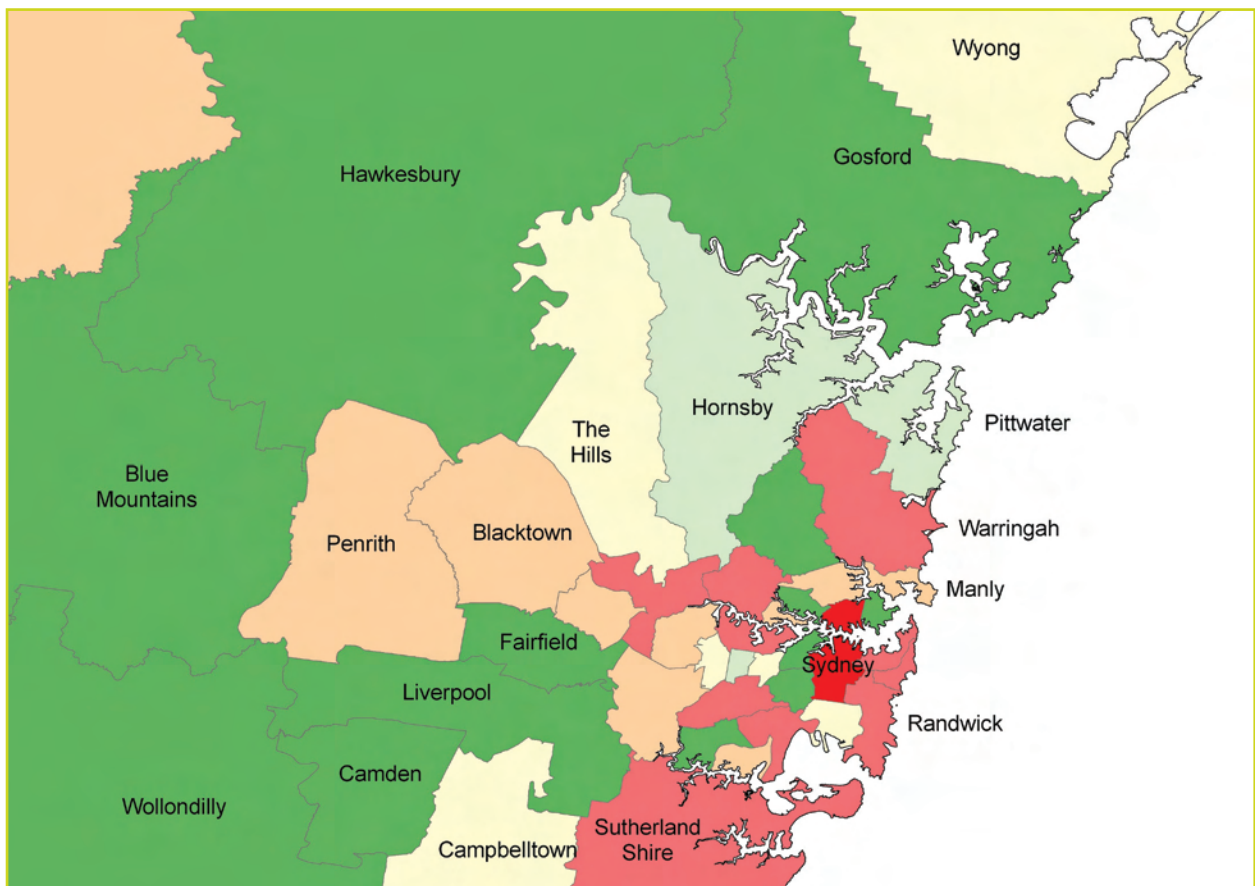


Figure 2.4: Number of residential and mixed use* lots for Sydney by LGA, July 2011



2.3 Legislation and planning policies that apply to strata schemes

There are a number of pieces of legislation and planning policies that relate to strata schemes in NSW and which will be referred to in this document. These are outlined below.

2.3.1 Acts of Parliament

Table 2.1 outlines the acts, regulations and amendment acts that govern the development and management of strata title schemes in NSW. In addition to the legislation that applies specifically to strata schemes, there are at least 58 additional State Government and 16 Commonwealth Government Acts that apply to strata schemes.

Table 2.1: Legislation pertaining specifically to strata schemes in NSW¹

NSW Legislation – Development	
<i>Strata Schemes (Freehold Development) Act 1973</i>	Enables the strata development and subdivision of freehold land.
<i>Strata Schemes (Freehold Development) Regulation 2007</i>	Provides further prescriptions regarding location plans, schedules of unit entitlement, floor plans, strata plans, strata plans of subdivision, strata plans of consolidation and building alteration plans, alteration of plans, strata development contracts, execution of the developer on behalf of the body corporate, notices relating to development concerns, insurance for vertical staged development, administration sheets and other miscellaneous matters.
<i>Strata Schemes (Leasehold Development) Act 1986</i>	Enables the strata development and subdivision of leasehold land.
<i>Strata Schemes (Leasehold Development) Regulation 2007</i>	Provides further prescriptions regarding location plans, schedules of unit entitlement, floor plans, strata plans, strata plans of subdivision, strata plans of consolidation and building alteration plans, staged development, administration sheets, and other miscellaneous matters.
NSW Legislation – Management	
<i>Strata Schemes Management Act 1996</i>	Legislates for the management and control of common property and the administration of strata schemes.
<i>Strata Schemes Management Amendment (Sinking Funds) Regulation 2006</i>	Extends section 75A of the <i>Strata Schemes Management Act 1996</i> (NSW) to all owners corporations (except those in strata schemes of 2 lots) requiring the preparation of a 10 year sinking fund plan and review of that plan at specified intervals.
<i>Strata Management Legislation Amendment Act 2008</i>	Definition of a caretaker, restrictions on the use of proxies, preventing by-laws allowing parking on common property being made during the initial period, disclosure of potential conflicts of interest by candidate for executive committee elections, reduction in the voting weight of original owners in votes on the vacation of office of an executive committee member. Also allows individual owners to lodge a building dispute with Fair Trading and arrange for an inspection of building work.
<i>Strata Schemes Management Regulation 2010</i>	Provides additional prescription and clarity around records and accounts, insurance, restrictions on the exercise of functions of owners corporations and executive committees, election of the executive committee, fees, proceedings of the CTTT, mediation processes, model by-laws, forms and certificates, priority votes and extension of section 75A.

2.3.2 Building codes and planning policies

As well as strata-specific legislation, there are a multitude of building codes, planning policies and acts that apply to the development and management of strata schemes in NSW.

Federal

Minimum acceptable standards for the design and construction of buildings in Australia are set out in the Building Code of Australia (BCA). The BCA outlines the minimum standards and technical provisions for the design and construction of buildings.

The BCA is given legal effect in NSW through the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

The Guide to Standards and Tolerances is a non-legal document that provides an explanation of the tolerances that a building professional will consider when determining whether a part of a building has been constructed or installed to an acceptable standard under the BCA.

State

The State Environmental Planning Policy 65 (SEPP 65) (2002) outlines design quality principals for residential apartments built in NSW. Under this policy, all residential dwellings over two storeys or with more than four dwellings must be designed and certified by registered architects, in line with the design quality principals outlined in SEPP 65. An accompanying document, the Residential Flat Design Code supplies detailed information about how development proposals can achieve the principals set out under SEPP 65.

All new residential dwellings in NSW must also be designed in line with the Building Sustainability Index (BASIX). BASIX is an online program that analyses data about a proposed dwelling design (such as location, size and building materials) and determines whether it meets specific energy and water use targets.

Local (council)

Local Environment Plans (LEPs) and Development Control Plans (DCPs) apply to new developments in different Local Government Areas.

The Local Environmental Plan is a legal document which controls the development and guides the planning decisions made by a council. LEPs outline what development is permitted and prohibited in different parts of an LGA and development standards (such as floor space ratios, height of buildings, provision of car parking, heritage provisions) and define those areas that are appropriate for higher density residential building.

The Development Control Plan is a non-legal document that provides more detailed planning and design guidelines to support the LEP. The provisions outlined in a DCP need to be taken into account by developers, in addition to those provisions outlined in the Residential Flat Design Code.

When a council issues a development consent, this includes conditions that are designed to improve the outcome of the development process based on reference to applicable LEPs and DCPs. Conditions of consent can be specific to a particular development, but there are also standard conditions that apply to many development consents.

2.4 Peak bodies that are active in strata title in NSW

There are a number of peak body organisations that provide information and advocacy specifically relating to strata schemes.

Organisations representing residents and/or property owners

- ❑ *The Owners Corporation Network of Australia Ltd.* (OCN) is the peak body representing residential strata and company title owners. OCN is NSW based with a chapter in the ACT, and provides support to owner groups in other states. It strives to improve strata living through consumer education and legislative change.
- ❑ *Shelter NSW* is a non-government, non-profit agency which advocates for the housing interests of low-income and disadvantaged people in NSW. Shelter NSW provide community education to build the capacity of non-profit organisations to provide housing and housing-related services. They have recently become active in the area of apartment living.

- ❑ *The Tenants Union* is the peak body for all NSW tenants. The Tenants Union is a legal centre specialising in residential tenancy law, which provides information on tenants' rights and responsibilities, advocates for the reform of policies and laws affecting tenants, conducts litigation to advance the interests of tenants, and supports the state-wide network of Tenants Advice and Advocacy Services, which provide free information, advice and advocacy to tenants.
- ❑ *The Property Owners Association* is a non-profit organisation that represents the interests of private residential landlords.

Organisations representing service providers and/or residents

- ❑ *Strata Community Australia* (SCA) is the Australian national representative professional association for home owners, community associations, body corporate management practitioners, solicitors, trades people, insurers, bankers and other parties involved in the professional, full-time administration of community and strata schemes.
- ❑ *Strata Community Australia (NSW Chapter)* is peak body for the strata sector in NSW. The majority of strata managing agents are members of SCA (NSW).
- ❑ *Australian Resident Accommodation Managers Association* (ARAMA) is the peak industry body supporting resident managers who operate a management rights business in strata and community management properties.
- ❑ *The Real Estate Institute of NSW* (REINSW) is a professional association for real estate agents and other property professionals. They provide advice support, information and training to their members.
- ❑ *Australian College of Community Association Lawyers* (ACCAL) is a national body of lawyers specializing in strata law and related matters. They provide support and accreditation to lawyers active in this specialist field and have a broader remit to promote knowledge and research in this area.

Organisations representing developers and/or builders

- ❑ *The Housing Industry Association* (HIA) advocates for the housing industry.
- ❑ *The Property Council of Australia* advocates for major investors, property owners and developers and the property industry's professional service and trade providers.
- ❑ *The Urban Development Institute of Australia* is a peak body representing the interests of all sectors involved in the urban development industry in NSW.
- ❑ *Urban Taskforce Australia* is a non-profit organisation representing property developers and equity financiers.

As the number of people living in strata schemes increases and as strata schemes become an increasingly important part of the business of many professions, advocacy around strata title issues has been growing in momentum and peak bodies representing different interests within the strata title sector are increasing their membership, profile and impact. Notably, SCA has been launched as a national organisation, and the OCN is now in a position to look towards expanding its operations nationally.

2.5 Government departments that are involved with strata title in NSW

There are a number of government departments involved with strata title issues in NSW:

- ❑ *NSW Fair Trading* provides information on strata management and administration, including resolving disputes and runs mediation and adjudication services.
- ❑ Where parties are not satisfied with an adjudicator's decision, they can appeal to have the matter heard publicly at the *Consumer, Trader and Tenancy Tribunal* (CTTT). If they are not satisfied with a decision made at the CTTT, parties to a dispute can then appeal to the *District Court* and *Supreme Court*.

- ❑ The *Land and Property Information (LPI)* division of the *NSW Department of Finance and Services* compiles maps, databases and registers of land and property information. LPI also provides information to the public and organisations.
- ❑ *NSW Department of Planning and Infrastructure* is the government department responsible for strategic planning in NSW, including land supply and management, affordable housing and urban renewal.
- ❑ For people considering purchasing a strata property, *Housing NSW* offers the Home Purchase Advisory Service, and publishes information relating to purchasing into a strata scheme.
- ❑ From the first of July 2010, the NSW Self Insurance Corporation, which is part of the *NSW Treasury* took over as the sole provider of home warranty insurance in NSW.

2.6 Professionals working in the strata title area

Numerous professionals work in the strata title area, including accountants, architects, builders, building certifiers, building contractors, building inspectors, surveyors, developers, fire inspectors, lawyers, non-resident building managers and caretakers, real estate agents, resident building managers, strata inspectors, and strata managing agents.

The strata management industry has grown in response to the growth of the strata sector. The industry employs an estimated 20,000 people Australia-wide, who service and manage property assets worth around \$500 billion (Strata Community Australia Victoria 2011). If you add to that the number of people involved in those professions that do not specialise in strata title, but service the sector (including builders, tradesmen, surveyors and accountants) and those people who work in local and state government departments dealing with strata title issues, then the importance of strata title for government and industry becomes clear.

(Endnotes)

- 1 Information provided by Teys Lawyers, 2011



Chapter 3: Major stakeholders in a strata scheme

This chapter provides an introduction to the major stakeholders in an individual strata scheme. These are the key groups that the research reported here focused on and will be referred to throughout the report.

The major stakeholders within a strata schemes are strata lot owners (and their tenants), owners corporations, executive committees, strata managing agents and building managers. For the purposes of the management of a strata scheme, they are organised into the following main groupings:

3.1 The owners corporation

The owners corporation comes into existence as soon as a strata plan is registered and is made up of whoever the owners of the lots are at any one time.

All owners automatically become part of the owners corporation and it is not possible for an owner to 'opt out' of the owners corporation.

The owners corporation owns the common property in a strata scheme, and has responsibility for:

- ❑ Maintaining and repairing the common property
- ❑ Managing the finances of the strata scheme
- ❑ Taking out insurance for the strata scheme
- ❑ Keeping records and accounts for the strata scheme
- ❑ Administering the by-laws for the strata scheme (i.e. the rules that govern resident behaviour)
- ❑ Employing a strata managing agent and/or building manager (this is optional)

Not all owners have equal weight within the owners corporation. The relative weight a strata owner has within the owners corporation is called their unit entitlement, and is generally based upon the relative value of their strata lot. Unit entitlements regulate the voting rights of each owner and the amount of levies each owner must pay.

The owners corporation can only make decisions at properly convened meetings.

There are two types of owners corporation meeting:

- ❑ Annual general meetings, which must be held once a year.
- ❑ Extraordinary general meetings, which can be held when necessary.

3.2 The executive committee

The owners corporation can elect people to assist in the day to day running of the scheme. These people are known as the executive committee.

The executive committee can have up to nine members and must elect a chair, secretary and treasurer (although the same person can hold multiple roles). The committee makes many of the day-to-day decisions about the running of the scheme on behalf of the owners corporation.

Where an owners corporation is unable to elect an executive committee (e.g. if no-one volunteers for this role), the owners corporation can administer the scheme itself. However, this requires that every time the owners corporation wants to make a decision it must call a general meeting with all of the associated formalities.

Alternatively the owners corporation can appoint a strata managing agent and delegate the necessary powers to them, or an Adjudicator or the CTTT can order that a strata managing agent be appointed to administer the scheme.

The executive committee must endeavour to elect its office bearers at its first meeting.

The **chairperson** presides at all meetings of the executive committee and owners corporation, so as to ensure the successful and lawful functioning of those meetings (*Strata Schemes Management Act 1996* (NSW) schs 2, 3).

The **secretary** is the chief administrative officer of the strata scheme (however, they do not have the power to contractually bind the company as a secretary of a company does). The secretary is responsible for:

- ❑ Preparing and distributing the minutes of meetings of the owners corporation and executive committee
- ❑ Submitting a motion for confirmation of the minutes of the last general meeting to the next owners corporation meeting
- ❑ Giving notices required under the Act including notices of executive committee meetings, general meetings and levy contribution notices
- ❑ Maintaining the strata roll
- ❑ Making records specified in s108 available for inspection
- ❑ Answering communications addressed to the owners corporation
- ❑ Convening meetings of the executive committee and general meetings
- ❑ Attending to all administrative and secretarial tasks of the owners corporation and the executive committee
- ❑ Giving at least 72 hours notice of an executive committee meeting
- ❑ Ensuring that the minutes of an executive committee meeting are complete and accurate and contain all of the resolutions passed
- ❑ Displaying the minutes of executive committee meetings on the notice board or circulate them to owners and executive committee members

- ❑ Advising the chairperson on who is entitled to move a motion, nominate a person for election as an executive committee member or vote at owners corporation meetings

- ❑ Including any motions received on the agenda of the owners corporation meetings¹.

Most importantly, a secretary of a strata scheme can be held personally liable to a third party if his or her acts are beyond the authority conferred onto them by the executive committee. For this reason, it is recommended that owners corporations purchase office bearers liability insurance.

The **treasurer** is responsible for:

- ❑ Notifying owners of the strata levies
- ❑ Receipt, acknowledgement, banking and accounting for any moneys paid to the owners corporation
- ❑ Preparing section 109 certificates
- ❑ Keeping the prescribed accounting records and prepare the prescribed financial statements
- ❑ Using the levy register to advise the chairperson at owners corporation meetings of those lots with moneys outstanding to the owners corporation, allowing the chairperson to announce those remaining persons who are entitled to vote on a motion or elect executive committee members²

The executive committee can make decisions in two ways:

1. At a conventional meeting of executive committee members.
2. Through the submission of written votes by executive committee members.

The owners corporation as a whole is ultimately in charge of a strata scheme, however, and can overrule the decisions of their executive committee. There are also some things that the executive committee cannot make decisions about and these decisions must be made by the owners corporation. These include (but are not limited to) decisions about:

- ❑ The distribution of surplus money from the administrative or sinking fund.
- ❑ The creation of easements or restrictions on use over the common property.

- ❑ The amendment, addition or repeal of by-laws.
- ❑ Estimating and determining the moneys payable by owners to the administrative and sinking funds of the scheme, and any special levies.
- ❑ Adding to, altering or erecting a structure on common property.
- ❑ Appointing or terminating a strata managing agent or caretaker.
- ❑ Deciding what matters shall not be decided by the executive committee or the strata managing agent.

3.3 The strata managing agent

Some strata schemes also hire a strata managing agent (often referred to as a strata manager) to help manage the scheme and/or a building manager or caretaker to help manage the common property. Ilkin (2007) estimates that 70% of schemes in NSW hire a strata managing agent. In NSW, managing agents must be licensed under the *Property, Stock and Business Agents Act 2002*. Strata managing agents are required to hold a Certificate IV in Property Services (Operations) for their license. In this qualification they cover managing meetings, leadership skills, financial literacy, managing contracts and contractors and customer service strategies.

The owners corporation must make a decision about what functions to delegate to the managing agent and these functions will be outlined in a management agreement (a contract). A managing agent can undertake many of the functions of the executive committee. However, a managing agent cannot set levies, decide a matter that must be decided by the owners corporation or make further delegations (i.e. delegate responsibilities to someone else). Some of the things a managing agent might do include:

- ❑ Keeping the scheme's records in good order
- ❑ Assisting with the preparation of budgets
- ❑ Advising the executive committee and owners corporation on their legislative requirements
- ❑ Coordinating maintenance, obtaining quotes, scheduling work

- ❑ Organising insurance
- ❑ Liaising with caretakers and building managers

The owners corporation and its executive committee can still carry out their duties even if they are delegated to a managing agent and final authority and responsibility on any decision lies with the owners corporation.

3.4 The building manager

Some strata schemes also engage building managers or caretakers to assist with the management of common property. Sometimes their building managers live on site. Some of the things a building manager might do include:

Maintaining and repairing common property

Controlling the use of common property by non-residents

Liaising with strata managing agents

Some building managers also own rental rolls for the properties they work in. This means that they can act as a real estate agent and let out properties in the scheme to tenants.

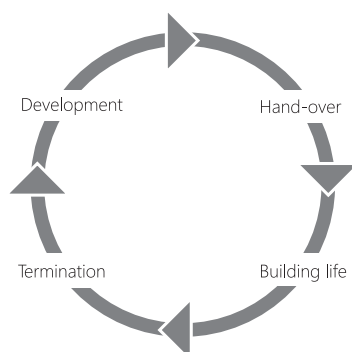
(Endnotes)

- 1 *Strata Schemes Management Act 1996* (NSW) ss 22, 102, sch 2, 3.
- 2 *Strata Schemes Management Act 1996* (NSW) s 23(1), 109, sch 2



Chapter 4: Significant periods in the life of a scheme

There are four distinct, but interrelated, stages in the lifecycle of a strata scheme – development, hand-over, building life and termination.



This report concentrates on the longest period in this lifecycle – the life of the building – but there can be significant governance challenges during the life of the building that relate to what happened during the development and hand-over of the scheme. Further, as more and more strata buildings age, increasing numbers of owners corporations will have to deal with the governance challenges associated with deciding whether to terminate and re-develop their schemes.

This chapter provides a brief introduction to these four stages in the lifecycle of a strata scheme, which will be referred to throughout the remainder of the report. Where relevant, the discussion is based on the position of the various parties as determined by the relevant legislation in NSW, as well as relevant national regulations. While the details may vary with other States and Territories, the broad context remains the same outside NSW.

4.1 Design / development / building

Developers of new strata schemes must abide by Federal and State building codes and State and Local planning policies when designing and building new properties. While a significant emphasis is often placed on designing the resulting product to meet assumed requirements of those who buy the properties, the design and construction of residential strata is undertaken without any significant input from, or reference to, those people who will subsequently live in those developments over the lifetime of the building. Further, given the prevalence of investors in the sector, there is often little immediate incentive for a developer to consider the long term outcomes for residents many years into the future.

However, the standard to which a strata scheme is designed and built can have significant impacts on the governance and management of that building by the owners corporation during its life. Building quality, and in particular building defects, can impact upon the subsequent owners of properties within a development for many years after the property is built, as owners are affected not only by the defects themselves (leaking water membranes, for example), but also the requirement on the owners corporation (and hence all owners) to identify these defects and seek to have them remedied.

Building design can also have a significant impact on the liveability of properties for residents, as well as the effective management and governance of the scheme by owners (Easthope & Judd 2010). Issues can range from an absence of space in which to hold meetings

of the owners corporation, through to the placement of services leading to confusion over what is common property and what is lot property.

Issues arising for owners and owners corporations as a result of poor building quality or building design at this development stage are discussed in more detail in Chapter 8.

4.2 Hand-over / initial period

When a strata plan is registered, the owners corporation is automatically created. The owners corporation is made up of the owners of the lots in the building, which at this early stage is usually the developer. As lots are sold, membership of the owners corporation changes.

During these early stages of a strata scheme, regulations exist governing the actions that the 'original owners' (e.g. the developer) can and cannot take in their role as member of the owners corporation. During the initial period, the original owner is responsible for all of the duties of the owners corporation, even if the first AGM has not been held. Further, during the initial period, the owners corporation must not¹:

- ❑ change or cancel the by-laws or make extra by-laws that do not give a right or obligation to all owners or all lots
- ❑ alter common property (except under a development contract)
- ❑ incur a debt for more than is set aside in its funds to repay
- ❑ borrow money or give securities
- ❑ appoint a strata managing agent or caretaker to continue after the first Annual General Meeting (AGM)

There are also regulations governing the types of information that the original owner is required to hand over to subsequent owners.

There are further restrictions placed on the power of the original owner under the legislation. For example, if there is a motion to determine that a person's office as a member of the executive committee should be vacated and the original owner owns half or more of the lots, their vote is reduced to one vote for each three lots they own².

Despite these legislative protections, in practice, problems can still arise during, or as a result of, this hand-over period. These issues are discussed in Chapter 8 and 9 of the report.

4.3 In-use / building life

During the longest period in the life of a strata scheme, the owners corporation (and hence all owners) is responsible for the effective governance and management of the scheme. In practice, this means that the owners corporation and its executive committee is responsible in the first instance for managing the common property of the scheme (the building and grounds) and managing the funds needed to do this effectively.

But property management is not the only task of the owners corporation. Managing people is also an important task, and the management of conflicting interests and priorities and the resulting disputes amongst owners and residents is essential for the smooth running of a strata scheme.

Undertaking these roles requires effective governance of a scheme, as well as access to the necessary information on which to base decisions. This phase of a strata building's life cycle is the main focus of this report and Chapters 7 to 11 address each of these issues in turn. However, the two preceding phases can have critical impact on how well the in-use phase of the scheme works in practice for those who live in and own strata properties. Many of the issues aired in the report will reflect matters that have their origins in the decisions that were made during these two initial phases.

4.4 Termination / knocking down the building

Before a strata titled building can be demolished and the land redeveloped, the strata scheme must first be terminated. When a strata scheme is terminated, the owners corporation is dissolved. The land and assets of the owners' corporation then pass to the owners in shares proportional to their unit entitlements.

There are three main scenarios in which strata buildings would be demolished to enable re-development:

1. A strata building requires so much remedial work that it makes more sense to knock the building down and build a new one in its place than to undertake the work.

2. A low-rise strata building is in an area that is re-zoned to enable higher-rise developments, and there is profit to be made by the property owners in knocking down the low rise property and building a higher-rise property in its place.
3. A strata building (or buildings) are situated in a larger area (e.g. a few blocks) that could be redeveloped as part of a broader urban renewal project. In many areas with a high potential for redevelopment (such as near transport nodes like railway stations), there are already existing strata titled dwellings.

There are two ways to terminate a strata scheme in NSW currently:

1. *By unanimous agreement.* 100% of owners, leasees, mortgagees, charges and covenant chargees must agree to terminate the scheme, and sign the application for termination, which is decided by the registrar general or Supreme Court³.
2. *By court order.* These are very rare and focus on procedural issues, rather than resolving disputes between owners.

In practice, the difficulty of achieving a 100 per cent vote has meant that very few strata schemes have been terminated in NSW⁴.

There has been significant discussion about the options to change the legislation in order to make termination easier. This issue has been raised in commonwealth and state government reports (COAG 2010 attachment B; NSW Transport and Infrastructure 2010: 26). It has also been raised by numerous peak body organisations (including Property Council of Australia 2010, Strata Community Australia (NSW) 2012 and the Urban Development Institute of Australia 2010).

Other countries have already changed their strata legislation to make termination of strata schemes easier. For example, in Singapore, the vote required to agree to a collective sale to a developer (for the purposes of terminating and re-developing a strata scheme) is 80% for buildings more than 10 years old.

As more strata title schemes reach an age at which it make more sense to re-develop them than to continue to maintain them, strata owners and owners corporations will increasingly confront the question of whether to knock down their buildings in order to re-develop. However, the issue of strata termination largely lies outside the focus of this research, which is concerned to better understand how schemes work during the management phase of the building's life cycle.

(Endnotes)

- 1 *Strata Schemes Management Act 1996* (NSW) ss 50, 113
- 2 *Strata Management Legislation Amendment Act 2008* (NSW) Sch 3(4)
- 3 *Strata Schemes Freehold Development Act 1973* (NSW) ss. 51, 51A
- 4 In April 2012, the total number of strata plans that had been ever been terminated in NSW was 826 (information from LPI NSW).





B

THE PROJECT

Chapter 5: Research methods

This chapter outlines how the information informing this research report was collected. The research project was undertaken over a period of three years, beginning in February 2009, and concluding in March 2012.

The project involved the following research tasks, which are described in more detail below:

- ❑ Interviews with strata peak body representatives around Australia
- ❑ Review of the NSW strata legislation
- ❑ Analysis of the NSW strata title database
- ❑ Survey of executive committee members in NSW
- ❑ In-depth interviews with executive committee members in NSW
- ❑ Survey of strata managing agents in NSW
- ❑ In-depth interviews with strata managing agents in NSW
- ❑ Survey of strata owners in NSW
- ❑ In-depth interviews with strata owners in NSW
- ❑ Stakeholder consultation and awareness-raising

The project partners, through an Advisory Group, were involved at all stages of the research, and provided detailed input and advice on the selection of peak body representatives for interview, as well as the design of the three surveys with strata stakeholders. Advisory Group meetings were held approximately once every six months to obtain feedback and advice from the project

partners on the research project. The project partners also assisted in raising awareness about the surveys with the target groups, as did journalist Jimmy Thomson through his *Flat Chat* column in the *Sydney Morning Herald*.

At the end of the first year of the project, a workshop was held with the project partners and other invited stakeholders to present the research findings to date, and receive feedback on the progress of the research.

5.1 Peak body interviews

The first stage of the research involved in-depth telephone interviews with peak body representatives around Australia to discuss what they saw as the main issues arising regarding the governance and management of strata.

The interviews were semi-structured enabling fuller discussion of issues as they arose. All interviewees were asked the following questions:

- ❑ What do you see as the main challenges facing the effective running of strata schemes?
- ❑ Are there any challenges facing strata governance and management [in your jurisdiction] that are not adequately covered by the existing legislation?
- ❑ To what extent do you think that the legislation can impact on strata management in practice? What other considerations need to be taken into account?
- ❑ Do you think that the level of training available to [sector represented] is adequate? If not, what would you like to see offered?

- ❑ Do you think that the level of knowledge amongst unit owners is sufficient to ensure the effective management and governance of strata schemes [in your jurisdiction]? If not, what would be the best way to inform owners of their rights and responsibilities and the management structures in place?
- ❑ Are there any other issues that we haven't addressed, that you think we should have?

Eleven interviews were conducted at this stage. Table 5.1 provides details on those interviewees. These interviews were used to inform the further development of the project, including the design of the surveys with strata managing agents, executive committee members, and strata owners, but are not referred to directly in this report.

Table 5.1: Details of peak body interviews

Group	State
Strata manager peak body	ACT
Resident manager peak body	NSW
Strata manager peak body	NSW
Strata manager peak body	NSW
Owner peak body	QLD
Resident manager peak body	QLD
Strata manager peak body	QLD
Strata manager peak body	SA
Strata manager peak body	SA
Owner peak body	VIC
Strata manager peak body	VIC

In addition to these formal interviews, many less formal discussions were also held with other peak body representatives including the Australian Resident Accommodation Managers Association, Shelter NSW, and the Urban Development Institute of Australia (NSW), over the course of the project, both as the project progressed, and as part of our stakeholder workshop held at the end of the first year of the project.

5.2 Review of the legislation

A review of the legislative framework for the strata sector on NSW was undertaken, including a review of recent developments in policy and practice, and recent media commentary. As the project continued, this information was kept up to date.

Basic information about the legislation that applies to strata schemes was presented in Chapter 3. More detailed reference to the relevant legislation is included throughout Part C of the report, where relevant.

5.3 Analysis of the NSW strata title database

As part of the project, one of our partners, Land and Property Information NSW, provided us with access to the strata title database for the state at lot level. This data was provided to us under a strict data supply agreement and was treated in accordance with national privacy principles. No other project partners had access to this dataset during the project. Our access to this dataset enabled us to undertake detailed analysis of the residential strata sector in NSW (presented in Chapter 3). This database also provided the sampling frame for the strata owners survey reported on Chapters 7-11 and described below.

From this dataset, we extracted information pertaining to residential strata schemes. To capture all strata properties used for the purpose of residence, figures reported for residential schemes and lots include the zoning categories of A (Residential), B1 (Neighbourhood Centre), B2 (Local Centre), B3 (Commercial Core), B4 (Mixed Use), D (Mixed Use Development), E4 (Environmental Living), M (Mixed Residential / Business), R1 (General Residential), R2 (Low Density Residential), R3 (Medium Density Residential), R4 (High Density Residential), RU4 (rural small holdings), V (Comprehensive Centre) and Z (Undetermined, or Village). Commercial schemes were not included in the analysis. Some non-residential lots may be included in the presented figures, for example where they form part of a mixed-use development.

We then mapped these data to the property cadaster for NSW. From this analysis, we were able to report up-to-date information about the strata schemes registered in NSW at a local government level for the whole state. We undertook this analysis on the following dates:

- ❑ May 2009
- ❑ July 2010
- ❑ January 2011
- ❑ July 2011

In reporting our analysis of this dataset, we presented both maps and figures of the following information:

- ❑ Number of residential and mixed use schemes
- ❑ Number of residential and mixed use lots

- ❑ Percentage of owner-occupied and investor-owned lots
- ❑ Percentage of schemes with 100 or more lots
- ❑ Scheme registration dates

More information on the methods used to calculate these figures are available in the detailed *Strata Data* reports¹.

5.4 Survey of executive committee members

The first survey launched for the project was a survey of executive committee members. This survey ran between the 18th January and the 20th September 2010. The survey was promoted through a number of channels, including through the distribution lists of SCA (NSW) and OCN, promotion in the popular Sydney Morning Herald newspaper's *Flat Chat* column (which focuses on strata issues and is published weekly), online advertisements in the *Domain* (property) section of the Sydney Morning Herald, and print advertisements in SCA (NSW)'s publications *Inside Strata* and *Strata & Community Living*, the magazine *Strata Voice*, and the free Sydney commuter newspaper *Mx*. A prize draw was included as an incentive to participate.

Both online and printed versions of the survey were made available to prospective respondents. The survey included both closed and open questions. The survey asked people background questions about themselves, and their property, the nature of their strata scheme, the functioning of their executive committee, specific questions regarding the management of their strata schemes, how disputes had been dealt with in their scheme, and what they considered to be the important factors influencing the practice of executive committees and owners corporations. A copy of the full survey is attached in Appendix 2.

In all, 413 complete and valid responses were received from executive committee members in approximately 390 strata schemes across NSW². Some further complete responses were deleted because they did not comply with the criteria established in the survey description (for example, responses which were from a different state or a commercial strata scheme), and a number of incomplete surveys were not included in the analysis to guard the integrity of the data.

There is no available data on the number or composition of executive committee members, and so it is not possible to ascertain to what extent our survey respondents reflect the total population of executive committee members in NSW. Given that there are over 65,000 strata schemes in NSW and each can have an executive committee with up to nine members, it is clear that our response reflects only a small proportion of the total possible population. Confidence levels for this survey are calculated at $\pm 4.8\%$ ³. For example, if 60% of respondents agreed with a statement, the range is between 55.2% and 64.8% of the total population⁴.

While relatively small in proportion to the total possible population of executive committee members, the response does provide a useful indication of issues facing a variety of executive committee members in running strata schemes of a number of types, sizes and locations (see Appendix 3). It is also the first survey of its type in NSW, or indeed in Australia, and consequently there is no comparative data to which we can compare our response.

The responses to the closed questions in the survey are presented in Chapters 7-11 of this report. The responses to the open questions in the surveys (which typically asked for examples or opinions) were grouped into common themes, with the assistance of the qualitative data analysis software package NVivo, and these are also presented throughout Chapters 7-11 either in terms of common issues (themes) arising, or as direct quotes to the open responses of individual survey respondents.

5.5 Executive committee interviews

All survey respondents were asked whether they would be willing to participate in a further in-depth interview about their experiences of sitting on the executive committees of their strata schemes. The aim was to explore some of the major issues raised through the survey in more depth. In all, 290 survey respondents agreed to be contacted, and twenty-one were selected for interview. Interviewees were selected to reflect a cross-section of schemes types and locations, and a cross-section of issues raised within the survey.

The interviews were each individually tailored around the responses given in the survey, to discuss specific issues raised by the respondent. The interviews were semi-structured and ranged from half an hour to over two hours in duration.

Information about the interviewees is presented in Table 5.2 below. Names and other identifying features have

been removed to protect the anonymity of the interviewees.

Table 5.2: Characteristics of executive member interviewees

Respondent number	Number of lots in the scheme	Mixed use	Resident or Investor owner	Location	Year property built	Sex	Age	Economic status
9	101-150	No	Resident	Middle Sydney	2004-07	M	45-49	Full-time employee
17	3-6	No	Investor	Inner Sydney	1970-79	M	65-69	Full-time employee
43	7-10	Yes	Investor	Regional town	2004-07	F	55-59	Full-time employee
53	81-100	Yes	Resident	Inner Sydney	2000-04	M	65-69	Retired
71	81-100	Yes	Resident	Inner Sydney	1990-99	M	65-69	Part-time or temporary employee
83	3-6	No	Investor	Newcastle and surrounds	1980-89	M	75-79	Retired
110	41-60	Yes	Resident	Newcastle and surrounds	2000-03	F	55-59	Retired
129	11-20	No	Investor	Middle Sydney	1970-79	F	40-45	Full-time employee
130	11-20	Yes	Resident	Newcastle and surrounds	2008-11	M	35-39	Part-time or temporary employee
135	81-100	No	Resident	Middle Sydney	1990-99	M	70-75	Self-employed
147	3-6	No	Resident	Middle Sydney	1970-79	F	30-34	Student
185	3-6	Yes	Resident	Inner Sydney	-	F	45-49	Full-time employee
211	81-100	Yes	Resident	Outer Sydney	1990-99	F	55-59	Self-employed
239	21-40	Yes	Resident	Inner Sydney	-	M	60-64	Full-time employee
275	21-40	No	Resident	Middle Sydney	1980-89	F	60-64	Retired
291	21-40	No	Investor	Outer Sydney	1980-89	F	25-29	Full-time employee
310	11-20	No	Resident	Middle Sydney	-	M	25-29	Full-time employee
325	41-60	No	Resident	Inner Sydney	2000-03	M	55-59	Self-employed
329	11-20	No	Investor	Inner Sydney	1960-69	F	25-29	Full-time employee
398	21-40	No	Resident	Middle Sydney	2004-07	F	60-64	Retired
406	11-20	No	Resident	Inner Sydney	1970-79	F	40-44	Full-time employee

The purpose of the interviews was to provide concrete examples of issues and to tease out the complexities of those issues. The interviews were recorded and notes were taken from these recordings as well as selected verbatim quotes, some of which are re-produced in Chapters 7-11 of this report.

5.6 Survey of managing agents

The second survey conducted was a survey of strata managing agents in NSW. This survey ran between the 18th April and the 8th December 2010. The survey was initially promoted via a number of avenues, including the mailing list of Strata Community Australia (NSW), at the National Community Titles Institute and Institute of Strata Title Management National Convention (21st-23rd October 2010), and in Strata Community Australia's publication *Inside Strata*.

Both online and printed versions of the survey were made available to prospective respondents. The survey included both closed and open questions. The survey asked questions about the managing agents and their company, how they came to be involved in the industry, the training they have received, the schemes they man-

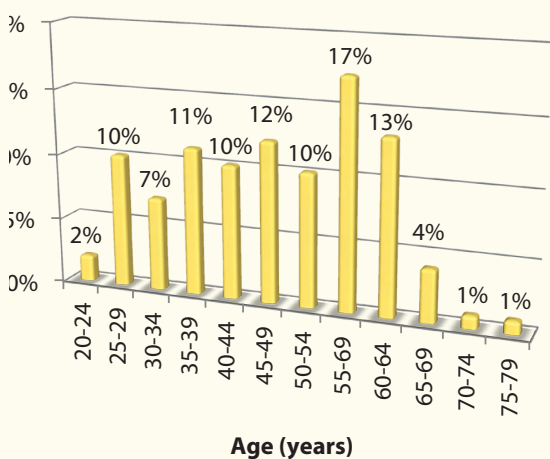
age, the issues they face in managing those schemes, disputes in the schemes they manage, and what they considered to be the important factors influencing the practice of managing agents. A copy of the full survey is presented in Appendix 4.

Despite targeted advertising, the long running time of the survey, and the inclusion of a prize draw, we found it very difficult to attract managing agents to undertake the survey. A final boost to survey numbers was achieved by our partners at Strata Community Australia e-mailing the Principals of member strata management companies strongly encouraging them and their staff to complete the survey.

A total of 106 complete and valid responses were received from managing agents operating across NSW.

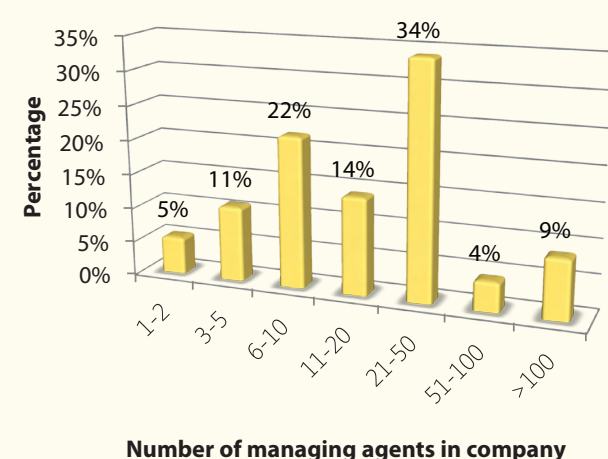
This sample size is too small to be considered representative of all strata managing agents operating in NSW. It does, however, provide a useful indication of issues facing managing agents working with strata schemes of different types, sizes and locations (see Figures 5.1 – 5.3 below).

Figure 5.1 Managing Agents Survey: Age of respondents



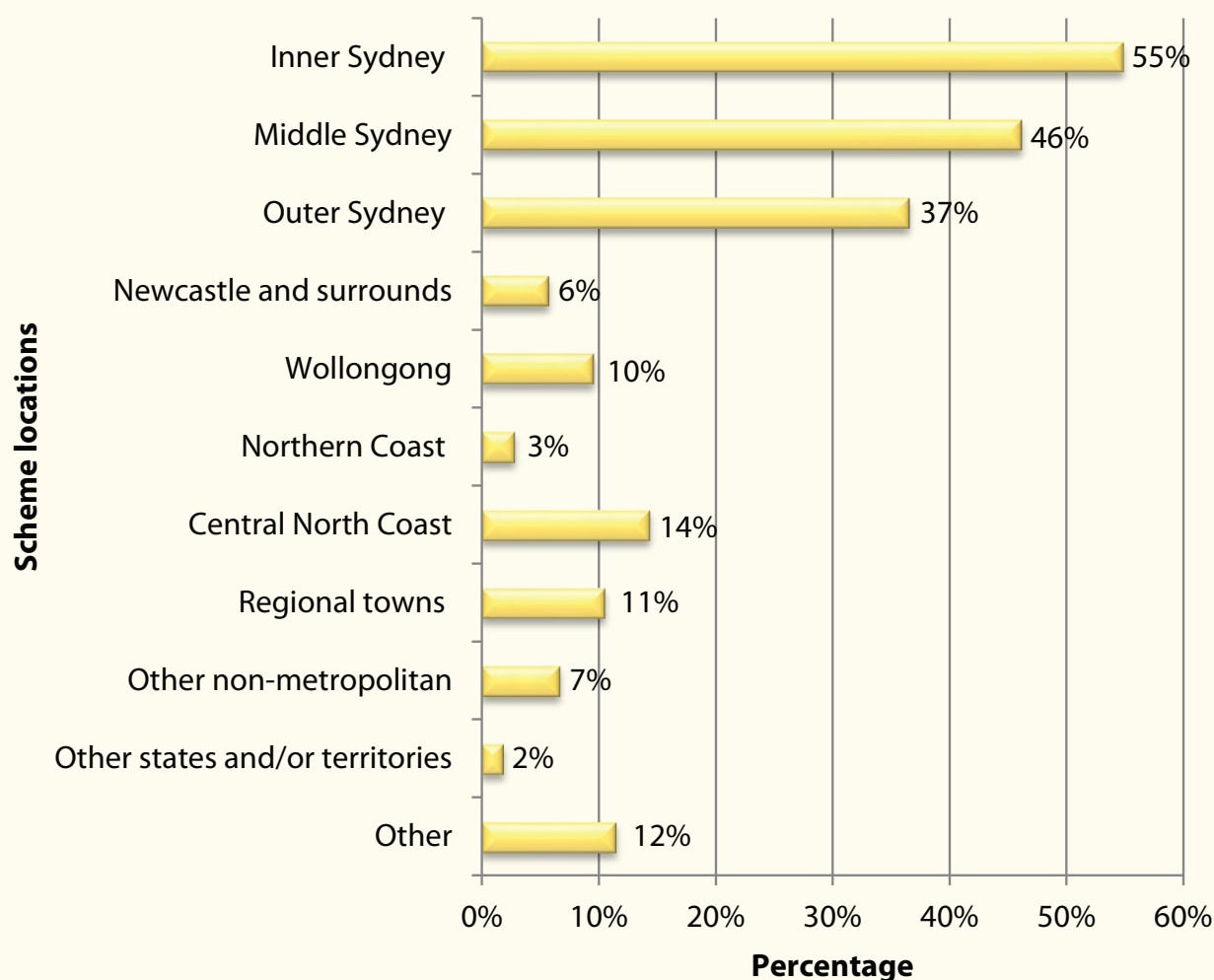
Survey of executive committee members. 410 respondents. Single response question.

Figure 5.2: Managing Agents Survey: Size of company (number employed)



Survey of managing agents. 91 respondents. Single response question.

Figure 5.3: Managing Agents Survey: Locations of the schemes managed



Survey of managing agents. 104 respondents. Multiple response question

The responses to the survey were analysed in the same manner as those of the Executive committee survey (see above).

5.7 Interviews with managing agents

All survey respondents were asked whether they would be willing to participate in a further interview about their experiences of working as a strata managing agent and 44 respondents agreed to be interviewed. How-

ever, scheduling times with these agents for interview proved very difficult and as a result only four in-depth semi-structured interviews were conducted. Again, the interviews were each individually tailored around the responses given in the survey, to discuss in more depth specific issues raised in the surveys.

Information about the interviewees is presented in Table 5.3. Responses have been used in the report in the same manner as for executive committee members.

Table 5.3 Characteristics of managing agent interviewees

Respondent number	Sex	Age	Economic status	Number of agents in company	Scheme types managed by company	Location of business
35	M	55-59	Employed by a company	6-10	Residential	Sydney
17	F	45-49	Self-employed	Self only	Residential	Regional NSW
45	F	55-59	Employed by a company	11-20	Residential, mixed use, commercial	Sydney
56	M	-	Self-employed	Self only	Residential	Sydney

5.8 Survey of strata owners

The final survey focused on strata owners. This survey ran between the 13th of March and the 15th of November 2011. The survey was promoted through a number of channels, including through the distribution lists of SCA (NSW) and OCN, promotion in the Sydney Morning Herald's *Flat Chat* column, and print advertisements in *Mx* and *Inside Strata*. A prize draw was included as an incentive to participate.

An invitation to participate in the survey was also sent out to stratified random sample of 5,000 strata owners across NSW on our behalf by NSW Land and Property Information. These were selected to be representative of a cross section of strata scheme locations and scheme sizes. NSW Land and Property Information randomly selected the number schemes to meet the total mail-out number required from each sampling group and sent one survey to a selected address in each of those schemes. There was a problem with the address fields on some of the first 5,000 survey invitations sent out by NSW Land and Property Information, and so an additional 5,000 invitations were sent out, using the same methodology, a few weeks later.

Both online and printed versions of the survey were made available to prospective respondents. The survey included both closed and open questions. The survey asked people for background information about themselves and their strata schemes, their satisfaction with strata ownership and their owners corporation, their opinions regarding levies and changes, repairs and maintenance, relationships with neighbours, participation in management decisions, access to information, disputes,

and satisfaction with their strata managing agents and building managers. A copy of the full survey can be found in Appendix 5.

A total of 1,041 complete responses were received from strata owners, of which 21 were excluded during the data cleaning stage because they did not meet the criteria specified for survey participants (i.e. that there were three or more lots in their scheme, at least one residential lot, and the scheme was in NSW), or did not provide adequate information to determine whether they met these criteria. This resulted in a sample of 1,020 responses representing approximately 990 strata schemes across NSW⁵.

There is no available data on the exact size and nature of the total population of strata lot owners, however, it is possible to compare the characteristics of these respondents with the characteristics of people who identified as household heads who are over 20 years old and living in owner occupied flats, units, apartments, town-houses, row-houses and villas in NSW from the 2006 Census of Population and Housing collected by the Australian Bureau of Statistics (ABS), as a proxy for strata owner occupiers.

As 88% of the respondents to the owners survey were owner occupiers, this can provide an indication of the representativeness of the sample. Table 5.4 below compares the ABS sample with our own sample of strata owners.

Table 5.4: Characteristics of owners survey respondents in comparison with ABS 2006 sample

		ABS 2006 sample	Owners Survey sample ⁶	Owners survey owner-occupiers sub-sample
Age	20-24	0.1%	0.6%	0.6%
	25-29	6.0%	6.9%	7.2%
	30-34	11.4%	10.5%	10.0%
	35-39	9.7%	10.0%	10.5%
	40-44	10.2%	9.2%	9.5%
	45-49	9.0%	8.3%	8.1%
	50-54	8.8%	9.9%	9.3%
	55-59	8.7%	10.2%	9.6%
	60-64	8.3%	11.0%	10.9%
	65-69	6.1%	10.2%	10.2%
	70-74	5.6%	7.1%	7.4%
	75-79	6.7%	3.2%	3.5%
	80-84	5.5%	1.9%	1.9%
	85 and older	3.7%	1.0%	1.1%
	TOTAL	100.0%	100.0%	99.9% ⁷
Gender	Male	55.4%	44.6%	45.0%
	Female	44.6%	55.4%	55.0%
	TOTAL	100.0%	100.0%	100.0%
Labour Force status	Employed	62.8%	68.6% ⁸	67.3%
	Unemployed	1.5%	1.0%	1.0%
	Not in the labour force	34.0%	30.1%	31.2%
	Not stated	1.6%	0.4%	0.3%
	TOTAL	100.0%	100.0% ⁹	100.0% ¹⁰

As can be seen in Table 5.4, our survey sample compares closely to the ABS Census. Differences of note include a moderate over-representation of 55-74 year olds in our survey sample and an under-representation of people over the age of 75. We also sampled a higher proportion of employed, and lower proportion of those not in the labour force than in the ABS sample¹¹.

Given that we received over 1,000 responses to this survey of owners; the distribution of the respondents broadly reflect the distribution of the total popula-

tion of strata owners in regard to age, sex and labour force status; and the respondents were geographically spread across NSW (see Figures 5.4 and 5.5), we can be confident that this survey sample is broadly representative of strata owners in NSW. Confidence levels for this survey are calculated at +/- 3.1%¹². For example, if 60% of respondents agreed with a statement, the range is between 56.9% and 63.1% of the total population¹³.

Figure 5.4 Distribution of owners survey respondents by Local Government Area, NSW

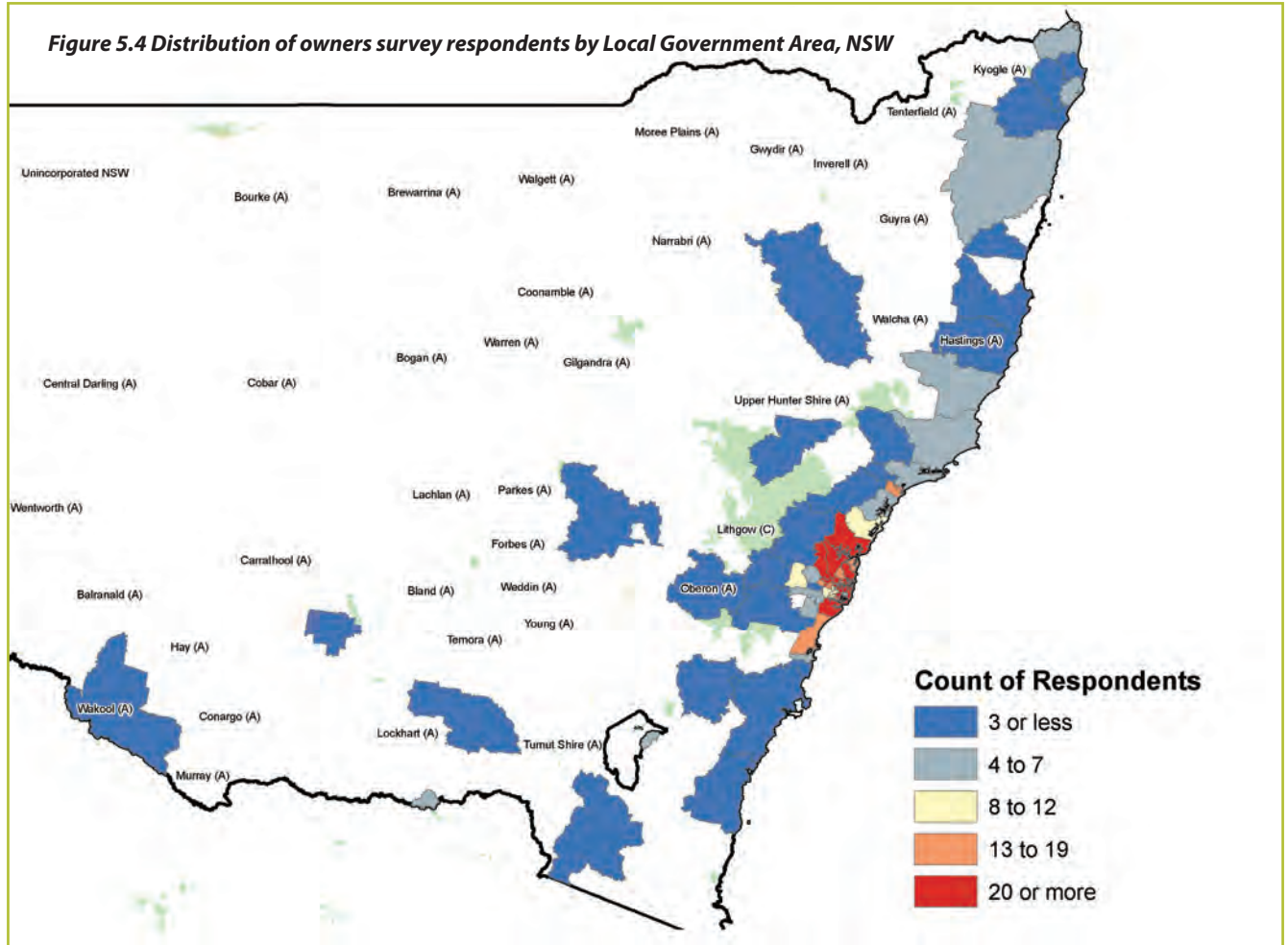
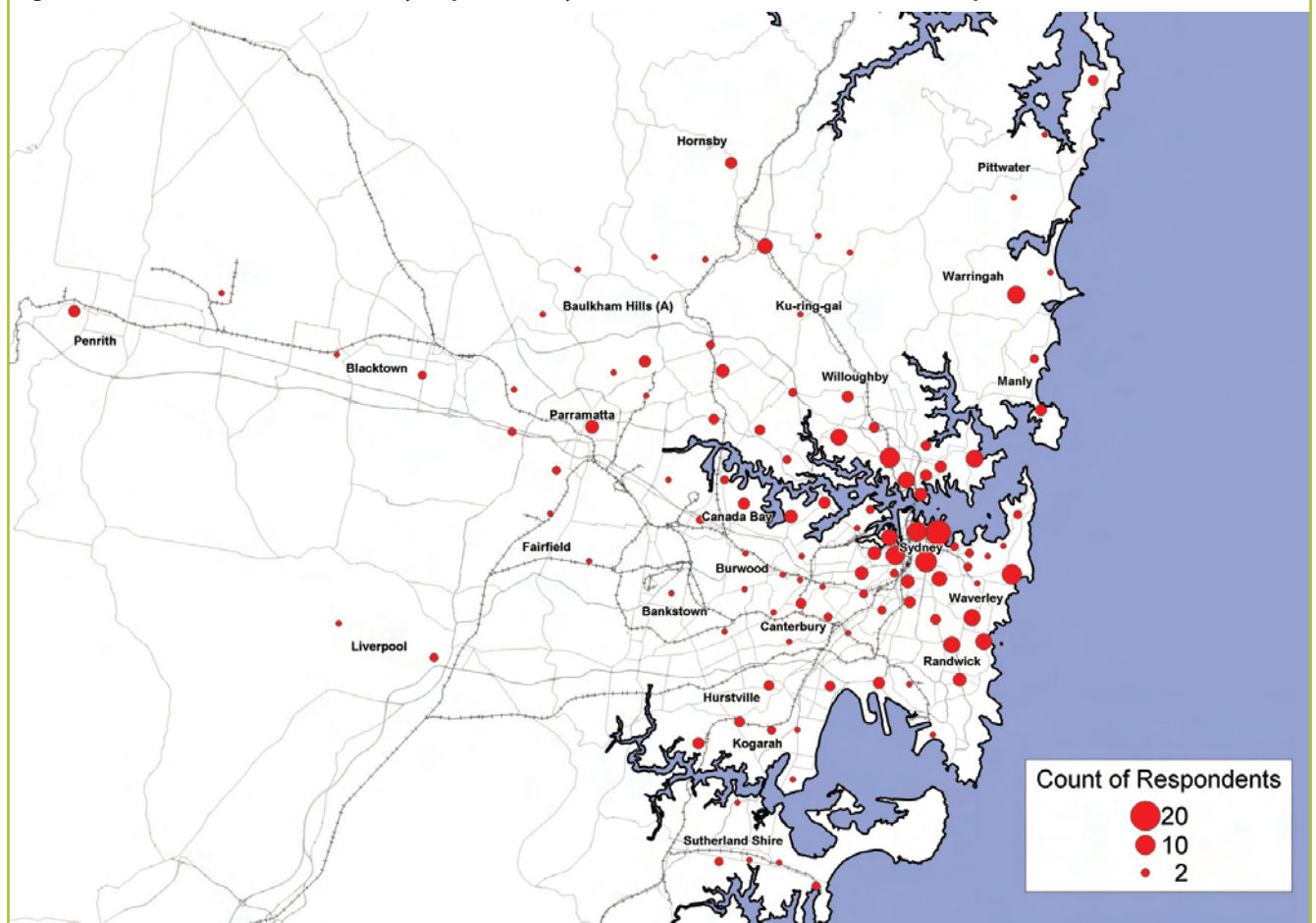


Figure 5.5 Distribution of owners survey respondents by Local Government Area, Greater Metropolitan Area



However, it is important to note that 60% of the respondents to this survey also indicated that they were on the executive committees of their strata schemes. This high proportion of executive committee members amongst the survey respondents is likely a result of the higher interest taken by this group in the issues covered in the survey. While the survey of owners is broadly representative of strata owners across the state in terms of age, sex, labour force status and location, the respondents to the survey are likely to be more engaged in issues regarding their strata schemes than the total population of strata owners. The implications of this for understanding the survey results are noted throughout Chapters 7-11 of this report.

The responses to the survey were analysed in the same manner as those of the executive committee survey.

5.9 Interviews with strata owners

As with the other two surveys, respondents were asked whether they would be willing to participate in a further interview about their experiences and 623 survey respondents agreed to be interviewed. Of these, 20 were selected for semi-structured interviews, the profile of these is presented in Table 5.5.

Table 5.5 Characteristics of strata owner interviewees and their strata schemes

Respondent number	Number of lots	Mixed use	On the EC	Resident or Investor owner	Location	Year property built	Gender	Age	Economic status
21	61-80	No	Yes	Investor	Inner Sydney	1920-29	F	60-64	Retired
63	151-200	Yes	No	Resident	Inner Sydney	1990-99	F	65-69	Retired
64	10-20	No	No	Resident	Outer Sydney	2004-07	F	65-69	Retired
76	101-150	Yes	Yes	Holiday home	Inner Sydney	1980-89	F	55-59	Not in work-force
139	41-60	No	No	Resident	Middle Sydney	2008-11	M	75-79	Retired
152	300 +	Yes	Yes	Resident	Inner Sydney	1920-29	M	65-69	Retired
213	21-40	Yes	No	Resident	Inner Sydney	2004-07	F	65-69	Retired
256	81-100	Yes	No	Resident	Inner Sydney	1990-99	F	35-39	Full-time employee
294	3-6	No	No	Investor	Middle Sydney	-	F	30-34	Full-time employee
537	251-300	Yes	No	Resident	Inner Sydney	1990-99	F	45-49	Retired
548	3-6	No	Yes	Resident	Inner Sydney	1920-29	F	40-44	Full-time employee
567	21-40	No	No	Resident	Outer Sydney	2008-11	F	55-59	Full-time employee
585	7-10	No	No	Resident	Outer Sydney	1980-89	F	25-29	Not in work force
678	101-150	Yes	No	Resident	Middle Sydney	2004-07	M	65-59	Retired
691	3-6	No	No	Resident	Wollongong and surrounds	2000-03	M	55-59	Full-time employee
694	41-60	No	Yes	Holiday home	Inner Sydney	1950-59	F	80-84	Retired
711	201-250	No	No	Resident	Inner Sydney	1990-99	M	55-59	Full-time employee
896	21-40	No	No	Resident	Inner Sydney	-	F	35-39	Full-time employee
1002	7-10	No	Yes	Investor	Inner Sydney	2000-03	F	45-49	Full-time employee
1004	21-40	Yes	Yes	Resident	Newcastle and surrounds	1920-29	M	30-34	Self-employed

5.10 Stakeholder consultation and awareness raising

Throughout the research process we were concerned to raise awareness of our research and of the issues currently facing the strata sector in NSW.

We worked closely with our project partners and others to provide information and advice to the sector throughout the course of the research. This included keeping our project website up to date and publishing the strata data series and other short publications on issues of particular relevance to the industry on the site¹⁴; maintaining an e-mail list of people interested in outcomes for the research to inform them of this information, and giving a series of presentations of related issues at industry and peak body events.

We also received significant media coverage on issues coming out of the project, including mention in major national (*The Financial Review*), metropolitan (*The Sydney Morning Herald*) and industry-specific media (e.g. *Inside Strata*).

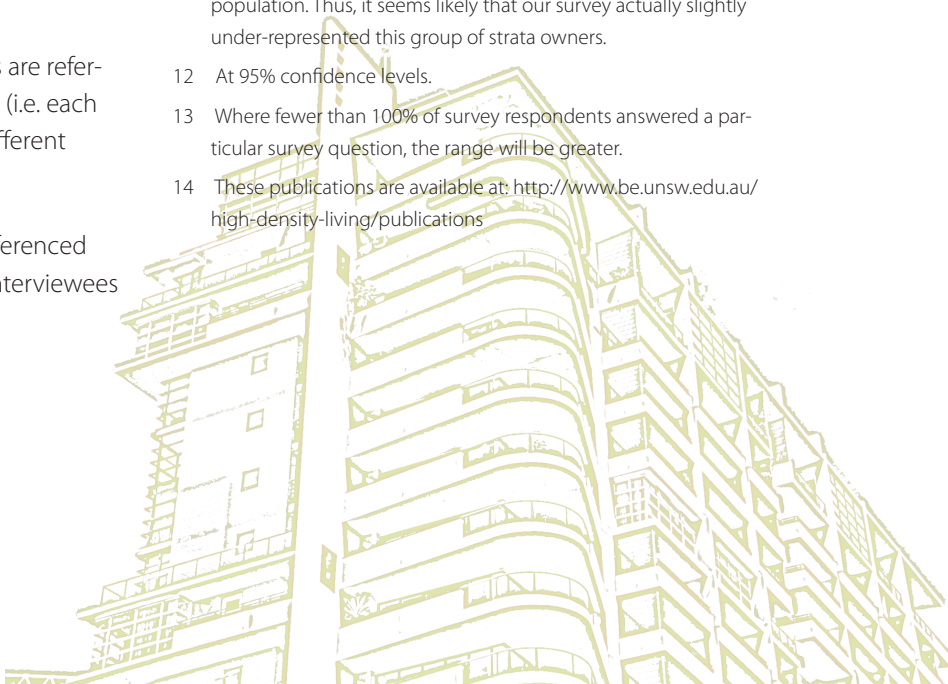
5.11 A note on reporting

Throughout this document, we have adopted the following approach to the presentation of the data:

- All percentages in this report referring to original data are valid per cents, measuring a particular variable with reference only to the number of respondents who answered the applicable question, rather than the total survey sample including those who skipped the question.
- Quotes attributed to survey respondents are referenced with the survey response number (i.e. each survey respondent number refers to a different person).
- Quotes attributed to interviewees are referenced with their survey response number (all interviewees also completed a survey).

(Endnotes)

- 1 These detailed reports (as well as year-to-year comparison reports) are available at <http://www.be.unsw.edu.au/high-density-living/projects/governing-compact-city-role-and-effectiveness-strata-management-higher>
- 2 The approximate number of schemes represented was determined by comparing reported strata plan numbers and property addresses of the survey respondents.
- 3 At 95% confidence levels, based on an average of four executive committee members per scheme across all schemes with three or more lots.
- 4 Where fewer than 100% of survey respondents answered a particular survey question, the range will be greater.
- 5 The approximate number of schemes represented was determined by comparing reported strata plan numbers and property addresses of the survey respondents.
- 6 In all of the questions referred to in this table, at least 99.1% of respondents answered.
- 7 0.1% were 18-19 years of age
- 8 There were a number of categories for main occupation status in the survey. Here, 'Employed' has been calculated as the sum of Full-time employee, Part-time or temporary employee and Self-Employed, with 'Unemployed' being equivalent to 'Seeking work', and 'Not in the labour force' being the sum of 'At home not seeking work', 'At home caring for children', 'Long-term sick / disabled', 'Retired / Semi-retired'.
- 9 Component figures rounded by SPSS (100.1%)
- 10 As above (98.9%)
- 11 Regarding employment type, significantly in the survey, 25% of our respondents indicated that they were retired. As this was a relatively high proportion, we were concerned to demonstrate whether our survey had an over-representation of retired people. In order to compare our survey sample with the available census data, we determined the number of household heads living in an owner occupied apartment or townhouse who were over 60 and not in the labour force. These people made up 26.8% of the selected census population, compared with 25% of our survey population. Thus, it seems likely that our survey actually slightly under-represented this group of strata owners.
- 12 At 95% confidence levels.
- 13 Where fewer than 100% of survey respondents answered a particular survey question, the range will be greater.
- 14 These publications are available at: <http://www.be.unsw.edu.au/high-density-living/publications>



Chapter 6: Governance and management

Owners corporations of strata schemes (and hence all lot owners) are ultimately responsible for the governance and management of their schemes. While governance and management are intricately connected, these terms should not be considered interchangeable. As noted by Bugden (2009), the terms are rarely distinguished under the current approach to strata management in Australia, and this is problematic.

When we speak of governance, we refer to the structures, process and practices that determine how decisions are made in a system and what actions are taken within that system. In other words, when we speak of governance, we are speaking about the decision-making process in a strata scheme. In contrast, when we speak of management, we are referring to the operational implementation of those decisions. This distinction is important, as different actors in the strata system have different responsibilities with regard to the governance and management of a strata scheme. For example, while an owners corporation might delegate some of its management responsibilities to a strata managing agent, it is generally inappropriate for an owners corporation to delegate its governance responsibilities to their managing agent. While a managing agent can help to practically implement the decisions of the owners corporation, they should not normally make those decisions for the owners corporation.

We have previously written about the usefulness of governance theory for understanding strata schemes (Easthope & Randolph 2009) and we summarise these arguments here.

Some useful definitions

- ❑ Governance: The structures, processes and practices that determine how decisions are made in a system.
- ❑ Management: The structures, processes and practices through which decisions are practically implemented.
- ❑ The system: The particular strata development (e.g. apartment building) and the relationships that extend beyond that development, encompassing broader political, social and economic systems.
- ❑ Structures: The rules that govern the system. These include the strata legislation and urban planning policies (which influence council planning guidelines) and larger state and federal political and economic structures. Structures can be formal (e.g. laws) or informal (e.g. alliances).
- ❑ Processes: The ways in which things are usually undertaken. Processes are largely determined by formal structures (e.g. the granting of planning permission by a council, or the hiring of a strata managing agent), but can also be influenced by informal structures, such as good prior working relationships and alliances.
- ❑ Practices: What happens 'on the ground'. For example, the way in which an annual general meeting is run.

We found it useful to look at some theories of governance that were originally applied at the scale of the city, and apply these at the scale of a strata development. In particular, Harding et al.'s (2000) concept of 'governance through negotiation' proves useful. They explain that in

liberal democratic societies, there are two independent systems of authority. One is based on popular control through the various organs of representative government, and the other is based on the ownership of private assets. This means that public officials cannot be indifferent to private (i.e. market) decisions and that, in effect, urban governance works “through a system of ‘civic co-operation’ based upon mutual self interest” (Harding et al. 2000:984). These features can be readily applied to the situation in strata schemes and have led to strata being described as the ‘fourth tier of urban governance’ below that of the federal, state and local levels (Easthope 2009).

Strata schemes can therefore be understood to be governed through negotiation between multiple stakeholders, with power distributed unevenly among different stakeholders and dependent upon the power imbued through ownership of property assets (e.g. through unit entitlements at the scheme level, and the lobbying power of developers at state and federal levels) as well as the power vested in representative government (e.g. through the executive committee at the scheme level, and through the creation of legislation impacting on strata schemes at the state and federal levels).

Two fundamental issues facing the governance and management of all strata schemes are *regulation* and *representation*.

6.1 Regulation

A major issue in strata title developments is the need to effectively navigate the complex legal and contractual relationships between the many stakeholders in strata schemes.

While the strata title legislation may be seen as an example of authority through representative government, the legislation actually advocates a negotiated form of governance, placing increased power into the hands of private organisations and individuals and the networks between them, while at the same time regulating their actions.

The owners’ corporation, and its elected representatives (the executive committee), is the legal entity that manages the property in the interests of all the strata lot owners in the scheme. It has powers to set by-laws for the building, fix services charges and other levies, manage the maintenance and repair requirements for the building, and enforce compliance, acting to all intents and purposes as mini local councils.

Governance through small associations like owners corporations can be understood to be legitimised through a market-based approach with a focus on public choice, fragmented decision-making and local autonomy, which is at the same time managed under a legislative framework set by State and Territory governments.

However, owners’ corporations are only one of many stakeholder groups involved in strata developments. Warnken (2005) lists a number of these, including: resident owners; investor owners; the resident unit manager (also known as a residential property manager or site manager); strata managing agents; maintenance and repair companies; real estate agents; lettings agents, management rights brokers; legal practitioners; developers; financiers; local governments; state governments; tourist accommodation managers; as well as the taxation office, insurance industry, energy and telecommunication service providers, tourists, local residents, tourism retailers, hotel and motel operators, media, and the health and aged care industries.

Negotiating the relationships between all of these stakeholders is complex and there is always potential for conflict between different stakeholders. For example, previous Australian and international studies have reported on conflicting priorities between resident owners and investor owners (Guilding et al. 2005), owners in different economic positions (Ngai-ming and Forrest 2002:715), and between residents - both tenants and owner-occupiers (Bugden 2005:12).

Mechanisms for resolving disputes in strata schemes therefore become very important in order to manage neighbour disputes that are compounded by both close living arrangements and more formal interactions that are of necessity conducted through the owners’ corporation. As a result, most Australian jurisdictions have incorporated some form of special dispute resolution processes for strata title properties in their regulatory frameworks for the sector.

Although strata schemes are governed by a set of by-laws, effective regulation requires effective compliance. Policing compliance with by-laws is the responsibility of the owners’ corporation. In NSW, the *Strata Schemes Management Act 1996* (NSW) enables the owners’ corporation, in the case of non-adherence to by-laws, to serve a notice on the offending party requiring compliance. If they do not comply, then it can be enforced through the NSW Consumer, Trader and Tenancy Tribunal (CTTT) and the offender may be penalised. However, this process does not always work in practice (see Chapter 10).

Apart from regulation of residents by owners' corporations, other important issues have surfaced surrounding the long-term financial planning of strata schemes (through the creation of sinking fund plans) and the regulation of developers and managing agents (see Chapters 7, 8 and 9).

These issues are compounded by the fact that the members of an executive committee who are responsible for running a strata scheme are volunteers and often have limited skills and few resources with which to manage their strata development (see Chapter 7 and 11). The competence of the owners' corporations' officers is therefore a major issue, especially as schemes get progressively larger and more complex, often including commercial elements. These problems are compounded in schemes that are self-managed, without professional assistance (see Chapter 7). But even owners corporations that hire strata managing agents and building managers run into problems due to the failings of some managers. Despite the fact that strata managing agents in NSW are required to be licensed under the *Property, Stock and Business Agents Act 2002* (NSW), at the lower value end of the market they may be poorly remunerated and may lack the up to date professional skills needed to perform their duties (Bugden 2007). However, building managers are not required to have any qualifications at all. This situation has been highlighted by Bugden (2005:12), who concludes that there is:

"[a clear] need for better skills (particularly on the facilities management side) to cope with the increasing size and complexity of real estate developments and the increase in regulation in areas of safety and risk, as well as operational regulations (such as the real estate agency legislation)."

More positively, the professional associations of strata managers that now exist in all states have led to a marked improvement in the professional standing and competencies of members in recent years (see Chapters 7 and 11).

The interactions and negotiations that have taken place between the government and other stakeholders in strata title developments have resulted in a multitude of necessary amendments to the strata title legislation, which have complicated the legislation and have made governance more difficult. The fact that each state and territory has its own legislation causes more confusion for companies and individuals with property interests in more than one jurisdiction (Australian Government 2004:25). Further, despite these amendments, the grow-

ing complexity and size of the strata sector in Australia is placing further strains on the legislation in most jurisdictions.

In summary, a system of *negotiated governance* characterises the relationship between the key stakeholders in the strata sector in NSW, with negotiation between representative government, asset owners and residents (strata owners and their tenants, developers, strata managing agents etc.). A significant amount of control over the governance of increasingly significant parts of our major cities is now in the hands of private individuals and organisations that represent them under the overall regulation of government legislation. However, it is often difficult for the legislation to keep up with the pace of change in that is occurring in the strata sector to ensure that there are regulations in place to protect the interests of the individuals and organisations involved, particularly those who may not hold the balance of power in a market-dominated environment. Ensuring that the legislation is enforced is also a challenge.

6.2 Representation

In addition to whether strata schemes work well in terms of the regulatory frameworks in place to support good management and governance is the question of effective representation among owners in strata schemes and the unequal power relations that can occur in their governance.

The concept of negotiated governance growing from co-operation based on mutual self-interest (Harding et al. 2000) raises the issue of which actors are involved in this co-operation and have their interests considered, and which actors are excluded or under-represented and in what contexts. Webster's (2002) concept of 'club goods' provides a useful framework for theorising these issues. Webster (2002: 5) makes a distinction between different types of goods, by which he means "any form of goods, services, infrastructure or facility that yields benefits or disbenefits [sic] to individuals". Webster described four types of goods:

- Pure private goods. Consumption by one individual prevents consumption by any other.
- Pure public goods. All consumers consume the same good.
- Local public goods. Consumption is shared, but locals will benefit more.

- ❑ Club goods. Consumption is joint, but individuals outside the 'club' are prevented from consuming the goods.

Webster (2002:3) argues that "most public goods are consumed by particular publics and are better conceived of as club realms". He argues (2002:22) that the "urban realm" is "an interlocking and overlapping set of club realms". When dealing with clubs, we are necessarily also dealing with issues of governance in the sense of managing the boundaries of club realms. Strata schemes can be understood as a manifestation of a club realm, which require governance structures that allow for governance within the scheme as well as for the management of borders and the exclusion of people who are not members of that particular 'club'.

As noted above, the day to day administration of a strata scheme is carried out by the executive committee of the owners' corporation (often liaising with a professional strata managing agent). This executive committee is made up of representatives of the owners' corporation who are elected at each annual general meeting (AGM). All strata owners have a vote at the AGM. However, not all strata owners have equal weight within the owners' corporation. The measure of their weight is called their 'unit entitlement' and is based upon the relative value of their strata lot. The unit entitlement regulates both the voting rights of each unit owner and the levies that they must pay to the owners' corporation for insuring, maintaining, repairing and managing the common property. In other words, the extent to which individuals are represented in their strata relies upon their market share in the strata 'club'.

The issue of representation within strata developments is beginning to receive increasing attention. While it could be argued that the governance of strata schemes should be a negotiated governance within a club realm – and this certainly seems to be what the NSW strata title legis-

lation is trying to achieve – the reality in many schemes is that the stakeholders do not have equal rights to participate. Sometimes they do not even have rights proportional to their market share of a scheme because of the practice of forfeiting proxy votes (see Chapter 7).

Furthermore, while owners in a strata scheme usually hold some power based on their market share, renters living within a strata scheme have no right to participate in the representative structures in place in their scheme (they have no vote) and have power only to the extent that they are able to influence the position of the owner of their unit, or be nominated by an owner to sit on the executive committee. Given that the majority of renters rent through a real estate agent (ABS 2006), the potential to influence decisions affecting their building is small.

International discussions on the governance of owners' corporations have pointed to the tendency amongst such organisations to focus on restrictions and legalities rather than democratic rights (e.g. Blandy & Lister 2005). On the other hand, Ngai-ming and Forrest (2002), in their discussion of owners' corporations in Hong Kong, note that while owner's corporations also tend to focus on the legal, rather than the democratic and participatory side of governance, they have been criticised for being over-democratic, with owners more concerned about the efficiency of management.

Indeed, in some cases, democratic processes in the governance structures of owners' corporations (and similar) have been seen to lead to serious inefficiencies in the governance of these organisations (Hastings & Wong 2006:295).

In the following chapters, we address these issues in more detail with reference to the surveys and interviews conducted with strata owners, executive committee members, and managers.





RESEARCH
FINDINGS

Chapter 7: Governance in strata

This chapter focuses on the governance of strata schemes. The chapter is divided into three parts. The first part focuses on regulation, in particular the strata schemes legislation and its practical implementation. Part two addresses representation through a consideration of the decision-making processes in strata schemes, and the role of strata managing agents. The final part of the chapter discusses the particular challenges faced in the governance and management of complex schemes.

7.1 Regulation

7.1.1 Who is responsible under the legislation?

The *Strata Schemes Management Act 1996* (NSW) is detailed and prescriptive about what residents, owners, owners corporations, executive committees and managing agents must and must not do.

Owners and residents

- ❑ All residents must abide by the scheme's by-laws.
- ❑ All owners must pay their levies, notify the appropriate people if they are seeking to renovate their lot, and when they rent it out give the by-laws to their tenants and lessees.
- ❑ Owners and residents must not use their lot in a way to cause a nuisance or hazard to other residents or use common property in a way that unreasonably interferes with another person's use of common property or their lot.
- ❑ Owners and residents must not interfere with any support or shelter provided by their lot for another

lot or the common property or with the passage of water, sewerage, drainage or similar services.

- ❑ Owners and residents must not hinder a public authority from entering the strata scheme pursuant to an authorising Act of Parliament.
- ❑ Owners corporations are responsible for controlling, managing and administering the common property including convening and holding meetings, holding appropriate insurance, keeping records and accounts, managing finances, keeping common property in a state of good repair and setting and enforcing by-laws. There are additional requirements placed on strata schemes with over 100 lots.

Executive committee members

The executive committee must assist the owners corporation in the day-to-day management of the strata scheme. The executive committee must endeavour to elect its office bearers at its first meeting. These office bearers have duties outlined in the *Strata Schemes Management Act 1996* (NSW).

Managing agents

Managing agents must undertake the duties and functions delegated to them by the owners corporation as licensed professionals under the *Property, Stock and Business Agents Act 2002* (NSW).

7.1.2 Are strata owners aware of their rights and responsibilities?

Concern has previously been raised by the NSW Government that owners may not be aware of their rights with regard to the governance of their strata schemes (NSW

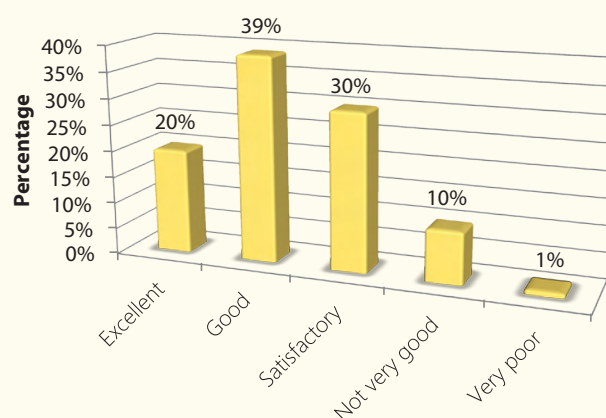
Department of Planning 2007:117). The results of our surveys support these concerns.

In the survey of owners, respondents were asked to rate their own understanding of their rights and responsibilities as strata owners, as well as the level of understanding amongst other owners in their scheme. As can be seen in Figures 7.1 and 7.2, while the vast majority of respondents (89%) thought that their own knowledge of their rights and responsibilities in strata was at least satisfactory (Figure 7.1), 36% of respondents thought

“The lack of interest of most owners in the operation of body corporate, and ignorance of their responsibilities to other members. The refusal by the [executive committee] to recognise the requirements of the relevant act” (Owner survey, respondent 826)

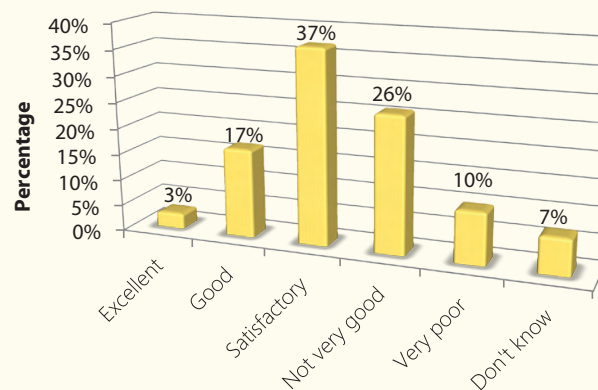
“Would have liked to feel more confident in my rights as strata owner” (Owners survey, respondent 997)

Figure 7.1: How would you rate your own understanding regarding your rights and responsibilities as an owner in your strata scheme?



Survey of owners. 1003 respondents. Single response question.

Figure 7.2: In your opinion, how good is the level of general understanding amongst other owners in your strata scheme regarding their rights and responsibilities as strata owners?



Survey of owners. 1001 respondents. Single response question.

that the general understanding amongst other owners in their schemes was less than satisfactory, and only 20% thought it good or excellent (Figure 7.2).

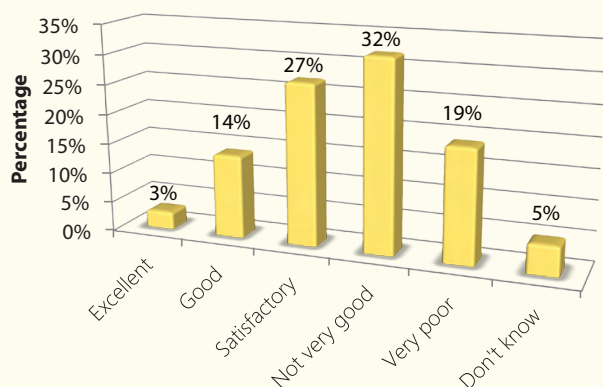
At the end of the survey of strata owners, owners were asked to identify the main problem they have faced as an owner in their strata scheme. One of the more common complaints identified owners (including in some cases themselves) as being unaware of their rights and responsibilities in strata:

Similar concerns were also raised in interviews with strata owners:

“I guess it’s what happens when you’re in a democracy, and people think, ‘I know my rights, I’m going to do as I like, there’s nothing you can do about it’. A lot of people have got that attitude these days. I don’t think they do know their rights because their rights also have obligations, and they’re certainly not taking any notice of those.” (Owner interview, Respondent 64)

Reflecting the findings of the survey of owners, more than half of the respondents to the executive committee survey rated the understanding of other owners in their schemes of their rights and responsibilities as poor, and less than one-fifth rated their understanding as good (see Figure 7.3).

Figure 7.3: In your opinion, how good is the level of general understanding amongst other owners (i.e. non-executive committee members) regarding their rights and responsibilities as owners in your strata scheme?



Survey of executive committee members. 412 respondents. Single response question.

Concerns regarding the knowledge of owners about their rights and responsibilities were also raised during the interviews with executive committee members:

"Lot owners ... don't seem to have a good understanding of the obligations of the strata ... to maintain the property. So I think some people regard some expenses as non-essential or optional when they're related to the obligation to maintain the property." (Executive committee interview, respondent 9)

As well as concerns about the awareness of strata lot owners of their rights and responsibilities in strata, some concern was also raised through the surveys and interviews about the knowledge of executive committee members about their rights and responsibilities in strata. In the survey of strata managing agents, respondents were asked to rate the level of understanding of the executive committee members in the schemes they manage about their rights and responsibilities in strata. While 20% said that this varied between schemes, equal proportions said that the knowledge of their executive committee members was good or very good (31%) and poor or very poor (30%). A further 16% said they thought that the knowledge of executive committee members in the schemes they managed was satisfactory.

There are a number of possible reasons for the fact that many strata owners and executive committee members do not have a good understanding their responsibilities under the legislation. These include:

- ❑ The legislation itself is unclear and hard to apply in practice (see section 7.1.3).
- ❑ Limited regulation and compliance checking provide owners with little incentive to understand or comply with the legislation (see section 7.1.4).
- ❑ Owners are compliant in allowing others to manage their strata schemes on their behalf (see section 7.2.4)

7.1.3 Can people understand the strata legislation?

When asked whether they thought that there were any challenges facing strata owners in regard to the management of strata schemes that were not adequately addressed by the existing legislation, 49% of the strata owner survey respondents said that they didn't know, 38% said that they thought there were challenges that were not adequately addressed in the legislation, and 13% thought this was not the case. The fact that almost half of respondents to this survey said that they didn't know whether the legislation adequately addressed challenges facing strata owners is interesting in itself. Given that those people who undertook the survey were likely a more engaged group than strata owners generally, the fact that half were not aware of the legislation to the extent that they felt they could answer this question is significant.

In the executive committee survey, respondents were asked about difficulties they had experienced in accessing information. Responses to this question raised the difficulties faced by many executive committees in trying to interpret the *Strata Schemes Management Act 1996* (NSW) in practice:

"Checking the rules is often difficult and VERY time consuming" (Executive committee survey, respondent 108)

"The vagueness of the Act on day to day running matters" (Executive committee survey, respondent 185)

"Conflicting opinions / information from strata manager / Office of Fair Trading. I have a big book of strata law which I find inaccessible even as a lawyer." (Executive committee survey, respondent 294)

These concerns were also reflected in interviews with executive committee members:

"The law will say one thing, but actually if you turn the page, it says this ... it's hard because, you think if someone does the wrong thing, then the law will back you up, but no, it doesn't, so I guess I'll just have to get used to that." (Executive committee interview, respondent 324)

Respondents to the managing agents survey also noted that the legislation was complex and unclear, and that the many amendments that have been made to the Acts need to be drawn together and simplified:

"The legislation is too complicated and the owners can't understand it. The legislation is so complicated it takes too many staff to comply with it. Most owners corporations won't pay the fees required to enable a strata manager to afford the staff needed to comply with all of the legislation." (Managing agent survey, respondent 73)

7.1.4 To what extent is the legislation enforced?

Many of the executive committee and owner interview respondents spoke about the challenges involved in enforcing the strata schemes management legislation in practice.

Some interviewees spoke about the fact that it is hard for volunteers to have all of the knowledge and skills needed to ensure that they are abiding by the Act:

"I'm not that knowledgeable on strata, it's my first ever strata, and I've not read up in too much detail on it ... The other bloke is a bit like me. I don't think he's very well up on it, he just blags [sic] it a bit like me, just guesses what might be right but doesn't know what our responsibilities are or our rights or anything like that....None of us really seem to know. It's just a bit of guess work, really." (Owner interview, respondent 691)

In some cases, interview respondents spoke of the pressure in some schemes to not take the Act seriously, and to consider certain aspects of the Act as unimportant for the smooth running of their schemes:

"There is no corruption here in the sense of tickling the books or getting off with money. But there are things here which are irritating because they're not following the Act and they're being excused as

just unimportant... This place appoints secretaries that are not elected members of the committee. They make decisions and spend money that are not minuted. ... This place will break laws as much as it can and avoid following the Act or the by-laws when it suits them. It's what happens in many of these stratas when you get a bunch of amateurs saying, 'All we want is a quiet life....So many of the EC [executive committee] members come under enormous local pressure to do this, or do that, or to just bend the rules a little bit.'" (Owner interview, respondent 139)

In addition, some interviewees pointed to the lack of regulation and compliance in regard to the management of strata schemes by executive committees, and therefore the lack of incentive amongst owners and executive committees to ensure that they are, in fact, abiding by the Act:

"Coming from a financial services background, we're subject to so many rules and regulations, and you've got multiple regulators ... and there is that fear factor to ensure that you're doing things properly, otherwise you could be subject to a surveillance, and at worst an undertaking, which would cost you money and compensating for anything where you actually have resulted in a loss to your clients. So when I compare that to Strata World where anything seems to go without any fear of penalty..." (Executive committee interview, respondent 406)

"The philosophy of the Act is basically 'Look, you people just run your own business and have a happy little democracy and everything will work out.'That sort of approach, which underlies the Act, is not good enough. To take an analogy, that's not how the Traffic Act is run. You don't just say, 'Here's the keys, go and drive a car, sort it out yourself'. There have to be rules, there have to be penalties, there have to be restrictions and all of these things have to be policed" (Owner interview, respondent 139)

"There's so many rules, and we get more and more rules every day one way or another, but there's nobody policing them." (Owner interview, respondent 64)

The strata title system introduces a new legal entity (the owners corporation) that both represents communities and delivers services to residents. Just as for any repre-

sentative body, this system only works where services are in fact provided, and residents are actually represented. The lack of compliance measures in this context is a concern, and while the surveys did not ask specifically about the role of government (beyond questions regarding the legislation and formal dispute resolution processes), some survey respondents and interviewees expressed frustration at this devolution of responsibility, without accompanying support:

"It seems to be that you're expecting a bunch of well meaning amateurs to run a business. The amount involved with levies involved with the income we get and the spending that we have to do to maintain the building and improve it and so on ... this is what it seems to be the legislation is saying, 'we'll leave you to it, we don't want to interfere.' There are some rules to abide by, but it's quite frightening in one sense." (Executive committee interview, respondent 36)

"Considering strata is supposed to be a benefit for them, every government has been so afraid of offending particular groups that they haven't done anything positive for strata owners" (Managing agent interview, respondent 45)

In this context, strata managing agents often act as the last line of defence in assisting owners corporations to meet their responsibilities under the *Strata Schemes Management Act 1996* (NSW), and interviewees pointed to the important role of their strata managing agent in ensuring that they are abiding by the legislation:

"You really don't need to know the intrinsic details of the Strata Management Act, if you understand the basics – the Body Corporate, and that it's managed according to the government rules, and that sort of thing, and most people can go in on that basis knowing they're going to be well advised by their managing agent. Now, of course, if they've got a dud managing agent, I agree, they've got a problem." (Executive committee interview, respondent 83)

"We haven't got that many complex issues ... so we don't want to be bothered because we're pretty happy with the rest and with the way it's running. We just hope she's [the managing agent] paying all the bills, the insurance all that, hope everything's above board. We just take it on trust, really." (Owner interview, respondent 691)

However, some interviewees also raised concerns that sometimes strata managing agents might not be properly fulfilling this role:

"We have this strata manager who, to my mind, could cause a lot of financial damage in mismanagement ... The accounts are never correct, the minutes are never kept correctly ... so I on quite a few occasions disrupted the meeting by insisting that the protocol be adhered to." (Executive committee interview, respondent 53)

7.2 Representation

7.2.1 How are decisions made in a strata scheme?

Under the *Strata Schemes Management Act 1996* (NSW) all owners are entitled to have a say in decision-making in their strata schemes. The only exception is when an owner's levies are in arrears.

Ultimately the owners corporation (made up of all owners) has the final say in any decision affecting a strata scheme. Some decisions must be made by the owners corporation as a whole, while others can be decided by the executive committee. However the owners corporation is able to override any executive committee decision.

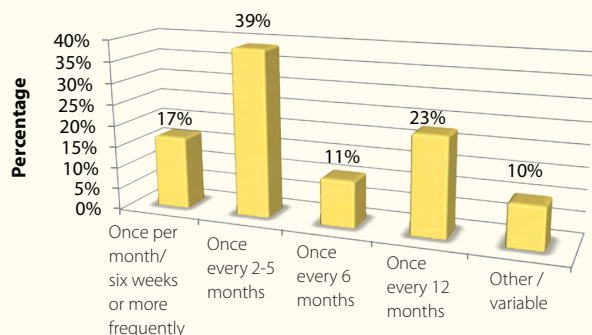
As was noted in Chapter 3, there are some things that the executive committee cannot make decisions about and which require the whole owners corporation to deliberate on.

In practice however, not all owners may exercise their right to have a say in the running of the scheme. This may be because they are either uninterested or unable to do so (see section 7.2.4).

7.2.2 Conducting meetings

Respondents to the executive committee survey were asked a series of questions about the meetings held in their scheme. The frequency of executive committee meetings differed markedly between respondents, as indicated in Figure 7.4. On average, executive committees in schemes with smaller buildings (with six or less storeys) met less often than those in schemes with larger buildings (with seven or more storeys).

Figure 7.4 How regularly does the executive committee meet on average?



Survey of executive committee members. 403 respondents. Single response question.

As for the duration of meetings, most executive committee members said that their meetings typically lasted less than two hours (94%) and the majority (75%) are held in the evening.

More than one-third (39%) of executive committee survey respondents said that there had been challenges associated with the conduct of a general meeting in their scheme. The most common challenges (32% of respondents citing challenges) were in regard to improper meeting procedures, including the inadequate performance of the strata manager, inadequate documentation, questionable validity of the use of proxies, ignorance of owners about their responsibilities in the meeting and unethical behaviour, including conflicts of interest and deceit. The second most common type of challenge (27% of respondents citing challenges) were in relation to disagreements over meeting items, most commonly budgets and expenditure and levies. The third most common type of challenge (15% of respondents citing challenges) were regarding managing the behaviour of those present at the meeting, including abusive or disruptive behaviour and personal conflicts.

"I must admit, our meetings are so unpleasant, I don't blame them for not wanting to have meetings. But they don't have to be unpleasant either, if everybody was creative and positive about their complex and they knew what they were doing."
(Executive committee interview, respondent 275)

In order to hold a meeting during which decisions can be made, there must be a quorum at that meeting. For general meetings, the quorum is 25% of people entitled to vote or 25% of unit entitlements. For an executive committee meeting, the quorum is 50% of executive committee members. When asked about difficulties in meeting a quorum at meetings, 13% of executive

committee respondents said that they had had difficulty reaching a quorum at an executive committee meeting and 25% had had difficulty reaching a quorum at a general meeting. These findings are concerning, as when a quorum is not reached, the meeting must be re-scheduled, further delaying the time taken to reach a decision. This also reflects a degree of disengagement amongst owners in the running of these schemes.

Several issues regarding meetings were also raised in the survey of managing agents including proxies, resolutions, the chairman's roles and responsibilities, adjourned meetings, and sending of the meeting agenda. Where owners are unable to attend a meeting and cast their vote in person, they have the option of giving their vote to another person. This is known as a proxy vote. To be valid, a proxy must be in the form prescribed in the *Strata Schemes Management Regulation 2010* (NSW) and must state which matters the proxy can vote on.

However, in some schemes, problems can arise when one person in a scheme holds a significant number of proxies and as a result holds significant interest or control over the voting in the scheme:

"Initially [the] developer & their colleagues held too many proxies and railroaded the EC [executive committee] for about 5 years. This nearly resulted in missing the 7 year warranty." (Owner survey, respondent 964)

In the past, concern was raised about the practice of developers requiring that owners sign over their proxies as a condition of sale. In response, the legislation was changed so that an original owner or a person connected with the original owner may not cast a vote by means of a proxy (or power of attorney) given by another owner of a lot in the strata scheme if the proxy was given as a term of the sale contract for the lot¹. Also a proxy cannot be used by strata managers, caretakers or on-site building managers to obtain a material benefit². However, this does not stop individual owners from 'proxy farming' within their own schemes.

Importantly a proxy vote has no effect if the owner who gave the proxy attends a meeting and votes in person. Also, if an owner changes their mind about a proxy they have issued they can issue another proxy to a different person and the most recent proxy is valid. In these ways owners can maintain control over their vote for particular issues even if they have issued proxies.

7.2.3 The executive committee

The executive committee are the representative body of the owners corporation, and undertake much of the day to day management of strata schemes.

Respondents to the executive committee survey were asked by they had decided to join their executive committee. The three most common responses were:

1. In order to be involved in decision-making and 'have a say' (15%);
2. To be informed and aware of what is going on (11%) and
3. To be involved in the management and running of the scheme (10%).

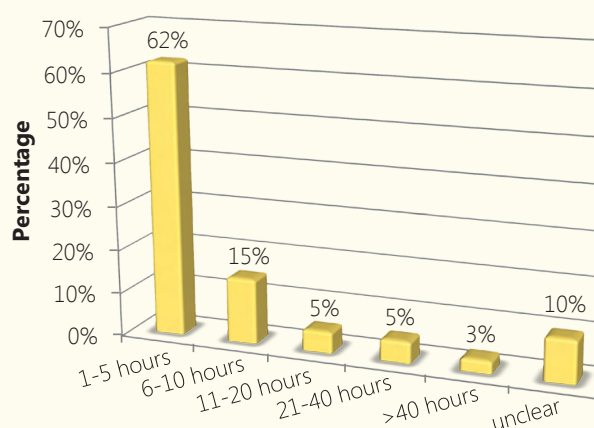
Other common responses included correcting perceived neglect and mismanagement, ensuring repairs and maintenance are undertaken properly, protecting an investment, ensuring good financial management, and having the skills, experience and/or time to contribute. Interviewees also commented on their decisions to join the executive committees of their schemes:

"It is one of my biggest investments of my money and this is my retirement and I want to have a say and be involved in this issue." (Owner interview, respondent 102)

"I felt it was better to be on it and knowing what was going on in the building than to be one of the people complaining at meetings because decisions had been made that I wasn't a part of." (Owner interview, respondent 21)

The amount of work involved in being part of the executive committee differs significantly between schemes and individuals. While the majority of executive committee survey respondents who completed our survey spent less than 10 hours per month on executive committee matters (see Figure 7.5), a significant minority spent more time, with some respondents spending as much as 61-80 hours per month on executive committee matters. Similarly, while 68% of respondents said that they thought the time they spent on executive committee matters was appropriate, a further 24% said that it was not.

Figure 7.5 How many hours a month would you spend on executive committee matters on average (including any meetings)?



Survey of executive committee members. 404 respondents. Single response question.

Unsurprisingly, there was an inverse relationship between the amount of time spent on executive committee matters and perceived appropriateness, with 79% of those spending less than 5 hours per month on executive committee matters seeing this as appropriate, and 66% of those spending more than 40 hours per month seeing this as inappropriate.

Executive committee survey respondents identified ongoing problems or initiatives as having a major impact on the amount of time they spent on executive committee matters. In particular, building works, defects and repairs and maintenance and dealing with disputes were highlighted as issues requiring their time.

Some respondents also noted that all executive committee members did not contribute equally to the management of their scheme, with some executive committee members carrying more responsibility. Some respondents also noted that their strata manager did much of the necessary work in their scheme, limiting the amount of time they had to commit.

Satisfaction amongst strata owners with the performance of their executive committees was quite variable. The majority of respondents to the owners survey (57%) said they were satisfied with their executive committee, but one in five (21%) were dissatisfied. Given the large proportion of owners survey respondents who were actually on the executive committee for their schemes, the responses of owners who were not on the executive committee should also be considered separately. Of the (399) respondents who answered this question and were not on the executive committee, 42% said they were satisfied and 29% dissatisfied. Amongst those respondents

who were not on the executive committee, the most common reasons for satisfaction with the executive committee was that the scheme ran smoothly, committee members were proactive, the committee communicated well with owners and the committee worked well together, and with their managing agent:

"Deal with issues, plan for the future, liaise with [managing agent] closely." (Owner survey, respondent 125)

"Matters are dealt with responsibly and information is available." (Owner survey, respondent 447)

On the other hand, the most common reason for dissatisfaction among this group was a perception that the executive committee were acting in their own interests, rather than in the interests of all owners:

"Successive groups have 'taken over' EC [executive committee] and acted to better their own interests." (Owner survey, respondent 359)

"EC [executive committee] members arrange for each other to have contracts to do work around the complex, in areas which appear to benefit them and their friends" (Owner survey, respondent 651)

The second most common reason for dissatisfaction expressed by these owners was that they received insufficient information and communication from their executive committee (see Chapter 11 for a detailed discussion of these issues). Other common reasons for dissatisfaction included that the executive committee was too slow to take action on issues; that members of the executive committee were unapproachable, or unresponsive; that one individual dominated the committee; and that committee members had insufficient knowledge and experience to carry out their roles.

Executive committee survey respondents were also asked to self-rate the performance of the executive committee on which they sat in regard to their management of the strata scheme. The majority (67%) were satisfied or very satisfied, but a significant minority (17%) were dissatisfied or very dissatisfied. The most common reasons for dissatisfaction were undue influence of a dominant member or clique and personal agenda-pushing by a member of the committee, reflecting similar concerns raised in the survey of owners, and interviews with executive committee members:

"He comes along to the meetings and really only is interested in championing things that directly affect his lot. So that sometimes distorts or takes the committee down rabbit holes of discussions that aren't really about the common property, but about doing things that would be advantageous to that particular committee member's lot..." (Executive committee interview, respondent 9)

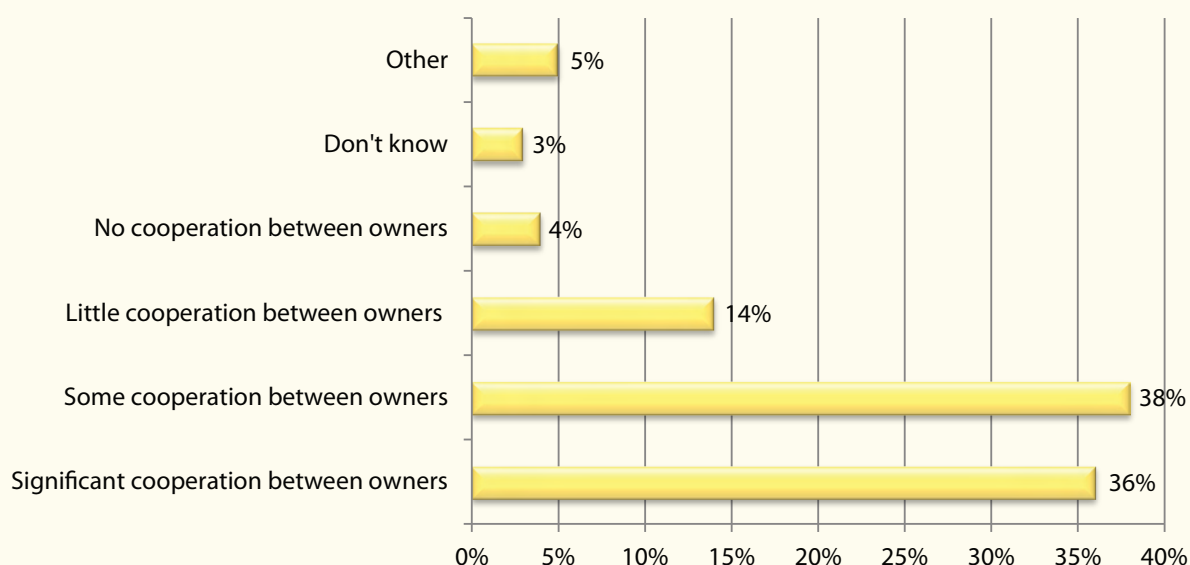
Other causes for concern raised by executive committee survey respondents were that the executive committee had insufficient knowledge or ability, were inactive and unresponsive, had poor communication, transparency or accountability, unclear roles and an unfair balance of labour between members, again reflecting some of the concerns raised in the survey of owners.

When asked what the main factors are, other than the legislation, that influence the practice of their executive committee the most common responses given by executive committee survey respondents were the interest, commitment and participation of executive committee members and executive committee skills, knowledge and experience (discussed in more detail in Chapter 11). Another prominent issue raised in discussion about the running of executive committee was the importance of the personalities of individual executive committee members for the smooth running of the committee (discussed in more detail in Chapter 10).

7.2.4 How engaged are owners in the governance and management of their strata schemes?

Participants in the owners survey were asked to rate the level of co-operation between owners and residents in their strata schemes. Figure 7.6 presents the findings. Importantly, the majority of survey respondents (75%) indicated that there was some, or significant, cooperation between owners in managing their scheme.

Figure 7.6: How would you rate the level of cooperation in your strata scheme?



Survey of owners. 1016 respondents. Single response question.

However, a significant minority (18%) said that there was little or no cooperation between owners in their scheme, and lack of engagement and apathy of owners was raised as a common concern in the open responses to both the owners survey and executive committee survey. In the owners survey, owners were asked to identify the main problem they have faced as an owner in their strata scheme and one in ten respondents to that question complained that lack of engagement and apathy of owners was the main problem in their scheme:

"The main problem is getting enough owners involved / interested in the running of the building, owners of investment properties have little or no interest in the day to day running and care of the building and contribute in no way" (Owner survey, respondent 779)

"... apathy with a capital 'A' is a problem in this place and, I guess, in a lot of places. Some people do not want to be involved. They think that they have bought through their levies the right to ignore everything that goes on and have no further responsibility." (Owner interview, respondent 139)

Interviewees pointed out that some owners may not wish to get involved in the running of their scheme because they are happy with the way the scheme is being run without them:

"If somebody else does the job and you are comfortable, why should you worry? ... Somebody is looking after you." (Executive committee interview, respondent 398)

"We say at the meetings, they come along if they want to complain; they haven't come along, so there's nothing to complain about, so they must be doing okay." (Executive committee interview, respondent 37)

Investor owners were in some cases identified as a group who are less likely to get involved in the running of their schemes than owner occupiers:

"Most owners don't give a damn as long as their money comes in one third to a half are non-owning tenants. So the owners live elsewhere, they don't care. They can adjust their rental levels once a year, they have an agent to look after their property. So in terms of the daily cleanliness and the noise levels, how pleasant or unpleasant, they don't care, they just rent it out. And any expense they have is tax deductible. So that's most probably one of the reasons most of them don't give a damn what goes on." (Executive committee survey, respondent 53)

"The critical thing is that they don't really take an interest. A lot of the investors pretty much buy the property and go to a real estate agent and get them to manage it for them. So they're not actually taking an interest in how their property is managed day to day." (Executive committee interview, respondent 305)

However, there are certainly exceptions, and amongst the executive committee survey respondents, 15% were investor owners who were involved in the running of their schemes.

While some owners may not want to get involved in the running of their schemes, other owners may be unable to exercise their right to have a say in their scheme. This can be for a number of reasons. First, they may not know what their rights and responsibilities are regarding the management of the scheme, what is involved in being a member of the executive committee, or how to get involved:

"Obviously, the person responsible for paying the electricity bills does his/her job because the lights in common areas are always working. Apart from that, I don't know what is required." (Owner survey, respondent 457)

"[I'm] unaware of the system and how to become involved." (Owner survey, respondent 864)

"Why don't people get involved in strata? I think they feel intimidated." (Owner interview, respondent 63)

Second, they may feel that they don't have the time to get actively involved:

"Lack of time to pay proper attention to what is happening in the scheme." (Owner survey, respondent 499)

"It's just the way it is. Some people are working and have family and don't have time. Some people don't even speak English enough to participate. And we have about forty per cent rate of people not living here who own the property." (Executive committee interview, respondent 398)

Third, they have been bullied or intimidated by other owners and as a result feel unable to vote at all, vote in a particular way, and/or sit on the executive committee:

"[It's the] Chairperson who made all the decisions. Anything she considered unnecessary just did not get done. People avoided the AGMs because it was a waste of time attending, unless you wanted to be insulted." (Owner survey, respondent 222)

"...there's also the unwillingness to expose yourself ... to have conflict ... and they're a bit overwhelmed and unwilling to expose themselves because if they open their mouth and they're voted down then they're called troublemakers or not team players or something." (Executive committee interview, respondent 275)

Finally, they may not feel that their vote or input will make a difference:

"In a small self managed strata I have found owners were powerless in the face of aggressive office holders that were acting inappropriately." (Owner survey, respondent 535)

The issue of attracting owners to join the executive committee is clearly complex. In the survey of executive committee members, more than a third (37%) of respondents said that they had had trouble recruiting people to sit on their executive committee and one-fifth (22%) said the membership of their committee didn't change often enough.

Almost 60% of the respondents to the survey of owners sat on the executive committee of their schemes. Those who did not sit on the committee were asked how they would feel about being involved in running their scheme. Approximately one third of these respondents said that they would be willing to sit on the executive committee, and another third said that while they would not join their executive committee, they would be willing to help out in less formal ways.

On the other hand, there was also clear evidence of a reluctance by some owners to be involved. Common reasons for not wanting to join the executive committee included having insufficient time or other conflicting commitments, not wanting to get involved because of perceived problems with the way the committee operates and feeling excluded from joining the committee.

Regarding perceived problems with the running of the executive committee, responses focused on personality clashes and lack of co-operation:

"Too many big egos taking the meetings [go] round in circles." (Owner survey, respondent 291)

"Atmosphere of hostility and lack of cooperation." (Owner survey, respondent 775)

"We have an owner who is a lawyer and he is forever against any decision made by the executive committee and all owners. He even takes them to court. I don't want to get involved and don't have time to waste in dispute." (Owner survey, respondent 91)

In regard to feeling excluded from joining the executive committee, respondents expressed concern that decisions about executive committee membership were

inappropriately controlled by the current executive committee members:

“Our committee is hand-picked and dominated by one person.” (Owner survey, respondent 65)

“The strata manager & Exec Com [Executive committee] won’t allow anyone else on the Exec Com & even illegally ignore proxy votes.” (Owner survey, respondent 329)

Interestingly, of the 212 people who answered the open component of this question, 65 said that they had previously been a member of the executive committee of their scheme, or another scheme. While many respondents simply stated that they had previously been on the executive committee, some went on to explain why they were no longer on the committee. Responses included not being willing to continue with the high workload associated with committee membership, having left their committee because of a dispute, not being willing to sit on a committee viewed as being dysfunctional, a change in personal circumstances meaning they are no longer able to volunteer, being unwilling to serve with particular individuals on the committee, and having suffered abuse while serving on the executive committee:

“I was on the committee for two of the last three years ... and resigned because several people expected me to do far too much for a person acting in a voluntary capacity, with not enough cooperation from all to make the job easier.” (Owner survey, respondent 62)

“I was on the EC [executive committee] for 5 years and would never volunteer again. My health suffered as a result of all the unpleasantness. As secretary I was blamed for all the teething problems any new building experiences. The blame manifested itself in anonymous letters, faeces in my letterbox and other bullying tactics, along with being ostracised by certain groups.” (Owner survey, respondent 208)

“I would never go on an executive committee again, never, never. Because if you’re the secretary, you just get blamed for everything. They need to have a scapegoat. If you do the good things you never get a thank you, and if you do things that don’t please them, you’re gossiped about and castigated and ostracized.” (Owner interview, respondent 213)

Another cause for concern is the prospect of owners being unwilling to join the executive committee because of the liabilities they may take upon themselves as committee members. While the lack of understanding amongst many strata owners is a cause for great concern, the opposite situation also raises challenges for the continuation of a strata system based on volunteers. Once they come to fully understand their liabilities as executive committee members, people can become concerned about the risks they would be taking on in becoming actively involved in the management of their schemes:

“I think the other aspect...when people hear the responsibilities of the EC [executive committee] ... the prospect of being personally liable for debts, or whatever, can be pretty daunting if the EC doesn’t tread very carefully and correctly.” (Executive committee interview, respondent 37)

“When I went to this seminar on this asbestos it was made very clear to us that even though you can get a professional in to do a survey on the asbestos and put together a report, if the issues aren’t properly covered off, it’s not the expert that can be sued, the law states that it can be the owners, the strata managers and the executive committee ... I actually got quite scared about the responsibilities I was taking on being on the EC [executive committee].” (Owner interview, respondent 21)

7.2.5 What challenges can strata schemes face when making decisions?

Perhaps the greatest tension in managing a strata scheme is that between the individual property rights held by lot owners and their collective rights and responsibilities as members of the owners corporation. A smooth running strata scheme requires that people compromise, understand other people’s view points, and make decisions collectively.

This can be problematic, as each owner will have different expectations and means, and some may be more able to understand others’ positions and willing to compromise than others. Often tensions can arise between individuals and groups with different priorities. For example, non-resident owners may be more inclined than resident owners to minimise spending by the owners corporation, except on essential works. Similarly,

wealthier owners may be more inclined to undertake building upgrades and cosmetic improvements than those with fewer resources. Differences of opinion can occur as a result of personal preferences (e.g. should we concrete over the swimming pool and make a tennis court?) and household type (e.g. should we build a children's play area?):

"There's two camps now – the good camp and the bad camp. I'm not quite sure which one I'm on, but they're two different schools of thought ... some people don't want to spend any money ... so nothing gets done." (Owner interview, respondent 213)

There are regulations governing the decision-making process in strata schemes. Decisions surrounding the management of a strata scheme must be made at general meetings or executive committee meetings. For a matter to be voted on in one of these meetings, it must first be put on the agenda of that meeting. Any owner who is eligible to vote can request that an item be put on the agenda of an executive committee or general meeting. This request should be in writing to the secretary of the executive committee. When the meeting is held, before a motion can be put forward, and a vote held, there must be a quorum at that meeting.

Different types of votes are needed for different decisions. There are three types of resolutions:

1. Ordinary resolution: A simple majority vote (more than 50%)
2. Special resolution: A 75% majority vote
3. Unanimous resolution: A 100% vote

Votes of the owners corporation (i.e. votes cast at an annual general meeting or an extraordinary general meeting) will usually be calculated on the basis of unit entitlements, rather than number of lots. That is, the votes of those owners with the highest unit entitlements (usually owners of the more expensive properties) will carry more weight. Votes of the executive committee will be on the basis of one vote per person.

While the majority (58%) of executive committee survey respondents said that there had not been any occasions where coming to agreement regarding the running of their scheme was problematic, a large minority (39%) said there had been some occasions when reaching agreement had been difficult. Respondents were asked to explain their answers. Of those respondents who

provided an explanation (147), the majority described the issues that had been the cause of disagreement. The most common issues resulting in disagreements were those relating to major expenditures, including expenditures on major repairs:

"Some residents wanted Foxtel. However, this could only be achieved through a 'common' property installation. Eventually the [executive committee] was able to convince a majority of owners that it was worth paying the proposed special levy as the availability of Foxtel would enhance the value / lettability of their unit even if they didn't want Foxtel themselves." (Executive committee survey, respondent 177)

Rather than simply explaining the nature of the disagreement, some respondents noted what they thought were the reasons for disagreements in their schemes. The most common explanations related to personality clashes, and competing priorities of individuals in the scheme:

"Some [executive committee members] adopt a leadership approach and more receptive of change whereas others are more comfortable without too much change. Some want to restrict spending and keep fees low, whereas others want quality and are prepared to pay to obtain quality" (Executive committee survey, respondent 329)

"The secretary is a builder who has a 'grand vision' that everyone else is supposed to agree to. These issues are never resolved. He just does what he wants." (Executive committee survey, respondent 349)

Another challenge raised regarding decision-making in strata schemes is the length of time it can take to make decisions, and take action on particular issues because of the time it can take to get consensus within the executive committee, or between owners:

"The biggest issue for me in strata living is... the process of everything happening being so slow It's very frustrating." (Executive committee interview, respondent 130)

"[The problem] was resolved in the end, but very long-winded and easily open to manipulation by the lot owners simply by being non-participatory in the process, because they can opt out and drag it on and on and on." (Executive committee interview, respondent 9)

This process of decision-making can be made more difficult where executive committee members and owners do not have access to the information they need to make a decision. This is discussed in more detail in Chapter 11.

7.2.6 Strata managing agents

The majority of strata schemes hire a strata managing agent or strata manager to help manage the scheme (Ilkin 2007).

Strata managers perform a crucial role in assisting the schemes they manage to run in accordance with the *Strata Schemes Management Act 1996* (NSW). Strata managers are also the first port of call for many strata owners and executive committee members for information and advice (see Chapter 11):

“Given that most committee members don’t understand the Act, and don’t understand the Office of Fair Trading processes, you have to rely on the strata manager to offer that professional advice in the absence of going and finding out yourself” (Executive committee interview, respondent 9)

“AGMs can get quite uncomfortable and [the strata managers] are quite good at managing all the different people and giving us procedures to follow and saying this is the rules [sic], and this is the way it should be done, this is where it’s a bit flexible because you’re such a small group.” (Executive committee interview, respondent 147)

The owners corporation must make a decision about what functions to delegate to the managing agent (see Chapter 3). However, responses to the strata managing agent survey and interviews with owners pointed to confusion among owners about the role and responsibilities of executive committees and managing agents. While it is the role of the owners corporation (through their executive committee) to make decisions regarding their strata schemes and to inform strata managing agents of those decisions so that the managing agents can put those decisions into action, the distinction between decision-making and implementation is often unclear. Because the owners corporation can delegate some of its duties to the managing agent, confusion can arise as to whose responsibility it actually is to make decisions in a scheme:

“Coordination is a very important thing that’s missing in the law. How do you coordinate between these participants – the Executive Com-

mittee, who has the main responsibility, but we pass it on to the strata managing agent, and then they fall asleep and think, ‘Oh no, we don’t have to worry. It’s his responsibility’ and he says, ‘Oh, according to the law...’” (Executive committee interview, respondent 275)

Under the *Strata Schemes Management Act 1996* (NSW), ultimately final authority and responsibility lies with the owners corporation, and the owners corporation and its executive committee can still carry out their duties even if they are delegated to a managing agent.

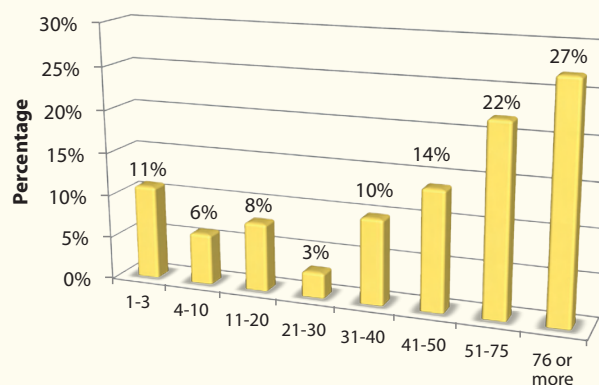
Strata managers were asked to determine what some of the reasons were for negative relationships with the executive committees they managed. The top five responses included a lack of understanding amongst executive committee members about how strata works, poor communication and misunderstandings and a lack of understanding among executive committee members about the strata manager’s roles and responsibilities. Conversely, an understanding by managers and committees of their roles was identified by managing agents as one of the top three reasons for good relationships between managing agents and executive committees.

Two thirds (67%) of respondents to the managing agents survey indicated that there had also been disputes between themselves and the owners in one or more of the schemes they managed. The most common reason for this kind of dispute was conflicting expectations of the managing agent’s and owners’ roles and responsibilities and difference in opinion.

Strata managing agents were also asked how good they thought the level of understanding amongst executive committee members about the strata manager’s roles and responsibilities were. While a large proportion thought they were satisfactory or good (57%), around a quarter (26%) thought that the understanding of executive committee members about the strata manager’s role was poor:

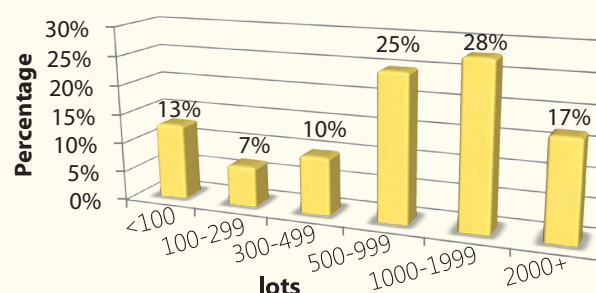
“They usually want you to call back straight away. But I could walk in to ten messages, and that can take two to three hours to get part of the way through that. And in between that we’re struggling, because we have to draft meeting notices, to approve accounts... Sometimes they think we’re just really like a call centre, and we’re not... I don’t think there’s a really thorough understanding of what we do.” (Strata manager interview, respondent 35)

Figure 7.7 How many strata schemes are you responsible for managing at the current time?



Survey of managing agents. 101 respondents. Single response question.

Figure 7.8 How many lots are there (in total) across all of the schemes you are responsible for at the current time?



Survey of managing agents. 100 respondents. Single response question.

Managing agents who completed the survey were also asked to assess how reasonable they thought the expectations that executive committee members had of them were. Approximately half (55%) of the respondents said that the expectations of executive committee members were reasonable, while a third (34%) said there were unreasonable. The others said that this was variable:

"Owners don't realize the strata manager's job is not what they think we should do for them, but what is on the management agreement. We get paid to do a certain job but they expect us to do everything else for nothing. Our average fee is \$3 per week per lot and they expect us to work all day for them." (Managing agent survey, respondent 65)

Certainly, the results from our survey of managing agents indicate that some managing agents have very high workloads. Amongst our survey sample, some managing agents managed as few as 1-3 strata schemes, while others managed more than 75 schemes at any one time (see Figure 7.7). Figure 7.8 shows the breakdown of strata managing agents who completed the survey by the number of lots they manage at the one time. Importantly, 70% of those surveyed managed schemes containing over 500 lots, with some managing over 2000 lots at any one time.

The workloads of these managing agents are such that if every lot owner were able to contact them regarding issues in their scheme, they would not be able to deal with the sheer volume of communication involved:

"If you asked me for a couple of words to describe our strata manager, I would probably say disorganised and unreliable. They're the two words that come to mind ... there's a lot of stuff that doesn't happen that we ask for. It just seems to get ignored – I can't imagine why they don't have some kind of 'to do list' on their wall." (Executive committee interview, respondent 325)

"Strata managers burn out pretty quickly because of the expectations and it's very exhausting and hard because no-one's saying anything friendly to you." (Managing agent interview, respondent 45)

"My overarching feeling about strata managers is that they have too much to do. They manage too many buildings, they're spread too thin. I think they have an impossible job. I feel really sorry for them. I can imagine it must be bedlam ... And I think they don't charge enough. \$6,000 to run this building of forty-odd apartments just seems like, I wouldn't do it. I'd personally rather they charged fifty per cent more than that and were more involved, and we could rely on them a bit more. It appears to me that to be profitable, they need to spend not much time on each of their buildings." (Executive committee interview, respondent 325)

Adding to the workload of some managing agents, some of the survey respondents indicated that they manage schemes spread across multiple areas in Sydney and the rest of NSW. This necessarily limits the ability of those managers to visit the schemes they manage:

"During the entire period the agent managed our property, not once did they physically visit the property, so essentially they lacked personal knowledge of the building and grounds that would have greatly assisted when discussing (and understanding) matters relating to the property" (Executive committee interview, respondent 129)

Managing agents were asked what they saw as the three main challenges they have faced in effectively managing strata schemes over their career. The most common response to this question was owner education, followed by the expectations of owners and knowing, and complying with, the legislation. Other common responses included relationships with owners, managing their workloads, the behaviour of owners, poor public perception of strata managers and managing disputes (each with over 10 responses). From this list, it is evident that many of the challenges facing strata managing agents are not associated with the day to day tasks of their job (with regard to record keeping, managing accounts etc.), but rather relate strongly to their relationships with owners in the schemes they manage, and the knowledge and education of all those involved in running a scheme.

Nevertheless, the majority of respondents to the owners survey whose scheme hired a strata manager³ were satisfied with the services provided by their strata managers (51% of the 900 people who answered this question). However, a significant minority (27%) were dissatisfied.

The most commonly identified reason for satisfaction with their strata managing agent was their responsiveness to inquiries and good communications. Other common reasons for satisfaction included the knowledge of the strata managing agent and their capacity to give good advice, their interpersonal skills, and their professional attitude:

"Efficient, prompt and often pro-active. Knows the law and has excellent financial background." (Owner survey, respondent 597)

"He's responsive, knowledgeable, efficient and diplomatic. The best we've ever had!" (Owner survey, respondent 806)

"Our strata manager is highly competent, knowledgeable and is always available for advice and/or consultation. All requests/requirements are dealt with professionally and promptly." (Owner survey, respondent 904)

"They're a very efficient [strata management] agency, I would recommend them to anybody ... anything that needs doing is dealt with by the agent very efficiently ... he really does respond very quickly" (Owner interview, respondent 694)

In contrast, the most common reason for dissatisfaction was a lack of timely responses and poor communication. Other common reasons for dissatisfaction included the managing agent's lack of knowledge and inability to provide advice, poor interpersonal skills, poor value for money and perceived conflicts of interest:

"Our Strata Manager has to be constantly chased up and doesn't appear to be very experienced or knowledgeable with regard to strata issues." (Owner survey, respondent 166)

"Believe we have been given some bad advice by the strata manager, not convinced of his competence. Also concerned that there may be a connection between the managing agent and the builders which has impacted our ability to get defects rectified." (Owner survey, respondent 112)

"[They are] rude, overcharge us, do not check whether contractors charge in line with contract, when pointed out that contractors overcharged us, they did nothing, after raising the issue again at the next AGM it was rudely brushed off." (Owner survey, respondent 361)

Reflecting the findings of the survey of owners, a large proportion of respondents to the executive committee survey whose scheme hired a strata manager were satisfied or very satisfied with the services provided with their strata managers (49%). However, 31% were dissatisfied.

Executive committee members who were satisfied with their strata managers were asked for their reasons for satisfaction. The most common reason for satisfaction was that their managing agent responds quickly to enquiries and is available and contactable and is accurate, organized and professional. Conversely, the most common reason for dissatisfaction was that the managing agent was slow to act and respond to correspondence and required consistent follow-up from the executive committee. These findings are similar to those of the survey of strata owners. It is particularly interesting that responsiveness was a more common reason for both satisfaction and dissatisfaction than the knowledge and experience of the manager or their interpersonal skills in both the survey of strata owners and the survey of executive committee members.

When asked to rate their professional relationship with the executive committees of the schemes they manage, the majority (80%) of strata managing agents who completed the survey rated their relationships with executive committee members as good or excellent, and the rest as variable (with the exception of one rating their relationships as poor). Those managing agents who reported their relationships to be good or excellent were asked what conditions they thought led to them having positive relationships with the executive committees they manage. Interestingly, the vast majority identified their availability and responsive communications from the executive committee (this response was given by 52% of those who answered this question) to be an important reason for these positive relationships, reflecting the findings of both the executive committee and owner surveys. The importance of responsiveness was also mentioned in many of the interviews:

"Client service isn't mentioned anywhere in the Act. People want to know that the manager is responsive on the phone and will come out in person, taking an interest in the building and being proactive" (Managing agent interview, respondent 56)

"If I have an issue I go to my strata managers and say, look, this is the problem, what should I do? Or how do you think we should handle this? I get an immediate response. And I mean immediate. The other thing is their bookkeeping is immaculate...If anyone asked me I couldn't speak highly enough of them." (Executive committee interview, respondent 135)

When asked to explain why they had poor relationships with some committees, managers who answered this question cited a lack of understanding among executive committee members of how strata works and of the strata manager's roles and responsibilities, poor communication and misunderstandings, and problematic behaviour by executive committee members.

Managing agents were also asked to comment on any problems they had experienced with owners in the schemes they manage who were not on the executive committee. The most common problems identified were related to a lack of understanding of the nature of strata and unrealistic expectations and demands of the strata manager. Other common problems were problematic or aggressive behaviour, resistance to paying levies, not understanding how levies work, and resisting proper processes (for example, not seeking executive committee approval for renovations).

Self managed schemes

It is not necessary for owners corporations to hire a strata managing agent. Amongst the few executive committee survey respondents (21 respondents) who owned a property in a scheme without a strata managing agent, the three major reasons given for this decision were a desire to keep costs down, a preference for and capacity to self manage, and doubts about the efficiency of strata managing agents based on previous poor experiences.

Some self-managed schemes run well:

"We rotate roles, we communicate regularly, we reach amicable decisions in the best interest of all owners and the building itself." (Owner survey, respondent 801)

However, in other cases, self-managed schemes can run into difficulties:

"They don't have the sophisticated accounting software for the level of financial reporting required now in strata." (Managing agent interview, respondent 35)

"If I'm going to live in an apartment again ... I wouldn't ever buy anything else that's run under self-management, never." (Owner interview, respondent 548)

In situations where there has been serious mismanagement of a strata scheme, it is possible to request that the Consumer, Trader and Tenancy Tribunal put the scheme under compulsory strata management. This is a serious step, as it takes away some or all of the owners' rights to self-management for a period.

Respondents to the survey of owners were asked whether they had ever had a compulsory strata managing agent appointed for their scheme. Thirteen respondents indicated that this had been the case. When asked why it was necessary to have a compulsory manager appointed, the two most common responses were mis-management (including embezzlement) of strata funds and the incapacity of the executive committee to properly run the scheme:

"It was at the request of the Executive Committee, as a last resort to protect the committee and some owners from the abuse of a 'caretaker' running an illegal serviced apartments business & stealing from the owners corporation" (Owner survey, respondent 65)

“Our former strata manager allegedly embezzled our funds. We are now left to pay excessive sinking fund fees.” (Owner survey, respondent 144)

Just over half of these people said that the compulsory manager was effective in their duties.

7.3 Scheme set-up and the influence of the developer

As well as strata owners, executive committee members and strata managing agents, there is another important group of actors who can have a significant influence on the functioning of strata schemes – developers.

The way in which a strata scheme is physically built, as well as the way its management structures are set up, can have a long-lasting effect on the future operations of that scheme. The choices made by developers can have a significant impact on the quality of buildings (addressed in Chapter 8), the financial viability of schemes in the short to medium term (addressed in Chapter 9), the balance of power between owners (addressed below) and the ease or difficulty of management and the incidence of disputes (addressed below and in Chapter 10).

This is because, at the early stages of a strata scheme, the owners corporation is the developer. During these early stages of a strata scheme, known as the ‘initial period’, the original owner is responsible for all of the duties of the owners corporation, even if the first Annual General Meeting has not been held. There are regulations governing the actions that the ‘original owner’ (e.g. the developer) can and can’t take in their role as member of the owners corporation⁴, but essentially developers are responsible for designing not only the buildings and grounds, but also the management structures under which a strata scheme will operate.

7.3.1 The balance of power between owners: allocation of unit entitlements

Not all owners have equal weight within the owners corporation. The relative weight a strata owner has within the owners corporation is called their unit entitlement, and is generally based upon the relative value of their strata lot. Unit entitlements regulate the voting rights of each owner and the amount of levies each owner must pay.

Where unit entitlements are perceived to have been incorrectly allocated – for example allocating lower unit

entitlements to the most valuable property so that the owners of that property pay fewer levies – this can cause disputes in a strata scheme.

In the survey of managing agents, respondents were asked whether there were any issues with the set up of the schemes they manage other than the quality of the design and buildings themselves. Just over half (55%) of respondents identified issues with the set up of the scheme. The most common issue was the allocation of unit entitlements (in 21 of 64 cases).

In the survey of executive committee members, unit entitlements were also the most commonly mentioned issue when survey respondents were asked to describe any issues faced as a result of the set up of their schemes.

In the survey of strata owners, owners were asked specifically if there had been any disagreements in their scheme in regard to the distribution of unit entitlements. Interestingly, while the majority (76%) said there had not been any issues in this regard, a significant proportion (17%) said that there had (a further 7% did not know).

The most common complaint regarding the allocation of unit entitlements amongst owners survey respondents was that the unit entitlements did not reflect the relative value of lots in the scheme. Interestingly, two respondents noted that in their schemes all lots had equal unit entitlements, irrespective of the value of lots. Four respondents said that unit entitlements had been allocated so that lots retained by the developer had disproportionately low unit entitlements and a further four respondents were in schemes that had successfully had their unit entitlements altered:

“The architect made entitlements to the lots he owned incredibly low and the commercial one he was leasing incredibly high, and then varied them arbitrarily for the other residential lots, making them not correspond accurately with the relative sizes of those units. It took them a while to understand, but some were paying 28-30% more in strata rates than others for similar sized apartments.” (Executive committee interview, respondent 239)

7.3.2 The difficulty of managing complex schemes

There are many different types of strata schemes. Strata schemes can range from schemes made up of only two

townhouses, to apartment buildings with hundreds of apartments. They can also include multiple buildings and can be used for both residential and commercial purposes. Some strata schemes also sit within a larger management structure. For example, strata schemes can sit within a building, which has been sub-divided horizontally into different 'stratum parcels' for different uses (e.g. car parking, offices, hotels, residential). They can also form part of a community title scheme. For example, a master planned estate under community title may include a number of detached houses each on their own community lots, and a strata scheme on a community lot.

As schemes have got bigger and more complex, managing them has become more difficult. In the survey of strata owners, 15% of respondents said that there were non-residential uses in their strata scheme. The most common non-residential uses were shops (55%), offices (51%) and restaurants or cafes (43%).

Just over half of those respondents with non-residential uses in their scheme (53%) had experienced problems, the most common of which related to the shared use of facilities:

"There's pressure between the various people involved to say, 'We're not doing that, that's your fault'. For example, the roller shutter on the car park entrance. It's got to involve [the commercial owners], it's got to involve [the car park operators]...because there's no security when the door's not working, and the door didn't work for a month."

Nevertheless, a substantial proportion of these owners (46%) had not experienced any problems in regard to non-residential uses:

"I think we're fairly friendly and we do try to support our commercial units. I suppose there's a bit of community. We all go to the same coffee shop, which is in the building, and we all buy our wine from the wine company, and get a good deal, we buy our flowers from the flower shop, and we get our nails done at the nail shop...And the building managers we have are quite respected...So it's sense of community and a bit of luck as well." (Owner interview, respondent 152)

Respondents to the survey of owners were also asked whether their strata scheme was subordinate to a higher

management structure, such as a community title scheme, or a building management committee. Some 13% of respondents said that this was the case. When asked whether any disputes had occurred as a result of these different levels of management, 54% of these respondents said that no disputes had occurred as a result, 31% said that there had been some disputes, and 15% did not know:

"No disagreement within the scheme, but disagreement exists within the community which comprises several strata within a neighbourhood scheme." (Owner survey, respondent 85)

7.3.3 The continued interest of the developer in a scheme

As well as problems that can arise as a result of the set-up of the strata scheme by the developer, in some cases, the practice of developers maintaining a continued interest in schemes after the initial period can lead to problems. The problems experienced can be divided into financial problems (addressed in Chapter 9), conflicts of interest including unethical behaviour, reluctance to address building defects (addressed in Chapter 8), dominating decision-making processes, and conflict with owners.

In those cases where a builder or developer maintained an interest in one or more schemes managed by the strata managing agent survey respondents (80% of respondents), problems had arisen for half (55%) of those respondents as a result of this continued interest in at least one of the schemes that they managed.

In the survey of executive committee members, 13% said that the builder or developer of their scheme still held some interest in their scheme - the majority of whom owned properties in schemes built since 2004. Of these executive committee members, 56% said that problems had arisen as a result of this continued interest by the developer. The most commonly identified problems were that the developer had control over the strata management and/or contractors working in the scheme, the developer was delaying the rectification of defects, and that the developer owned many lots and dominated the owners corporation and/or executive committee. Other issues raised included the developer not paying levies and setting levies too low.

7.4 Summary

The main findings of this chapter are:

- ❑ Many people are not aware of their rights and responsibilities as strata owners.
- ❑ Owner engagement and apathy is a problem in some schemes.
- ❑ Practical implementation of the strata schemes management legislation poses a major challenge for the volunteer committees of some schemes and existing government support is considered insufficient to support this process.
- ❑ Coming to an agreement in strata schemes can be a difficult and slow process.
- ❑ The performance of executive committees is highly variable.
- ❑ There is some confusion regarding the respective roles and responsibilities of managing agents and executive committee members.
- ❑ Satisfaction with strata managing agents is highly variable.
- ❑ The set-up of a scheme by the developer can have significant knock-on effects on its long term management.

(Endnotes)

- 1 *Strata Schemes Management Legislation Amendment Act 2008* (NSW), Sch 2, cl 11 7AA
- 2 *Strata Schemes Management Legislation Amendment Act 2008* (NSW), Sch 8
- 3 92% of survey respondents.
- 4 *Strata Schemes Management Act 1996* (NSW) ss 50, 113



Chapter 8: Managing buildings

This chapter focuses on management of the built environment in strata schemes. The chapter contains three parts. The first part considers issues related to the design and building standards of properties; part two discusses building maintenance and improvements; and the final part of the chapter discusses the role of building managers and caretakers.

8.1 The property as built

The design of strata titled properties and the quality of the building work can have a significant impact on the quality of life of strata residents, and the capacity of the owners corporation and its executive committee and strata managing agent to manage the strata scheme.

8.1.1 Defects

One of the most striking findings of the surveys with strata owners and executive committee members was the extent of concerns around building defects in their strata schemes. Building defects are building faults that have existed since construction or been triggered later on by faulty original construction or design.

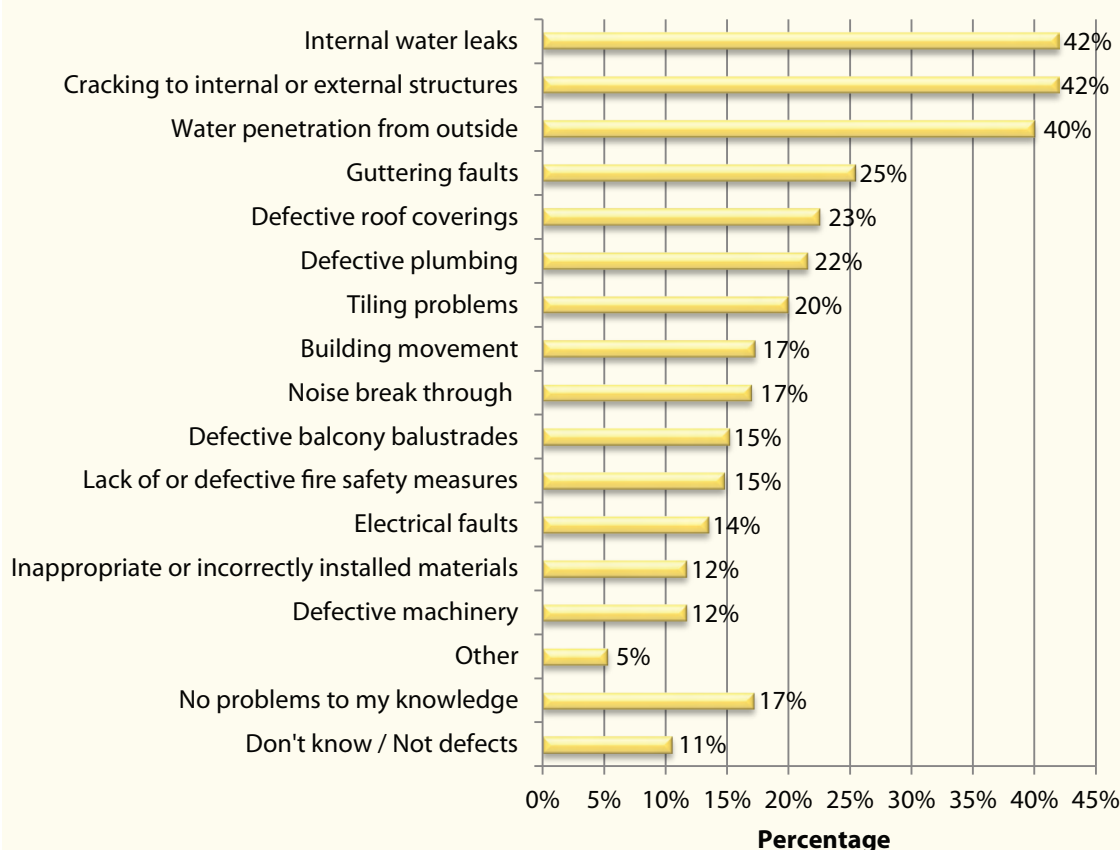
In the survey of owners, respondents were asked whether there had ever been any defects in their strata schemes to their knowledge. The survey clearly defined

defects and specified that the question was not asking about repairs and maintenance issues. Of the survey respondents, only 17% had never had any defects¹ present in their scheme, and 11% did not know². The remaining 72% indicated one or more defects that had been present in their scheme at some stage.

The most common defects were internal water leaks, cracking to internal or external structures, and water penetration from the exterior of the building (see Figure 8.1). These findings support the findings of other reports of the most common types of defects in strata schemes in NSW (e.g. Easthope et al. 2009).

For people living in schemes built in the last decade, an even higher proportion were aware of defects in their scheme. Only 8% of the 293 respondents who owned lots in schemes built since 2000 indicated that there had been no problems with defects to their knowledge, while 8% said they did not know, or identified problems that were not defects. That leaves 85% of respondents in schemes completed in the last decade who indicated some kind of defect was currently, or had been in the past, present in their scheme.

Figure 8.1: To your knowledge, have any of the following defects ever been present in your strata scheme?



Survey of owners. 1011 respondents. Multiple response question.

Of those respondents who were aware of defects having existed in their schemes, 60% said that there were still some defects in their buildings that had not been fixed. For owners in schemes built since 2000 that had had defects, 75% said that there were still some defects that had not been fixed, with 21% stating that none of the defects in their building had been fixed (see Figure 8.1). Table 8.1 demonstrates that this finding is not the result

of respondents' schemes being too new for defects to have been remedied. In fact, of those respondents who were aware of defects having been present in their schemes, 69% of respondents in buildings built between 2000 and 2003 and 82% of respondents in buildings built between 2004 and 2007 still had un-remedied defects in their schemes.

Table 8.1 Have these defects been fixed in your strata scheme? Responses to owners survey question by year property built, 2000-2011

	Yes, all defects have been fixed	Yes, some (but not all) defects have been fixed	No, these defects have not been fixed	Don't know	TOTAL (100%)
2008-2011	14%	57%	21%	7%	28
2004-2007	15%	54%	28%	3%	98
2000-2003	28%	53%	16%	3%	152
TOTAL	22%	54%	21%	4%	278

Similar results were obtained in the survey of Executive Committee members, with 46% of respondents stating that their schemes currently had defects that had not yet been fixed, and a further 23% saying there had been defects in their schemes in the past.

These figures are concerning as defects can have significant negative impacts. Defects can negatively impact upon:

- ❑ The health and safety of residents.
- ❑ The quality and livability of homes, and hence quality of life.
- ❑ The capacity of owners, executive committee members and strata managers to deal with other management duties.
- ❑ The financial costs borne by owners (to cover emergency and other repairs, investigations, legal costs, and re-housing residents).
- ❑ Property values and rental incomes.
- ❑ Relationships between neighbours and other stakeholders. Conflicts over funds and responsibilities for defects can occur between owners, executive committees, managers, developers and others.

Un-remedied defects can also result in further ongoing damage and deterioration to the property (e.g. a leak that is not fixed can result in water damage to residents' properties, mould growth and weakening of the building structure).

If the problems of defects are not adequately addressed, then as the population living in strata titled dwellings grows:

- ❑ Increasing numbers of owners, residents and owners corporations will suffer short and long term problems caused by defects and the necessary costs and efforts associated with rectification.
- ❑ Court cases and associated costs are will increase, putting pressure on the courts.
- ❑ Complaints to NSW Fair Trading will increase, putting pressure on government resources.

Defects can occur during both the design and construction stages of a building. In NSW, concern regarding building defects has largely been around problems during the construction of the building. A specific concern

in the NSW context is the knock-on effects of cost-cutting. When builders and developers cut costs and rush a development, this can have a negative impact on building quality because:

- ❑ It takes time for some materials to settle before further work can be undertaken (e.g. time for adhesives to bind, or time taken for floor boards to adjust to the new environment before they are installed).
- ❑ It can result in a reduction in the involvement of architects and engineers in the building process, thereby reducing opportunities for quality checks by professionals.

Long term cost implications of defects are potentially significant. For example, a simple problem with water-proofing in apartment bathrooms could cost up to 50 or 100 times more to rectify at the user occupancy stage, rather than during construction.

Another area of concern in NSW is failures in the sub-contractor supply chain and a disregard by some sub-contractors for the effects of their actions on subsequent other trades working on a building (Karim et al. 2006: 30-31).

A question raised by some interviewees and survey respondents was why defects present in their buildings were not picked up before they moved into the property:

"How did the building get signed off as fire safe when these things had never been installed initially? They were required. And when we looked back through the process, it's a crazy system where the developer can sign off that all the appropriate fire safety stuff has been done... but the person who certifies the building is allowed to rely on the word of the developer, which is what they've done. ... And there's nobody supervising that." (Executive committee interview, respondent 130)

"The builder did not comply with council ... requirements and will not rectify the issues as the building was privately certified by a registered certifier. Council refuses to discuss any issues with the certifier and issued a rectification notice and a fine and instituted court action. Money has been wasted in an endeavour to find our correct legal position." (Owner survey, respondent 87)

In NSW, building work must be certified to ensure that the works carried out comply with councils' conditions

of consent and building standards (including the Building Code of Australia). Certifiers can be the Minister for Planning, a local council or an accredited surveyor. A principle certifying authority (PCA) will issue an occupation certificate, required before people can move into the building. Much of the debate around the extent of defects in residential buildings in NSW to date has focused on apparent failures of the building certification system, specifically the issuing of occupation certificates.

The occupation certificate issued by the PCA is the final validation that there is a valid development approval and construction certificate for the building and that the building is fit for use under the requirements of the Building Code of Australia. The PCA is required to go to the building to check this before signing off on the occupation certificate, although inspections carried out during the building work do not need to be done by a PCA, and may be done by another appropriately qualified person. 'Appropriately qualified' in this case is broad and means any person with training or experience in that field³.

It can be difficult for the PCA to check every component of a large multi-unit building in detail, and the PCA may rely on self-certifications by subcontractors of component parts of the building. Furthermore, manufacturers of building components provide their own certifications and may not always clearly list the limitations of the application and capacity of the product.

Changes have been made to the building certification system since a parliamentary inquiry into the quality of new buildings in NSW (Joint Select Committee on the Quality of New Residential Buildings 2002) was undertaken (see Appendix 6 for detail). However, the extent to which these new mechanisms are sufficient, or the penalties severe enough, to adequately address public concerns is the subject of ongoing debate.

Getting defects fixed

Ultimately, it is the legal responsibility of the owners corporation to have defects fixed. This responsibility has been tested through the courts in the case of *Seiwa Pty Ltd v The Owners - Strata Plan 35042*, which found that:

1. The duty to maintain common property extends to require the remediation of original defects in the common property.
2. The obligation extends to do things which may not be for the benefit of the majority of owners (e.g. remedy a defect in the common property affecting only one lot).

If the owners corporation does not take measures to have defects fixed they can be sued for damages if someone suffers loss or injury as a result of an un-remedied defect. Executive committee members can also be sued for negligence.

In some cases, the owners corporation might cover the costs of defects out of the administrative or sinking funds or through a special levy or loan. However, while the owners corporation has a legal duty to have defects remedied, this does not mean that the owners corporation must necessarily pay for this remediation. There are a number of channels through which the rectification of defects in a strata scheme can be financed.

Builder/developer covers the cost

Where the builder and/or developer is still operating, an owners corporation can assess the nature and extent of defects (with the assistance of an expert) and negotiate with the developer to rectify defects. The owners corporation will need to come to an agreed position about how to proceed (generally this will go to a general meeting for the support and funding of all owners). This process can be difficult because there is a split of ownership and responsibility for different parts of the building between the owners corporation (which is responsible for dealing with defects in common property) and each owner (who is responsible for dealing with defects in their own lot). Legally, the owners corporation should only rectify defects in the common property, and lot owners should negotiate directly with the developer about defects in their lots. However, defects can exist in both lot property and common property, or a defect in one area can cause damage in another (e.g. common property roof leaks affecting the interior of top floor apartments). This can make it difficult to identify defects and decide who should organize to have them rectified.

The owners corporation can begin negotiations with the developer for the rectification of defects. Owners corporations can request that NSW Fair Trading assist with these negotiations. This is the most common course of action to get defects remedied and appears to be successful in many cases. Of those respondents whose schemes had defects, 49% said that they had not had any problems getting defects fixed in their schemes:

"We had a defect report completed with the major defect being the glass panels on the balcony not within BCA regulations. The developer immediately rectified the issue at their cost and was able to rectify the defect without requiring access to

any lot property. Our lot property defects were rectified prior to settlement.” (Owner survey, respondent 50)

“We had a lot of trouble getting waterproofing matters fixed, especially as a couple of owners wanted a more expensive type of rectification. Finally, the developer, in a surprise move, did the work at no cost to us.” (Owner survey, respondent 247)

When the builder / developer won't cover the costs

Of those respondents to the owners survey who had experienced problems in getting defects fixed, the most common problems were that the developer and/or builder was no longer operating and that the developer or builder was maintaining control over the development and stalling the defects rectification. These findings were reflected in the survey of executive committee members (see Figure 8.2).

When the builder and/or developer is no longer operating, it is not possible to negotiate with, or sue, them for the rectification of defects. This happens when:

- ❑ Builders and/or developers go into liquidation as a result of losing legal cases and being unable to pay legal costs.
- ❑ Builders and/or developers cease doing residential work and relinquish licenses to evade responsibility and major costs in relation to discovered defects.
- ❑ Developments are undertaken as single project entities with project specific companies (isolated from the assets of the development groups as a whole). These companies can then be shut down at the completion of the development.

“The developer still owns a number of lots in the strata scheme. And also there [have] also been defects such as water leaks, walls between units being not soundproof enough, etc. The developer and builder are passing on the bucks between one another and no one wants to take responsibilities. The developer has also dissolved their company and started another company with a different name making it harder to take legal actions against them.” (Executive committee survey, respondent 368)

If the builder or developer goes into liquidation, then owners corporations can claim on home warranty insur-

ance, if they have it and if their claim period for that insurance hasn't expired. However, the protections offered to strata owners under home owners warranty insurance have decreased significantly over the past fifteen years. In 1997, Home Warranty Insurance was first resort insurance for all new residential buildings. In 2012 it is last resort insurance and is not required for new buildings with 4 or more storeys. This reduction in consumer protections has resulted from private insurers not being able or willing to open themselves up to the potential exposure of defects claims at a price developers can afford and still make developments financially viable.

While some strata owners find themselves with no home owners warranty insurance, survey respondents whose schemes did have such insurance had also experienced problems in getting paid under those insurance claims:

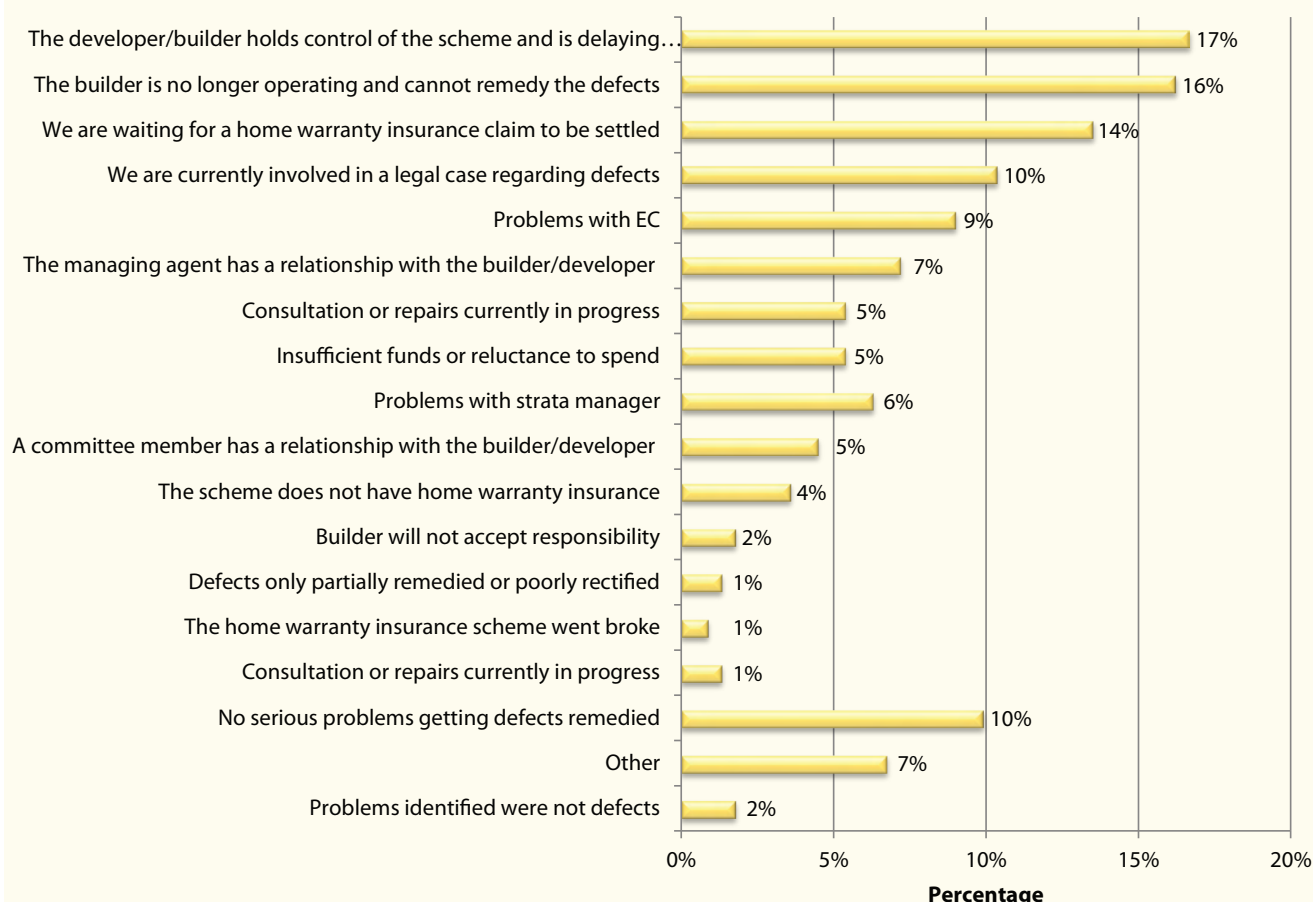
“The process of the insurance claim and subsequent court case took too long and was very expensive. The CTTT let the insurer delay the matter for a number of years on the grounds that they were not ready to proceed.” (Owners survey, respondent 41)

“The cost of legal and professional advice (engineers, QS) for defects process is soooooooo [sic] costly and so long time wise (currently 19 months) and still no resolution. Strata manager although co-operative was out of his depth in handling the situation so a legal team became essential. Insurance company had to be taken to CTTT to simply get them to respond and in the meantime the defects have become so significant that 70% of my house is un-liveable.” (Owner survey, respondent 268)

Hence, the fact that the builder or developer is no longer operating can cause significant problems in regard to defects rectification. However, when the builder or developer continues to operate, and holds control over a strata scheme, this can also cause problems.

When a scheme is new, transition from developer to owner control is often still in progress. The developer may still own lots in the scheme (and therefore voting rights). There is also an imbalance in power, knowledge and financial strength between the builder or developer and the owners. Whilst owners only deal with defects once, developers and builders do so regularly as part of their usual business. Developers also have better access to, and more familiarity with, the investigation, rectification, claim and legal processes.

Figure 8.2 Please identify which kinds of problems have been experienced in your scheme in regard to having defects remedied (schemes that currently have defects that have not yet been remedied)



Survey of executive committee members. 222 respondent. Multiple response question.

In some cases, the fact that a developer maintains some control can be beneficial in enabling them to draw on their contracts with builders to get them to fix building problems quickly as they are identified. But in other cases, developers can delay or hinder the rectification of defects where their rectification might result in costs to their business. Developers can hold control in a scheme in the following ways:

1) Maintaining ownership of lots and therefore unit entitlements⁴:

"Developer has too much say, and is reluctant to address building deficiencies" (Executive committee survey, respondent 299)

2) Holding proxy votes⁵:

"Initially [the] developer and their colleagues held too many proxies and railroaded the EC [Executive Committee] for about 5 years. This nearly resulted in missing the 7 year warranty." (Owner survey, respondent 964)

3) Having connections with members of the executive committee and/or strata managing agents who might hide defects, delay investigation and try to avoid claims and legal actions⁶:

"The other thing that I found, which was very uncomfortable in one situation ... the builder who engaged me to have the first meeting ... the owners were picking him to bits at this meeting about the various defects ... they wanted me to include it all in the one letter ... I said OK I'll do that for you because I know that you're uncomfortable writing to the builder... well he got a bit stropky because he thought my role was to support him because he had engaged me... I said I've been charged by the Executive ... now issues are coming up So you're in the middle ground and it can be quite delicate. So that's all relating to poor building products and I just wish the builders would take a little bit more time and care and do it properly the first time." (Managing agent interview, respondent 17)

“At one stage, the Exec Committee included the developer, the builder and their relatives. This meant that serious defects relating to fire safety were not treated as defects and were paid for by the Body Corporate - thus reducing our sinking levies by more than \$30,000.” (Owner survey, respondent 270)

The costs of defect rectification

What happens when defects are rectified? The evidence from the research suggests that outcomes were mixed for owners. While 38% of owners were satisfied with the costs to owners of the defects rectification, 25% were dissatisfied⁷. In some cases, the costs to owners of rectifying defects can be significant, and in the early stages of a scheme there are often insufficient funds in the sinking fund to cover these costs, necessitating the payment of special levies.

Where the builder and developer are no longer operating, it is not possible to take legal actions against them for costs, and if the scheme also has no home owners warranty insurance, this places owners of these lots in a precarious position, with little recourse and potentially very large costs. However, strata owners who do have home owners warranty insurance and/or a builder who is still operating can also face significant costs in having defects remedied, including the costs of experts to assess the nature and extent of the defects, and legal teams to negotiate with builders, developers and insurance companies and to run cases in the courts.

A document published by Teys Lawyers, one of NSW's leading strata law firms, provides the following time and cost break-down for a hypothetical 20-unit scheme with 2 or 3 major defects in NSW.

Table 8.2 Hypothetical cost breakdown

STAGE	TIMEFRAME	COST
Assessment of the nature and extent of defects	4-6 months	\$30,000-\$50,000
Negotiations regarding settlement	Up to 6 months	\$20,000-\$50,000
Application for rectification	9-12 months	\$10,000-\$50,000
Court case for damages	2-3 years	\$150,000-\$250,000

Source: Teys 2010

Costs are a significant concern for some schemes. New strata schemes often don't have the finances needed to cover the costs of identifying and rectifying defects, or seeking to have these defects rectified by the builder or

developer. Where the owners corporation can't afford these costs, either the defects will not be remedied (which places the owners corporation in a difficult legal position and open to litigation) or they will have to strike a special levy (an additional lump sum payment from all owners) or borrow the money (and pay off the loan and interest over time). In some cases, it can be cheaper to pay to have the defects remedied, rather than take legal action:

“Although the plumbing failure was due to installation issues it would have cost more to take it through court than to just get the work done independently. [The] Body Corporate spent \$30,000 just in consultancy fees and initial legal advice and we were told that [the developer] would keep it tied up in courts for so long it would probably cost more in legal fees than it would to repair” (Owner survey, respondent 532)

Satisfaction with the management of defects issues

Most owners were satisfied with the management of the defects issues by the executive committee and strata manager (50%) or felt neutral or had no opinion (14%), although a significant minority were dissatisfied (25%).

“Lack of simple practical knowledge on committee (not technical expertise) made it difficult to define problems for negotiation. Faulty emergency and exit lighting should have been replaced under 2-year non structural warranty by developer or manufacturer responsible, but bad negotiation by committee led to corporation bearing heavy costs.” (Owner survey, respondent 139)

“The SP [Strata Plan] is now in litigation as the executive failed to act on defect notifications. Warranty period has expired [and the] chances are very slim. [We] anticipate the building will be placed into administration” (Owner survey, respondent 140)

Executive committees can therefore face a lot of problems in dealing with defects because executive committee members are new to their roles and are not familiar with handling such matters. Furthermore, problems must be dealt with co-operatively. This can extend the time, stress, and cost of identifying and addressing defects because it is necessary to discuss these matters and complete the necessary protocols and paperwork. Multi-party reporting lines (resident to managing agent to owner to manager) can also slow everything down.

8.1.2 Design

As well as the quality of the buildings, the design of strata schemes can also have an impact on the management of schemes.

Executive committee members were asked whether there were any aspects of the design of the building(s) in their strata schemes that made managing the scheme more difficult. Almost one-third (29%) of respondents said that there were aspects of building design that contributed to management decisions in their scheme, while almost two-thirds (63%) said there were no such problems [EC 4.2]. Respondents who said that there were building design issues were asked to identify the most important building design problem. Some respondents answered this question by mentioning construction problems, and problems with water ingress. Besides these responses, common responses to this question (with more than 10 responses each) were that the complexity of the scheme (having multiple buildings, multiple strata schemes, or being mixed-use); the design and placement of services and utilities; the existence of old and heritage buildings; problems with access; and problems with drainage and flooding affected the management of their scheme.

Managing agents were asked a similar question – whether there were any aspects of the design of any of the strata schemes they manage that made managing the scheme(s) more difficult. Over half (53%) of the managing agents indicated that there were aspects of design that made management more difficult, while 40% said that there were not. Besides defects such as inadequate waterproofing, the most common problems raised were poorly located services which are difficult to access for maintenance.

In addition, a particular area of concern regarding building design and construction quality identified in other survey questions regarding disputes was the impact of building design and quality on problems associated with noise. These building and design issues exacerbating disputes over noise are addressed in Chapter 10.

Some survey and interview respondents also pointed to the benefits of good design in their schemes, especially in regard to encouraging positive social interaction between residents:

"I think also because it's got that design and it's got a garden in the middle and so on, people are more friendly. When we were living there...a lot of people

knew each other because the design of the building is of a nature to encourage communication and friendliness to so people sort of pass the time of day, 'Hello, how are you going,' and all that sort of stuff." (Owner interview, respondent 21)

8.2 Maintaining and improving the property

8.2.1 Property maintenance

One of the perceived benefits of living in an apartment for many people is the reduced maintenance work compared with living in a detached house or townhouse. However, while 41% of respondents to the Owner survey said that there had been no maintenance problems that they are aware of, 59% said that there had been at least one type of problem (see Figure 8.2). As can be seen from Figure 8.3, aside from an inadequate standard of work being undertaken (24% of respondents), the majority of problems relating to maintenance in the scheme were regarding disagreements over whose responsibility it is to plan for this maintenance (discussed in Chapter 7) and concerns around the budgeting and financing of repairs works (these issues are discussed in depth in Chapter 9).

8.2.2 Property improvements and understanding the boundaries between lot and common property

Property improvements can be made to both common property and lot property in a strata scheme. Planning and budgeting for improvements to the common property is discussed in more detail in Chapter 9. In this section, we discuss some of the problems that can arise for owners when they want to make improvements to their own property, as this often necessitates obtaining approval from the executive committee and sometimes also means making changes to the common property.

There are few things that can usually be done within a strata lot without the approval of the owners corporation or local council. These can be broadly interpreted as interior decorating, and include:

- ❑ painting and wallpapering internal walls and ceilings
- ❑ carpeting and using soft or noise-reducing floor coverings
- ❑ changing light fittings

- ❑ changing taps or shower heads
- ❑ fitting blinds or curtains
- ❑ attaching fixtures to an internal wall (i.e. to lot property)
- ❑ installing security or insect screens

For everything else including exterior decorating (e.g. painting the front door) and renovations (e.g. new kitchen, new bathroom), generally an owner will need approval from the executive committee. The committee is involved for two main reasons:

1. An owner may be making alterations that will have an impact on the common property so a decision needs to be made by the owners corporation.
2. The works proposed may make noise and/or require tradesmen to access common property with equipment and materials. As this has the potential to impact on all owners the owners corporation must make a decision on whether to allow the works and under what conditions (e.g. timing of works).

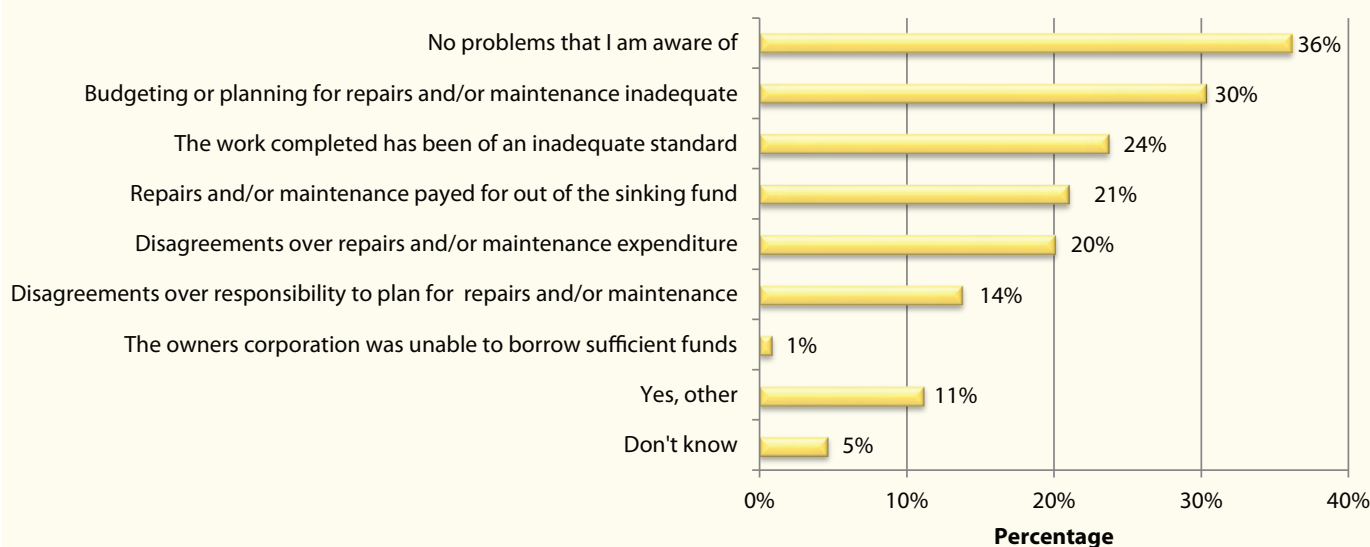
In some cases, planning approval will be required from the local council.

In either case, the owner will need to apply in writing by drafting a motion outlining the works to be undertaken and serve the motion on the secretary of the executive committee for inclusion in a meeting agenda. Some strata schemes have special by-laws governing the procedure for renovations to an individual lot and the procedure will change between schemes. Some schemes will require that such motions are passed at an annual or extraordinary general meeting while others will allow the executive committee to consider these motions.

One issue that we did not ask explicitly about in the surveys, but was nevertheless spontaneously raised by many respondents, was the difficulty owners face in obtaining some clarity around the distinction between lot property and common property in their schemes, and therefore their rights and responsibilities when it came to making improvements to, and maintaining, their lots:

"We really didn't know anything when we came into these units. The whole differentiation between common property and your own property and what you're allowed to do without getting permission and what you weren't allowed to do, we had no idea. And I guess we're still probably not sure on some things." (Executive committee interview, respondent 130)

Figure 8.3 Have there ever been any problems in regard to having building repairs and maintenance carried out in your scheme to the best of your knowledge?



"If my parents hadn't helped me with the buying process and stuff like that, I probably wouldn't have known about strata. Stupid, but I've always lived in a house, and I just didn't know that you couldn't just do what you wanted. Say you wanted to paint the inside of the windows or something, I think you'd have to ask permission or ... see, I don't even know." (Executive committee interview, respondent 329)

"I think people don't understand what strata is ... I went to a briefing by a lawyer who said the biggest problem is that strata is an abstraction. People own the airspace they live in individually and collectively they own the building. That's an abstraction ... So when people ring, they don't even understand what they own." (Managing agent interview, respondent 35)

At the end of the survey of strata owners, survey respondents were asked to identify the main problem they have faced as an owner in their strata scheme. This was an open question, and respondents were able to write whatever they wanted. The difficulties in distinguishing between lot property and common property in the scheme was a common response:

"Being unsure of what comes under strata and what is my responsibility, i.e. the toilet is my responsibility but the cistern belongs to strata apparently...who knew?" (Owner survey, respondent 10)

"People not knowing what is common property, what isn't, what they are responsible for, what they are allowed to do within their lot and what they need permission for when make alterations." (Owner survey, respondent 702)

This challenge stems from one of the fundamental characteristics that makes strata title distinct – that strata title owners simultaneously own the private property of the lot, and a share in the common property. Being able to distinguish between one's private property and property in common then become very important as lot owners are able to make decisions about changes to their private property, and must also pay for its maintenance and repair, while all owners have to agree on changes to common property, and share in the costs of its maintenance.

Some respondents also identified this as an area where more information could be made available to strata owners and managing agents:

"Common property boundaries ... they're always a grey area and if we could get some illustrations with real life scenarios and some PowerPoint slides on how to read strata plans and then go from there". (Managing agent interview, respondent 17)

Some guides do already exist. Strata Community Australia published a document 'Who's responsible' (Strata Community Australia n.d.) that outlines those parts of a strata scheme that are *usually* common property, and in 2011, Land and Property Information NSW developed two memoranda (AG 520000 and AG 600000) to determine who is responsible for repairing, replacing or maintaining items or areas in a strata scheme (NSW LPI 2011). However, even when owners are trying to do the right thing to determine the boundaries between lot and common property, they can face difficulties, with different actors and government agencies providing conflicting advice. The following extensive quote is worth repeating in full to illustrate the issue:

"My husband and I attended Mediation at the OFT [Office of Fair Trading] ... because our sliding doors to our balcony are so warped (made of PVC) that they cannot close to keep out rain and wind, and cannot lock. We are unable to go away, sell or lease our apartment as there is no security. Despite meetings, countless emails to previous strata manager and EC [the executive committee], and two defect reports listing our doors as needing to be replaced, nothing has been done to fix or replace [them]. The Mediation resulted in the chairman of our OC [owners corporation] and the new strata manager ... stating that they would bring in an exclusive use by law to make all doors to balconies no longer common property, but instead the responsibility of each owner to maintain and replace. The chairman stated that this move would give all owners/occupiers the option of upgrading to a better product while allowing investors to keep things the way they are. I asked if this was legal and within strata law as somehow it seemed a little unethical for the OC to do this in order to avoid a substantial repair/replacement bill, but was assured it was. It did not make sense to me either as owners already have exclusive use of their sliding doors to balconies. I rang the LPI [Land and Property Information] when I got home and was informed that this cannot be done as the plans registered with the LPI of SP [number removed] show the sliding doors are located in an exterior wall specifically marked

CP -Common Property. I was told that even if a resolution was passed and 100% were in favour, a resolution or new bylaw cannot override the Act, and that a new owner could challenge the legality of the process and could legally refuse to accept it. Also, that common property cannot be made 'not common property'. We are giving the OC until the end of February to sort something out and then we will go to a solicitor and the CTTT. " (Owner interview, respondent 213)

8.3 The role of the building manager and caretaker

As well as a managing agent, some strata schemes also hire a building manager or caretaker to help manage the common property.

While the majority of respondents to the survey of owners did not employ a building manager or caretaker in their schemes (72%), a significant minority (22%) did. Of these, one third (29%) said that their building manager or caretaker owned their own lot and lived on site at their strata scheme.

In general, satisfaction with building managers was high, with 67% of respondents who had a building manager or caretaker being satisfied and only 16% dissatisfied with their service. Satisfaction levels were similar for building manager who lived on-site (74% satisfied or very satisfied) and those who didn't (68% satisfied or very satisfied). Common reasons for satisfaction with the building manager or caretaker were availability, responding quickly to enquiries and problems in the scheme, quality of the maintenance of the scheme, and maintaining a good relationship with owners in the scheme:

"The standard of service having an onsite building maintenance manager helps, and we're big enough to have that. I think if we were relying on the strata manager to handle maintenance issues as they occur it wouldn't be nearly as friendly, it would be held up and delayed quite a bit." (Owner interview, respondent 152)

The most common reasons for dissatisfaction were not dealing with issues as requested or in a timely manner and being a poor communicator. Another issue raised by six respondents was that the building manager is either an employee of the developer, or purchased management rights from the developer, causing conflict:

"We are very satisfied with the particular Building Manager but not at all satisfied with his employers. Our complex was contracted to a subsidiary company of the Developer for ten years at, we believe an excessive cost. This is judged by asking three other companies to quote on the terms of the work being supplied. The result of the quotes was significantly lower prices." (Owner survey, respondent 6)

Strata managers were also asked specifically about their relationships with resident building managers. Amongst the managing agents surveyed, only 25% worked with a resident building manager in one or more of the schemes they managed. The majority (72%) of those respondents said that working with a resident building manager had benefits in their own role. Benefits of working with a resident building manager included that they are on hand to help resolve issues as they arise, they have a hands-on knowledge of the building, it reduces the strata managing agent's workload, and they can liaise with contractors:

"They are onsite and are the first point of call for most matters." (Managing agent survey, respondent 83)

"A building manager has the knowledge and skills to look after a building's infrastructure which a strata manager is not trained to undertake and this is frequently misunderstood by smaller strata schemes." (Managing agent survey, respondent 58)

The four respondents who raised negative points about working with building managers complained mainly about conflicts of interest and neglecting their duties.

8.4 Summary

The main findings of this chapter are:

- ❑ Building defects constitute a major concern in strata schemes in NSW.
- ❑ Building design problems commonly influence management decisions in strata schemes.
- ❑ Concerns over maintenance often focus on long term planning and funding issues.
- ❑ Many owners have trouble getting a clear explanation of where the boundaries lie between their lot and common property.
- ❑ Most owners whose schemes hire a building manager or caretaker are satisfied with their services.

(Endnotes)

- 1 It was made very clear at the beginning of this question what we meant by 'defects'. See Question A32 in the survey in Appendix 4.
- 2 48 (42%) of the respondents who selected 'don't know' also selected at least one other option indicating defects that were present. If these are included, the percentage of respondents with defects in their scheme at some stage is 76%.
 - These figures do not add to 100% due to rounding.
- 3 However, electrical and plumbing issues would need to be checked by someone with a license to work in these fields.
- 4 Changes under the *Strata Management Legislation Amendment Act 2008* (schedule 3 clause 4) states that if a motion is proposed to determine that a person's office on the executive committee is to be terminated, the original owner has one vote for every 3 lots for which they are entitled to vote, if they own more than half of the lots and they are not entitled to vote on the motion as a proxy for any person – this is designed to enable other owners to vote original owners off the executive committee. Further, while in the past if a developer held the majority ownership or voting rights, it could be hard for an owners corporation to lodge a complaint with Fair Trading (under the Home Building Act). The *Strata Management Legislation Amendment Act 2008* allows individual strata lot owners to lodge complaints with Fair Trading and invite a Fair Trading Building inspector onto the common property and caretakers and other who control access to the common property are obligated to cooperate with officers from Fair Trading.
- 5 Changes under the *Strata Management Legislation Amendment Act 2008* (schedule 2) mean that the developer cannot cast a vote using a proxy vote obtained as part of the contract of sale for a lot.
- 6 Changes under the *Strata Management Legislation Amendment Act 2008* (schedule 3) mean that a person connected with the original owner or caretaker is not eligible to sit on the executive committee unless they disclose their connection.
- 7 The remainder were neither satisfied nor dissatisfied, had no opinion, or said that the question was not applicable.



Chapter 9: Managing money

As we discussed in Chapter 1, when buying into a strata scheme, owners buy their own lot (usually the airspace within the walls of their dwelling) and a joint share in everything else (the common property). They also buy into a responsibility for the joint management and maintenance of that common property. A significant part of this responsibility relates to the joint management of the finances of their scheme – and a commitment to budgeting, collecting and spending money to ensure the proper upkeep and maintenance of the buildings and grounds in their strata scheme.

Decisions about the financial management of strata schemes, many with property assets worth millions of dollars, must be made collectively by all owners in a scheme. Some decisions can be delegated to executive committees, and some further delegated to strata managing agents. The responsibilities of owners corporations (and their delegates) in regard to managing money can be understood in four major groups: budgeting, collecting levies, spending money, and keeping records.

9.1 Budgeting

The *Strata Schemes Management Act 1996* (NSW) lays out the responsibilities of owners corporations with regards to budgeting for their schemes. Each strata scheme must have an administrative fund and a sinking fund, which should each be used for a different purpose.

The administrative fund should be spent on:

- ❑ Maintaining the common property in a good condition on a day to day basis (e.g. cleaning, gardening, repairs)

- ❑ Insurance premiums
- ❑ Recurrent expenses (e.g. water, electricity, strata management fees, taxes)
- ❑ Payments in connection with the owners corporation carrying out its powers (e.g. legal fees, engineers fees)

The sinking fund should be spent on:

- ❑ The renewal or replacement (but not maintenance or repair) of fixtures and fittings that are part of the common property
- ❑ Painting of common property areas
- ❑ Acquisition, renewal or replacement of owners corporation property (e.g. gardening tools)
- ❑ Other capital expenses (e.g. replacing roofing)

Every year, the owners corporation has to decide on their budget for the next year. Decisions will be made about how much needs to be put into the administrative and sinking funds.

While the strata schemes management legislation requires that estimates for expenses for both the sinking and administrative funds must be made, the budget statements do not need to comply with any set form and there is no legislated minimum amount of savings that must be maintained in each fund.

Under-funded budgets are a concern because they can result in inadequate funds to pay for required works. However, they also raise equity issues. For example, where a sinking fund has not been adequately funded through levies, this means that previous owners who

have now sold their properties have not contributed, so the new and current owners have to pay more that would reasonably be expected if there hadn't been shortfalls in the past:

"They [executive committee members] were only really planning for within their lifetime, and they only really had a 10 year plan, and whatever happened after that they weren't really worried about. And as a result, they wanted to keep those fees as low as possible and once they died or moved on to some other retirement living then the next person could sort it all out." (Owner interview, respondent 1002)

Executive committee survey respondents were asked to rate the performance of their own executive committees with regards to preparing budgets and managing budgets. Many respondents said that budget preparation (63%) and management (57%) were carried out by the strata managing agent on their behalf. Of the remaining respondents, a small proportion rated their preparation of budgets (13%) and management of budgets (4%) as unsatisfactory.

Respondents to the survey of strata owners were not asked specifically about budgeting practices in their schemes, but issues around budgeting were raised by respondents in open responses to other questions in the survey. Of those owners that had experienced problems with regards to budgeting in their schemes, many of these difficulties related to planning for, and funding repairs.

The survey of strata owners asked respondents whether there had ever been any problems in regard to having building repairs and maintenance carried out in their scheme to the best of their knowledge. The results of this question were presented in Figure 8.3 in Chapter 8. Aside from concern that the standard of work undertaken was inadequate (24% of respondents), the majority of problems identified in relation to maintenance of their schemes related concerns around the budgeting and financing of repairs works. Many respondents were concerned that repairs and/or maintenance had been paid out of the sinking fund, when it should have been paid out of the administration fund (21% of all respondents). Many (30%) were also concerned planning and budgeting for repairs and maintenance had been inadequate and that there had been disagreements over repairs and maintenance expenditure, such as how much to pay (20%).

Sinking funds

Owners were asked whether they knew approximately how much money there was in the sinking fund for their scheme. The majority (81%) of owners said that they did, but almost one in five (19%) owners who completed the survey did not. The results differed for those owners who were on the executive committees of their schemes, and those that were not. 90% of the survey respondents who were on their executive committee knew how much money was in the sinking fund for their scheme, compared to 67% of those who were not executive committee members. Given that the owners who completed this survey can be expected to be more involved and interested in their strata schemes than average (see Chapter 5), it is a reasonable assumption that strata owners in general would be less likely to be aware of the state of their sinking funds.

In NSW, all strata schemes are also required to have a ten year sinking fund plan, and to take this plan into consideration when setting their annual budgets. A sinking fund plan is a plan for the renewal, repair or replacement of common property, and any associated costs over a ten year period.

However, there is some evidence that the financial planning being undertaken in some strata schemes in NSW is far from ideal. For example, Easthope et al. (2009: 36) found that the most common reason strata owners gave for being dissatisfied with the budgeting undertaken in their schemes for routine maintenance was that "there was little pro-active planning undertaken and that their schemes operated on a 'crisis management' model."

Further, despite the legislative requirement for sinking fund plans, Easthope et al. (2009) found evidence of some schemes in NSW with no sinking fund plan in place. Further, even when a sinking fund plan is in place, this does not mean that it is necessarily accurate or satisfactory. In fact, sinking fund plans can be set by specialist consultants, strata managing agents, building managers, or the owners corporation itself. There is little guidance available as to what an appropriate sinking fund might be:

"Between the committee we decide what the sinking fund should be for the building. It's anyone's best guess. ... even with the legislation that requires the committees to consider the reports or consider the sinking fund, at the end of the day, it's just guessing in the future and you're projecting out items which are essentially ten or twenty years in the future, or they may need to be done in the next five years, who knows ..." (Executive committee interview, respondent 305)

It is questionable whether non-specialists would be able to accurately estimate the costs of future works in a strata scheme and this is a cause for concern as inadequate assessments of the work required with lead to budget shortfalls:

"It's just sad that people that are on the committee at the time when they think they've got lots of money really don't know how to manage it. If they were told right from the word go, 'As a ballpark figure, your building will need to have X amount of dollars put away' ... But when they see they've got all this money, they're like 'I want to get my hands on it now, why is it sitting there doing nothing? I want to use it.' And I would say at least 95% of owners have no idea what the sinking fund is for or how much really should be there. And if they had some sort of a yard stick – I know not all buildings will have the same problems – but if you said, your building is a block of twenty, it's a walk-up, it doesn't have elevators, doesn't have a swimming pool, it's pretty stock standard, and at year five you guys technically should have this amount in the bank. By year ten you should have this amount in the bank. Just so people know what they have to aim for." (Owner interview, respondent 537, also a professional building manager)

Formal business planning

One tool that can assist with realistic budgeting in strata schemes is a formal business plan that sets out what the executive committee and strata manager will achieve over the year, or a longer period. Executive committee survey respondents were asked whether they had a formal written business plan for their scheme. Only 11% of respondents said that their executive committee had such a plan and the majority of these found it a useful tool. Of those respondents who did not have such a formal plan, 48% thought that such a plan would be beneficial for their scheme. The most common reasons for thinking this were that such a plan would provide direction, focus and clear priorities to guide executive committee actions and that the formality of such a plan would encourage clarity and accountability:

"You're living in a community ... so in terms of having a business plan or a goal for that community ... like businesses do it, in five years this is where we're going to be. Working towards something together, but I don't know if a separate document ... maybe merging the two together ... having a sinking fund report together with a statement on

where you guys are going ... So maybe a business plan would be good for long-term projects. So if there's something the strata scheme wants to do together, they could put in a plan to say in ten years we're going to do this, or in five years we want to build this..." (Executive committee interview, respondent 291)

Participants in the strata managing agents survey were also asked about formal business plans. Only four respondents said that all of the schemes they managed had such plans, but a further 32 respondents said that some of the schemes they managed did. Of the 36 respondents who managed schemes with formal business plans, 13 said the tool was useful in all cases, 22 in some cases and only 1 said it was not useful. However, of those managers who did not manage any schemes with such a plan, only 16 (31% of respondents) thought such a plan would be useful. Common reasons for thinking a plan would not be useful included that such plans were not necessary for small schemes, and that the sinking fund plans in schemes provided a similar role.

"Often the owners are taking a relatively short term view of their building because they might be selling or moving up or they may be still investors and they're looking at yield and that sort of thing. So they take a very narrow view. Whereas I think the strata manager has an obligation to the building to look almost three to five years out for the building. The trouble is you're generally only employed for twelve months so they [managing agents] have to do only as much as they can in that timeframe because they may get kicked out. If they did have a three-year view for the building, the owners would be more inclined to keep them in place for three years." (Managing agent interview, respondent 56)

Influence of the developer

In the survey of managing agents, respondents were asked whether any problems had arisen for them as a managing agent as a result of a builder or developer maintaining an interest in any of the schemes they managed. Fifty-five percent (47 of the 85 respondents who answered this question) said that problems had arisen for them in this regard. When asked what types of problems, the most common problem identified were financial problems (21 mentions) and reluctance to address defects (17 mentions). Reluctance to address defects was discussed in Chapter 8. The financial problems raised included withholding (not paying) levies,

resisting spending on the building, misusing funds and underfunding or underinsuring the scheme. Respondents to the Executive Committee survey raised the same concerns, in addition to concern that the developer had set levies too low:

“They [the executive committee] have knowingly significantly under-budgeted for the sinking fund, because the developer at that stage still owned over fifty per cent of the properties. So he didn’t want to be paying out extra money into the sinking fund, he wanted to keep his costs as low as he could and get out of it with as much money as he could. So they were woefully inadequate. I think ... it was something like a quarter of what we ended up getting [as] an estimate from a quantity surveyor.” (Executive committee interview, respondent 130)

“When you’ve got a builder, I’m talking about a brand new place now, and he says the strata fees will be X amount of dollars, and he’s so way out with the figures, because I know myself, looking at a building, when you can see extensive gardens, and swimming pools and lifts and everything, that down the track are going to be big maintenance. And then you’ve got ... the strata fees are this much, just to make it so attractive so you can buy. If you’re budgeting on the value of a property and then you think, well, I could do that if the strata fees are this much I can afford it. But ... you move in and as soon as the builder’s gone, a year later, you’ll be doubling those strata fees. I think that’s a big problem, and I’m blaming the builder, the developer, because he’s obviously made it sound very attractive, oh, you can afford to move in here, because it’s only this much. And once you’re in it’s a different ball game.” (Owner interview, respondent 691)

The issues discussed in this section strongly suggest that there is a need for a system of indicative benchmarks for the level of sinking fund requirement that an owners corporation should put aside, differentiated by type and age of scheme in order to assist owners corporations and lot owners to judge the most appropriate level of sinking fund provision. Such a system, regularly updated (like the building cost estimates available to the building industry) and reflective of best practice, would help avoid the difficulties some owners find themselves in when funds for major works in their schemes are unavail-

able or where developers fail to adequately budget for such funds at the start of a scheme.

9.2 Collecting levies

Levies are collected from all owners and are used to pay for:

- ❑ Maintenance, repairs and capital works in the common property
- ❑ Bills paid by the owners corporation, including electricity (for common areas) and water
- ❑ Administrative costs of the executive committee, such as printing and postage
- ❑ Strata manager fees
- ❑ Building manager and/or caretaker fees
- ❑ Insurance premiums
- ❑ Legal fees

Respondents to the owners survey were asked to what extent they agreed with a series of statements about their levy payments. The results of these questions are presented in Table 9.1 through 9.4 below.

Tables 9.1 and 9.2 show that while most respondents to the owners survey were generally satisfied with their strata levies, over a quarter (28%) considered their strata levies to be inappropriate and not to provide good value for money. Perhaps not surprisingly, members of the executive committee were less likely to be dissatisfied than owners who did not sit in the committee, who were more equivocal about the fees they were charged. For the latter group, less than a half (48%) thought the levies were appropriate and only just over a third (37%) thought they represented good value for money. Having said that a clear majority (75%) of respondents thought the level of information they were provided with was adequate (Table 9.3) although, again, non-committee members were less convinced this was the case.

The same is true when it comes to the enforcement and collection of levies in strata schemes. Most respondents (69%) agreed that enforcement was adequate, but once more, non-committee members were less sure of this (Table 9.4).

Table 9.1: Response to statement: my strata levies are appropriate (not too high or too low) given the value of my property, and the facilities provided in the strata scheme

Member of Executive Committee	Agree or strongly agree	Disagree or strongly disagree	Neutral or no opinion	Total (100%)
Yes	67%	22%	11%	597
No	48%	35%	17%	403
Total	59%	28%	13%	1000

Table 9.2 Response to statement: my levy payments provide good value for money

Member of Executive Committee	Agree or strongly agree	Disagree or strongly disagree	Neutral or no opinion	Total (100%)
Yes	56%	22%	22%	597
No	37%	38%	25%	400
Total	48%	28%	23%	997

Table 9.3 Response to statement: I am provided with adequate information on what levies comprise (what they are collected for, and what they are spent on)

Member of Executive Committee	Agree or strongly agree	Disagree or strongly disagree	Neutral or no opinion	Total (100%)
Yes	83%	10%	7%	596
No	62%	25%	13%	402
Total	75%	16%	9%	998

Table 9.4 Response to statement: the enforcement and collection of levies in arrears is adequate in my strata scheme

Member of Executive Committee	Agree or strongly agree	Disagree or strongly disagree	Neutral or no opinion	Total (100%)
Yes	78%	8%	13%	593
No	56%	14%	31%	399
Total	69%	11%	20%	992

The findings indicate that those owners with more information and influence over levy setting (those on the executive committee) are also more likely to be satisfied with the level of levies in their schemes:

“Formal training would be good if we could actually give it to the owners as well. So if we did some sort of formal training, and then we could put together a document which could go in the business plan as, this is where we stand as owners, and just letting people know their rights as well. Because I think a lot of owners don’t know where they stand with strata, they just pay it ... Because if you’re not on the committee, you don’t realise that it costs \$1500 to mow the lawn, it’s not just someone getting out there to mow the lawn themselves. Just the upkeep and things like that. Whereas a lot of the elderly people, and even the young people, they just don’t know where the money goes.” (Executive committee interview, respondent 291)

“I still don’t know what [the levies are] for ... I really have no idea what they do with the money... They do give it to us once a year, but I don’t understand it. I actually don’t know how to read the document, I don’t know what it means ... I’ve never found it to be very clear, and to be honest I try to avoid it as much as I can. ... I’d like to have a definition of what does the sinking fund mean ... I would need to have a clear outline of what it’s made up of, then itemised accounts of the actual cost and spend that’s coming out of the strata and that we’re putting toward it. And, to be honest, I’d like that as a quarterly update rather than annual. Because I pay mine every quarter, so I’d like to get an update when I do pay for it” (Owner interview, respondent 294)

One area that appears to be particularly contentious when it comes to understanding levies in strata schemes and how they are spent is the confusion of some owners of the strata management fee with levy payments:

“Often people say, well I pay you \$450 a quarter. And I’m thinking, well, no, you pay levies of \$450 a quarter” (Managing agent interview, respondent 35)

While levy payments do go towards the strata management fee, they are also used to cover other costs, such as insurances, recurrent expenditure, maintenance, repairs and capital works. A related issue is the lack of clarity amongst some owners about what the strata manage-

ment base fee actually covered, and what charges are additional in some schemes:

“Understanding what the strata manager’s actually responsible for and understanding what you pay for and what you don’t pay for. There’s the contract fee...which I think is really is just for the administration of the building. For doing the accounts and paying bills and statutory stuff. I didn’t know until recently ... that if we get them to do stuff for us, like get quotes and all that sort of thing, that they actually charge us for their time. And it’s never really been clear to me where the cut-off is and what we get for our \$7,000 and then how we pay for it and what the rate is ... Because people tended to treat the strata manager, owners would just call him up and say, this needs fixing, that needs fixing, and so we racked up a fair bit of fees. And then we’d get complaints about the strata manager, saying, they haven’t responded to this. So are they building managers, or are they just administrators, administrative managers? And those lines all seem blurry to me. So a very simple document ... that laid out what the strata manager is responsible for under the fee arrangement and then what else they can do and what the additional fee for that would be, would be really useful.” (Executive committee interview, respondent 325)

Special levies

When there is insufficient money in the administrative and a sinking funds for required building work and maintenance, special levies (one-off additional levy payments) can be called.

There are a number of potential reasons for insufficient levy reserves:

- ❑ Some owners are not paying their levies at all, or not paying them on time
- ❑ Owners cannot agree on how much to pay, or cannot agree to pay enough to meet anticipated expenses
- ❑ Financial planning for future repairs and maintenance expenses has been ineffective and/or insufficient
- ❑ Emergencies or unexpected events have occurred, beyond those allowed for in contingency plans

- ❑ Owners have to cover the costs of building defects (rectifying the problem, legal costs etc.) either temporarily, or permanently

The in-depth interviews with owners shed light on this issue in some detail and revealed a range of strategies to ensure major costs were provided for. When asked about different approaches taken in their schemes to dealing with budget shortfalls and the calling of special levies some interviewees spoke of a strategy to keep levies low, but to call special levies when necessary, while others spoke of increasing regular levy payments in order to avoid large special levies. There appeared to be no set approach:

"Since I've moved into this building we've been given a special levy every single year ... If there's always a need to have special levies put in place, why aren't we increasing some of the quarterly levies? ... We're trying to keep the levies down because it looks good on the books, if we have new buyers coming to buy into the building it holds us in a better position." (Owner interview, respondent 896)

"We raised the fees by 50% and we were able to show the costings that were required and potential outgoings. We were also able to show that anybody in this situation could be liable for up to \$10,000 if everything went wrong at once ... Having the strata manager able to talk this through with me meant that I took it away from the personal ... and gave it to someone who was far more experienced ... and with the knowledge of what's happening in other buildings and knowledge of other special levies that could be levied and other body corporate communities within our surrounding area." (Owner interview, respondent 1002)

Levies in arrears

The surveys and interviews also revealed a range of situations in which owners may not pay their levies which added to the problems surrounding the adequate upkeep and repair of schemes:

1. Developers who own a number of unsold apartments in a scheme may resist paying levies on unsold properties. Where a developer holds a number of properties in a scheme, this can cause a major strain on the other owners, who must make up the shortfall in funds in the meantime, which

often means striking special levies. This is a particular problem when the property market slows down and sales decline:

"Developer in liquidation Levies always in arrears except when they want something (i.e. to change the use of the empty shop to residential)." (Executive committee survey, respondent 323)

2. Owners who bought a property when levies were a certain amount may find it difficult to pay regular levies when these increase rapidly as a result of shortfalls in previous budgets or a failure of other owners to pay their levies.

"The levies were way too low when we bought into the building, as the original developers still owned the majority of units and so were keeping the levies artificially low. This left the building completely underserved, and meant an enormous increase in levies as well as a huge burden of special levies at the 10 year mark when all the work required became apparent!" (Owner survey, respondent 127)

3. Owners on fixed or restricted budgets may find it difficult to pay special levies.

"But for people who are here on fixed incomes, if you were to put any kind of larger budget I think it would be frightening. I'm trying to never have a special levy, because I think that's harder for people on fixed incomes. But so much of your budget is guesstimates anyway." (Owner interview, respondent 64)

Information on what might be considered an acceptable level of arrears in levy payments for a scheme is limited and therefore owners corporations do not have any agreed benchmarks to judge this against. A rule of thumb when considering the extent of levy arrears developed by Teys Lawyers is given in Table 9.5.

Table 9.5 Delinquency Rates for Levy Arrears

Delinquency rate (over 90 days late)	Rating
0%	Good
5%	Average
10%	Bad
15%	Very bad

Source: Teys Lawyers, 2011d

A small number of survey respondents expressed concern that overdue levies had not been collected in their schemes:

The collection of the outstanding levies was not effective. The deceased estate still owed the body corporate over \$35,000 and nothing was done by the Strata Manager. For other outstanding levies, only reminder letters were sent to owners. (Owner survey, respondent 147)

Despite the issues raised above, there are steps that an owners corporation and its executive committee can take to encourage prompt payment of levies. These include:

- ❑ Measure delinquencies and let all owners know the consequences
- ❑ Charge interest on overdue levies
- ❑ Provide a discount for early payment of levies and make allowance for this in the budget
- ❑ Have a written levy collection policy and follow this policy
- ❑ Educate and inform owners about what the money is actually spent on
- ❑ In the case where a developer is holding multiple unsold properties in a building use a winding up notice to bring this to the attention of the banks. Once this notice is served the developer has 21 days to pay the debt or else be declared insolvent. Where the developer can pay, this will encourage them to do so.
- ❑ It is also possible for owners corporations to sue owners for unpaid levies.

The provision of clear guidance and information based on best practice examples would be a considerable help to owners corporations in managing these kinds of issues.

9.3 Spending

At least as important as budgeting and collecting funds is spending that money in a timely way:

"Some members have been very stubborn on certain issues and have been reluctant to spend even modest sums of money on key building maintenance expenses." (Executive committee survey, respondent 376)

"Repairing rusted section of roof. The EC [executive committee] continues to ask for more and more quotes and procrastinates on spending money on general maintenance. Unfortunately these difficulties have remained unsolved for over 8 months. (Executive committee survey, respondent 220)

Certainly, the amount of time it can take to decide how to spend money on repairs and maintenance in a strata scheme can be a concern:

"We're all working, and it does take a lot of time to go around and get quotes, and have meetings, and it's often stuff that we don't really know a lot about ... there's no one on there who's really handy and knows already about this sort of stuff, so I think that just means that it takes a lot longer." (Executive committee interview, respondent 147)

Another area that can cause contention in strata schemes is determining whether repairs and maintenance are the responsibility of the owners corporation or the individual lot owner (see Chapter 8):

"There have been several occasions when the Committee could not agree on whether the owners corporation or the owner was responsible for an item of expenditure. Our solicitor was asked for his opinion in such cases." (Executive committee survey, respondent 332)

Despite the requirement to maintain all common property (no matter where it is in a scheme), some owners may also be unwilling to fund repairs in another part of a building which does not affect their own apartment:

"Some members reluctant to outlay money on repairs to Units that are not theirs. i.e. front units face the water, are valued much higher, need most repairs, other owners do not feel they should have all the money spent on the front units." (Executive committee survey, respondent 90)

9.4 Financial reporting and record-keeping

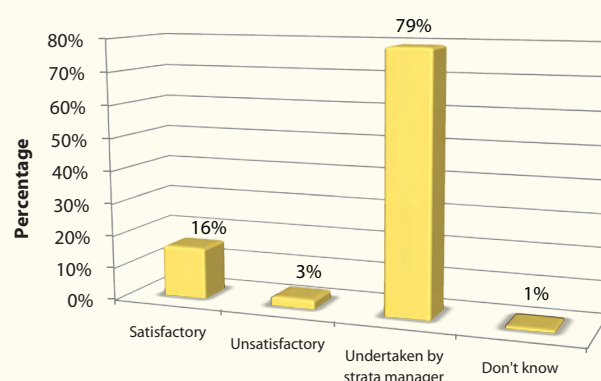
The final issue to consider in this Chapter concerns the standards of record keeping and financial reporting that are essential for the smooth running of a strata scheme. As indicated above, clear reporting of financial matters to owners (such as what levies are spent upon) can improve the likelihood that owners will pay levies,

and more readily agree to increases in levies. It can also improve the financial planning for a scheme:

“What would be really useful for an EC [executive committee], I think, would be if it was projected twelve months. With all the standard fixed charges – like maintenance contracts and insurances – along with the projected income from fees, so you could see where your finances were going, not just where they’d been ... It’s really a cash flow projection, I suppose. And if we could sit down and say, there’s a problem coming up here, what are we going to do with that? Or we’re progressing fine, here’s what the sinking fund and admin fund are going to be in twelve months.” (Executive committee interview, respondent 325)

Executive committee members were asked to rate the performance of their executive committees in regard to keeping financial records in good order. Figure 9.1 shows that the majority of respondents’ executive committee members delegated this responsibility to their strata managing agent. Of those who did not, the vast majority were satisfied with the performance of the executive committee. On the whole, therefore, owners were happy with the state of financial reporting. However, in those occasions where record keeping is not satisfactory, this can cause much confusion and distress to strata owners. This issue is discussed in more detail in Chapter 11.

Figure 9.1: Please rate your executive committee’s performance in regard to keeping financial records, accounts and statements in good order



Survey of executive committee members. 406 respondents. Single response question.

9.5 Summary

The main findings of this chapter are:

- ❑ Many owners are concerned that planning and budgeting for repairs and maintenance in their schemes is inadequate.
- ❑ The continued influence of a developer can have a significant negative impact on the management of finances in a strata scheme.
- ❑ Many owners are dissatisfied with the level of their strata levies.
- ❑ Coming to an agreement regarding spending money can be a difficult and slow process.
- ❑ There is a case for a system of indicative benchmarks to be developed regarding appropriate amounts of money to be put aside in sinking funds.



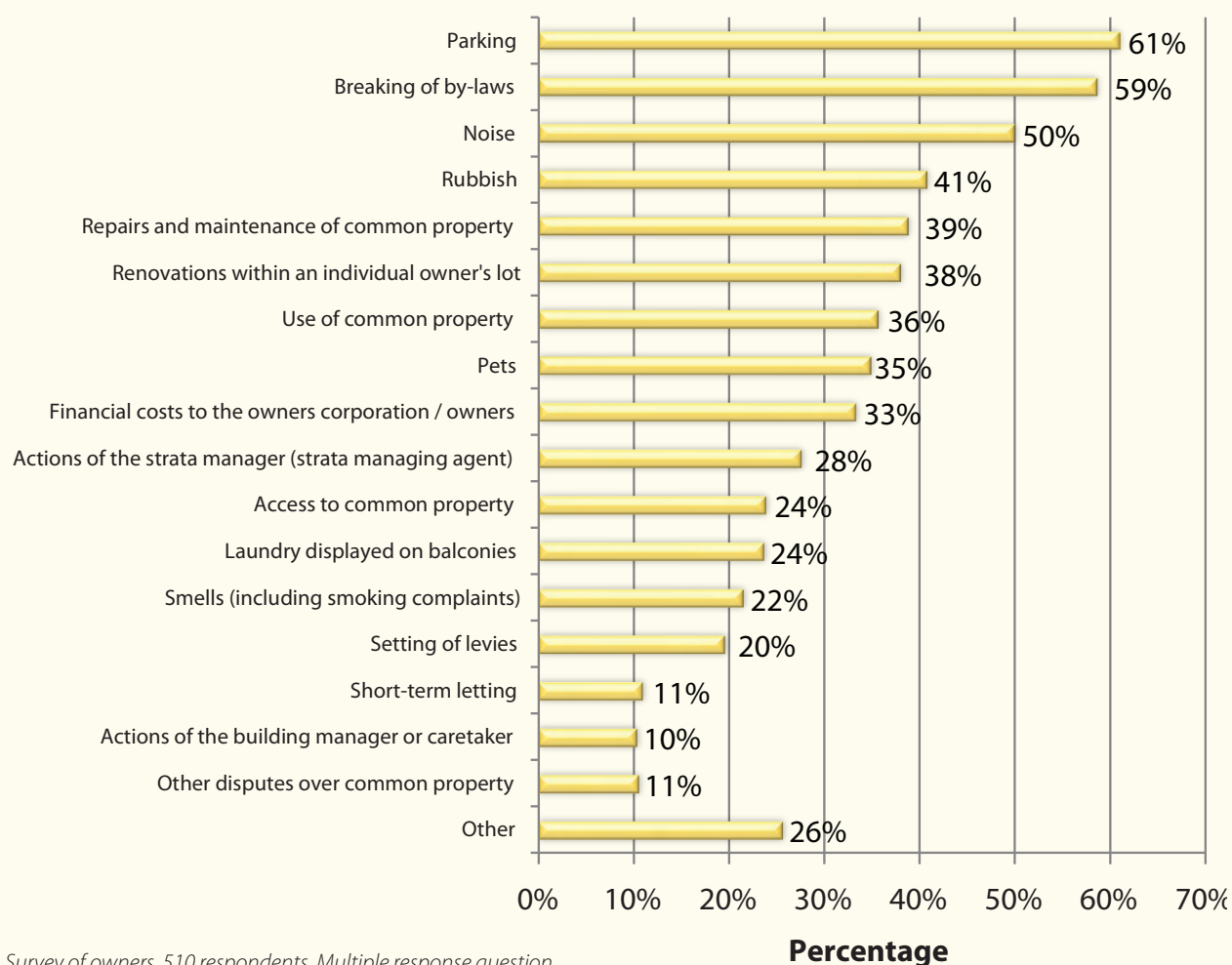
Chapter 10: Managing people

People are at the heart of the strata system. Strata title can be seen as a mechanism for managing the formal relationships between people who share a common financial interest in the strata building. Consequently, the issue of how these relationships are mediated on the ground is a key issue. The distinct built forms and social contexts associated with strata title living make these living environments more susceptible to particular kinds of social issues impacting quality of life, community well-being and the smooth running of schemes. The close proximity of neighbours and the shared ownership of built features and facilities necessitate a degree of shared responsibility and decision-making amongst owners, tenants, managing agents and building managers. In some cases, the necessity for negotiation between different stakeholders can lead to tensions in regard to social relations and attitudes as to what constitutes acceptable behaviour. This chapter outlines the major disputes reported by our survey respondents, dispute mediation and the influence of social relations for the smooth running of strata schemes.

10.1 Disputes

In the survey of strata owners, 51% of respondents indicated that there had been disputes between owners or residents or between the executive committee and owners or residents since they purchased their strata property while 38% said there had not. A further 11% did not know. The most common types of disputes identified in the owners survey are presented in Figure 10.1. Issues over car parking, the breaking of by-laws and noise were the three most prevalent complaints, although there were also a wide range of other issues mentioned.

Figure 10.1 What have the disputes in your strata scheme been in regard to?



Not surprisingly, managing agents were much more aware of the prevalence of disputes, with the vast majority in the managing agents survey reporting disputes in one or more of the schemes they managed (61% reporting that there were occasional disputes in the schemes they managed and a further 32% reporting that such disputes occurred frequently).

There seems to be a common recognition amongst all those involved in our research as to the main disputes in strata. Table 10.1 provides a list of the top five types of disputes in strata schemes identified through the three surveys. All three surveys ranked disputes over parking, noise and by-laws in their top five. In addition, disputes over rubbish, use of common property, repairs to common property and lot renovations all figured in the collective top five issues.

Table 10.1 Top five disputes in strata scheme, by survey

Most common disputes	Owners survey (n = 1,020)	Executive committee survey (n = 413)	Managing agent survey (n = 106)
1	Parking	Use of common property	Noise
2	Breaking by-laws	Parking	Parking
3	Noise	Noise	Breaking by-laws
4	Rubbish	Breaking by-laws	Rubbish
5	Repairs and maintenance of common property	Renovations within an individual owner's lot	Use of common property

10.1.1 Parking

Parking was identified as a particular issue of concern in the open responses of all three surveys, as well as in the in-depth interviews. The most commonly raised issue was cars parked illegally on common property, particularly in visitor car parking spaces. Parking was specifically raised by owners when asked what the major problem was they had faced as strata owners, and in giving examples of problems with the design of their scheme:

"Owner spaces near the common entrance mean visitors just 'dropping in' etc. illegally park in owners spaces." (Owner survey, respondent 219)

"Tenants with more than one car that insist on parking in allocated visitors parking spaces." (Owner survey, respondent 849)

Parking was also raised in the survey of executive committee members in relation to the design of their scheme and the main challenges they had experienced in effectively running their schemes:

"Parking areas are open to general public, which, along with owners/tenants abuses the visitor car park - difficult to put on an effective security gate." (Executive committee survey, respondent 311)

"We've put big notices up on the visitors parking spot saying 'residents, don't park here at all,' we had notices printed out that we stuck on people's windscreens when we saw they were parking there, we've spoken to people directly ... and still, the serial offenders just continue to serially offend. We did have the strata manager write to them as well" (Executive committee interview, respondent 325)

This issue was also raised by both executive committee members and managing agents when they were asked whether there are any challenges facing strata management in NSW that are not adequately addressed by the existing legislation:

"Illegally parked vehicles whether they are resident vehicles or visitors vehicles parked illegally to be towed out of the complex. This will eliminate more cars than car spaces for each lot and strangers taking advantage by parking in a scheme then catching a train to work or to go shopping, etc." (Managing agent survey, respondent 97)

"Power of an EC [executive committee] to enforce parking by-laws and effectively deal with illegally parked vehicles - Allow wheel clamping/tow away of offenders - Allow Council rangers or Police to assist in removal where emergency access routes are blocked by illegal parkers - Escalating financial penalty for multiple offences by same person/same vehicle" (Executive committee survey, respondent 25)

One managing agent noted that not only is this a potential annoyance for all strata residents, it could also have particularly significant impacts on people with special needs, including those people who need carers to be able to access visitor car parking:

"One of the factors that is impacting is the changing demographics of the older population, where a lot of people living in units now have carers [for elderly residents] come, and I have a number of buildings where the carers are coming to look after someone ... the only place they can park now is the visitor parking..." (Managing agent interview, respondent 35)

10.1.2 Noise

As well as being a major cause for disputes, noise was raised as an important factor influencing the quality of life of strata residents and when asked to describe the main problem they had experienced as a strata owner, some respondents specifically identified problems caused by noise in their schemes.

Noise is a particularly significant issue in strata schemes as unwanted noise can:

- ❑ negatively affect people's health and emotional wellbeing, including exacerbating mental health problems
- ❑ have adverse development effects on children and young people
- ❑ increase stress and discomfort, distraction and sleep disturbance
- ❑ increase relationship tensions between neighbours
- ❑ increase dissatisfaction with the dwelling. (EPA Victoria 2008, Evans 2006, Queensland University of Technology 2010)

The degree to which noise is a problem for apartment residents depends on:

- ❑ the type of noise
- ❑ whether the noise is constant or intermittent
- ❑ whether it is anonymous or identifiable
- ❑ at what time the noise occurs
- ❑ the mix of people in the building, and their habits (e.g. if they take their shoes off outside, if they hold parties on their balconies). (Kang 2010, QUT 2010)

There are two main contributing factors to noise problems in apartments, building design and quality, and resident behavior. Some owners pointed to the behavior of other residents as the main reason for noise problems:

"Noisy neighbours with electric guitar practice and loud home theatre systems." (Owner survey, respondent 154)

"Neighbours not considering other neighbours as living close together noises affects others." (Owner survey, respondent 976)

However, many responses identified noise issues that resulted from the quality and design of the building:

"Units of the 70s were simply but solidly built, but have poor noise insulation between units." (Owner survey, respondent 274)

"Noise is also a MAJOR on-going issue. Hear water running, chairs scraping on tiles, even know when someone going to the toilet. Minimum noise specs need to be up-graded in unit development / building." (Owner survey, respondent 688)

Respondents to the owners survey were asked whether their life would be easier if their building had been laid out differently, and were asked to explain their answers. Respondents specifically identified issues regarding the layout and quality of their buildings that affected problems with noise transmission. These can be divided into three groups of concerns:

1. The layout of the building affects noise transmission:

"The building is in a "U" shape therefore all noise emanates throughout the complex." (Owner survey, respondent 104)

"Two larger unit blocks on either side carry/ bounce sound directly into my unit block. The car park and balconies of the unit block next door is much too close to the bedrooms in my unit block, therefore disruptive noise levels are high, often at night/early hrs." (Owner survey, respondent 402)

2. The lack of sound insulation affects noise transmission:

"Better soundproofing in common walls between townhouses [is needed]" (Owner survey, respondent 251)

3. The positioning of rooms affects noise transmission:

"Kitchens backing onto adjoining apartment main bedrooms = excessive noise/vibration transmission." (Owner survey, respondent 18)

"Our lot and two others have common walls which sometimes cause noise problems as these adjoining rooms are not used for the same purpose i.e. our living room and our kitchen adjoin two bedrooms next door." (Owner survey, respondent 304)

Respondents to the executive committee survey also raised design and building quality considerations relating to noise transmission, including noise insulation between units, and the layout of rooms and positioning of the properties¹:

"The common walls have not been built so as to have any cavity or soundproofing in them ... Also, having the common wall between a lounge room and neighbouring bedroom creates all sorts of noise issues with stereos and different waking hours ..." (Executive committee survey, respondent 171)

10.1.3 By-laws and resident behavior

Disputes over by-laws cover a large range of issues. Each strata scheme has a set of by-laws, which are rules that all people living in the strata scheme must follow (i.e. both owner-occupiers and tenants). By-laws can cover such things as noise, vehicles, damage to common property, behaviour of residents and visitors, appearance of a resident's lot, garbage disposal and keeping animals. By-laws have to be registered at the beginning of a development, but new by-laws can be made, and existing ones changed, by the owners corporation. Strata by-laws must be made for the purpose of 'the control, management, administration, use or enjoyment of the lots or the lots and common property' (Strata Schemes Manage-

ment Act 1996 (NSW) s. 47), but aside from this, there are few limits on by-laws, except that they cannot restrict or prohibit children (with the exception of retirement villages and housing exclusively for aged persons), guide-dogs, or prevent or restrict a dealing relating to a lot (e.g. a transfer, lease or mortgage)².

At the end of the survey of strata owners, respondents were asked to identify the main problem they have experienced as a strata owner. Over 120 respondents identified breaches of by-laws and unacceptable behavior by residents as the main problem they had faced:

"Getting other owners and tenants to comply with bylaws, getting tenants to be respectful and having a community spirit [such as not leaving rubbish around on common property] ... tenants parking in visitor car-parking, tenants running a business from a small town house with regular truck deliveries damaging common concrete drive." (Owner survey, respondent 154)

"Owners who do not live here do not take responsibility for routine matters. Many tenants and agents are indifferent. Disposal and dumping of rubbish, visitor parking and security." (Owner survey, respondent 159)

On the other hand, one owner expressed her frustration at the desire of many owners to add new by-laws in their scheme, and a perceived reduction in the tolerance of residents to their neighbours:

"We've got this big atrium area, people with children ... their children ran all around the place and we loved watching them growing up and they rode their tricycles around and it was really heartwarming. Now somebody's child goes out onto the common area on their tricycle and there's immediate complaints about how they're upsetting the peaceful enjoyment of the building, and so then we have to start throwing strata laws at the occupier because they're not allowing the general 'peaceful enjoyment' of the rest of the residents, or it might only be one or two residents ... In my view it's becoming increasingly difficult to live in harmony with other people because we're a lot less tolerant of people's foibles and quirks and we're much quicker to draw on the rules and regulations and make sure that we're looked after and forget about the other person ... we're having to constantly increase the number of by-laws that we're passing." (Owner interview, respondent 21)

Dealing with breaches of by-laws

There are both formal and informal processes that can be followed when residents fail to comply with the by-laws of a scheme. These are:

- ❑ A resident, owner, executive committee member, managing agent, caretaker or building manager can speak to the resident to let them know that their behaviour is not allowed under the by-laws of the scheme.
- ❑ A formal letter can be sent to the resident telling them that they have broken a by-law, which by-law and on what occasion, and that they can be fined if they do not cease breaking that by-law. Such a letter is known as a 'notice to comply' and must be sent by the owners corporation. In most cases, the executive committee will have the authority to send this notice on behalf of the owners corporation.
- ❑ Where the resident breaking the by-law is a tenant it may also be useful for the owners corporation (through the executive committee) or the managing agent to send a letter to their real estate agent, and the owner of their lot to let them know that the tenant has received a notice to comply. If this is common practice in the scheme it can act as a deterrent for tenants breaking by-laws.

Tackling breaches quickly can often solve the problem. As one committee member put it in relation to tenants who break by laws:

"We tend to get onto them pretty quickly, depending on how bad it is. If it's a first offence, they tend to just get a pretty strong letter from the committee. If it's really bad and they get [the letter], the strata manager issues them a breach notice and the strata manager also informs the owner and the letting agent so they're put on notice." (Executive committee interview, respondent 110)

If these actions do not stop the problem and the resident breaks the by-law again within 12 months of the notice being served, the owners corporation can apply directly to the CTTT for the person to be fined up to \$550 (for each breach) for failure to comply with a notice to comply.

This is a common approach to dealing with by-law breaches. Of the executive committee survey respondents, 47% said that their executive committee had issued a formal notice to comply during their time on the

committee. Of those (195) respondents whose executive committee had issued a formal notice to comply, 22% of their owners corporations had applied to have a penalty imposed by the CTTT. If the resident does not pay that penalty, then the owners corporation can apply for an order from an adjudicator for compliance. Of those (42) executive committee respondents who had applied to have a penalty imposed on an owner or resident by the CTTT, 67% had had to obtain an order for an adjudicator for compliance.

If this still does not resolve the problem, then the formal dispute resolution process can be followed (see section 10.3).

10.2 Informal dispute resolution

The research findings show that in the majority of cases where disputes take place, a settlement is reached before formal measures need to be taken. This suggests that the informal mediation processes used by owners and managers are effective in defusing and resolving emerging disputes among parties. However, in around a third of cases where disputes were noted, more formal procedures had to be invoked, indicating a sizeable number of disputes proceed beyond informal mediation. If these results are typical of what is happening across the strata community in NSW, this implies a not insubstantial number of more drawn out disputes that are ongoing at any one time.

Respondents to the survey of owners were asked whether any of the disputes experienced in their strata schemes were resolved before there was a need to take formal measures. Of those respondents who said that there had been disputes in their schemes, almost two thirds. Of these, almost two thirds (61%) said that some disputes had been resolved before there was a need for formal measures, although 31% said that this was not the case (8% were not sure).

Similarly, of the 256 (62%) of executive committee members surveyed, who were aware of disputes in their schemes, a comparable proportion (62%) said that at least some of these disputes were resolved before there was a need to take formal measures, and 35% said this was not the case (3% were not sure), closely reflecting the findings of the survey of owners.

Respondents to the survey of managing agents also indicated that many disputes in the schemes they managed

were resolved informally. Of the 89 managing agents who answered this question 72% said that in some cases disputes in the schemes they managed had been resolved before there was a need to take formal measures, and additional 21% said this was true in all cases. Only 6% of respondents said that none of the disputes in the schemes they managed were resolved before there was a need to take formal measures.

Respondents to all three surveys were asked to describe the informal measures that were taken in their schemes to resolve disputes.

The most common response to this question in the owners survey (as well as in interviews) was that disputes were resolved through personal discussions and communication and negotiations between owners (raised by over 100 respondents):

“Generally it’s a matter of talking with people - most of them have no idea of the rules or by-laws - and no inclination to find out! Most people are reasonable when they’re approached on a friendly basis. Those that weren’t generally backed off once they were verbally threatened with formal action being taken.” (Owner survey, respondent 63)

“Direct approach to owner/s. Sometimes involving explaining rules, by laws. Trying to keep a sense of neighbourliness.” (Owner survey, respondent 190)

“When we have an owner coming to us with a problem ... I have tried to inculcate to say, ‘How can help? What is the issue? Do the by-laws allow us to apply common sense? Can we apply compassion, can we reach something so it’s a win-win situation?’ ... The initial approach should be one of compassion and trust and willingness to assist.” (Owner interview, respondent 152)

This was also the most common informal measure identified in the survey of executive committee members:

“We generally try to resolve issues through direct negotiation.” (Executive committee survey, respondent 60)

The findings of the managing agents survey also reflect the importance of personal correspondence and communication for dealing with disputes. Respondents to the managing agents survey said that the most com-

mon informal measures taken to resolve disputes in the schemes they managed were personal correspondence such as through a letter or a phone call, followed by a conversation, or informal mediation:

“Our strategy is, we work with the executive committee to identify the problem, we then write to the owner – and it’s usually a tenant ... and to the real estate agent. We find that’s a very good strategy ... I think talking to people makes a big difference, but I think the follow-up in writing makes a bigger difference” (Managing agent interview, respondent 35)

Some survey respondents specifically identified the role of the executive committee and managing agent in facilitating these discussions:

“The manager or a member of the Ex Com [executive committee] had a word with the owner. Sometimes the threat of a breach notice was made.” (Owner survey, respondent 994)

“Executive members brokered a compromise between the residents in dispute and the strata manager acted as an intermediary.” (Executive committee survey, respondent 270)

Other common informal measures discussed in the owners survey and executive committee survey, as well as in interviews included letters, notes and e-mails sent to owners, discussion of matters at strata meetings, and public notices and signage:

“If there’s a large disturbance, we’ve got a little note attached between the lifts on each floor, and we put up a shame notice and we just put the name in big letters – ‘The noise that you heard on Saturday night was from apartment whatever’, and we just leave it there for a week.” (Executive committee interview, respondent 110)

Although it is clear from the research that these informal negotiated approaches work well in most situations, the attributes needed for owners and managers to achieve positive outcomes from what can obviously be potentially difficult interpersonal negotiations indicate a high degree of interpersonal skills are needed. Whether owners and committee members possess adequate skills to achieve good outcomes is obviously a key determinant. However, it seems that it’s a matter of luck that a strata scheme includes active owners who have the capacity and willingness to take on this kind of role on a voluntary basis.

10.3 Formal dispute resolution

Where informal dispute resolution is not possible or has not been successful, people have the option of going to Fair Trading for mediation and adjudication, and to the Consumer, Trader and Tenancy Tribunal (CTTT) for tribunal hearings in relation to disputes in strata schemes.

Owners corporations, managing agents, owners, residents, people with an estate or interest in a lot and others bound by a strata management statement can use this dispute resolution process. In some cases interim orders can be issued by NSW Fair Trading, and in other cases, the local council or police may also get involved.

Respondents to the owners survey who indicated that there had been disputes in their schemes were asked, to their knowledge, what formal measures had been taken by their owners corporation in relation to a dispute. A large proportion (46%) of those respondents who said there had been disputes in their scheme said that no formal measures had been taken by their owners corporation in relation to a dispute. Amongst those in schemes where formal measures had been taken (40%), the most common measure (cited by the 23% who said there had been disputes) was mediation, followed by determination of a dispute by an adjudicator (14%), application for a penalty through the CTTT (14%), and a hearing at the CTTT (14%). The least common measure was to have a matter heard at the District or Supreme Court, although 21 respondents (4% of those with disputes) stated that their owners corporation had had a matter heard in court.

Mediation

If talking with others in the scheme is not enough to resolve a dispute, then the next step is usually formal mediation. Mediation services are available in NSW through NSW Fair Trading, Community Justice Centres (CJCs) and independent mediators. The purpose of mediation is to help people to understand each others’ point of view and to reach an agreement about what to do next that is acceptable to both parties. The mediator does not make decisions on behalf of the participants, or issue penalties.

The party that has decided to take the matter to mediation must formally request mediation. If that party is the owners corporation then a general meeting will need to be held to decide upon this course of action, and this must be recorded in the minutes of that meeting. If an individual owner decides to take action against the executive committee, for example, they can request mediation themselves (as an individual).

Once a formal request for mediation has been made, NSW Fair Trading or the CJC will contact the other party and ask them to attend. Mediation is voluntary, and if the other party refuses to attend mediation this will be recorded. The registrar at the CTTT needs to be satisfied that mediation has been attempted before any further action can be taken through the CTTT³.

According to official figures, in most cases mediations result in an agreement being reached. NSW Fair Trading reported that 70% of applications for strata mediation were successfully resolved in the financial year 2009-2010 (NSW Fair Trading 2010d: 19).

Adjudication

If mediation is not successful, or if the second party refuses to attend mediation, then the next step is to apply for adjudication through Fair Trading.

Once the application is received, all interested parties are asked to lodge written submissions to the CTTT on the issue under consideration, usually within 28 days. There is no hearing, and the adjudicator makes a decision based on the written submissions they receive. The adjudicator makes an order (a decision about what the parties must now do) and provide written reasons for their order(s).

If a person fails to comply with an order, an application can be made to the Tribunal for a penalty for failing to comply with an order. This penalty can be up to \$5,500.

If parties are not satisfied with an adjudicator's order, then they can appeal the decision. The mechanisms for doing this is to make an application for a Tribunal order.

Tribunal hearing

In addition to amending or revoking an order passed by an adjudicator, the following issues relating to strata schemes are also heard at the Tribunal:

- ❑ Changes to unit entitlements
- ❑ Changes to the management statement
- ❑ Penalty applications (for failing to comply with an order, or failing to comply with a notice to comply)

At the Tribunal hearing, parties will give evidence (in person) and the Tribunal member will make orders and give reasons for those orders. Legal representation is not required, although parties in strata scheme proceedings are automatically entitled to legal representation.

It is possible to appeal a decision of the Tribunal through the District court in limited circumstances.

10.3.1 The effectiveness of the formal dispute resolution process

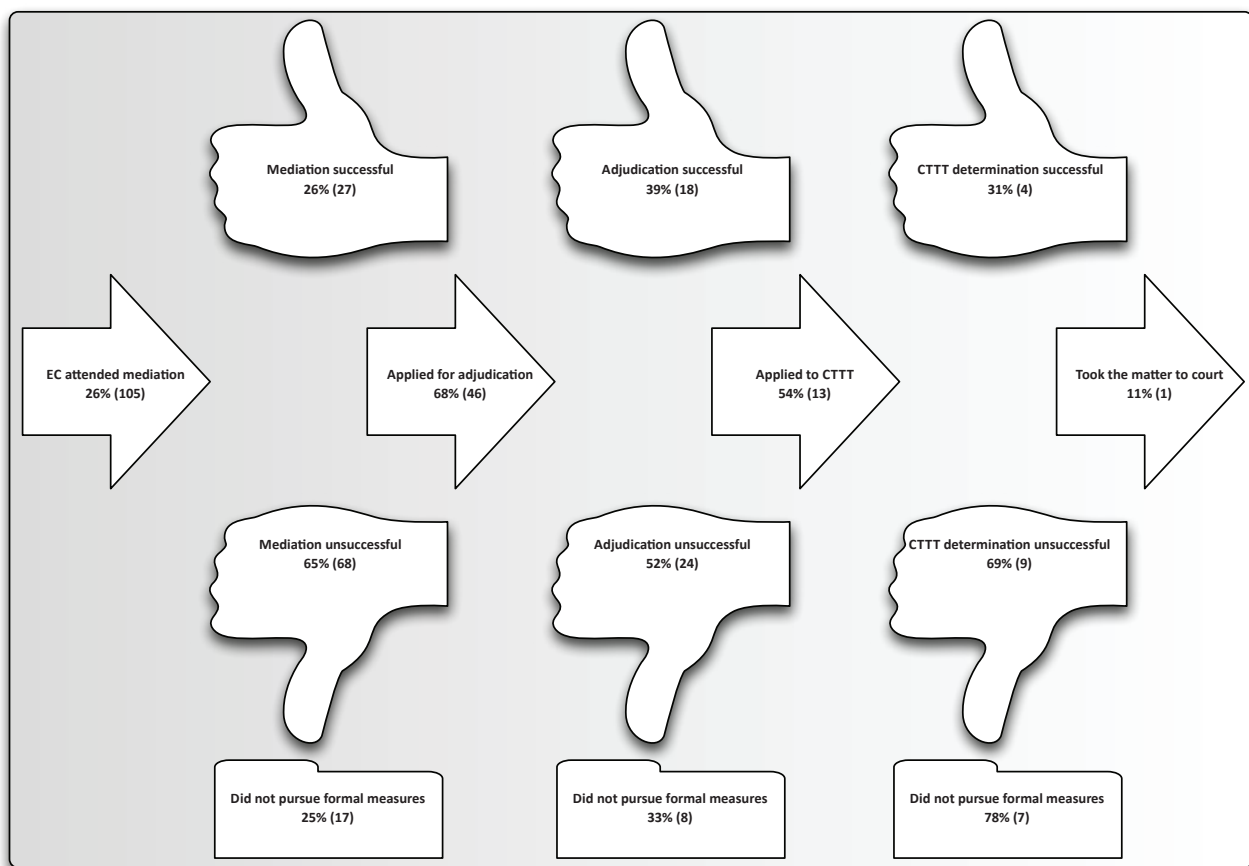
So how effective are these formal mechanisms in resolving disputes? Figure 10.2 presents the findings of a series of questions asked in the executive committee survey regarding the formal dispute resolution process. While the numbers involved are relatively low (just over a quarter (26%) of executive committee survey respondents - 105 in all - had sat on a committee that had been requested to attend, or sought, mediation through Fair Trading), what the analysis demonstrates is that at each stage of the dispute resolution process, significant proportions of executive committee survey respondents reported that the dispute resolution process had not been successful in resolving a dispute, and, moreover, a significant proportion seem to have simply dropped out of the process altogether.

This suggests the structure of mediation and dispute resolution, while perhaps complex, does serve to resolve many disputes in strata schemes without recourse to expensive and perhaps challenging court proceedings, with only one case going on to a court hearing. However, it is also clear from these figures that a sizeable number simply gave up at one or other of the stages. Unfortunately, no information was gathered in the survey as to whether these issues were resolved.

This mixed view of the success of the formal mediation and adjudication system was also reflected in comments from some owners:

*"My experience with the Tribunal is, I've got no faith ... From what I've been told by people who have dealt with strata and solicitors and things, apparently I'm doing really well to have gotten as far as I've gotten, because there are a lot of other people that haven't even got as far as I have."
(Owner interview, respondent 548)*

Figure 10.2: Reported success of the formal dispute resolution process, executive committee survey respondents



Results from the survey of strata owners and interviews support this finding. Respondents to the owners survey were asked whether disputes addressed through formal measures in their schemes were resolved as a result of those measures. Of the 195 respondents who answered this question, 42% said that all disputes were resolved, 31% said that some disputes were resolved while others were not and 26% said that no disputes were resolved. Table 10.2 presents these results by the type of formal measure taken. These results suggest that the success rates of all types of formal dispute resolution are similar:

"In my previous building we had ... repeated difficulties with managing commercial tenant owners and we repeatedly took two of those owners to mediation ... the second one we went to mediation twice and it was a waste of time. He entered into agreements which he had no intention of honouring. I left the building by that point and the other people just gave up on it, were worn out by it ... I know the adjudication process is there to go back to get compliance but I think people just gave up in the end and I suspect you've got to be pretty committed to be prepared to go through that process because it can be quite adversarial even though I thought the people managing it were quite skilled and reducing that adversarial quality. It nevertheless is, because you're sitting there facing somebody you see regularly having to have a very challenging discussion." (Owner interview, respondent 711)

Table 10.2: To your knowledge, what formal measures have been taken by your owners corporation in relation to a dispute? Responses against whether the dispute(s) addressed through formal measures were resolved as a result of those measures, survey of owners

	The dispute / all disputes were resolved	Some disputes were resolved while others were not	The dispute / all disputes were not resolved	Don't know	Total (100%)
The owners corporation applied to have a penalty imposed by the CTTT	35%	38%	24%	3%	63
The owners corporation obtained an order from an adjudicator for compliance	39%	33%	25%	4%	49
The owners corporation (or its EC) attended mediation through Fair Trading	47%	30%	22%	1%	106
The owners corporation (or its EC) had a dispute determined by an adjudicator	47%	38%	15%	0%	66
The owners corporation (or its EC) had a matter heard at the CTTT	43%	33%	24%	0%	67
The owners corporation (or its EC) had a matter heard at the District or Supreme Court	30%	30%	35%	5%	20

Open responses to the surveys, as well as comments made during interviews demonstrate that some strata owners have found the formal dispute resolution process to be challenging. In particular, concerns were raised regarding the complicated nature of the processes involved, the speed in which disputes can be resolved and the legalistic nature of the formal processes, especially once issues reach the Tribunal:

"There is nothing in the Act and the system – whether it's the OFT [Fair Trading] or the Tribunal - to get quick, remedial action. The lack of speed for remedy of problems in strata is one of the big problems. There's no recourse to a quick fix." (Owner interview, respondent 139)

"Anyone who goes to the tribunal will get a dose of law, but no justice." (Owner interview, respondent 139)

"You get this really clunky system of mediation and dispute resolution through Office of Fair Trading which cost a bomb and in the end what it's doing is putting band-aids over the problems which are partly personal, partly interpersonal,

partly to do with confidence ... it's a really flawed scheme and it's based on an assumption that any building will have within it the expertise, the commitment and the good will to come together and manage the most significant asset they will own in a cooperative way. You only need one or two aberrant personalities and the whole thing goes out the window, and that's really unfair on people, and they frequently don't have the skills or the emotional resources to go on dealing with stuff like that." (Owner interview, respondent 711)

These comments indicate the personal strain the pursuit of dispute resolution imposes on the protagonists in such cases. Clearly, no formal system can alleviate these pressures completely, given the highly personal nature of many of the problems and many protagonists will feel aggrieved if the outcomes are not entirely favourable to them, regardless of the facts of the matter. Nevertheless, these results indicate that some review of current practice may be needed to explore how the outcomes of the mediation and adjudication process can be improved upon.

10.4 The influence of social relations

The success or otherwise of dispute resolution in strata schemes is largely reliant on social relations in a scheme:

“Where there’s goodwill, a strata plan works, and I think in my own strata plan where I live, there is lots of good will. Owners are cooperative. The Owners Corporation Network makes it quite clear that there are strata plans that are toxic and you have to thrash it out through the tools that are available, and that’s stressful, it’s expensive and the outcome’s not necessarily that good.” (Executive committee interview, respondent 9)

While social relations are expressed in a formal way through disputes and breaches of by-laws, the surveys and interviews provided a lot of additional information about different aspects of social relations in strata schemes that can both influence, and be influenced by, governance and management of schemes. In particular, many respondents spoke of their frustrations with the behavior of residents who did not know how to live well in density, and the difficulties caused by particular individuals. Respondents also spoke of the particular importance of the personalities and characteristics of executive committee members for the successful management of their schemes.

10.4.1 Living well in density

People who participated in the survey of strata owners were asked to identify the main problem they have faced as a strata owner. Many respondents identified the behaviour of residents in their schemes as a major cause for concern:

“The main problem is that there is always ‘one’, sometimes more, who move into a strata scheme who really should be living in the middle of five acres. They do not understand (nor want to) the concept of shared living. This is getting worse with the general trend to not take responsibility for one’s actions and flaunt the common sense rules which exist as part of the Act.” (Owners survey, respondent 62)

Harmonious higher density living arguably necessitates a degree of consideration, compromise and tolerance that supersedes what is necessary in lower density living:

“I think people still have this idea it’s my home and I can do whatever I want in it and I think if just that idea were better explored and people were to understand that your rights to enjoy your home as you want to does have a limit and it’s actually probably a lot earlier than you would hope or like to think, then I think people might live better together.” (Owner interview, respondent 1004)

“Because people live so close to one another. You’re often only a brick’s width from another person, and if there’s been something nasty or there’s been factions that have happened in a committee or in a building because of some behaviour, people are bumping into those people every day, and it’s not nice for your living.” (Owner interview, respondent 64)

Good relationships with neighbours can have significant positive benefits, not only for the individuals involved, but also for the smooth operation of the scheme. Positive relationships can increase the likelihood of good communication, tolerance and collective problem solving. The degree to which residents in higher density housing experience positive neighbor relations appears to be largely context-specific. Easthope and Judd (2010) found an abundance published evidence associating higher density living with both negative and positive social outcomes. They argue that this indicates that it is not residential density in itself that results in positive or negative social interaction, but rather the mix of residents and the design and quality of the building.

Lower levels of neighbourliness have also been linked to a large proportion of renters and a subsequently high rate of tenant turnover (Henderson-Wilson 2008) and it is suggested that residents who do not have long term plans to live in a development are less likely to invest in building social ties or community participation (James and Carswell 2008). This may extend to renters having less interest in the ongoing social viability of a development than owner-occupiers who generally have longer term interests (Randolph 2006: 26).

Of those respondents to the owners survey who identified breaches of by-laws and unacceptable behavior as the main problem they had faced, half explicitly identified problems with the behavior of tenants in particular in their scheme:

"As an owner and EC [executive committee] member the primary problems are gaining the understanding of tenants from different cultures that the by-laws determine allowable behaviour and must not be breached." (Owner survey, respondent 79)

"Tenants not respecting common property or how a strata scheme is run. Owners tend to be more responsible and assist in keeping property clean/tidy." (Owner survey, respondent 282)

However, some interviewees noted that tenants had not been made aware of the by-laws in their schemes. Indeed, while landlords or real estate agents are required to provide new tenants with a copy of the by-laws for their scheme within 7 days of moving in⁴, in some cases tenants appear not to be aware of by-laws in their schemes:

"There's a million and one things that people do in buildings that cost absolutely hundreds of thousands of dollars to the body corporate, and it's always done by a tenant, and only because they're clueless. They're not doing it to go out of their way to be a pain, but they do it regardless. But once you tell them, it's uncanny, that all that crap stopped happening for us." (Owner interview, respondent 536)

"You have to go around and knock on their door and you have to educate people, what the rules are, and they go, 'I didn't even know what a by-law was'. We have them displayed and we give them copies of them, but of course nobody's going to sit there and read them all." (Owner interview, respondent 537)

10.4.2 Personalities

Some interview and survey respondents spoke about the negative impact that could be caused by particular problematic residents and owners in a scheme:

"When you're living in a strata plan and you're supposed to be living as a community together and administering your own affairs and having regard for your neighbour, it doesn't work when you've got someone who's got a whole problem in their life that doesn't sit well with strata ... If there was a local mental health service we could probably go to them and say, we don't want to have

this man living with us here when they're so upset, and they might have the authority to talk to him"
(Owner interview, respondent 64)

"It happens very rarely, by the way....I manage a thousand lots, and of it I've got about fifteen people who are difficult. I hardly think that's onerous. But they're the ones that call all the time and cause the headaches. I manage around sixty schemes and I would say I've probably got two to three schemes which are extremely difficult, and that's usually because the executive committees are young, in their twenties, and they really don't want to understand what collective living is about and they tend to want to push their weight around because it's a voluntary position." (Managing agent interview, respondent 35)

However, the majority of comments relating to problematic individuals and their influence on the governance and management of their schemes referred to executive committee members. This is perhaps not surprising given that one survey focused on the running of executive committees, and respondents to the survey of owners included a large number of executive committee members..

Of those executive committee members who said that they were dissatisfied with their executive committee (72 respondents), undue influence of a member or clique on the executive committee was the most common reason given for dissatisfaction. Further, when asked about occasions where the executive committee had had difficulty coming to a decision, some respondents mentioned a particular person whose dominating or vexatious attitude or behavior affected the operation of the committee. Problems with particular executive committee members were the exception, rather than the norm amongst our respondents. However, the severity of the concerns raised regarding autocratic behavior, bullying and intimidation warrant attention:

"At the AGMs the Secretary tells everyone who the other Exec Comm [executive committee] members are going to be for the next year. There is no vote." (Executive committee survey, respondent 329)

"The President and the Secretary are married and they use the proxy votes of elderly owners to get their way. The President bullies anyone who challenges him ... Committee members generally give in." (Executive committee survey, respondent 152)

"It was very difficult when you've got someone with a personality like that, even though you've got six people voting against them, he [the Chairman] did what he wanted. And usually at the meeting he shouted everyone down and they were all too scared to speak out. They'd nod their heads or say nothing, and they'd go away and whinge behind his back but they wouldn't speak up at the meeting." (Executive committee interview, respondent 206)

Respondents pointed out that such problems can stymie decision-making, create toxic committee environments, waste time, and deter owners from wanting to sit on the committee:

"A few hostile, uncooperative EC [executive committee] members, forming a clique, block timely decision-making, especially in regard to maintenance of common property." (Executive committee survey, respondent 275)

As well as problematic individuals on the executive committee, concern was raised in the surveys and interviews about the existence of cliques within the executive committee resulting in poor management and biased decision-making:

"Certain people in the complex have received certain favours that other have not, so they're happy to give their proxies to the executive committee ... parking favours, storage favours, gardening favours" (owner interview, respondent 567)

"Difficulties are not resolved as one person has too much control and his support person now has an AVO against him due to abuse in meetings. More time is spent on assumptions and attack than dealing with business. Myself and another have had two OFT [NSW Fair Trading] mediations with no positive outcome. Basically the SS [strata scheme] is being run by three incompetent people who behave inappropriately creating a toxic environment." (Executive committee survey, respondent 165)

Survey respondents and interviewees also pointed to the poor conduct of some executive committee members in meetings:

"At the AGM it was horrendous ... it just turns into this giant screaming match at me, and it's when the guy ... he's very explosive, he's the one that was screaming and swearing and stuff, when he starts leaning over the table and pointing his finger in my face, I just stood up and said, 'This is intolerable'; walked out, vomiting in the car park afterwards ... you're just actually physically afraid to attend the AGM meetings." (Owner interview, respondent 548)

"I believe a voluntary committee doesn't play by the rules that you might play by in an office situation that's more formal, where you're more accountable. So there's less politeness, and in any small group of people, the stronger ones, or the ones who can articulate their message clearer, appear to have more sway. In my case that has divided the committee" (Owner interview, respondent 76)

"The current committee is largely dysfunctional, with shouting, feuding, and inappropriate behaviour evident. Some members want the committee to do things their way, or want to run the building to suit their own preferences. Some members are impossible to deal with, or are persecuting some other tenants and owners about trivial things." (Executive committee survey, respondent 194)

While problematic individuals or cliques on the executive committee can have a devastating impact on the quality of governance and management in a strata scheme, at the other end of the spectrum, some survey respondents and interviewees spoke about how particular individuals on their executive committees had had a very positive impact on the running of their schemes.

There was plenty of evidence in the research of executive committees that function well with a strong group of often highly skilled and conscientious volunteer members. Many of the owners who had executive committees that ran well spoke about the importance of the skills and commitment of members for the success of their scheme:

"We have been lucky in having a committed body of owners that has not had any problems that could not be resolved." (Executive committee survey, respondent 65)

"You can get people on an executive who are authoritarian and the whole thing breaks down, but I don't feel that ours is of that ilk." (Owner interview, respondent 21)

"We have a fairly broad professional skill set [including a lawyer, engineer, accountant and IT professional], which is a big advantage...we're pretty much alert to all the tricks and ways that business and government work." (Owner interview, respondent 152)

"The committee's breadth of skill and rigour of process is a great success. The chair of the committee is ... [a] very skilled meeting chair... very skilled meeting chair, very diplomatic in manner and I think very capable of managing a range of personalities very effectively. The treasurer – very strong –professional accountant ... very good at that strategic financial management, so not only day to day, but setting up longer term strategic financial building management and maintenance plans. And then a bunch of people that bring a diversity of interests to it, and ... have a respect for each other and civilised interpersonal skills with each other." (Owner interview, respondent 711)

10.5 Summary

The main findings of this chapter are:

- ❑ Many strata schemes experience disputes. The most common disputes are those over parking, noise, and adherence to by-laws.
- ❑ Most disputes are resolved through informal dispute resolution.
- ❑ Some executive committees do not pursue formal dispute resolution measures, even when the dispute has not been resolved.
- ❑ The role of interpersonal relationships and skills amongst residents, owners and committee members are critical factors in determining the success or otherwise of strata living and management.

(Endnotes)

- 1 For more information regarding acoustic privacy in strata schemes in NSW, see Barton (2012).
- 2 Schemes registered before the commencement of the *Strata Schemes Management Act* on the 1st July 1997 generally have 19 model by-laws set out in schedule 1 of the Act, including by-laws relating to noise, vehicles, obstruction of and damage to common property, behaviour of residents and visitors, appearance of a resident's lot, changes to floor coverings, garbage disposal and keeping animals. Schemes registered from 1st July 1997 can choose one of six sets of model by-laws or can prepare their own by-laws. The two sets of model by-laws relating to residential strata properties are the model by-laws for residential strata schemes (*Strata Schemes Management Regulation 2010* (NSW), sch 2) and model by-laws for mixed-use schemes (*Strata Schemes Management Regulation 2010* (NSW), sch 7). The model by-laws for residential schemes include 22 by-laws similar to those in the model by-laws for older schemes with the addition of by-laws relating to fire safety, the possibility for the owners corporation to serve documents on owners electronically, compliance with planning regulations, and provision of services (such as window cleaning, electricity, cable TV) to lot owners. The model by-laws for mixed-use schemes include a set of 24 by-laws, similar to those for residential schemes, with the addition of by-laws on control of hours of operation and use of facilities and the prevention of hazards.
- 3 Exceptions are matters relating to the appointment of a compulsory strata managing agent, compensation, allocation of unit entitlements and penalty disputes. In some cases, where an adjudicator is satisfied that there is "a real and present danger to persons or property, or where the Adjudicator considers that if they do not make an interim order, the applicant will be disadvantaged in such a way that cannot be remedied by further orders", an interim order can be made by the adjudicator without the need for mediation (NSW CTTT 2009b).
- 4 *Strata Schemes Management Act 1996* (NSW), s 46.



Chapter 11 Managing information

In order to make sound decisions as members of their strata schemes, people need access to information and an understanding of how to interpret that information. Information, communication and education for strata residents, owners, executive committee members and managing agents are essential for the successful management and governance of strata schemes. This chapter considers these issues in three parts. The first part discusses the information available to owners before they purchased their strata property and the information available to them while living in the property. Part two highlights issues around communication between managing agents, executive committee members and other owners in a strata scheme. Finally, part three considers the need and opportunities for education for strata owners, executive committee members and managing agents. In general, the findings suggest that while there is information available from a variety of sources, for many individual owners and committee members, finding it often proves difficult.

11.1 Information

11.1.1 Information when purchasing

The majority of owners who completed our survey (86%) had not experienced any problems obtaining relevant information about the strata scheme they were buying into. However, 14% said that they did experience some problems:

“The problem with community living is that there’s no option where people who, before they buy property in the community living, are educated as to what it is. Nobody knows about strata laws, people buy into strata without any kind of education and I would put in the policy

of selling that people should read what it is to be living in strata ... before they sign on dotted line and pay money. To be honest with you, a lot of people come into strata living for the first time in their life, especially older people who used to live in their own homes, and there was a lot of people coming from different cultures, don’t speak English and don’t even know that it’s not just their place, it’s a place of community living and there are certain laws they need to abide by.” (Executive committee interview, respondent 398)

Owners survey respondents who said that they had had difficulty obtaining information on purchase were asked to describe the difficulties they had experienced. Common responses to this question included:

1. The minutes from owner corporation and executive committee meetings were either unavailable, or incomplete:

“The available minutes were very brief and did not disclose a number of problems. This is still the practice.” (Owner survey, respondent 899)

“Minutes of previous OC [owners corporation] meetings did not reveal the extent of problems in the building.” (Owner survey, respondent 878)

2. The information that was provided was incomplete or incorrect:

“It was a new building and pretty much any information we were given turned out to be false.” (Owner survey, respondent 265)

“Unable to get accurate info from RE [Real Estate] agent, vendor, builder and council. Agent inaccurate

rate, Vendor/builder lied or wouldn't reply, council made it difficult to obtain construction documents for the off-the-plan development." (Owner survey, respondent 516)

"It became apparent that after purchase that the financial records weren't accurate." (Owner survey, respondent 566)

One strata managing agent also noted that it can be hard to undertake their role when the information available to them is incomplete:

"I don't have any drawings of where storm water lines are in some of the complexes so it's very difficult to give some of the information on where to start digging up when there's a blockage ... that was one I inherited from another strata manager and that wasn't there." (Managing agent interview, respondent 17)

3) Information was difficult to obtain from the strata managing agent:

"There were problems from both the owner and the real estate agent handling the sale, and they had to contact the strata manager a number of times to get the documents." (Owner survey, respondent 508)

The types of information that people were unable to access at the time of sale (in addition to meeting minutes) included financial records, insurances, management agreements, and records on building defects and building works.

The most commonly cited type of information that was difficult to obtain was by-laws for the scheme¹:

"Nobody could tell me what the by-laws of the strata were. I had to wait till I bought to property to get them." (Owner survey, respondent 632)

The 2002 Campbell Inquiry into the quality of residential buildings was "not satisfied that purchasers of strata titled units are provided with adequate information about the nature of strata schemes generally and, in particular, about planning requirements and avenues for redressing problems" (Joint Select Committee on the Quality of New Residential Buildings 2002: 173).

Improvements have been made since the Campbell Inquiry, including the creation of the Home Building Advocacy Service and the Home Purchase Advisory Service. However, a discussion paper released by the office of Clover Moore in 2009 reported that new owners

(and tenants) often complain that they were not aware of the by-laws or thought that the by-laws were not enforced. The same paper also reported that owners and their representatives (e.g. their solicitors) were not aware of strata management statements (required in buildings with part-building strata schemes) or community management statements (required for strata schemes that sit within a community title scheme). Some of the owners survey respondents and interviewees had had similar problems:

"My conveyancer told me next to nothing about strata living. In retrospect I wish I had been given the booklet 'Strata Living' before purchase." (Owner survey, respondent 610)

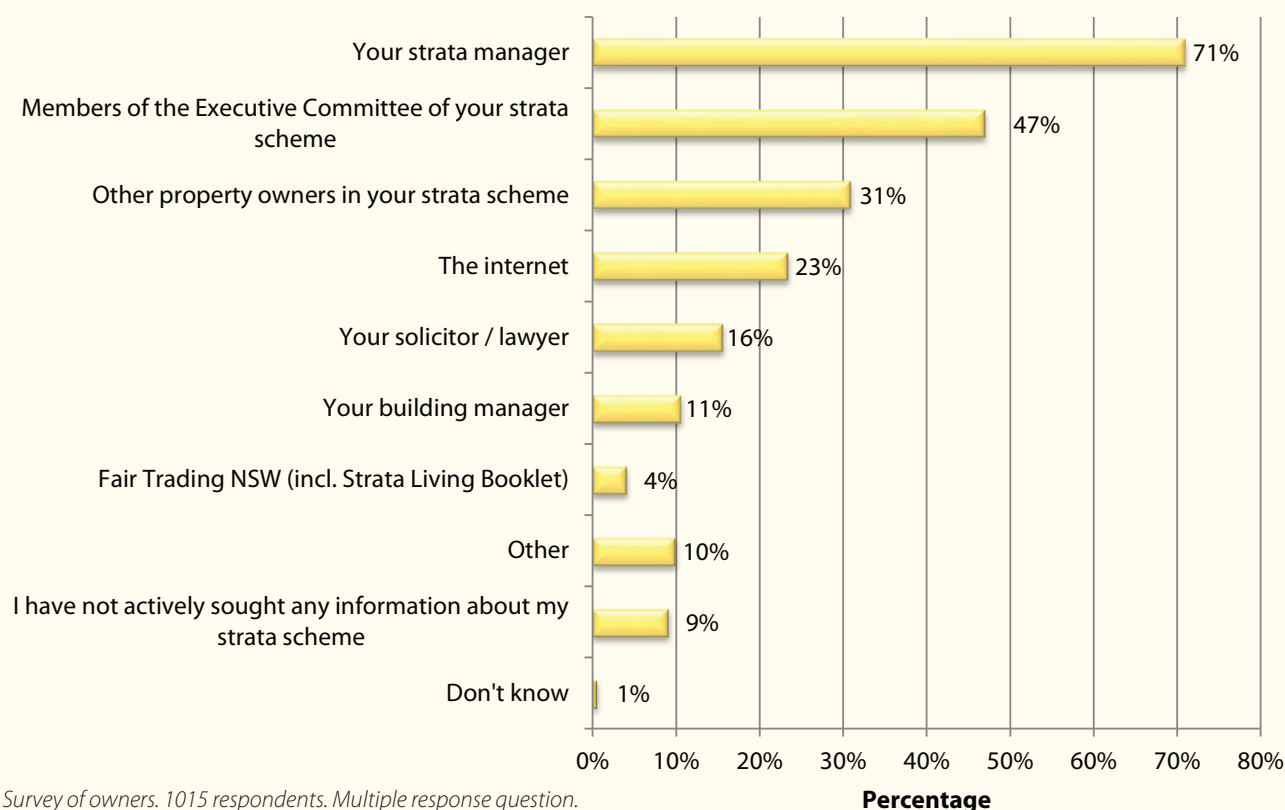
"Selling agents ... often pass the buck and say the solicitors will explain all of that of where the common property is and the boundaries of what you've bought. Well the potential buyers need to know right up front before they're ready to sign the contract what they're likely to get themselves into. Selling agents are hesitant to give too much information because they want the sale. And then the solicitors – some are excellent ... but there are other ones who just [say] ... sign this sign that ... their consultation is half an hour and that's it. So I'm finding at the first AGMs ... a lot of them haven't got a clue of what they've bought or not bought." (Managing agent interview, respondent 17)

People who had bought into a new development off the plan identified particular problems they had had in obtaining information at the time of sale:

"[I] was not given the correct information regarding some of the by-laws until settlement and we received a full copy of the by-laws. We purchased off the plan and by-laws were not included in the original contract. We were told they had not been drawn up yet." (Owner survey, respondent 27)

"Not that they [the developer and the developer's solicitor] were uncooperative at all, it just seemed that they were not really familiar with how strata works, which was supposed to be their responsibility. In other words, when a third sells, then a meeting should be convened. It wasn't until I said, 'My purchase constitutes the third sold, when are we having the meeting? And the developer said, 'Oh, do we have to have one now? I thought it was when all the units were sold.'" (Owner interview, respondent 64)

Figure 11.1: Since purchasing your lot, where have you managed to get information about your strata scheme?



11.1.2 Information since purchasing the property

Respondents to the survey of strata owners were asked where they had managed to get information about their strata scheme since purchasing their lot. The most common source of information for strata owners about their strata scheme was their strata manager (71% of respondents), followed by members of their executive committee (47%), other property owners in the scheme (31%) and the internet (23%)² (see Figure 11.1).

While 29% of respondents to the owners survey had not had problems getting information about their strata scheme since purchasing their property, 21% had had some problems. Respondents were asked to describe the nature of the problems they had experienced getting this information. In response to this question, owners discussed the types of information they were unable to access, the source of the information they were unable to access and the quality of the information they did access.

With regards to the types of information, the most common types of information people had had difficulty accessing since purchasing their properties were information about building plans, information about building works and information about their scheme's finances.

Other types of information people had had difficulty accessing included information about their schemes' by-laws, the boundaries between lot and common property, contracts (including insurance and strata managing agent contracts), contact information (e.g. for executive committee members and managing agents), the strata roll, and the responsibilities of owners:

"I wanted to find out where electrical cables were located in order to renovate. However, it became clear that electrical plans were never kept. The chief electrician personally helped me to install a toilet in my utility room (as he knew the general layout of the cables)." (Owner survey, respondent 536)

"The building has had to have significant structural and water proofing rectification works and it has been extremely difficult to get written information / reports on what works have been completed and what still needs to be addressed. There is no formal approved works program." (Owner survey, respondent 132)

"Chasing up financial statements has been difficult. I also had to request a copy of the by-laws and had lots of problems getting the strata manager to contact me about issues in the building." (Owner survey, respondent 485)

With regards to the sources of the information, the most commonly mentioned source was the strata managing agent, followed by the executive committee, the developer or builder and the building manager. Many of the comments regarding getting information from the strata managing agent referred to the unresponsiveness of the managing agent to requests (this was addressed in Chapter 7).

With regards to the quality of the information they were able to access, owners survey respondents complained of incomplete, incorrect and confusing information, conflicting advice, and poor record keeping:

"During self-management, the secretary would not inform the owners he didn't like about OC [owners corporation] meetings or EC [executive committee] meetings. All sorts of resolutions would be passed without knowledge of other owners ... Documents were missing from the executive committee's files. No-one knows what exactly was there or where they went." (Owner survey, respondent 272)

"We never received any information about our strata scheme at all. Since moving in every 3 or 4 months I receive a regular bill from them to pay my levies and sometimes I also receive a letter stating things which I don't understand at all" (Owner survey, respondent 382)

"On many occasions when I have tried to find things out I have experienced the building manager and the strata managers both pointing at each other claiming the other party should know / inform me, and neither seems to have a clue." (Owner survey, respondent 770)

In addition to information specifically relating to their own scheme, owners were also asked where they have sought general information about strata title ownership and management. The most common source of such information was NSW Fair Trading and the Consumer Trader and Tenancy Tribunal (43% of respondents), followed by the internet (38%), members of the executive committee (30%), other owners in their scheme (20%) and executive committee members in other schemes (18%)³.

NSW Fair Trading provides general information online and in printed publications and assistance with specific queries online and over the phone. Fair Trading's 'Strata Living' booklet in particular was identified by many interview and survey respondents as a particularly useful source of information:

"It's a very good publication and they love it ... I find that when I do give that to people they actually keep it as a reference." (Managing agent interview, respondent 35)

However, some respondents expressed frustration with the service provided by NSW Fair Trading:

"I just feel sorry for people who might not have any support or don't know where to go, and the Office of Fair Trading was no help whatsoever. I just kept getting different answers." (Executive committee interview, respondent 291)

"It seems that there's a lack of administrative structural framework that probably restricts them [NSW Fair Trading]. I think there's also a lack of expertise and not a willingness to be involved ... it's probably due to the amount of money, the lack of financial support they have ... I feel that the rules and regulations they work under, if they were strengthened, would produce better outcomes." (Executive committee interview, respondent 37)

Many other organisations and individuals also provide information about strata living on the internet. Recently there has been a growth in strata-related internet resources and especially sites that are interactive and collaborative allowing people to contribute content and answer each other's questions online. Appendix 7 provides some examples of different types of online information resources that are currently available to strata owners. However, while a lot of information is available, some respondents noted that it can be very difficult to sift through all of this information to find what they are looking for:

"There is information there but it is very general, and you also have to search quite hard for it. So I've just spent hours Googling how much notice do I have to give for an executive committee meeting, and do I have to take minutes, and if so, who should do it, and do they have to be on the noticeboard, little things like that. So if it just had, this is how you organise a repair ... And things like, if something goes wrong, who should I call? What sort of things are covered by strata, what things aren't, just in more layman's terms." (Executive committee interview, respondent 147)

Certainly, a particular issue identified by interviewees was the difficulty of having to sift through a large amount of available information in order to find what they were looking for. This was the case in regard to information about strata title in general:

“The information is out there if you want to find it ... Even though it’s there, it doesn’t fall out of the sky, you’ve got to go looking for it, and then you’ve got to work out what’s relevant and what isn’t relevant, and believe me it all takes time. I don’t think I would ever have been able to do it when I was working full time ... You’ve really got to have that sort of time.” (Owner interview, respondent 63)

It was also the case in regard to information about specific schemes:

“You really needed to sit down and look at it, because this great, massive pile of papers come, and I think for the first couple of years, we didn’t pay much attention to it...The information’s there, frequently it’s buried just in the amount of information there is...I can understand how some people don’t understand it very easily.” (Owner interview, respondent 63)

While the majority of respondents (84%) had not had any problems accessing general information about strata title ownership and management, 16% said that they had experienced some problems.

What information is needed?

Those survey respondents who said that they had had problems accessing general information about strata title ownership and management were asked what other information they would like to be able to access. Common responses to this question were:

1. Clear explanations of the laws that apply to strata schemes, including the *Strata Schemes Management Act 1996* (NSW).
2. Clarification of the rights and responsibilities of owners, managing agents and executive committee members.

3. ‘How to’ information for owners, with regards to dealing with disputes, ensuring the executive committee undertake their responsibilities, managing finances, understand financial statements, reading a strata plan and retrofitting buildings.
4. A guide to what is common property.
5. A mechanisms to more easily access a scheme’s by-laws.

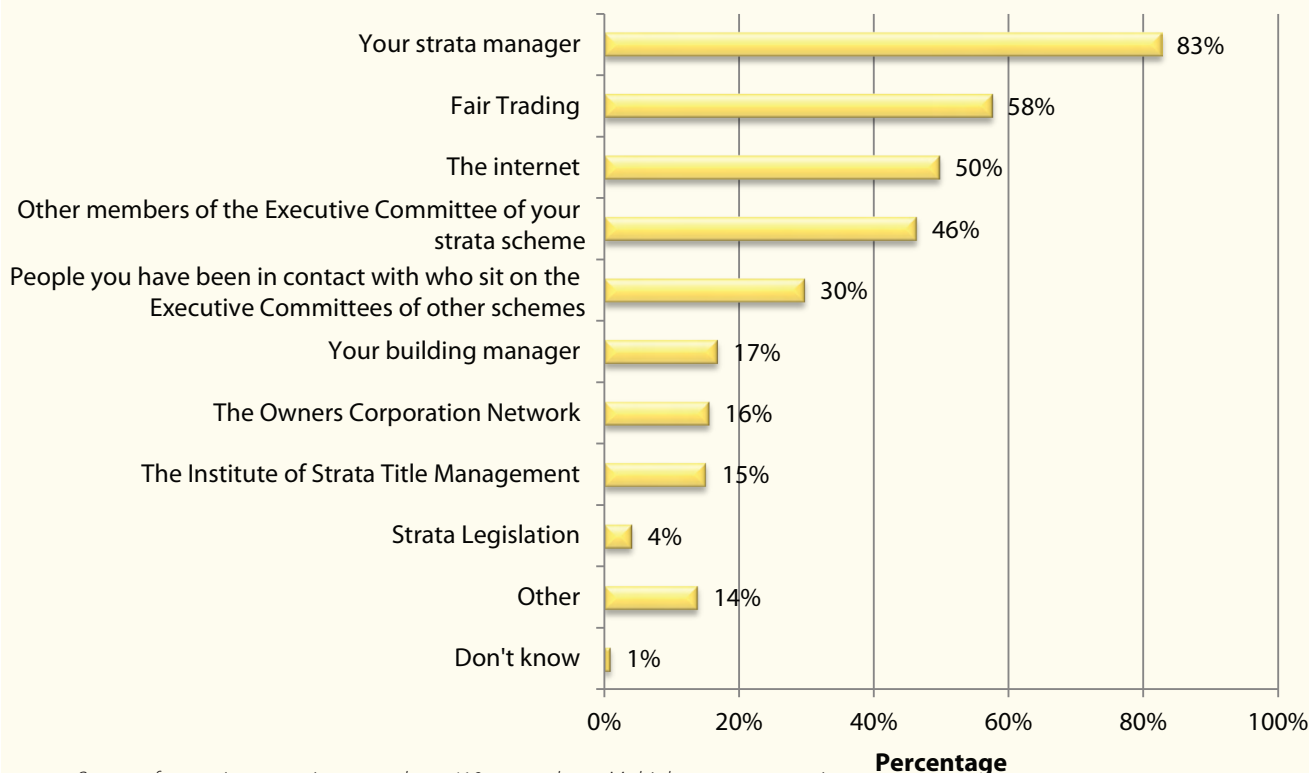
People also turn to their executive committee for information. As a group of volunteers the knowledge executive committee members have varies widely:

“They do not have any understanding of how it works. It is embarrassing to be at an EC [executive committee] meeting. There are a few of us that are fairly knowledgeable and have read all the various handbooks and things ... but we’ve got laypersons that have no clue whatsoever, and they’re making the decisions about our building ... Units were first built because people couldn’t afford houses, but now you’ve got expensive apartments, and you cannot have them being run by amateurs. The whole apartment scenario has changed and you can’t have people that don’t have a clue that have a lot of time on their hands making decisions about other people’s properties.” (Owner interview, respondent 213)

Sources of information for executive committee members

Executive committee survey respondents were asked where they get the information they need regarding the running of their scheme. The strata manager is the most common source of information for executive committee members, just as it was for the respondents to the survey of strata owners (see Figure 11.2).

Figure 11.2: Where do you, as an Executive Committee member, get information regarding the running of your scheme?



Survey of executive committee members. 410 respondents. Multiple response question.

Respondents to the survey of executive committee members were also asked whether they had experienced any difficulties accessing the information they needed to help run their scheme. More than one-third (37%) of respondents said that they had experienced difficulties. The two most common difficulties experienced were:

1. Accessing information through their strata managing agents, including getting reliable advice and documents:

"Strata management not freely releasing, or being timely delivering information needed for Executive Committee to do their job." (Executive committee survey, respondent 153)

"[Company] would not provide Strata Roll. [Company] refusing to email copies of previous minutes, instead making Exec Committee Member go to their office, despite acknowledging they held such records electronically. [Company] would not forward Financial Information in a form that was easily searchable" (Executive committee survey, respondent 166)

"The Strata Manager charges us if we want to look at records and files." (Executive committee survey, respondent 215)

"The quality of strata managers can vary considerably and I have found that in many cases they are not able to give the advice we need or point us in the right direction. This leaves you floundering. There have been occasions where strata managers have been wrong which is also frustrating." (Executive committee survey, respondent 211)

2. The quality and consistency of advice, particularly advice from NSW Fair Trading:

"I'd like to get consistent quality of information; it seems everyone gives you a different answer to the same question." (Owner survey, respondent 733)

"Locating definitive answers to some questions regarding strata laws and the by-laws. Even ringing the Office of Fair Trading can sometimes result in an incorrect answer. There seems to be a large amount of 'grey' areas when it comes to strata law and what an EC [executive committee] or lot owner can / cannot do." (Executive committee survey, respondent 233)

"Some information is held by Strata Manager, who can be uncooperative. Assistance has been sought from NSW Office of Fair Trading which was unhelpful and confusing and, in one case, incorrect." (Executive committee survey, respondent 250)

"The problem is you ring the OFT and often get to speak to people who do not really know what they are talking about and being referred to seek advice from solicitors." (Owner survey, respondent 309)

"The Strata Titles Act and Regulations are not entirely clear or comprehensive. Fair Trading is not always completely forthcoming in its information, and it has been inconsistent over the years. This could be improved." (Owner survey, respondent 1017)

Other responses to this question included:

- ❑ Records pertaining to the scheme were missing because the developer did not pass on all of the required information to the executive committee and/or strata managing agent or because those records had been subsequently lost by executive committees and/or strata managing agents.
- ❑ There was a lack of clarity regarding the definition of common property as it applies to a specific scheme.
- ❑ People were advised by their strata managing agent or a NSW Fair Trading customer service representative to seek legal advice in order to get answers to relatively 'simple' questions.
- ❑ Financial reports prepared by the strata managing agent were difficult to understand.
- ❑ The *Strata Schemes Management Act 1996* (NSW) is difficult to understand (see Chapter 7).

In many cases, executive committee members stated that they had hired specialists to provide advice on the running of their scheme, with the most common consultants employed being engineers, lawyers, building inspectors and insurance providers or valuers.

Of particular note, almost one third (31%) of executive committee respondents said that they had employed legal advice at some point in relation to a dispute in their scheme. Indeed, one area that was a cause for concern amongst survey respondents and interviewees was a perception amongst strata owners that they had to rely on (expensive) legal advice, when they would prefer to go to another body for that information:

"It would be good if people on the committee had some central body in which we could get good solid information, since I can't get it from my strata manager, I've got to go along to a solicitor every

time, I've got to pay a couple thousand dollars just to go and that comes out of the pockets of everybody, not just me. And I've got silly questions or good questions, or 'is this reasonable', or 'is this the way it really works?' If there was somebody with that sort of information that would be really good." (Executive committee interview, respondent 53)

However, 22% said they had not employed any specialists to advise on issues, and a further 5% did not know. The cost of hiring specialists to advise on certain issues can cause a significant barrier:

"If you want to force anything to happen, it's so hard. The strata manager wants a fortune, any time you want any sort of legal representation they want thousands of dollars." (Executive committee interview, respondent 206)

When the information needed to make a decision is not available (or too expensive to access), the danger is that this can result in an increasing amount of time taken to make that decision, an uninformed decision being made, or no decision being made:

"Unless you've read the information and then asked questions, you are relying on somebody else's point of view, so they would rather not change than have to make a decision on why something could be changed for the better." (Owner interview, respondent 76)

11.2 Communication

Good communications between the managing agent and the executive committee, and between the executive committee and other owners are essential for the smooth running of strata schemes. Positive communications between owners (covered in Chapter 10) are also important in terms of maintaining a good sense of community in a strata scheme.

11.2.1 Between the managing agents and the executive committee

Chapter 7 pointed to the importance of good communications between managing agents and executive committee members for the smooth running of strata schemes, and the satisfaction of executive committee members and other owners. The results of the survey also demonstrate that owners and executive committee members rely heavily on managing agents when

it comes to getting information and advice about the management of their schemes.

Of the respondents to the managing agents survey, 70% indicated that most of their communication with their client base took place electronically, and 24% said that some of their communication was electronic. When asked whether there are any challenges facing strata management in NSW that are not adequately addressed by the existing strata management legislation, five respondents to the managing agents survey noted that the legislation needed to be upgraded to incorporate advances in internet technology, including emailing information, electronically distributing important documents and holding meetings online:

"Distribution of meeting notices/minutes to all owners other than by attaching to a notice board. All owners should be provided with either written or electronic information." (Managing agent survey, respondent 11)

Managing agents were also asked which sources they typically went to when they need to access additional information regarding the management of a strata scheme. The most common sources of information for managing agents are their colleagues (70% of respondents) and NSW Fair Trading (69% of respondents) followed by the internet, the peak body for strata managers (Strata Community Australia) and members of the executive committee of the scheme in question. The importance of managing agents consulting their colleagues should not be underestimated. One of the benefits of having a good strata managing agent identified in interviews was their capacity to draw comparisons between schemes they are managing, and other similar schemes in the area:

"They're very good on providing advice, they have an enormous amount of experience, I mean, not only their knowledge of the strata law, but also the experience they're able to draw on in other buildings. The person who's managing our property at the moment has been a strata manager for, I don't know, twenty years or something. Also, as far as tradespeople are concerned, if we suddenly decide we need a roofing expert, say, then she usually has somebody that she can recommend who's at a reasonable price. So it's basically advice and knowledge and experience." (Owner interview, respondent 21)

One managing agent noted that she adapted the strategies she used to communicate with executive committees depending on the demographics of the owners in her scheme. She said that she had managed some schemes where the owners are uninterested, and others where owners would chase her up if she hadn't responded to an e-mail within a couple of hours:

"The bigger the building and the more money involved, the more owners want, and need, to be involved." (Managing agent interview, respondent 45)

The same managing agent spoke of the importance of educating executive committees about her role, and expectations. (Chapter 7 reported on the frustration of some managing agents that some owners do not seem to understand their role.) She tells executive committees that they will need to take control of their scheme, and to ensure that only one person from the scheme contact her to give her instructions (managing agent interview, respondent 45). Another managing agent made a similar comment:

"With the agency agreement, a lot of owners wouldn't bother read it, it's 15 pages long I can't imagine too many owners would read through it, so I sit down with them and explain the key paragraphs ... They need to know what I will and won't do". (Managing agent interview, respondent 17)

Regarding communication problems between managing agents and executive committees, while many of the comments made by owners regarding getting information from the strata managing agent referred to the unresponsiveness of the managing agent to requests (addressed in Chapter 7), some respondents expressed concern that the strata managing agent would not release information to the executive committee:

"Managing Agent would not give details of Owners to the Owner's Committee when requested, cited Privacy Laws!" (Owner survey, respondent 316)

"Currently, the strata agent is refusing to provide the names and addresses of all the owners (resident and non-resident) to the executive committee. The purpose is to send minutes from executive committee meetings and updates on the rectification to the recent building maintenance. The strata agent is claiming 'privacy issues' preclude her from giving this information to the executive committee." (Owner survey, respondent 584)

"I read in the law that you can request the information ... so you can request it, but then she'll [managing agent] give you a date within the next two weeks when you're allowed to come down and see it, and when you work full time, it's quite hard to take a day off at their will. So if I could say, look, I'm coming in next Wednesday, if it's a reputable strata company and they're reasonable, I'm sure they would work to your request. But when they don't like to do anything, it was all about them, so they weren't really flexible about when we were allowed to go in and see our own documents." (Executive committee interview, respondent 291)

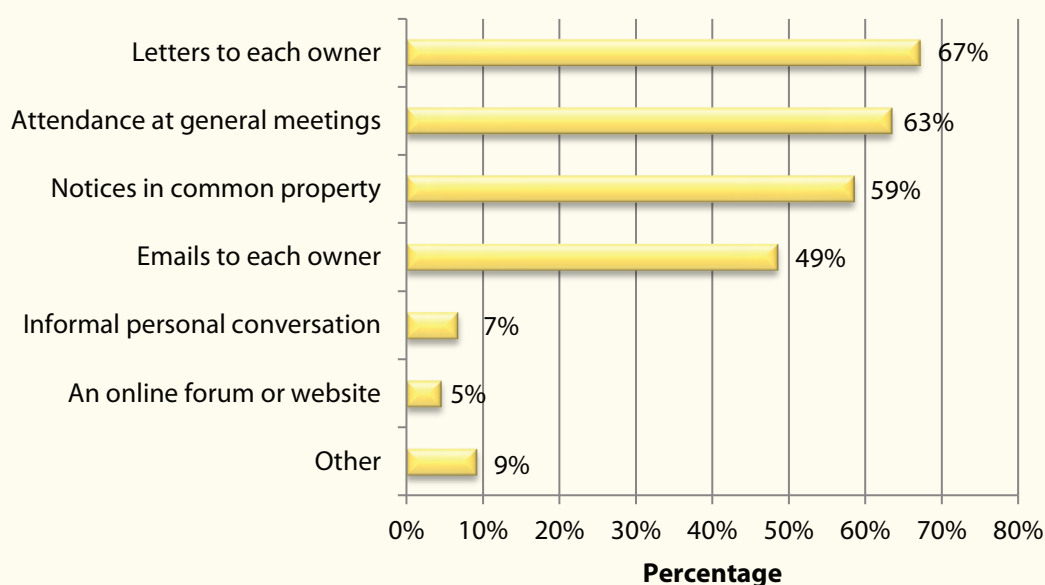
This is particularly concerning, as in most cases the privacy legislation will not apply to the operations of owners corporations. The *Privacy and Personal Information Protection Act 1998* (NSW) applies only to public sector agencies, and does not apply to owners corporations. The *National Privacy Act 1988* does not apply to owners corporations unless their turnover is greater than three million dollars, or they:

- ❑ Disclose personal information in order to receive a benefit, service or advantage (unless the information has been disclosed with the consent of the individual or as required or authorised by or under legislation).
- ❑ Provide a benefit, service or advantage to another party or collect personal information about another individual (*National Privacy Act 1988*, s 6D). The Owners Corporation should not sell their information.

11.2.2 Between the executive committee and other owners

Executive committee members were asked to describe the methods used by the executive committee to communicate with other owners in their strata scheme. The answers to this question are presented in Figure 11.3. The most common means of communication are letters to each owner (67 %), attendance at general meetings (63 %) and notices in the lobby or at the entrance to the building (59%)⁴.

Figure 11.3: What methods does the executive committee use to communicate with other owners in your strata scheme?



Survey of executive committee members. 410 respondents. Multiple response question.

E-mail correspondence was identified by some survey respondents and interviewees as an attractive way for the executive committee to keep other owners informed:

"The biggest problem, I think, about running an apartment building, both in terms of strata management and owners with tenants, it's communication ... I'd love to have everybody on email, if I had the time to set that up ... Because if there's anything happening in the building, like the lift has broken down, or the water is going to be off, any of those sort of things, you could just do a quick email." (Executive committee interview, respondent 325)

However, the second most common reason for dissatisfaction expressed by respondents to the owners survey regarding their executive committee was that they received insufficient information and communication from their executive committee.

"No information is provided to other residents about meetings held. It is a very 'closed off' group and quite secretive and nepotistic." (Owner survey, respondent 120)

"They don't provide any information to other owners about what they are doing, and they have tried to prevent other owners joining the committee." (Owner survey, respondent 770)

"Poor information supplied and EC [executive committee] Minutes reduced to virtually non-information." (Owner survey, respondent 231)

"I've owned a unit in the building for 6 years ... up until then there was a very tightly held incestuous group of people who were the body corporate and they kept all of the folders. [Two couples] were making all of the decisions and nobody got to see any of the folders or any historical data on the building. It was all tightly held within this group. Even though you could see the basic balance sheet ... When I took over the role of treasurer, it took almost two weeks of sanitising the documentation and the filing by the treasurer and his wife before I got the documents. I know I didn't [get all of the information]. That kind of thing leads to dissatisfaction, distrust and an acrimonious environment. We've [other executive committee members] managed to manoeuvre this guy out of this position." (Owner interview, respondent 1002)

"They [the executive committee] minute it but what's in the minutes may not always be what the underlying reason is. I think sometimes too much information confuses people, but equally, not enough information makes people very nervous as well." (Owner interview, respondent 537)

On the other hand, some executive committee members also expressed frustration at the apathy of owners (see Chapter 7) and the difficulty of informing and engaging owners who are not interested in the running of the scheme:

"When we've got things going on in the building we do letter box drops and we push things under people's doors, we address things to the occupier and they don't even get opened, they just get thrown into the rubbish beside the letterboxes. So how do you change people's apathy? Apart from having someone with enough energy to go around and knock on their door and ask whether they're interested or not and let them know what's going on a one-to-one basis, if they're not prepared to read what they get in the mail, I don't think there is a way of doing that, unless you can somehow get hold of their phone numbers or their emails and send them a short text message or something." (Owner interview, respondent 21)

Indeed, interviewees who shared their positive experiences of communication between the executive committee and owners often pointed to the importance of verbal communication for ensuring that owners are informed:

"If someone is getting a passive smoking problem, or a noise problem, or whatever, they have a problem. Their ability to have it dealt with should not be dependent upon their ability to write a coherent complaint. If it's a real problem, it is a real problem. So a strata agent or executive committee should be encouraged to listen; if necessary record the conversation or make notes, and get back to the person, say, 'I've made notes of what we said, can you read this and tell me if it's right', which is much more accessible or possible for a large number of people. I'm talking not only of Australians who were born here who may not be as able to write and organise their thoughts on paper, but the many, many migrants who have English not as a first language. They're threatened and intimidated by these situations to a great degree. And they're just as worthy of having compassionate and equitable treatment." (Owner interview, respondent 152)

"In all those communications [from the executive committee to owners] it's made very clear that we want to try and build a cohesive, friendly environment and that any time that anyone, regardless of whether they're an owner or a tenant, has an issue or a matter that they want to discuss, then my telephone is only a little way away." (Executive committee interview, respondent 135)

However, such personal attention from executive committee members is a lot to ask, especially in large schemes, given that these people are volunteering their time.

11.3 Education

11.3.1 Education of strata owners

Strata owners who completed the survey were asked whether they would be interested in taking advantage of educational resources created for owners to provide information about the management of strata schemes. Over half (58%) said that they would be interested, and another 25% said that they might be interested in taking advantage of such resources.

Of the 18% of owners who said that they would not be interested in taking advantage of such resources, half (47%) said that this was because they were sufficiently educated about these things already and a quarter (25%) said this was because they did not have enough time. Only 5% said that they did not think that kind of information is necessary for owners. This indicates that, while the knowledge of owners about their rights and responsibilities appears to be relatively low (see Chapter 7), there may be a willingness amongst owners to become more educated in these matters. Again, the respondents to this survey can be expected to be more engaged than the total population of strata owners, by virtue of their interest in completing the survey in the first place. Nevertheless, these findings do provide a positive indication that there is a significant audience of strata owners who are interested in educating themselves further about their rights and responsibilities in strata.

Managing agents were asked in the survey what they thought was the best way to inform executive committee members and other strata owners of their rights and responsibilities. The most common responses were through NSW Fair Trading publications, public seminars and regular correspondence through e-mails, phone calls and mail-outs. When asked whose responsibility

it should be to inform executive committee members and other strata owners of their rights and responsibilities, the most common responses amongst managing agents were that this was the responsibility of the strata manager, the solicitor and/or sales agent upon purchase, and NSW Fair Trading.

"Strata is a growing industry. Owners need to be educated better in regard to knowing what they are buying into." (Managing agent survey, respondent 31)

Executive committee members were also asked what they thought was the best way to inform strata owners of their rights and responsibilities and who should be responsible. Responses to this question are presented in Table 11.1. Interestingly, executive committee members were also most likely to see it as the strata managing agent's responsibility to inform owners of their rights and responsibilities in strata.

11.3.1 Education of strata managing agents

In the survey of executive committee members, survey respondents were asked whether there were any challenges they faced in running their strata schemes that were not addressed by the legislation, and if so, what these were. After the effective enforcement of by-laws and levies, the most commonly mentioned challenge not addressed by the existing legislation was the licensing, education and accountability of strata managers and building managers.

In NSW managing agents must be licensed under the Property, Stock and Business Agents Act 2002. Strata managers in NSW are required to hold a Certificate IV in Property Services (Operations) for their license. In this qualification they cover managing meetings, leadership skills, financial literacy, managing contracts and contractors and customer service strategies.

Some managing agent survey respondents and interviewees raised concerns that education in the industry was not of a sufficiently high standard, and expressed a desire for more training for managing agents, especially to improve professional standards:

Table 11.1: What is the best way to inform strata owners of their rights and responsibilities, and whose responsibility do you think this should be?, Executive committee survey

		Responses
Who should be responsible	Strata manager	139
	Executive committee members, owners corporation	65
	Fair Trading, CTTT	43
	Owners themselves	41
	Lawyer, solicitor, conveyance	23
	Government, regulatory body	19
	Real estate agent, seller	16
	SCA, OCN, industry group	9
	Building, property manager	7
	Council	5
	Land titles office	3
What should be involved	Letter, mail	63
	Notification at period of purchase	53
	Literature, brochures, booklets	49
	AGM attendance, minutes, notification	41
	Email	38
	Website, online documents and services	27
	Seminars, courses, training	21
	Newsletter, circular	20
	Welcome pack, information pack	20
	Signs, noticeboards	18
	Fair trading publications	16
	Forums, information sessions	9
	In person, direct	8
	Media, DVD	6
Other responses	Owners don't want to know	17
	Other	46
Total references		722

"I actually find the opportunity to be educated in your specialist field is good, it actually makes you more professional. That actually means that the advice you're providing to your clients is recent, and because we're dealing in schemes with million-dollar projects, which I'm involved with, and even with smaller buildings, it can easily add up to a million dollars, I just think it's important that you be looking after those who have some incentive to keep professional within the field." (Managing agent interview, respondent 35)

"Lack of education is leading to a very unprofessional/uneducated industry." (Managing agent survey, respondent 39)

"The only way to raise the professional standards is to increase the barriers to entry." (Managing agent interview, respondent 56)

Strata managing agents were asked a series of questions in the survey about their desire, and opportunities, for further professional education and training. Two-thirds (65%) of respondents said that their company offered them opportunities for continuing professional development, and of these the majority (68%) had taken advantage of these opportunities. One-third of respondents said that there were opportunities for continuing professional development not currently offered to them that they would like to undertake. The types of training most commonly desired were legal, finance and mediation training.

"In my view, the decisions that strata managers are making, or assisting the owners corporation or guiding them in making, are things around compliance with fire and occupational health and safety and equity values of the property and when major capital works should be considered and not considered, and then the whole harmony of the building of how to resolve disputes and how to get it running efficiently and everyone getting on with each other – they're things you can't just walk off the street and do." (Managing agent interview, respondent 56)

Mediation training, in particular, is an area that is not covered in the Certificate IV in Property Services, but would be very useful training for strata managing agents:

"It's part of communications for strata managers but it's so hard when you get new staff in, you're just flat out trying to teach them legislation and to get through it all, and the first few times that they've got to deal with conflict – people don't like conflict, they don't go looking for it – so your newer strata managers are not confident to deal with that sort of thing. And it's really quite a worry, because I've seen some of our managers where they'll just retreat into their shell because they've been bombarded with this conflict, or even sometimes abused by owners, and how do you deal with that sort of thing? You get your old-school owners that turn up to your meetings, and unless they find somewhere where you've made a mistake they don't think they've done their job." (Executive committee interview, respondent 43, also a managing agent)

Providing mediation training to strata managers may also be useful in addressing disputes between neighbours in a more informal manner.

"When they [owners] sit down and actually talk to each other instead of shouting at each other or making complaints via a third party against each other, then a lot of them can be sorted out. It could be something that strata managers, if there are issues, to maybe at meetings bring up the whiteboard and say, "Well, look, these are your issues: parking, dogs barking. We know them, we've identified to them, what are the solutions?" (Executive committee interview, respondent 43, also a managing agent)

"I guess if it's going to relate to how the complex gels and how people deal with issues relating to the use of the common property, yes the strata manager does need to step in there. So it would be nice if we had negotiation skills, that could be one of the CPD [continuing professional development] topics ... into a general discussion situation, not necessarily a meeting, or people writing to you to complain about somebody else, the way you can handle that. I guess at the end of the day I'm saying that the strata manager does have a responsibility to try to keep everyone happy when it relates to the way to how the common property is used. Who else is going to do it?" (Managing agent interview, respondent 17)

Suggestions for continuing professional education raised in the managing agent interviews included customer service, running a professional business, keeping up with trends in technology, legislative updates, common property boundaries, meeting protocols and conflict resolution.

One managing agent raised concerns regarding the provision of CPD [continuing professional development] by private providers, and indicated that some private providers are cutting hours and prices of their CPD courses in order to get more people enrolled. He suggested that there should be benchmarks for CPD courses and that a certain number of hours of CPD should be required per year, to be ratified by the peak body Strata Community Australia (managing agent interview, respondent 35). Another managing agent raised concerns about the availability of CPD in regional areas, with the cost of attending courses in the city too expensive. She pointed to the need for more webinars and courses on CD that can be undertaken by regional strata managers in their own time (Managing agent interview, respondent 17).

11.3.2 Education of executive committee members

While strata managers are required to undertake a training certificate before managing strata schemes, executive committee members and owners are not required to undertake any training in strata scheme management, and any education they do receive is on a voluntary basis. This has led to concern that executive committee members do not always have the knowledge and expertise to manage the complex issues of strata schemes, and to manage assets often worth millions of dollars.

"The people who volunteer are not strata managers. They don't know all laws, by laws or even how to conduct meetings. Yeah, okay, I've read the book. But the committee should be provided with examples of minutes, examples of how to present the meeting. So a couple of hours training of even mock kind of meetings to show people how to deal with it." (Executive committee interview, respondent 398)

"I had never lived in an apartment building before and I came to this place just from living in individual houses and I knew about what I thought was strata management committees back then. But when push came to shove and we set one up, I didn't know – none of us really, who were pretty well all new to the thing – we didn't know how to get information about what the committee can do, what powers it has, how it can reach the relationship of the committee to the strata manager, all those kinds of things. The Office of Fair Trading website was pretty helpful and that booklet they produce, Strata Living, it helped as far as it goes, but various strata managers, we've discovered over time, have different levels of interpretation of that. So it's a combination of the fact that it's a voluntary thing – it's not mandatory, people aren't specifically trained to do it, and yet it's a fairly important representative forum, really ... And I think it would be useful if it could be tightened up somewhat, maybe some kind of training or forum for Executive Committee members to swap ideas and solve common things." (Executive committee interview, respondent 239)

In the survey of executive committee members, respondents were asked to identify the most important factors that influence the practice of executive committees, other than the legislation. The most common response to this question was the skills, knowledge and experience of executive committee members.

Executive Committee members who completed the survey were asked whether they thought that formal training for committee members would be beneficial. Three-quarters (74%) of respondents thought that formal training would be beneficial to them in their roles.

"We've got a complex here of over two hundred units. We're talking about a huge complex with quite a substantial budget run by three of us, as it were, who really don't know much. I mean everybody puts out their chest and says, 'I used to, and I used to, and I did this, and I did that, and I ran a big company'; but basically nobody really knows how to run this whole thing efficiently." (Executive committee interview, respondent 53)

A number of organizations currently provide some training and educational seminars for executive committee members, including Strata Community Australia, the Owners Corporation Network, and some strata management companies.

However, in addition to such voluntary training courses, proposals have been put forward to require the training of executive committee members in NSW (e.g. Moore 2009). However, proposals for implementing such a requirement raise a number of important questions including who would pay for this training, how the training would be provided, how competency would be assessed, whether training should be mandatory for all schemes or only larger schemes and whether mandatory training would have an effect on the ability of executive committees to attract people to volunteer⁵.

When asked to identify the more important factors influencing the practice of executive committees (other than the legislation), the second most common response – after executive committee skills, knowledge and experience – was interest, commitment and participation of executive committee members. While education of executive committee members might improve the interest of executive committee members in their roles, it is also possible that a *requirement* for formal training might dissuade people from joining, or remaining on, the executive committee as volunteers (see Chapter 7 on difficulties attracting people to sit on executive committees).

One interviewee suggested that there need to be different 'layers' of information available to executive committee members, and that this information should be accessible in a flexible way:

"It's very clear that people stick up their hand – and I include myself in the group – I'm a first-time unit owner – I had no idea of the Strata Act and I had no idea of how the various processes and procedures that the Office of Fair Trading and the CTTT offer. So there needs to be several layers or several types of information available. So at a very simple level, somebody needs to prepare a pack that sets out what an executive committee is, what really you're obliged to do, and what's appropriate skills ... So I'm suggesting information fliers prior to being an executive committee member, and then online courses, and they could be chunked down into all sorts of things – accounting or managing the finances of a strata plan, dealing with the Office of NSW Fair Trading, CTTT processes, dealing with bullying ... meetings... some tools that people can use as a point of reference." (Executive committee interview, respondent 9)

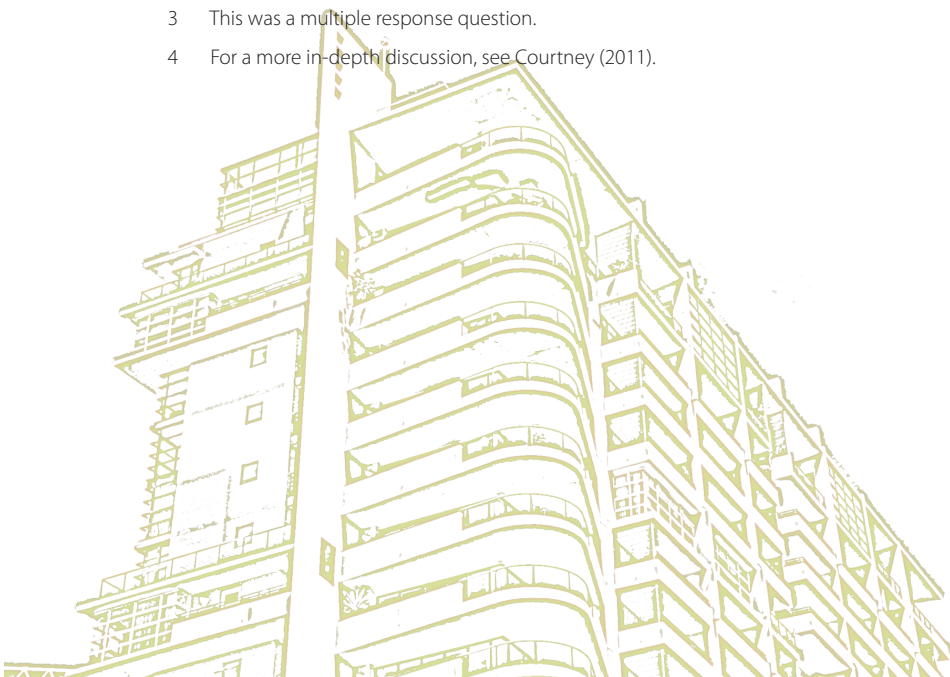
11.4 Summary

The main findings of this chapter are:

- ❑ Some owners experience difficulty obtaining information at the time of purchase.
- ❑ The main source of information for strata owners is their managing agent.
- ❑ Some owners have experienced difficulty obtaining information about their schemes since purchase.
- ❑ A small proportion of owners have had difficulty accessing general information about strata schemes.
- ❑ Many executive committee members have had difficulty accessing the information they need to run their strata schemes.
- ❑ Good communication is the most important factor influencing satisfaction with managing agents and executive committees.
- ❑ There is willingness amongst some owners, executive committee members and managing agents to be further educated regarding the governance and management of strata schemes.

(Endnotes)

- 1 It is possible to search for by-laws through NSW Land and Property Information. For more information, see NSW Land and Property Information (2012).
- 2 This was a multiple response question.
- 3 This was a multiple response question.
- 4 For a more in-depth discussion, see Courtney (2011).



Glossary

ADJUDICATION Written submissions are provided to an adjudicator by disputing parties. The adjudicator then considers the issues and makes an order outlining what actions are to be taken. This order is binding and penalties apply for non-compliance.

ADMINISTRATION (ADMIN) FUND A fund for the purposes of day-to-day and recurrent expenses (more detail in the report).

ANNUAL GENERAL MEETING (AGM) A meeting of the owners corporation that must be convened once a year under the *Strata Schemes Management Act 1996* (NSW).

BUDGET An estimate of future receipts and payments likely to occur in the coming year for a scheme prepared by the Executive Committee or the Strata Managing Agent.

BUILDING DEFECT Building faults that have existed since construction or have been triggered by faulty original construction.

BUILDING MANAGER A person or company employed by the executive committee to manage, maintain and control the use of the common property (not the same as a strata manager). Also known as a caretaker.

BY-LAWS A set of rules the residents in a strata scheme must abide by.

CHAIRPERSON One of the main office holders of the Executive Committee, responsible for presiding at all meetings of the executive committee and owners corporation to ensure the successful and lawful functioning of those meetings.

COMMUNITY TITLE SCHEME Community title is a form of land subdivision that enables shared property to be created within conventional Torrens title subdivisions. It is essentially a horizontal form strata title.

COMMON PROPERTY Property owned by the owners corporation. Typically this would include the buildings and outdoor areas and usually includes all property in a strata scheme that is not a privately owned strata lot.

CONSUMER, TRADER AND TENANCY TRIBUNAL (CTTT) Disputes are heard in a public hearing similar to Local Court. The Tribunal will make an order outlining what actions are to be taken. This order is binding and penalties apply for non-compliance.

COVENANT CHARGE An individual or organisation holding a covenant charge over a property, defined in s 3 of the *Real Property Act 1900* as “any charge on land created for the purpose of securing payment of an annuity, rent charge or sum of money other than a debt”.

DEFECTS See BUILDING DEFECT

EXECUTIVE COMMITTEE Elected members of the owners corporation (owners or owners’ nominees), responsible for assisting the owners corporation in the day-to-day management of the strata scheme. Also sometimes referred to as a ‘body corporate’.

EXECUTIVE COMMITTEE MEETING A meeting of the executive committee members.

EXCLUSIVE USE BY-LAW A by-law that gives a particular lot owner the right to use parts of the common property for their exclusive use.

EXTRAORDINARY GENERAL MEETING A meeting of the owners corporation, which is not an Annual General Meeting

HOME WARRANTY INSURANCE Insurance to protect consumers when a builder dies, cannot be found or becomes insolvent and cannot complete the construction of a property, complete renovations or fix defects.

INITIAL PERIOD The period when the original owner (i.e. the builder or developer) owns strata lots in a scheme and the unit entitlements of those lots comprises more than 2/3 of the aggregate unit entitlement of the scheme.

LEVIES Fees that must be paid by owners to the owners corporation. These can take three forms: administrative fund levies, sinking fund levies and special levies (contributions towards unexpected costs).

LOT Usually the airspace within the four mail walls, ceiling and floor, and anything included in that airspace including internal walls within the lot, floor coverings and fixtures. May also include car spaces and other areas or these can be registered as separate lots.

MAINTENANCE Routine upkeep of the building e.g. painting or clearing gutters.

MEDIATION A structured negotiation process in which a neutral and independent mediator assists parties to resolve a dispute.

MINUTES A record of all proceedings for Owners Corporation and Executive Committee meetings.

MORTGAGEE The organisation providing a mortgage.

ORDINARY RESOLUTION A resolution passed at a general meeting of the owners corporation that requires a majority of votes of those present at the meeting and eligible to vote (i.e. 51% of persons entitled to vote).

ORIGINAL OWNER The owner of the entire strata scheme when the strata plan is first registered. Usually the builder or developer

OWNERS CORPORATION A body corporate comprised of, and representing, all owners of lots in a strata scheme, formed when a strata plan is registered.

PROXY A person appointed in writing by an owner to attend a meeting and vote on their behalf.

QUORUM The minimum number of eligible attendees at a meeting before any motion can be voted upon. A Quorum is reached when at least two people eligible to vote attend and a quarter of the people eligible to vote OR people eligible to vote holding at least a quarter of unit entitlements attend.

RESOLUTION A decision made at a meeting based on a motion raised and addressed at that meeting.

REPAIRS Rectifying building problems that have arisen due to age, a lack of maintenance or an unforeseen event e.g. a storm or an accident.

SECTION 109 CERTIFICATE A certificate containing detailed information about a strata scheme, including levy contributions, insurances, Executive Committee member and strata management details, outstanding monies and other relevant information. Issued by the Strata Managing Agent or authorised person of the Owners Corporation to interested parties, such as purchasers, for a fee.

SECRETARY One of the main office holders of the Executive Committee. The chief administrative officer of the owners corporation.

SINKING-FUND A fund for the purposes of renewing, repairing or replacing common property

SINKING-FUND PLAN A ten-year plan for the renewal, repair or replacement of the common property, and associated costs.

SPECIAL LEVY A lump sum contribution paid by the owners to cover expenditure not covered by the administrative and sinking funds (this may include unplanned or unexpected expenditure)

SPECIAL RESOLUTION A resolution passed at a general meeting of the owners corporation against which no more than one quarter of votes (calculated by unit entitlement) is cast.

STAGED DEVELOPMENT The development of one strata scheme in two or more stages. For example, one building may be built, and the lots sold the finance the construction of a second building under the same strata plan.

STRATA LOT See LOT.

STRATA MANAGING AGENT (STRATA MANAGER) A qualified agent appointed by the owners corporation at a general meeting (or by an Adjudicator) and paid by the owners corporation to undertake management and administrative matters that are delegated to them. In NSW all strata managing agents must be qualified with a Certificate IV in Property Services (Strata Management) and registered with NSW Fair Trading.

STRATA PLAN The plan registered at the NSW Land and Property Management Authority showing the building on the land and the boundaries of the lots and common property.

STRATA ROLL Register of who owns each unit, mortgagees and others who have an interest in lots, general information about the strata scheme, the name of the managing agent, insurance details, the by-laws and the unit entitlements for the scheme and each lot.

STRATA SCHEME All of the lots, common property and rights and responsibilities associated with managing a single registered strata plan.

STRATA TITLE The subdivision of land and/or buildings into units (lots), which can be owned separately, and common property, which is owned collectively. This subdivision is registered as a strata plan.

STRATUM A multi-storey building can be subdivided horizontally into lots, called stratum. These stratum can then be further subdivided into strata schemes. Generally used for mixed-use schemes with each use (e.g. car park, offices, residential properties) on a different stratum.

TREASURER One of the main office holders of the Executive Committee, responsible for managing the financial accounting for the scheme.

UNANIMOUS RESOLUTION A resolution passed at the general meeting of the owners corporation against which no votes are cast.

UNIT ENTITLEMENT the relative weight a strata owner has within the owners corporation, which is generally based upon the relative value of their strata lot. Unit entitlements regulate the voting rights of each owner and the amount of levies each owner must pay.

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Appendix 1: National Strata and Community Data



National strata & community data

2012

Data compiled by City Futures Research Centre at the University of New South Wales with the support of Strata Community Australia.

Disclaimer: This data was provided to the City Futures Research Centre by the relevant Land Titles agencies in each state and territory. Please note the limitations to the validity of the data outlined in this document. The figures presented should be considered a best estimate, rather than a definitive count of strata and community lots around Australia.

Table 1: Number of strata and community schemes by scheme type by state/territory

Scheme type ^(a)	NSW ⁽¹⁾	VIC ⁽²⁾	WA ⁽³⁾	QLD ⁽⁴⁾	SA ⁽⁵⁾	TAS ⁽⁶⁾	ACT ⁽⁷⁾	NT ⁽⁸⁾	Australia
Commercial	4,903		559		1,015	421	320	185	
Industrial	2,975		906		132	30	147	148	
Mixed use	2,200		56		-	233	-	10	
Residential	64,621		26,475		16,625	6,596	2763	2,005	
Other (includes rural)	991		30,086		1,002	189	27	31	
Total	75,690	71,286	58,082	40,064	18,774	7,469	3,257	2,379	277,001
Date	Jul / Aug '11	Jul '11	Jun '11	Nov '11	Sep '11	Aug '11	Dec '11	Jul '11	

Table 2: Number of strata and community lots^(b) by scheme type by state/territory

Scheme type ^(a)	NSW ⁽¹⁾	VIC ⁽²⁾	WA ⁽³⁾	QLD ⁽⁴⁾	SA ⁽⁵⁾	TAS ⁽⁶⁾	ACT ⁽⁷⁾	NT ⁽⁸⁾	Australia
Commercial	94,405		3,521		7,415	2,184	9854	3,527	
Industrial	25,391		4,633		783	43	1039	1,263	
Mixed use	54,907		529		-	1,434	-	239	
Residential	539,482		102,007		85,489	10,938	26,527	13,161	
Other (includes rural)	14,595		130,436		5,657	521	955	910	
Total	728,780	419,289	241,126	382,991	99,344	15,120	38,375	19,100	1,944,125
Date	Jul / Aug '11	Jul '11	Jun '11	Nov '11	Sep '11	Aug '11	Dec '11	Jul '11	

Note:

(a) These are aggregate definitions collated by the City Futures Research Centre based on interpretation of the multiple zoning definitions provided by each state and territory.

(b) For all states and territories, total lot figures exclude any lots identified as common property (where applicable).

2

Notes by state:

(1) New South Wales

Figures presented include community title schemes and strata schemes.

(2) Victoria

Figures presented are estimations only.

In Victoria, the following plan types can include plans with one or more lots flagged as common property: plan of subdivision, cluster subdivision, registered plan, strata plan, lodged plan. However, not all plans of this type include lots flagged as common property. The figures provided were as follows:

- Plan of subdivision: 149,207 plans registered of which 43,205 have at least one lot flagged as common property.
- Cluster subdivision: 721 plans registered, of which 579 have at least one lot flagged as common property.
- Registered plan: 19,319 plans registered, of which 14,954 have at least one lot flagged as common property.
- Strata plan: 17,429 plans registered, of which 12,515 have at least one lot flagged as common property.
- Lodged plan: 127,720 plans registered, of which 33 have at least one lot flagged as common property.

Number of schemes presented are numbers of schemes registered as strata plan, lodged plan, registered plan, cluster subdivision and plan of subdivision that have one or more lots flagged as common property. [That is: 43,205 + 579 + 14,954 + 12,515 + 33 = 71,286].

Number of lots presented are the average number of lots for each registration type multiplied by the number of schemes of each registration type that have one or more lots identified as common property. The average number of lots for each registration type are the average number of lots for all plans in that registration type, not only those with lots flagged as common property, as the data provided did not enable a link to be made between common property lots and individuals plans. One lot was then subtracted for each scheme identified as having one or more common property lots (however, note that some registered plans may have more than one registered common property lot).

Information on registration type was not made available for lodged plans, registered plans, cluster subdivisions or plans of subdivision. For strata plans only, an estimate can be made of the number of schemes and lots by registration type (see table below).

3

Table 3: Number of strata schemes (only) by scheme type, Victoria

Scheme Type	All lots	Percentage of all strata lots	Lots excluding common property (estimate)
Commercial	14,129	12.27%	12,584
Industrial	11,534	10.02%	10,272
Mixed use	2,677	2.32%	2,385
Residential	85,419	74.18%	76,080
Other (includes rural)	1,392	1.21%	1,240
Total	115,151		102,561

Note: Number of strata schemes by registration type were not available (only number of lots). Total lot figures include 12,590 lots flagged as common property. When these are subtracted, the lot total is 102,561.

(3) Western Australia

Figures presented are for strata surveys.

The 'other' figure here is high largely because 29,557 schemes and 126,274 lots did not have a registration type specified in the data provided.

(4) Queensland

Figures presented include Building Unit plans and Group Title plans.

Figures are not readily available in Queensland regarding the type of scheme (commercial, residential etc.). This data is not held by Queensland Valuation and Sales (QVAS). Zoning information can be obtained at a Council level. Determining the number of schemes by type would require collection of this information from each of the Local Councils in Queensland.

(5) South Australia

Figures presented include strata schemes and community title schemes.

4

(6) Tasmania

Figures presented are for strata schemes.

(7) Australian Capital Territory

Figures presented include community title schemes and (Class A and Class B) unit title schemes.

(8) Northern Territory

Figures presented include unit plans and unit title schemes.

Until recently, unit plans were the mechanism for providing strata titled units in the Northern Territory. Under a unit plan, common property is tied to the land and there are no lots identified as common property. Recently a unit titles scheme has also been made available in the Northern Territory. Under unit title schemes, units are parcels, and some common property can also be identified as parcels and therefore included in lot (unit) counts. However, we are advised that this would constitute a very low proportion of identified lots in the Northern Territory.

5

Sense checking the data against the Australian Bureau of Statistics Census of Population and Housing (2006)

To sense check the numbers of properties under various forms of Strata Title across Australia the figures collected can be compared with the 2006 Census records of the total number of attached properties (Flats, units, apartments, semi-detached, townhouse etc.).

There are a number of limitations to this approach (outlined below), however, it does provide some indication as to the likelihood that the figures presented for strata and community properties are approximately correct for each state and territory.

Limitations to this sense checking approach include:

- Some attached properties will not be under strata or company title (including Torrens titled terraces and company titled apartments).
- Some properties under community title will be separate houses (including houses in master-planned estates under community title).
- The figures are for residential properties only, and do not provide any indication of the approximate number of non-residential strata and community title schemes.
- The census figures are for 2006, while the figures for strata and community title schemes are for 2011.

Table 4: Number of attached residential properties by state and territory in 2006 compared with reported strata and community title lots by jurisdiction in 2011

State / Territory	Total attached properties ABS Census 2006	Total strata and community title lots	Difference
New South Wales	811,214	728,780	-10%
Victoria	483,170	419,289	-13%
Queensland	365,207	382,991	+5%
South Australia	137,293	99,344	-28%
Western Australia	163,403	241,126	+48%
Tasmania	28,290	15,120	-47%
Northern Territory	19,379	19,100	-1%
Australian Capital Territory	33,964	38,375	+13%
Other Territories	256	-	
Total	2,042,176	1,944,125	-5%

Appendix 2: Survey of executive committee members



Survey of Executive Committee Members

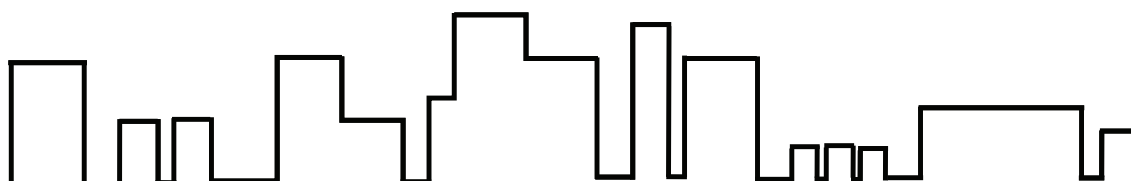
City Futures Research Centre at the University of New South Wales invites Executive Committee members of NSW strata schemes to share your knowledge and opinions on the management of your strata development by completing the following survey. We would love to hear from you if:

1. You are over 18 years old.
2. You are currently a member of the Executive Committee of an owners corporation in a strata scheme with 3 or more properties/lots.
3. Your strata scheme includes at least one residential property/lot.

Once you have completed the survey, don't forget to enter your e-mail address for a **chance to win 1 of 4 \$250 Coles Group & Myer Gift Cards**. Authorised under NSW Permit No LTPS/10/00291.

The information statement on the next page provides some background to this project and outlines how the information you provide will be used as well as how your confidentiality will be assured. Continuing with the survey indicates that, having read and understood the information provided in the information statement, you have decided to participate.

Please return the survey to:
Dr Hazel Easthope
City Futures Research Centre
Faculty of the Built Environment
University of NSW
NSW 2052



PROJECT INFORMATION STATEMENT

Date: 14th January 2010

Project Title: *Governing the Compact City: The role and effectiveness of strata management in higher density residential developments*

Approval No.: HREC 08372

THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF THE
BUILT ENVIRONMENT

Participant selection and purpose of study

You are invited to participate in a study of the role and effectiveness of strata management in higher density residential developments. You were selected as a possible participant in this study because you are a member of the executive committee of a strata scheme in New South Wales.

Description of study

This research is part of a two-year research project being undertaken by the City Futures Research Centre at the University of NSW, funded by the Australian Research Council, in conjunction with partner organisations, the NSW Land and Property Management Authority, NSW Fair Trading, Owners Corporation Network, NSW Institute of Strata Title Managers, Lannock Strata Finance and Macquarie Bank. The aim of the study is to provide strata owners, professionals and policymakers with a greater understanding of the effectiveness of the management and governance of the strata sector. One component of this research is a survey of members of the executive committees of owners' corporations throughout New South Wales.

If you choose to participate in this survey, the questions will focus on the role and function of your executive committee, decision making, participation and professional support as well as the relationship between the executive committee and strata managing agents and other stakeholders.

We expect the survey will take 20 minutes to complete. You can either complete the survey online by following the link at www.fbe.unsw.edu.au/cf or contact Dr Easthope (details below) to post a copy of the survey to you.

We expect that the findings of this research will provide a strong evidence base to inform the development of more effective policies to address the more problematic aspects of strata regulation and will feed into good practice in management and governance of the sector. However, we cannot and do not guarantee or promise that you will receive any benefits from this study.

Confidentiality and disclosure of information

Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission, or except as required by law. By continuing with the survey, you are indicating that, having read the information provided in this information statement, you have decided to participate in this research.

We plan to discuss our findings at a series of workshops with our partner organisations as well as at a final industry seminar hosted by ISTM in Sydney for the partner organisations, media and other interested stakeholders. A final research report will also be published jointly by City Futures and the ISTM, with a key findings summary allowing wider dissemination. This report will be available online. The research will also be published in national and international journals to disseminate the findings to a wider policy and academic audience.

Recompense to participants

There will be no direct remuneration for your participation in this research. However, if you complete the survey, you can enter into a prize draw with a total prize pool of \$1,000.

Your consent

Your decision whether or not to participate will not prejudice your future relations with The University of New South Wales or other participating organisations. If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without prejudice by contacting Dr Hazel Easthope, City Futures Research Centre, Faculty of the Built Environment, University of NSW, NSW 2052. If you have any questions, please do not hesitate to contact me.

Kind regards,

Dr Hazel Easthope

City Futures Research Centre
FBE, University of NSW

Ph. (02) 93856041
Hazel.easthope@unsw.edu.au

Complaints may be directed to the Ethics Secretariat, The University of New South Wales, SYDNEY 2052 AUSTRALIA
(phone 9385 4234, fax 9385 6648, email : ethics.sec@unsw.edu.au).



Welcome to the survey!

The survey is split into six sections:

1. You and your property
2. Your strata scheme
3. Your Executive Committee
4. Managing your strata scheme
5. Disputes in your strata scheme
6. Legislation and beyond

The survey should take about 20-30 minutes to complete.

You must be a member of an Executive Committee of a strata scheme to answer this survey.

If you are a member of the Executive Committees of more than one strata scheme, don't worry, we don't need to hear about all of them. *Please answer the survey questions in relation to the scheme in which you have been on the Executive Committee for the longest period of time.*

Before you get started, below are some **definitions of the terms used** in the survey which you may find useful.

STRATA TITLE – The subdivision of land and/or buildings into units (LOTS), which can be owned separately, and COMMON PROPERTY, which is owned collectively. This subdivision is registered as a STRATA PLAN.

STRATA SCHEME – All of the lots, common property and rights and responsibilities associated with managing a single registered strata plan.

OWNERS CORPORATION – A body corporate consisting of, and representing, all owners of strata lots in a strata scheme.

EXECUTIVE COMMITTEE – Elected members of the Owners Corporation, responsible for the day to day operation of the scheme.

STRATA MANAGING AGENT – A qualified agent appointed by the Executive Committee to undertake some, or all, of the responsibilities of the Owners Corporation.

BUILDING MANAGER – A person who looks after the day-to-day running of the building, including maintenance and repairs.

BY-LAWS – Rules governing the conduct of owners and occupiers, the use of common property (and in some cases the granting of greater power to an owners corporations).

UNIT ENTITLEMENT – The relative weight a strata owner has within the Owners Corporation. Generally based upon the relative value of their strata lot. Unit entitlements regulate the voting rights of each owner and the amount of levies each owner must pay.

LEVIES – Owners pay three types of levies to the owners' corporation: 1. administrative fund levies – for day to day expenses. 2. sinking fund levies – for longer term repairs and maintenance 3. special levies – for unexpected repairs.



YOU & YOUR PROPERTY

1. Are you...
 - ☐ Male
 - ☐ Female
2. How old are you? _____ years old
3. What is your main occupation status?
 - ☐ Full-time employee
 - ☐ Part-time or temporary (including casual and contract) employee
 - ☐ Self-employed or run own business
 - ☐ Seeking work
 - ☐ Student
 - ☐ At home / not seeking work
 - ☐ At home caring for child/ren
 - ☐ Full-time carer
 - ☐ Long-term sick / disabled
 - ☐ Retired
 - ☐ Other (please specify) _____
4. Do you work in the property sector? (E.g. real estate, property management, property development, building, trades, legal)
 - ☐ No
 - ☐ Yes (please specify) _____
5. Do you own a property in the strata scheme for which you are on the Executive Committee, or are you nominee of an individual or a company?
 - ☐ I own a property in the scheme
 - ☐ I am a nominee of an individual who is an owner
 - ☐ I am a company nominee of a corporation (with 20 or more employees) that is an owner....*please answer questions directed at owners to the best of your ability*
 - ☐ I am a company nominee of a corporation (with 5-19 employees) that is an owner...as above
 - ☐ I am a company nominee of a corporation (with 4 or less employees) that is an owner...as above
6. How many properties do you own in this strata scheme?
 - ☐ 1
 - ☐ 2
 - ☐ 3 or more



7. Is/are your property(ies) in this strata scheme (tick all that apply):
- ☐ Your primary place of residence
 - ☐ An investment property (that is rented out to tenants)
 - ☐ A holiday home or second home (that is not rented out to tenants)
 - ☐ Other (please specify)_____
8. Do you own this/these property/ies outright, or are you purchasing it/them with a mortgage?
- ☐ I own my property/all of my properties in this scheme outright
 - ☐ I own my property/all of my properties in this scheme with a mortgage
 - ☐ I own one or more properties outright and the rest with a mortgage
 - ☐ Other (please specify)_____
9. How many properties do you own in other strata schemes, in addition to those you own in this scheme?
- ☐ none
 - ☐ 1
 - ☐ 2
 - ☐ 3-5
 - ☐ 6-10
 - ☐ 11-20
 - ☐ more than 20
10. Are you a member of the Owners' Corporation Network?
- ☐ Yes, as an individual member
 - ☐ Yes, as an owners corporation or community association member
 - ☐ No



YOUR STRATA SCHEME

11. How many lots (e.g. apartments) are there in your strata scheme in total?

_____ lots (estimate if necessary)

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

_____ floors

13. What is your postcode? _____

14. What is your Strata Plan number OR your property address?

☐ SP number _____

OR

☐ Property address _____

☐ Do not wish to disclose

15. In what year was your strata scheme built, and in what year was the strata plan registered (estimate if necessary)?

Built in _____ Registered in _____

16. Are any parts of your building or your strata scheme used for non-residential purposes (e.g. retail, hotels, restaurants, offices)?

☐ No, all lots are residential..... Please go to Q19

☐ Yes, there are non-residential strata lots within the strata scheme..... Please go to Q18

☐ Yes, the building is also used for non-residential purposes (e.g. there is a hotel in the building which is not part of your strata scheme)..... Please go to Q17

☐ Yes, other (please specify) _____

17. Does your strata scheme have a building management committee with other stratum owners?

☐ Yes

☐ No

☐ Don't know

18. What non-residential purposes is your strata scheme or building used for? Tick all that apply.

☐ Hotel

☐ Short-term holiday apartments

☐ Office(s)

☐ Shop(s)

☐ Restaurant(s) or cafe(s)

☐ Bar(s) or nightclub(s)

☐ Other (please specify) _____



19. What type of residential property(ies) is your strata scheme made up of? Tick all that apply.

☐ Apartments

☐ Townhouses

☐ Detached units or villas

☐ Other (please specify)_____

20. Does your strata scheme sit within a community title scheme?

☐ Yes

☐ No

☐ Don't know



YOUR EXECUTIVE COMMITTEE

21. What office do you currently hold on the Executive Committee?

- ☐ Chair
- ☐ Secretary
- ☐ Treasurer
- ☐ I do not hold an office

22. Why did you decide to become a member of your Executive Committee?

23. How long have you been on your Executive Committee? _____

24. How many members are there on your Executive Committee? _____

25. How regularly does the Executive Committee meet on average? _____

26. What factors influence the frequency of these meetings?

27. On average, how long do meetings take and what time of day do meetings generally take place?

28. Since you have been on the Executive Committee, has the Executive Committee ever had difficulty in reaching a quorum at Executive Committee meetings?

- ☐ Yes
- ☐ No
- ☐ Don't know

29. Since you have been on the Executive Committee, has there been any difficulty reaching a quorum at a general meeting?

- ☐ Yes
- ☐ No
- ☐ Don't know

30. Since you have been on the Executive Committee, have there been any challenges associated with the conduct of a general meeting in your scheme (e.g. an individual questioning the validity of minutes, disagreements surrounding appropriate budget setting, questions as to the validity of proxy votes, etc.)?

- ☐ Yes
- ☐ No..... Please go to Q32
- ☐ Don't know..... Please go to Q32



31. Please describe the nature of these challenges associated with the conduct of a general meeting.

32. How many hours a month would you spend on Executive Committee matters on average (including any meetings)? _____ hours per month.

33. Do you think this is an appropriate amount of time for you to be spending on EC matters as an EC member? Please explain your answer.

☐ Yes

☐ No

☐ Don't know

☐ Comments _____

34. Have you had trouble attracting people to sit on the Executive Committee?

☐ Yes

☐ No

☐ Don't know

35. Is the turn-over of Executive Committee members a problem (i.e. do the members of the Executive Committee change too often, or not often enough)?

☐ The members change too often..... Please go to Q36

☐ The members don't change often enough..... Please go to Q37

☐ The turn-over of Executive Committee members is not a problem..... Please go to Q38

☐ Don't know..... Please go to Q38

36. Please explain why the frequent turn-over of Executive Committee members is a problem.

37. Please explain why the slow turn-over of Executive Committee members is a problem.

38. Have there been any occasions where the Executive Committee has had difficulty coming to an agreement on important matters regarding issues relating to the running of the strata scheme?

☐ Yes

☐ No..... Please go to Q40

☐ Don't know..... Please go to Q40

39. Please describe the occasions when the Executive Committee had difficulty coming to an agreement, and whether (and how) these difficulties were resolved.



40. Do you think that formal training for Executive Committee members would be beneficial?

- ☐ Yes
- ☐ No.....Please go to Q42
- ☐ Don't know.....Please go to Q42

41. What type of formal training do you think would be the most useful for Executive Committee members, and who do you think should provide this training?

42. Since you have been on the Executive Committee, have you had any difficulties accessing the information you require to run the scheme successfully?

- ☐ Yes
- ☐ No.....Please go to Q44
- ☐ Don't know.....Please go to Q44

43. Please describe the difficulties you have had in accessing information.

44. Where do you, as an Executive Committee member, get information regarding the running of your scheme from? Tick all that apply.

- ☐ Your strata manager
- ☐ Your building manager
- ☐ The NSW Office of Fair Trading
- ☐ The Institute of Strata Title Management
- ☐ The Owners Corporation Network
- ☐ Other members of the Executive Committee of your strata scheme
- ☐ People you have been in contact with who sit on the Executive Committees of other schemes
- ☐ The internet
- ☐ Don't know
- ☐ Other (please specify)_____

45. What methods does the Executive Committee use to communicate with other owners in your strata scheme? (Tick all that apply)

- ☐ Notices in the lobby or at the entrance to the building(s)
- ☐ Letters addressed to each owner
- ☐ Emails to each owner
- ☐ An online forum for the scheme
- ☐ Attendance at general meetings
- ☐ Other (please specify)_____



40. Do you think that formal training for Executive Committee members would be beneficial?

☐ Yes

☐ No.....Please go to Q42

☐ Don't know.....Please go to Q42

41. What type of formal training do you think would be the most useful for Executive Committee members, and who do you think should provide this training?

42. Since you have been on the Executive Committee, have you had any difficulties accessing the information you require to run the scheme successfully?

☐ Yes

☐ No.....Please go to Q44

☐ Don't know.....Please go to Q44

43. Please describe the difficulties you have had in accessing information.

44. Where do you, as an Executive Committee member, get information regarding the running of your scheme from? Tick all that apply.

☐ Your strata manager

☐ Your building manager

☐ The NSW Office of Fair Trading

☐ The Institute of Strata Title Management

☐ The Owners Corporation Network

☐ Other members of the Executive Committee of your strata scheme

☐ People you have been in contact with who sit on the Executive Committees of other schemes

☐ The internet

☐ Don't know

☐ Other (please specify)_____

45. What methods does the Executive Committee use to communicate with other owners in your strata scheme? (Tick all that apply)

☐ Notices in the lobby or at the entrance to the building(s)

☐ Letters addressed to each owner

☐ Emails to each owner

☐ An online forum for the scheme

☐ Attendance at general meetings

☐ Other (please specify)_____



MANAGING YOUR STRATA SCHEME

46. Have there ever been any problems in regards to having building defects remedied/fixed in your scheme to the best of your knowledge?
- ☐ I am not aware of any building defects in this strata scheme.....Please go to Q49
 - ☐ Yes, there are currently defects that have not yet been adequately remedied or fixed
 - ☐ Yes, there have been some problems with defects in the past, but there are no current defects, to the best of my knowledge.....Please go to Q48
 - ☐ No, there have not been any problems.....Please go to Q49
47. Please identify which kinds of problems have been experienced in your scheme in regard to having these defects remedied (tick all that apply).
- ☐ There have not been any serious problems in getting these defects remedied
 - ☐ The developer and/or builder still holds control of the scheme and is delaying the rectification of defects
 - ☐ The strata managing agent has a relationship with the builder and/or developer and is delaying the rectification of defects
 - ☐ Someone on the executive committee has a relationship with the builder and/or developer and is delaying the rectification of defects
 - ☐ The builder is no longer operating, and therefore cannot remedy the defects
 - ☐ We are waiting for a home warranty insurance claim to be settled
 - ☐ The scheme does not have home warranty insurance
 - ☐ We are currently involved in a legal case regarding defects
 - ☐ Other (please specify)_____
48. Please identify which kinds of problems have been experienced in your scheme in regard to having these defects remedied (tick all that apply).
- ☐ The developer and/or builder held control of the scheme and delayed the rectification of defects
 - ☐ The strata managing agent had a relationship with the builder and/or developer and delayed the rectification of defects
 - ☐ Someone on the executive committee had a relationship with the builder and/or developer and delayed the rectification of defects
 - ☐ The builder was no longer operating, and therefore could not remedy the defects
 - ☐ We received a settlement from home warranty insurance
 - ☐ The scheme did not have home warranty insurance
 - ☐ We took the matter to court
 - ☐ Other (please specify)_____
49. Are there any aspects of the design of the building(s) in your strata scheme that make managing the strata scheme more difficult for the Executive Committee (or for the strata managing agent)?
- ☐ Yes
 - ☐ NoPlease go to Q51
 - ☐ Don't know.....Please go to Q51



50. In your opinion what is the most important building design problem, and how does it impact upon the management of your scheme?

51. Have there been any issues with the set-up of the scheme other than the quality or design of building itself that have impacted upon the role of the Executive Committee (e.g. the distribution of unit entitlements, use covenants, etc.)?

☐ Yes

☐ No.....Please go to Q53

☐ Don't know.....Please go to Q53

52. In your opinion, what is/was the most important issue regarding the set-up of the scheme? Please outline how this issue was resolved, or what is stopping it from being resolved.

53. Does the builder or developer of your strata scheme still hold any interests in the scheme (e.g. do they still own some of the strata lots)?

☐ Yes

☐ No.....Please go to Q56

☐ Don't know.....Please go to Q56

54. Have there been any problems that have arisen for the Executive Committee as a result of the builder or developer maintaining interests in the scheme?

☐ Yes

☐ No.....Please go to Q56

☐ Don't know.....Please go to Q56

55. Please describe the nature of the builder or developer's interests and the problems that have arisen.

56. In your opinion, how good is the level of general understanding amongst other owners (i.e. non-Executive Committee members) regarding their rights and responsibilities as owners in your strata scheme?

☐ Excellent

☐ Good

☐ Satisfactory

☐ Not very good

☐ Very poor

☐ Don't know

57. What do you think is the best way to inform strata owners of their rights and responsibilities, and whose responsibility do you think this should be?



58. Does your scheme have a strata managing agent?

- ☐ Yes
- ☐ No.....Please go to Q61
- ☐ Don't know.....Please go to Q62

59. How much does your strata scheme as a whole pay your strata managing agent per annum for their services (i.e. the strata management fee, excluding administrative and sinking fund levies and other operational fees)?

- ☐ \$ _____
- ☐ Don't know

60. Speaking as an Executive Committee member, how satisfied are you with the service provided by your strata managing agent? Please explain your answer.

- ☐ Very satisfied
- ☐ Satisfied
- ☐ Neither satisfied nor dissatisfied
- ☐ Dissatisfied
- ☐ Very dissatisfied
- ☐ Comments _____
-Please go to Q62

61. Why did the Executive Committee choose not to hire a strata managing agent?

62. Does the scheme employ a building manager (or caretaker)?

- ☐ Yes
- ☐ No.....Please go to Q67
- ☐ Don't know.....Please go to Q67

63. How much does your strata scheme as a whole pay your building manager per annum for their services (i.e. the building manager's fee)?

- ☐ \$ _____
- ☐ Don't know

64. Does your building manager (or caretaker) own their own lot and live in the strata scheme?

- ☐ Yes
- ☐ No
- ☐ Don't know



65. Does your building manager (or caretaker) undertake any other duties besides repairs, renewal and maintenance of the common property? Tick all that apply.

- ☐ No, they do not carry out any other duties
- ☐ Yes, they act as a letting agent for investor owners for long-term tenants
- ☐ Yes, they act as a letting agent for investor owners for short-term holiday rentals
- ☐ Yes, they provide a security service for the building
- ☐ Yes, they mediate disputes between residents
- ☐ Yes, they relay the concerns of residents and owners to the strata manager
- ☐ Other (please specify)_____

66. Speaking as an Executive Committee member, how satisfied are you with your building manager (or caretaker)? Please explain your answer

- ☐ Very satisfied
- ☐ Satisfied
- ☐ Neither satisfied nor dissatisfied
- ☐ Dissatisfied
- ☐ Very dissatisfied

Comments_____

67. Since you have been sitting on the Executive Committee, what types of expert consultants has the Executive Committee employed to provide advice on issues relating to the management of the strata scheme? (Tick all that apply.)

- ☐ The Executive Committee has not employed any consultants
- ☐ Lawyer
- ☐ Engineer
- ☐ Surveyor
- ☐ Architect
- ☐ Building inspector
- ☐ Financial adviser
- ☐ Accountant
- ☐ Insurance provider
- ☐ Don't know
- ☐ Other (please specify)_____

68. Thinking of the last time the Executive Committee used these consultants, how valuable did you find them in assisting the Executive Committee with their role? Please explain your answer and specify which type of consultant you are referring to.



69. Generally, how satisfied are you with the management of the scheme by the Executive Committee?
- ☐ Very satisfied.....Please go to Q71
- ☐ Satisfied.....Please go to Q71
- ☐ Neither satisfied nor dissatisfied.....Please go to Q71
- ☐ Dissatisfied
- ☐ Very dissatisfied

70. Please explain why you are dissatisfied with the management of the scheme by the Executive Committee.

71. There are a number of administrative duties frequently carried out by an Executive Committee or its members. Please rate your own Executive Committee's performance in regards to the following: (please tick in the appropriate box)

	Satisfactory	Unsatisfactory	Undertaken by the strata manager	Don't know
Preparing budgets				
Collecting levies				
Managing budgets				
Managing the sinking fund				
Organising insurances				
Keeping financial records, accounts and statements in good order				
Keeping all non-financial records and correspondence in good order				
Managing the strata roll				
Issuing section 109 certificates				
Setting, and abiding by, a schedule of repairs and maintenance to be carried out on common property				
Hiring contractors where appropriate				
Paying suppliers and contractors in a timely manner				
Organising meetings				
Conducting meetings				

72. Where you have answered 'unsatisfactory' in the above table, please explain your answer(s).

73. Does your strata scheme have a formal written business plan that sets out what the Executive Committee and strata managing agent (if applicable) will achieve over the year?

- ☐ Yes
- ☐ No.....Please go to Q75
- ☐ Don't know.....Please go to Q75



74. Do you consider that this plan is successful in outlining an agreed set of goals for your strata scheme, as well as outlining what will need to be done in order to achieve these goals? (Please explain your answer).

☐ Yes

☐ No

☐ Don't know

Comments _____

_____ Please go to Q76

75. Do you think that your scheme would benefit from having a formal written business plan of this sort? (Please explain your answer)

☐ Yes

☐ No

☐ Don't know

Comments _____



DISPUTES IN YOUR STRATA SCHEME

76. Since you have been on the Executive Committee for your scheme, have there been any disputes between owners and/or residents or between the Executive Committee and owners and/or residents?

☐ Yes

☐ No.....Please go to Q80

☐ Don't know.....Please go to Q80

77. Were any of these disputes resolved before there was a need to take formal measures (such as issuing a Notice to Comply, undertaking formal mediation, seeking an order from an adjudicator etc.)?

☐ Yes

☐ No.....Please go to Q79

☐ Don't know.....Please go to Q79

78. Please describe the ways in which the dispute(s) was/were resolved.

79. What have the disputes that have occurred in your strata scheme been in regards to? Tick all that apply.

☐ Noise

☐ Smells (including smoking complaints)

☐ Laundry displayed on balconies

☐ Rubbish

☐ Actions of strata managing agent

☐ Actions of building manager or caretaker

☐ Use of common property

☐ Access to common property

☐ Repairs and maintenance of common property

☐ Renovations within an individual owner's lot

☐ Breaking of by-laws

☐ Financial costs to the owners corporation / owners

☐ Setting of levies

☐ Parking

☐ Pets

☐ Short-term letting

☐ Other (please specify)_____



80. Since you have been on the Executive Committee, has the Executive Committee ever issued a Notice to Comply (a formal warning notice) on a unit owner or resident?
- ☐ Yes
- ☐ NoPlease go to Q92
- ☐ Don't know.....Please go to Q92
81. Has the owners corporation ever applied to have a penalty imposed on an owner or resident by the Consumer, Trader and Tenancy Tribunal (CTTT)?
- ☐ Yes
- ☐ No.....Please go to Q92
- ☐ Don't know.....Please go to Q92
82. Has there ever been a need to obtain an order from an adjudicator for compliance?
- ☐ Yes
- ☐ No.....Please go to Q92
- ☐ Don't know.....Please go to Q92
83. Since you have been on the Executive Committee, has the Executive Committee ever been requested to attend, or sought, mediation through the NSW Office of Fair Trading?
- ☐ Yes
- ☐ No.....Please go to Q92
- ☐ Don't know.....Please go to Q92
84. Was the mediation successful in resolving the dispute? (If there has been more than one case, was the mediation successful in all cases?)
- ☐ Yes.....Please go to Q92
- ☐ No
- ☐ Don't know.....Please go to Q92
85. Did any of the involved parties apply to have their dispute heard by an adjudicator?
- ☐ Yes
- ☐ No.....Please go to Q92
- ☐ Don't know.....Please go to Q92
86. Was the adjudication successful in resolving the dispute? (If there has been more than one case, was the adjudication successful in all cases?) Please provide details.
- ☐ Yes
- ☐ No
- ☐ Don't know
- Comments_____



87. Did any of the parties lodge an appeal with the CTTT for the matter to be heard by a Tribunal member, or was the matter referred to the CTTT by the adjudicator?

☐ Yes

☐ No.....Please go to Q92

☐ Don't know.....Please go to Q92

88. Was the determination by the CTTT successful in resolving the dispute? Please provide details.

☐ Yes.....Please go to Q92

☐ No

☐ Don't know.....Please go to Q92

Comments_____

89. Was the matter taken to the Supreme Court or District Court?

☐ Yes

☐ No.....Please go to Q91

☐ Don't know.....Please go to Q92

90. Please provide details of the case and its outcome, if possible.

91. Please explain why the decision was made not to take the case to the Supreme Court or District Court.

92. Has the Executive Committee ever employed legal advice in relation to a dispute?

☐ Yes

☐ No

☐ Don't know

93. Please describe how the decision was made to employ legal advice, and how useful this advice was.



LEGISLATION & BEYOND

94. Are there any challenges facing strata management in NSW that you think are not adequately addressed by the existing legislation covering strata management?

☐ Yes

☐ No.....Please go to Q96

☐ Don't know.....Please go to Q96

95. Can you explain why you do not think the existing legislation is adequate in addressing these challenges? What do you consider are the three most important legislative changes required in order to address these issues?

96. Other than the strata legislation, what do you think are the three most important factors that influence the practice of the Executive Committees of owners corporations?

97. Lastly, and thinking over your period on the Executive Committee, what do you see as the three main challenges your Executive Committee has faced in effectively running your strata scheme?

Thank you for your help and valuable time.

This research is confidential and at no point will you be identified as a participant in any publications that arise from the research. However, we would like to know whether you would be prepared to **participate in an interview at a later date as part of this research?** Interviews will be organised at times as convenient for participants as possible and you will receive **remuneration of \$60.**

If you are happy to be contacted to participate in an interview, please write your full name and the best way to contact you (e.g. a telephone number or e-mail address) below.

Your contact details:

ENTER THE PRIZE DRAW

Thank you for your help and valuable time. If you would like to enter into the draw to win one of four \$250 Coles Group & Myer Gift Cards, please enter your e-mail address below.

Your contact details will remain confidential and will only be used to contact you if you win a prize.

Authorised under NSW Permit LTPS/10/00291. Terms and conditions of entry on the next page.

Your e-mail (or postal) address _____



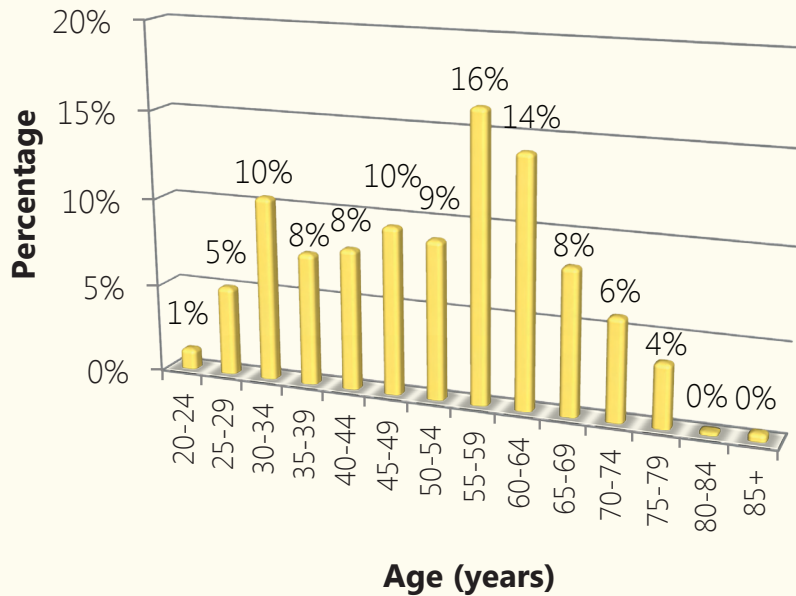
Terms and conditions of entry

1. Entry is only open to Australian residents aged over 18 years as at the time of completing the survey, who own (or are purchasing) a strata unit in New South Wales. Employees, officers and contractors (and their immediate families) of the Promoters are ineligible to enter.
2. The Promoters reserve the right to verify the validity of entries. The Promoters reserve the right to disqualify any entrant for tampering with the entry process or for submitting an entry which is not in accordance with these Terms and Conditions.
3. The promotion commences 18/01/2010 and entries close at 5.00 pm (Sydney time) on 20/09/2010. Incomplete or illegible entries will be deemed invalid. One entry only per person.
4. To be eligible to win a prize, a participant must fully complete the survey.
5. Participants must provide their current and valid email address at the end of the survey to be eligible to receive a prize. Any contact details entered incorrectly on the website shall be deemed invalid.
6. Winners will be drawn using a computer-generated selection at the City Futures Offices at 10.00am on 21/09/2010
7. Four winners will be drawn. Each of the four winners will receive a \$250 Coles Group & Myer Gift Card.
8. Total prize value for the promotion is \$1000 (including GST).
9. Winners will be notified by e-mail on 21/09/2010. These winners will have until 5.00pm on 27/09/2010 to contact City Futures via return email or by calling (02) 93857777. Should a winner not respond to City Futures by 27/09/2010 the prize will be forfeited. The prize will then be re-drawn.
10. Results of the prize draw will appear on the City Futures website <http://www.fbe.unsw.edu.au/cityfutures> on 28/09/2010
11. Winners must use their vouchers within the expiry time as outlined by Coles Group Ltd. The Promoters will not be responsible for any vouchers not used within the stated period and a second voucher will not be issued.
12. Prizes are not transferable or exchangeable and cannot be taken as cash.
13. Any costs associated with accessing the entry form page on the website are the entrant's responsibility and are dependent on the Internet service provider used.
14. The Promoters will not be responsible for any incorrect, inaccurate or incomplete information communicated in the course of, or in connection with, this promotion if the deficiency is occasioned by any cause outside the reasonable control of the Promoters including without limitation technical malfunctions or failures. If for any reason any element of a prize(s) become unavailable for any reason beyond the Promoters control then a similar prize of equal or greater value will be awarded to the winner in lieu.
15. If for any reason this promotion is not capable of running as planned because of infection by computer virus, bugs, tampering, unauthorised intervention, technical failures or any other causes beyond the control of the Promoters which corrupt or affect the administration, security, fairness, integrity or proper conduct of this promotion, the Promoters reserve the right in their sole discretion to cancel, terminate, modify or suspend the promotion.
16. Entries will not be returned. Entrants' personal details will not be used for marketing purposes by the Promoters.
17. The Promoters are City Futures Research Centre, University of New South Wales, ABN 57 195 873 179, Faculty of the Built Environment University of NSW Kensington 2052, ph. (02) 9385 7777.



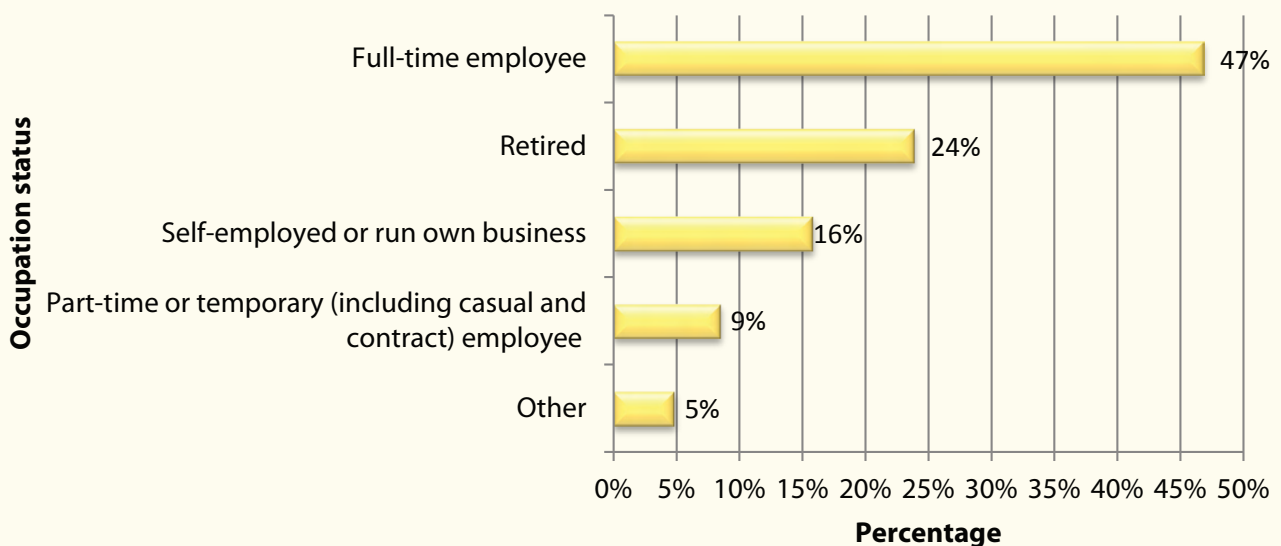
Appendix 3: Characteristics of executive committee survey respondents

Figure 1: EC Survey: Age of executive committee survey respondents



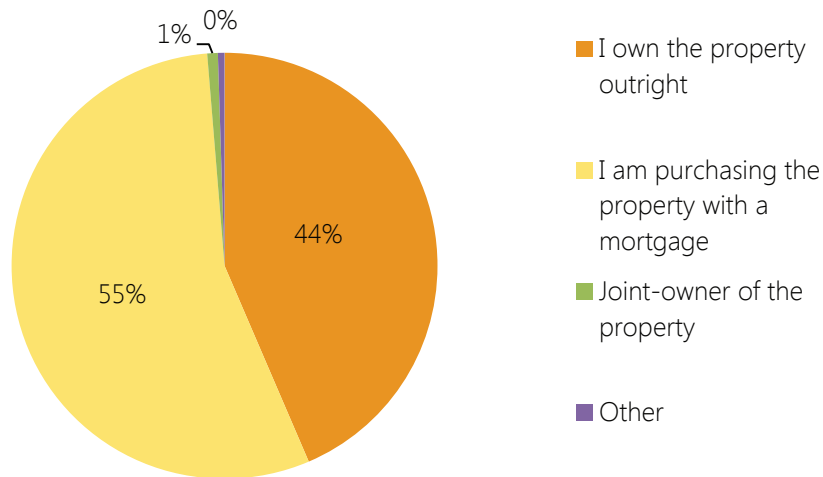
Survey of executive committee members. 410 respondents. Single response question.

Figure 2 EC Survey: Occupation of executive committee survey respondents



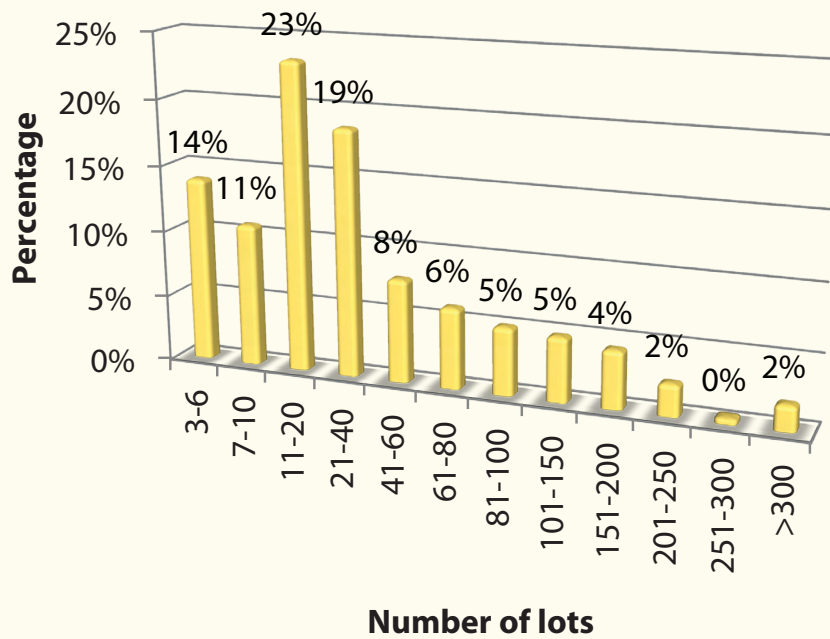
Survey of executive committee members. 410 respondents. Single response question.

Figure 3 EC Survey: Ownership type of executive committee survey respondents



Survey of executive committee members. 379 respondents. Single response questions.

Figure 4 EC Survey: Number of lots in executive committee survey respondents' strata schemes



Survey of executive committee members. 408 respondents. Single response question.

Figure 5: EC Survey: Location of executive committee survey respondents, Sydney

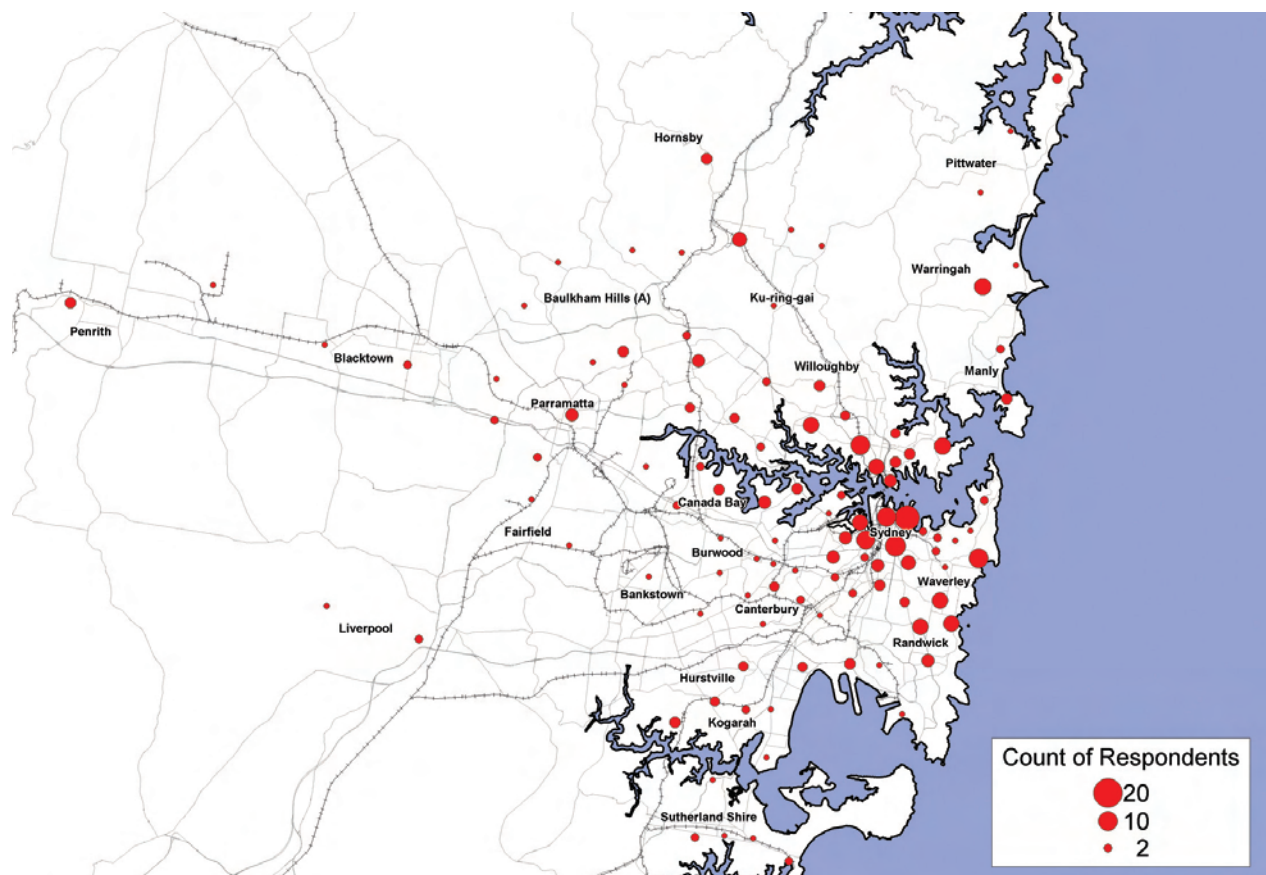


Figure 6: EC Survey: Location of executive committee survey respondents, NSW Eastern Seaboard

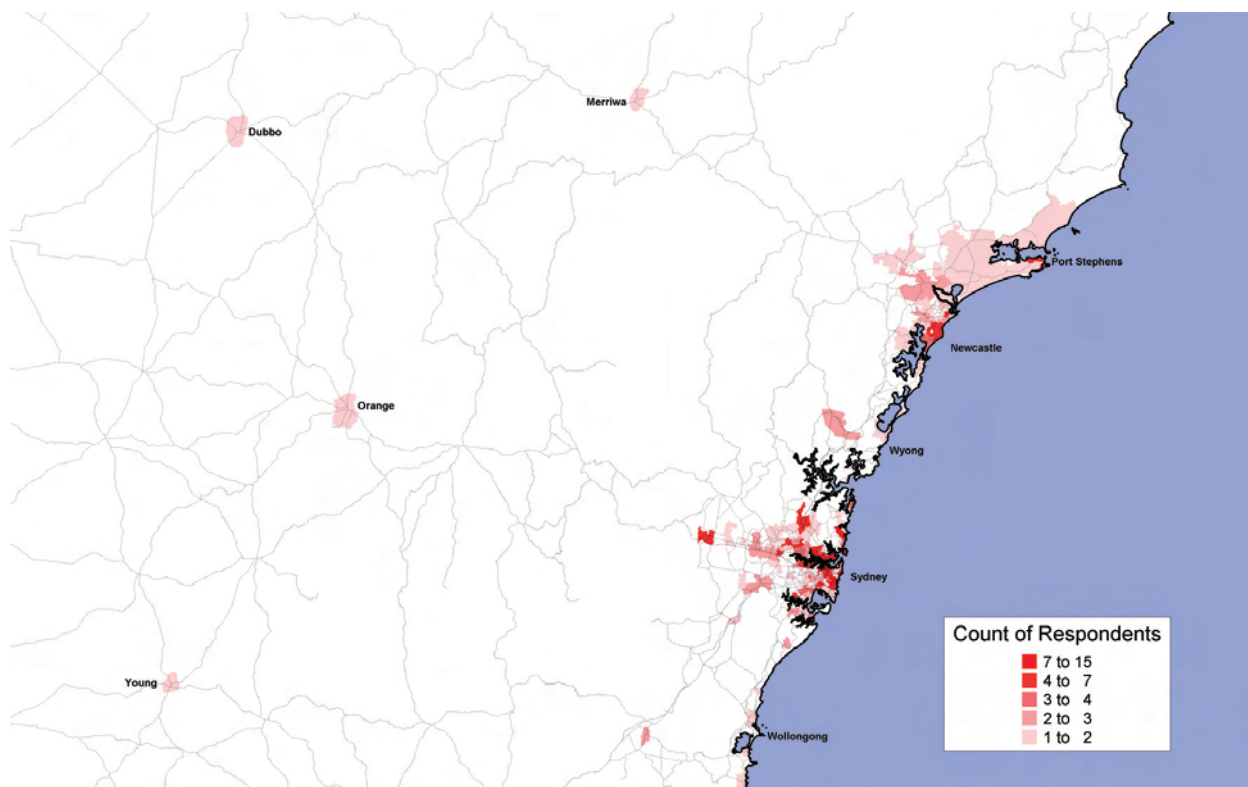
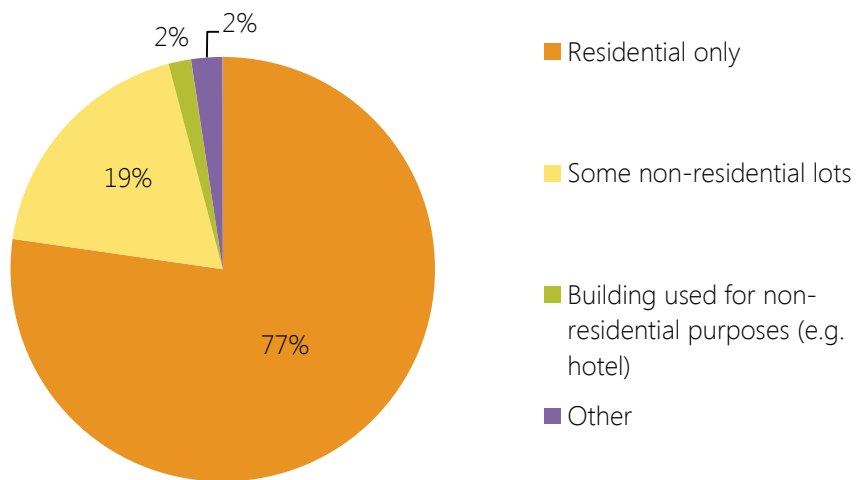
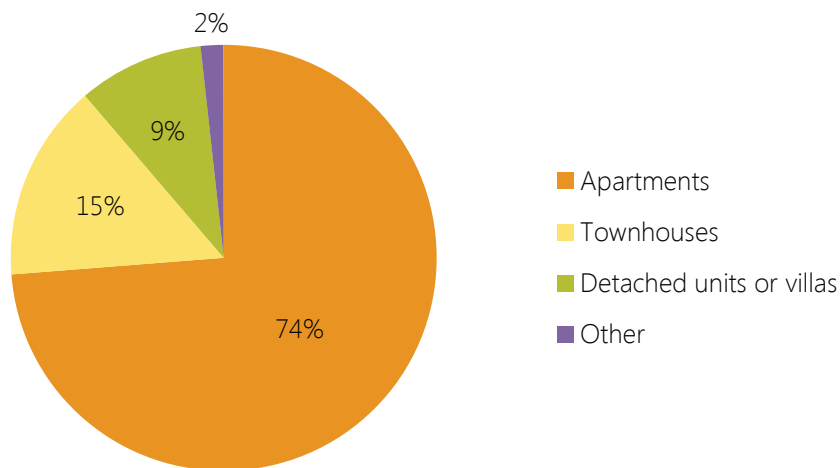


Figure 7 EC Survey: Type of strata scheme of executive committee survey respondents



Survey of executive committee members. 413 respondents. Single response question.

Figure 8 EC Survey: Type of properties in the strata schemes of executive committee survey respondents



Survey of executive committee members. 412 respondents. Single response questions.

Appendix 4: Strata managing agent survey

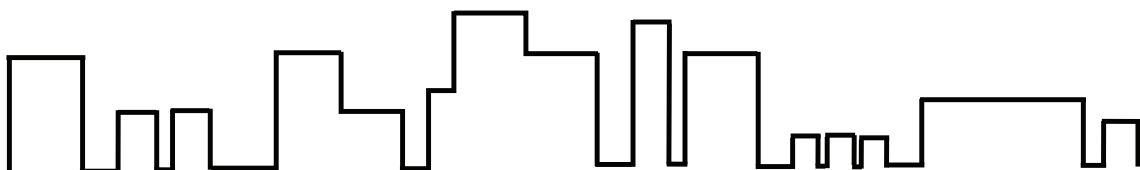


Strata Managing Agents Survey

City Futures Research Centre at the University of New South Wales invites Managing Agents of NSW strata schemes to share your knowledge and opinions on the management of strata schemes by completing the following survey. We would love to hear from you if:

1. You are currently working as a strata managing agent in New South Wales.
2. You manage one or more strata schemes with residential lots.
3. You are over 18 years old.

The information statement on the next page provides some background to this project and outlines how the information you provide will be used as well as how your confidentiality will be assured. Continuing with the survey indicates that, having read and understood the information provided in the information statement, you have decided to participate.



PROJECT INFORMATION STATEMENT

Date: 3rd March 2010

Project Title: *Governing the Compact City: The role and effectiveness of strata management in higher density residential developments*

Approval No.: HREC 08372

THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF THE
BUILT ENVIRONMENT

Participant selection and purpose of study

You are invited to participate in a study of the role and effectiveness of strata management in higher density residential developments. You were selected as a possible participant in this study because you are a strata managing agent in New South Wales.

Description of study

This research is part of a two-year research project being undertaken by the City Futures Research Centre at the University of NSW, funded by the Australian Research Council, in conjunction with partner organisations, the NSW Land and Property Management Authority, NSW Fair Trading, Owners Corporation Network, NSW Institute of Strata Title Managers (ISTM), Lannock Strata Finance and Macquarie Bank. The aim of the study is to provide strata owners, professionals and policymakers with a greater understanding of the effectiveness of the management and governance of the strata sector. One component of this research is a survey of strata managing agents.

If you decide to participate in this survey, the questions will focus on the role managing agents play in the management of the strata sector, relationships with owners and other stakeholders, staffing and skills development, and legal and legislative issues. The survey will take about 20 minutes to complete.

We expect that the findings of this research will provide a strong evidence base to inform the development of more effective policies to address the more problematic aspects of strata regulation and will feed into good practice in management and governance of the sector. However, we cannot and do not guarantee or promise that you will receive any benefits from this study.

Confidentiality and disclosure of information

Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission, or except as required by law. By continuing with the survey, you are indicating that, having read the information provided in this information statement, you have decided to participate in this research.

We plan to discuss our findings at a series of workshops with our partner organisations as well as at a final industry seminar hosted by ISTM in Sydney for the partner organisations, media and other interested stakeholders. A final research report will also be published jointly by City Futures and the ISTM, with a key findings summary allowing wider dissemination. This report will be available online. The research will also be published in national and international journals to disseminate the findings to a wider policy and academic audience.

Recompense to participants

There will be no direct remuneration for your participation in this research. However, if you complete the survey, you can enter into a prize draw to win one of four \$250 Coles Group and Myer gift cards. This prize draw will be open between 29th September 2010 and 10th December 2010.

Your consent

Your decision whether or not to participate will not prejudice your future relations with The University of New South Wales or other participating organisations. If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without prejudice by contacting Dr Hazel Easthope, City Futures Research Centre, Faculty of the Built Environment, University of NSW, NSW 2052.

If you have any questions, please do not hesitate to contact me.

Kind regards,

Dr Hazel Easthope

City Futures Research Centre
FBE, University of NSW
Ph. (02) 93856041
Hazel.easthope@unsw.edu.au

Complaints may be directed to the Ethics Secretariat, The University of New South Wales, SYDNEY 2052 AUSTRALIA
(phone 9385 4234, fax 9385 6648, email : ethics.sec@unsw.edu.au).



WELCOME TO THE SURVEY

The survey is split into 6 sections:

1. You & your company
2. You & your involvement in the industry
3. The schemes you manage
4. Managing your strata schemes
5. Disputes
6. Legislation & beyond

The survey should take about 20 minutes to complete.

You must be a strata managing agent to answer this survey.

YOU & YOUR COMPANY

1. Are you . . .
 - ☐ Male
 - ☐ Female
2. How old are you? _____ years
3. Are you an employer, employee or self-employed as a strata managing agent?
 - ☐ I am employed by a company that undertakes strata management
 - ☐ I work for myself and do not employ any other strata managing agents.....*Please go to Q8*
 - ☐ I run my own business and employ other strata managing agents
 - ☐ Other (please specify)_____
4. Is strata management the main business undertaken by your company (rather than, for example, real estate)?
 - ☐ Yes.....*Please go to Q6*
 - ☐ No
5. What is the main business of your company?_____



6. How many people does your company employ in total (all employees)?

- ☐ 1-2
- ☐ 3-5
- ☐ 6-10
- ☐ 11-20
- ☐ 21-50
- ☐ 51-100
- ☐ Over 100

7. How many strata managing agents does your company employ in total?

- ☐ 1-2
- ☐ 3-5
- ☐ 6-10
- ☐ 11-20
- ☐ 21-50
- ☐ 51-100
- ☐ Over 100

8. Are you, or is your company, a member of the Institute of Strata Title Management (ISTM)?

- ☐ Yes
- ☐ No
- ☐ Don't know

9. Are there any particular parts of the market that your company targets? If so, please specify (e.g. smaller blocks, mixed-use schemes, schemes in a single region)

- ☐ No, we do not target any particular parts of the market
- ☐ Yes, we do target particular parts of the market. (Please describe) _____



YOUR INVOLVEMENT IN THE INDUSTRY

10. How did you come to be involved with strata management? _____

11. How long have you been working as a strata managing agent? _____

12. What is your highest level of educational attainment, not including Certificate IV in Property (Operations) or (Strata Management)?

- ☐ Year 11 or below.....*Please go to Q14*
- ☐ Higher School Certificate (HSC) or equivalent.....*Please go to Q14*
- ☐ Trade Certificate
- ☐ Diploma or Advanced Diploma
- ☐ Bachelor Degree
- ☐ Graduate Diploma or Graduate Certificate
- ☐ Postgraduate Degree

13. In what field(s) is/are your professional qualification(s)? _____

14. Do you work full time?

- ☐ Yes, I work full time
- ☐ No, I work part-time or casually
- ☐ Other (please specify) _____

15. How many hours per month (on average) do you work as a strata managing agent? _____



16. What percentage of those hours (on average) would you estimate that you spend on the following activities as part of your strata management role across all of the schemes you manage?

	% of your time
Preparing for, and attending, executive committee meetings and/or general meetings at the schemes you manage	
Preparing budgets	
Managing budgets and keeping financial records, accounts and statements in good order (including the sinking fund)	
Organising insurances	
Collecting levies	
Keeping non-financial records and correspondence in good order (including managing the strata roll and issuing section 109 certificates)	
Setting, and implementing, a schedule of repairs and maintenance to be carried out on common property (including hiring, and paying, contractors where appropriate)	
Other (please specify)	

17. Does your company offer you any opportunities for continuing professional development, such as financial or other support (e.g. paid leave) for undertaking training courses that are relevant to your work?

- ☐ Yes
☐ No.....*Please go to Q22*
☐ Don't know.....*Please go to Q22*
☐ Other (please specify)_____ *Please go to Q22*

18. What opportunities are available? _____

19. Have you taken advantage of these opportunities as yet?

- ☐ Yes
☐ No.....*Please go to Q21*
☐ Other (please specify)_____ *Please go to Q22*

6



20. Please describe what you did (e.g. what course you undertook, what seminar you attended etc.) and how useful you found it. _____

_____ Please go to Q22

21. Why have you not (yet) taken advantage of these opportunities? _____

22. Are there any continuing professional development opportunities that are not currently available to you but that you would like to undertake as part of your job as a strata managing agent?

☐ Yes

☐ No.....Please go to Q24

☐ Don't know.....Please go to Q25

23. What type of training would you like to see offered to strata managing agents and why? _____

_____ Please go to Q25

24. Please explain why are you not interested in accessing any (further) continuing professional development opportunities. _____

25. When you need to access additional information regarding the management of a strata scheme, from which sources do you typically get that information? (Tick all that apply)

☐ Colleagues at your workplace

☐ NSW Fair Trading

☐ The Institute of Strata Title Management (ISTM)

☐ The Owners Corporation Network (OCN)

☐ Members of the Executive Committee of the scheme in question

☐ The building manager

☐ The internet

☐ Don't know

☐ Other (please specify) _____



26. What Information technology (IT) products does your business use (excluding basic operating systems, such as Microsoft Office)? (Tick all that apply)

- ☐ A company website
- ☐ Online banking
- ☐ Automated online transactions
- ☐ Specialised strata management software
- ☐ None
- ☐ Other (please specify) _____

27. Are you aware of any specific issues regarding the use of IT products in your company?

- ☐ Yes
- ☐ No.....*Please go to Q29*
- ☐ Don't know.....*Please go to Q29*

28. Please describe these issues with the use of IT. _____

29. Are you aware of any specific issues regarding the uptake of IT products by strata managing agents in your company?

- ☐ Yes
- ☐ No.....*Please go to Q31*
- ☐ Don't know.....*Please go to Q31*

30. Please describe the issues that have prevented IT uptake by managing agents in your company. _

31. Approximately how much of your communication with your client base takes place electronically?

- ☐ None of it
- ☐ Some of it
- ☐ Most of it
- ☐ All of it
- ☐ Other (please specify) _____

32. Approximately how many of your office-based management tasks are performed electronically?

- ☐ None of them
- ☐ Some of them
- ☐ Most of them
- ☐ All of them
- ☐ Other (please specify) _____

8



THE SCHEMES YOU MANAGE

33. How many strata schemes are you responsible for managing at the current time?

- ☐ 1-3
- ☐ 4-10
- ☐ 11-20
- ☐ 21-30
- ☐ 31-40
- ☐ 41-50
- ☐ 51-75
- ☐ 76 or more

34. How many lots are there in the schemes that you manage? (Tick all that apply.) [E.g. if you manage ten 2-lot schemes and one 410-lot scheme, tick the '2 lots' and '400-499 lots' boxes.]

- ☐ 2 lots
- ☐ 3-5 lots
- ☐ 6-9 lots
- ☐ 10-19 lots
- ☐ 20-49 lots
- ☐ 50-99 lot
- ☐ 100-199 lots
- ☐ 200-299 lots
- ☐ 300-399 lots
- ☐ 400-499 lots
- ☐ 500 or more lots

35. How many lots are there (in total) across all of the schemes you are responsible for at the current time?

- ☐ 2-10 lots
- ☐ 10-19 lots
- ☐ 20-49 lots
- ☐ 50-99 lots
- ☐ 100-199 lots
- ☐ 200-299 lots
- ☐ 300-399 lots
- ☐ 400-499 lots
- ☐ 500 -999 lots
- ☐ 1000-1999 lots
- ☐ 2000 or more lots



36. Where are the schemes that you manage located? (Tick all that apply):

- ☐ Inner Sydney (Mosman, Waverley and Randwick to Lane Cove, Ashfield & Botany Bay)
- ☐ Middle Sydney (Canada Bay, Burwood, Canterbury & Rockdale to Ku-ring-gai , Parramatta & Bankstown)
- ☐ Outer Sydney (Hornsby, Baulkham Hills, Holroyd, Fairfield, Liverpool & Campbelltown to Penrith & Camden, Warringah & Sutherland)
- ☐ Newcastle and surrounds (Newcastle, Port Stephens, Maitland)
- ☐ Wollongong (Wollongong & Shellharbour)
- ☐ Northern Coast (Tweed, Byron Bay, Lismore)
- ☐ Central North Coast (Lake Macquarie, Wyong, Gosford)
- ☐ Regional towns (including Broken Hill, Orange, Bathurst, Queanbeyan, Dubbo, Albury, Tamworth)
- ☐ Other non-metropolitan NSW
- ☐ Other states and/or territories
- ☐ Other (please specify) _____

37. When were the schemes you manage built? (Tick all that apply)

- ☐ 2001-present
- ☐ 1991-2000
- ☐ 1981-1990
- ☐ 1971-1980
- ☐ 1961-1970
- ☐ 1951-1960
- ☐ 1941-1950
- ☐ 1940 or before

38. Which of the following best describe(s) the schemes you manage? (Tick all that apply)

- ☐ Within a community title scheme
- ☐ A single building within a single strata scheme
- ☐ Multiple buildings within a single strata scheme
- ☐ Within a larger development with multiple stratum (e.g. a residential strata scheme and a hotel in the one building)

39. Which of the following best describe(s) the schemes you manage? (Tick all that apply)

- ☐ Residential.....*Please go to Q41*
- ☐ Commercial
- ☐ Mixed use (both residential and commercial)



40. What non-residential purposes are the mixed use schemes you manage used for? (Tick all that apply)

- ☐ Hotel
- ☐ Short-term holiday apartments
- ☐ Office(s)
- ☐ Shop(s)
- ☐ Restaurant(s) or cafe(s)
- ☐ Bar(s) or nightclub(s)
- ☐ Other (please specify) _____

41. What types of residential properties are the strata schemes you manage made up of? (Tick all that apply)

- ☐ Apartments
- ☐ Townhouses
- ☐ Detached units or villas
- ☐ Other (please specify) _____

42. Are there any aspects of the design of the buildings in any of the strata schemes you manage that make managing the scheme(s) more difficult?

- ☐ Yes
- ☐ No.....Please go to Q44
- ☐ Don't know.....Please go to Q44

43. In your opinion, what are the three most important building design problems, and how do they impact upon the management of the strata schemes you manage? _____

44. Have there been any issues with the set-up of the schemes you manage other than the quality of design of the buildings themselves that have impacted upon your role as strata managing agent (e.g. the distribution of unit entitlements, use covenants, etc.)?

- ☐ Yes
- ☐ No.....Please go to Q46
- ☐ Don't know.....Please go to Q46

45. In your opinion, what is/was the most important issue regarding the set-up of the scheme(s) you manage? _____



46. In any of the schemes you manage, does the builder or developer continue to hold any interest in the scheme (e.g. do they still own some of the strata lots)?

- ☐ Yes
- ☐ No.....*Please go to Q49*
- ☐ Don't know.....*Please go to Q49*

47. Have there been any problems that have arisen for you as a managing agent as a result of a builder or developer maintaining interests in any of the schemes you manage?

- ☐ Yes
- ☐ No.....*Please go to Q49*
- ☐ Don't know.....*Please go to Q49*

48. Please describe the nature of the builder or developer's interests and the problems that have arisen. Please limit your description to the most serious case, in your opinion. _____



MANAGING YOUR STRATA SCHEME(S)

49. Overall, how would you rate your professional relationship with the members of the Executive Committees of the strata schemes that you manage?

- ☐ Excellent.....Please go to Q51
- ☐ Good.....Please go to Q51
- ☐ Poor.....Please go to Q52
- ☐ Very poor.....Please go to Q52
- ☐ Variable (e.g. better in some schemes, worse in others or better with some EC members and worse with others)Please go to Q50

50. Are the majority of relationships with members of Executive Committees good or poor?

- ☐ The majority are good
- ☐ The majority are poorPlease go to Q52
- ☐ There is an equal split

51. [If good or excellent] Please explain what conditions you think lead to you having positive relationships with members of the Executive Committees of the schemes you manage_____

_____(If you answered 'variable' in Q49, please go to Q52. Otherwise, please go to Q53)

52. [If poor or very poor] Please explain what conditions you think lead to you have poor relationships with members of the Executive Committees of the schemes you manage. _____

53. In your opinion, how good is the level of general understanding amongst the Executive Committee members in the strata schemes you manage regarding their rights and responsibilities as owners?

54. In your opinion, how good is the level of general understanding amongst owners who are not on the Executive Committee in the strata schemes you manage regarding their rights and responsibilities as owners? _____

55. In your opinion, how good is the level of understanding amongst the Executive Committee members about your roles and responsibilities as a strata managing agent?_____

56. In your opinion, how reasonable are the expectations that Executive Committee members have of you? _____

13



57. Please describe any problems you have experienced with individual lot owners outside of the Executive Committee. _____

58. What do you think is the best way to inform Executive Committee members, and other strata owners, of their rights and responsibilities? _____

59. Whose responsibility do you think it should be to inform Executive Committee members, and other strata owners, of their rights and responsibilities? _____

60. Do any of the schemes you manage have a formal written business plan that sets out what the Executive Committee and managing agent will achieve over the year?

- ☐ Yes, all of the schemes I manage have a formal plan
- ☐ Yes, some of the schemes I manage have a formal plan
- ☐ No, none of the schemes I manage have a formal plan.....*Please go to Q62*
- ☐ Other (please specify) _____ *Please go to Q63*

61. Do you find such plans useful for outlining an agreed set of goals for the strata scheme(s), as well as outlining what will need to be done in order to achieve these goals? (Please explain your answer)

- ☐ Yes, in all cases.....*Please go to Q63*
- ☐ Yes, in some cases, but not in others.....*Please go to Q63*
- ☐ No.....*Please go to Q63*
- ☐ Don't know.....*Please go to Q63*

Comments _____

62. Do you think that the schemes you manage would benefit from having a formal written business plan of this sort? (Please explain your answer)

- ☐ Yes
- ☐ No
- ☐ Don't know

Comments _____

63. Do you work with a resident building manager in any of the schemes you manage?

- ☐ Yes, in one scheme
- ☐ Yes, in a number of schemes.....*Please go to Q65*
- ☐ No.....*Please go to Q66*

14



64. If yes in one scheme – do you find that working with a resident building manager has any benefits to you in your own role? (Please explain your answer)

- ☐ Yes
- ☐ No
- ☐ Don't know

Comments _____

_____ *Please go to Q66*

65. If yes in multiple schemes – do you find that working with resident building managers has any benefits to you in your own strata management role? Please explain your answer.

- ☐ Yes, it is beneficial in all cases.
- ☐ It is beneficial in some cases, but not in others
- ☐ No, it is not beneficial in any cases

Comments _____

66. Do you work with a non-resident caretaker in any of the schemes you manage?

- ☐ Yes, in one scheme
- ☐ Yes, in a number of schemes.....*Please go to Q68*
- ☐ No.....*Please go to Q69*

67. Do you find that working with a non-resident caretaker has any benefits to you in your own strata management role? Please explain your answer.

- ☐ Yes
- ☐ No
- ☐ Don't know

Comments _____

_____ *Please go to Q69*

68. Do you find that working with a non-resident caretaker has any benefits to you in your own strata management role? Please explain your answer.

- ☐ Yes, it is beneficial in all cases.
- ☐ It is beneficial in some cases, but not in others
- ☐ No, it is not beneficial in any cases

Comments _____



DISPUTES

69. Have there ever been any disputes between owners and/or residents in any of the schemes you manage?

- ☐ Yes, frequently
☐ Yes, occasionally
☐ No..... *Please go to Q73*
☐ Don't know *Please go to Q73*

70. Which are the three most common areas of dispute in your experience (please answer 1, 2 and 3, where 1 is the most frequent area of dispute)

	Rating	Please specify
Noise		
Smells (including smoking complaints)		
Laundry displayed on balconies		
Rubbish		
Actions of strata managing agent		
Actions of building manager or caretaker		
Use of common property		
Access to common property		
Repairs and maintenance of common property		
Renovations within an individual owner's lot		
Breaking of by-laws		
Financial costs to the owners corporation / owners		
Setting of levies		
Parking		
Pets		
Meetings		
Short-term letting		
Other		
Other		
Other		



71. Were any of these disputes resolved before there was a need to take formal measures (such as issuing a Notice to Comply, undertaking formal mediation, seeking an order from an adjudicator etc.)?

☐ Yes, in all cases

☐ Yes, in some cases

☐ No.....*Please go to Q73*

☐ Don't know.....*Please go to Q73*

☐ Other (please specify)_____ *Please go to Q73*

72. [If yes] Please describe the ways in which the dispute(s) between owners and/or residents was/were resolved. Please limit your answer to up to three examples. _____

73. Have there ever been any disputes between yourself as a managing agent and the owners in any of the schemes you manage?

☐ Yes

☐ No.....*Please go to Q77*

☐ Don't know.....*Please go to Q77*

74. [If yes] What have these disputes been in regards to? _____

75. Were these disputes between yourself and one or more owners resolved before there was a need to take formal measures?

☐ Yes, in some cases

☐ Yes, in all cases

☐ No.....*Please go to Q77*

☐ Other (please specify)_____ *Please go to Q77*

76. Please describe the ways in which the dispute(s) between yourself and the owners was/were resolved. _____



Thank you for your help and valuable time.

This research is confidential and at no point will you be identified as a participant in any publications that arise from the research. However, we will be inviting people to **participate in interviews** at a later date as part of this research in order to obtain some more in-depth information about these issues. Interviews will be organised at times convenient for participants,

If you would like to participate in an interview, please write your full name and the best way to contact you (e.g. a telephone number or e-mail address) below. (Please note that the number of follow-up interviews is limited and we cannot guarantee that you will be contacted).

Your contact details: _____

The first prize draw for this survey (entry to the 2010 Strata Title Convention in October 2010) is now closed. However, you now have the opportunity to win one of four \$250 Coles Group and Myer gift cards (Authorised under NSW Permit No. LTPS/10/08904.)

If you would like to enter to win a prize, please read the terms and conditions and provide your email address below before 10th December 2010.

Email address: _____

Terms and conditions of entry

1. Entry is only open to Australian residents aged over 18 years as at the time of completing the survey, who work as strata managing agents in New South Wales. Employees, officers and contractors (and their immediate families) of the Promoters are ineligible to enter.
2. The Promoters reserve the right to verify the validity of entries. The Promoters reserve the right to disqualify any entrant for tampering with the entry process or for submitting an entry which is not in accordance with these Terms and Conditions.
3. The promotion commences 29/09/2010 and entries close at 5.00 pm (Sydney time) on 10/12/2010. Incomplete or illegible entries will be deemed invalid. One entry only per person.
4. To be eligible to win a prize, a participant must fully complete the survey.
5. Participants must provide their current and valid email address or telephone number at the end of the survey to be eligible to receive a prize. Any contact details entered incorrectly on the website shall be deemed invalid.
6. Winners will be drawn using a computer-generated selection at the City Futures Offices at 5:00 pm on 10/12/2010.
7. Four winners will be drawn. Each of the four winners will receive a \$250 Coles Group & Myer Gift Card.
8. Total prize value for the promotion is \$1000 (including GST).
9. Winners will be notified by e-mail on 13/12/2010. These winners will have until 5.00pm on 04/01/2011 to contact City Futures via return email or by calling (02) 93857777. Should a winner not respond to City Futures by 04/01/2011 the prize will be forfeited. The prize will then be re-drawn.
10. Results of the prize draw will appear on the City Futures website <http://www.fbe.unsw.edu.au/cityfutures> on 12/01/2011.
11. Winners must use their vouchers within the expiry time as outlined by Coles Group Ltd. The Promoters will not be responsible for any vouchers not used within the stated period and a second voucher will not be issued.
12. Prizes are not transferable or exchangeable and cannot be taken as cash.
13. Any costs associated with accessing the entry form page on the website are the entrant's responsibility and are dependent on the Internet service provider used.
14. The Promoters will not be responsible for any incorrect, inaccurate or incomplete information communicated in the course of, or in connection with, this promotion if the deficiency is occasioned by any cause outside the reasonable control of the Promoters including without limitation technical malfunctions or failures. If for any reason any element of a prize(s) become unavailable for any reason beyond the Promoters control then a similar prize of equal or greater value will be awarded to the winner in lieu.
15. If for any reason this promotion is not capable of running as planned because of infection by computer virus, bugs, tampering, unauthorised intervention, technical failures or any other causes beyond the control of the Promoters which corrupt or affect the administration, security, fairness, integrity or proper conduct of this promotion, the Promoters reserve the right in their sole discretion to cancel, terminate, modify or suspend the promotion.
16. Entries will not be returned. Entrants' personal details will not be used for marketing purposes by the Promoters.
17. The Promoters are City Futures Research Centre, University of New South Wales, ABN 57 195 873 179, Faculty of the Built Environment University of NSW Kensington 2052, ph. (02) 9385 7777.

20



Appendix 5: Survey of strata owners



Survey of Strata Owners

City Futures Research Centre at the University of New South Wales invites owners of strata lots (apartments, townhouses, etc.) in strata schemes to share your knowledge and opinions on the management of your strata development by completing the following survey.

We would love to hear from you if:

1. You are over 18 years old.
2. You currently own a strata lot in a strata scheme with 3 or more properties/lots.
3. Your strata scheme includes at least one residential property/lot.

Once you have completed the survey, don't forget to enter your e-mail address for a **chance to win 1 of 5 \$200 Coles Group & Myer Gift Cards**. Authorised under NSW Permit No LTPS/11/01860

The information statement on the next page provides some background to this project and outlines how the information you provide will be used as well as how your confidentiality will be assured. Continuing with the survey indicates that, having read and understood the information provided in the information statement, you have decided to participate.

Please return the survey to:
Dr Hazel Easthope
City Futures Research Centre
Faculty of the Built Environment
University of NSW
NSW 2052



PROJECT INFORMATION STATEMENT

Date: 24th March 2011

Project Title: *Governing the Compact City: The role and effectiveness of strata management in higher density residential developments*

Approval No.: HREC 11055



Participant selection and purpose of study

You are invited to participate in a study of the role and effectiveness of strata management in higher density residential developments. You were selected as a possible participant in this study because you own a strata property in New South Wales.

Description of study

This research is part of a two-year research project being undertaken by the City Futures Research Centre at the University of NSW, funded by the Australian Research Council, in conjunction with partner organisations the NSW Land and Property Management Authority, NSW Fair Trading, Owners Corporation Network, NSW Institute of Strata Title Managers, Lannock Strata Finance and Macquarie Bank. The aim of the study is to provide strata owners, professionals and policymakers with a greater understanding of the effectiveness of the management and governance of the strata sector. One component of this research is a survey of strata owners.

If you choose to participate in this survey, the questions will focus on your satisfaction with strata ownership and your owners' corporation, your opinions of levies and charges, repairs and maintenance, property values, relationships with neighbours, participation in management decisions, disputes, and contracts with strata managing agents.

We expect the survey will take about 20 minutes to complete. You can either complete the survey online by following the link at www.cityfutures.net.au or contact Dr Easthope (details below) to post a copy of the survey to you.

We expect that the findings of this research will provide a strong evidence base to inform the development of more effective policies to address the more problematic aspects of strata regulation and will feed into good practice in management and governance of the sector. However, we cannot and do not guarantee or promise that you will receive any benefits from this study.

Confidentiality and disclosure of information

Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission, or except as required by law. By continuing with the survey, you are indicating that, having read the information provided in this information statement, you have decided to participate in this research.

We plan to discuss our findings at a series of workshops with our partner organisations as well as at a final industry seminar hosted by ISTM in Sydney for the partner organisations, media and other interested stakeholders. A final research report will also be published jointly by City Futures and the ISTM, with a key findings summary allowing wider dissemination. This report will be available online. The research will also be published in national and international journals to disseminate the findings to a wider audience.

Recompense to participants

There will be no direct remuneration for your participation in this research. However, if you complete the survey, you can enter into a prize draw with a total prize pool of \$1,000.

Your consent

Your decision whether or not to participate will not prejudice your future relations with The University of New South Wales or other participating organisations. If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without prejudice by contacting Dr Hazel Easthope, City Futures Research Centre, Faculty of the Built Environment, University of NSW, NSW 2052.

If you have any questions, please do not hesitate to contact me.

Kind regards,

Dr Hazel Easthope

City Futures Research Centre, FBE, University of NSW
Ph. (02) 93856041, hazel.easthope@unsw.edu.au



Welcome to the survey!

The survey is split into three sections:

- A. YOU AND YOUR PROPERTY
- B. MANAGEMENT OF YOUR STRATA SCHEME
- C. WHERE DO WE GO FROM HERE?

The survey should take about 20-30 minutes to complete.

You must own a strata property to answer this survey. If you own more than one strata property, don't worry, we don't need to hear about all of them. **Please answer the survey questions in relation to one strata property only.**

Before you get started, below are some definitions of the terms used in the survey which you may find useful.

STRATA TITLE – The subdivision of land and/or buildings into units (**LOTS**), which can be owned separately, and **COMMON PROPERTY**, which is owned collectively. This subdivision is registered as a **STRATA PLAN**.

STRATA SCHEME – All of the lots, common property and rights and responsibilities associated with managing a single registered strata plan.

OWNERS CORPORATION – A body corporate consisting of, and representing, all owners of strata lots in a strata scheme.

EXECUTIVE COMMITTEE – Elected members of the owners corporation, responsible for assisting the owners in the day to day management of the strata scheme.



A: YOU & YOUR PROPERTY

A1. Are you...

- ☐ Male
- ☐ Female

A2. How old are you? _____ years old

A3. What is your main occupation status?

- ☐ Full-time employee
- ☐ Part-time or temporary (including casual and contract) employee
- ☐ Self-employed or run own business
- ☐ Seeking work
- ☐ Student
- ☐ At home / not seeking work
- ☐ At home caring for child/ren
- ☐ Full-time carer
- ☐ Long-term sick / disabled
- ☐ Retired
- ☐ Other (please specify) _____

A4. Is your property...

- ☐ Your primary place of residence
- ☐ An investment property (that is rented out to tenants)
- ☐ A holiday home or second home (that is not rented out to tenants)
- ☐ Other – please specify: _____

A5. Do you own the property with or without a mortgage?

- ☐ I own the property and do not have a mortgage
- ☐ I own the property and have a mortgage
- ☐ Other – please specify: _____

A6. How many square metres is your individual strata property (i.e. the living areas in your property excluding car parks or external storage spaces)? Estimate if necessary. [Note: 1 square metre = 10.8 square feet]

_____ square metres

- ☐ Don't know



A7. What is the approximate current value of your individual strata property?

- ☐ Less than \$250,000
- ☐ Between \$250,001 and \$500,000
- ☐ Between \$500,001 and \$750,000
- ☐ Between \$750,001 and \$1 million
- ☐ Greater than \$1 million
- ☐ Don't know
- ☐ Do not wish to disclose

A 'strata levy' is the amount owners pay quarterly to the owners corporation for the upkeep of their strata scheme.

A8. What was the amount of your last quarterly strata levy payment (including both the admin and sinking fund levies)?

\$ _____

- ☐ Don't know

A9. At the time of purchasing your lot, did you experience any problems in regards to obtaining relevant information about the strata scheme you were buying into?

- ☐ Yes
- ☐ No → Proceed to A11

A10. Please describe the problems you experienced in obtaining information about your scheme at the time of purchase.



YOUR STRATA SCHEME

A11. How many lots (e.g. apartments, offices) are there in your strata scheme in total? Estimate if necessary (please do not include car parking spaces or other utilities such as garbage storage).

_____ lots

A12. How many floors are there in the building, including the ground floor and excluding any basements or parking areas?

_____ floors

A13. What is your postcode? _____

A14. What is...

...your Strata Plan number? _____

OR

...your property address? _____

☐ Do not wish to disclose

A15. In what year was your building built? Estimate if necessary.

☐ Don't know

A16. Please estimate the percentage of residents who are also owners in your strata scheme.

_____ %

☐ Don't know

A17. Are there any non-residential uses for your building or your strata scheme (e.g. shops, hotels, restaurants, offices, holiday apartments)?

☐ Yes, the building or strata scheme is also used for non-residential purposes

☐ No, all properties are residential → Proceed to A20.



A18. What non-residential purposes is your strata scheme or building used for? Tick all that apply.

- ☐ Hotel
- ☐ Short-term holiday apartments
- ☐ Office(s)
- ☐ Shop(s)
- ☐ Restaurant(s) or cafe(s)
- ☐ Bar(s) or nightclub(s)
- ☐ Other – please specify: _____

A19. Have you experienced any problems in regards to these non-residential uses of your building or strata scheme? Tick all that apply.

- ☐ No, there have been no problems as a result of these non-residential uses
- ☐ Yes, there have been noise problems
- ☐ Yes, there have been problems with shared use of facilities (e.g. parking, lifts, toilets, garbage disposal)
- ☐ Yes, there have been problems with cost-sharing for shared facilities (e.g. the amount of levies paid)
- ☐ Yes, other – please specify: _____

A20. What type of residential property(ies) is your strata scheme made up of? Tick all that apply.

- ☐ Apartments
- ☐ Townhouses
- ☐ Detached units or villas
- ☐ Other – please specify: _____

A21. Is your strata scheme subordinate to a higher management structure (e.g. a community title scheme or building management committee)?

- ☐ Yes
- ☐ No → *Proceed to A24.*
- ☐ Don't know → *Proceed to A24.*



A18. What non-residential purposes is your strata scheme or building used for? Tick all that apply.

- ☐ Hotel
- ☐ Short-term holiday apartments
- ☐ Office(s)
- ☐ Shop(s)
- ☐ Restaurant(s) or cafe(s)
- ☐ Bar(s) or nightclub(s)
- ☐ Other – please specify: _____

A19. Have you experienced any problems in regards to these non-residential uses of your building or strata scheme? Tick all that apply.

- ☐ No, there have been no problems as a result of these non-residential uses
- ☐ Yes, there have been noise problems
- ☐ Yes, there have been problems with shared use of facilities (e.g. parking, lifts, toilets, garbage disposal)
- ☐ Yes, there have been problems with cost-sharing for shared facilities (e.g. the amount of levies paid)
- ☐ Yes, other – please specify: _____

A20. What type of residential property(ies) is your strata scheme made up of? Tick all that apply.

- ☐ Apartments
- ☐ Townhouses
- ☐ Detached units or villas
- ☐ Other – please specify: _____

A21. Is your strata scheme subordinate to a higher management structure (e.g. a community title scheme or building management committee)?

- ☐ Yes
- ☐ No → *Proceed to A24.*
- ☐ Don't know → *Proceed to A24.*



A22. To your knowledge, have there been any disputes between different levels of management (e.g. between a strata scheme and its building management committee)?

- ☐ Yes, there have been disputes between the different levels of management
- ☐ No, there have not been any disputes to my knowledge → Proceed to A24
- ☐ Don't know → Proceed to A24

A23. Please describe the nature of these disputes.

A **'unit entitlement'** is the relative weight a strata owner has within the owners corporation, which is generally based upon the relative value of their strata lot. Unit entitlements regulate the voting rights of each owner and the amount of levies each owner must pay.

A24. Have there been any disagreements in your scheme relating to the distribution of unit entitlements?

- ☐ Yes
- ☐ No → Proceed to A26
- ☐ Don't know → Proceed to A26

A25. Please explain issues that have arisen relating to the distribution of unit entitlements.



A26. Please indicate to what extent you agree with the following statements regarding strata levies (including both admin and sinking fund levies).

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No opinion
My strata levies are appropriate (not too high or too low) given the value of my property, and the facilities provided in the strata scheme	0	0	0	0	0	0
My levy payments provide good value for money	0	0	0	0	0	0
I am provided with adequate information on what levies comprise (what they are collected for, and what they are spent on).	0	0	0	0	0	0
The enforcement and collection of levies in arrears is adequate in my strata scheme	0	0	0	0	0	0

A27. Any further comments on strata levies:

A28. Do you know approximately how much money there is currently in the sinking fund for your strata scheme?

- ☐ Yes
- ☐ No → Proceed to A30



A29. What are the current reserves in your strata's sinking fund (estimate if necessary)?

- ☐ Less than \$100
- ☐ \$101-\$999
- ☐ \$1,000-\$9,999
- ☐ \$10,000-\$19,999
- ☐ \$20,000-\$39,999
- ☐ \$40,000-\$59,999
- ☐ \$60,000-\$79,999
- ☐ \$80,000-\$99,999
- ☐ \$100,000-\$199,999
- ☐ \$200,000-\$299,999
- ☐ \$300,000-\$399,999
- ☐ \$400,000-\$499,999
- ☐ \$500,000-\$999,999
- ☐ Over \$1 million
- ☐ Do not wish to disclose

Building Design

A30. If your building had been laid out differently, would your life be easier?

- ☐ Yes, the layout of my building could be improved
- ☐ No, the layout of my building is fine → *Proceed to A32*
- ☐ Don't know → *Proceed to A32*

A31. Please give examples of how the layout of your building could be improved.



Building Defects

‘Defects’ are building faults that have existed since construction or been triggered later on by faulty original construction. This does not include maintenance and repairs issues.

A32. To your knowledge, have any of the following defects ever been present in your strata scheme? Tick all that apply.

- ☐ No, there have not been any problems to my knowledge → *Proceed to B1*
- ☐ Building movement
- ☐ Cracking to internal or external structures
- ☐ Defective balcony balustrades
- ☐ Defective machinery (e.g. lifts or air conditioners)
- ☐ Electrical faults
- ☐ Defective roof covering
- ☐ Guttering faults
- ☐ Inappropriate or incorrectly installed building materials (e.g. use of green wood)
- ☐ Lack of, or defective, fire safety measures (e.g. access hatches, fire collars between units)
- ☐ Tiling problems
- ☐ Water leaks in internal wet areas (e.g. bathrooms, showers, laundried)
- ☐ Water penetration to internal spaces from outside
- ☐ Noise break-through (e.g. faulty sound insulation)
- ☐ Defective plumbing
- ☐ Don't know → *Proceed to B1*
- ☐ Other – please specify: _____

A33. Have these defects been fixed in your strata scheme?

- ☐ Yes, all defects have been fixed
- ☐ Yes, some (but not all) defects have been fixed
- ☐ No, these defects have not been fixed
- ☐ Don't know



A34. Have you experienced any of the following problems in regards to having defects fixed in your strata scheme?

- ☐ We have not experienced any problems in regards to having defects fixed
- ☐ The developer and/or builder held control of the scheme and delayed the rectification of defects
- ☐ The strata manager (strata managing agent) had a relationship with the builder and/or developer and delayed the rectification of defects
- ☐ Someone on the Executive Committee had a relationship with the builder and/or developer and delayed the rectification of defects
- ☐ The builder was no longer operating and therefore could not remedy the defects
- ☐ The scheme did not have home warranty insurance
- ☐ We had to take the matter to court
- ☐ Other – please specify: _____

A35. How satisfied were you with the following in regards to the building defects issue(s) in your strata scheme?

	Very satisfied	Fairly satisfied	Neither satisfied nor dissatisfied	Slightly dissatisfied	Very dissatisfied	No opinion	N/A
Management of the defects issue by the Executive Committee and strata manager	0	0	0	0	0	0	0
The quality of the rectification works (the building quality)	0	0	0	0	0	0	0
The cost to the owners (the owners corporation) of rectifying the defects	0	0	0	0	0	0	0

A36. Please explain your answers.



B: MANAGEMENT OF YOUR STRATA SCHEME

B1. How would you rate the level of cooperation in your strata scheme?

- ☐ There is significant cooperation between owners in managing the scheme and all or most owners and/or residents work together
- ☐ There is some cooperation between owners in managing the scheme and some owners and/or residents work together
- ☐ There is little cooperation between owners in managing the scheme and few owners and/or residents work together
- ☐ There is no cooperation between owners in managing the scheme and no owners and/or residents work together
- ☐ Don't know
- ☐ Other – please specify: _____

Knowledge and Information

B2. Since purchasing your lot, where have you managed to get information about your strata scheme? Tick all that apply.

- ☐ I have not actively sought any information about my strata scheme
- ☐ Your strata manager
- ☐ Your building manager
- ☐ Your solicitor / lawyer
- ☐ Members of the Executive Committee in your strata scheme
- ☐ The internet
- ☐ Don't know
- ☐ Other – please specify: _____

B3. Have you had any problems getting information about your strata scheme since purchasing your property?

- ☐ Yes
- ☐ No → Proceed to B5



B4. Please describe the problems you have had getting information about your strata scheme since purchasing your property.

B5. The previous questions related to information about your particular strata scheme. Many owners also seek general information about strata title ownership and management (e.g. the rights and responsibilities of owners, how to deal with disputes). Since purchasing a strata property, where have you sought this kind of general information? Tick all that apply.

- ☐ I have not sought any general information about strata title ownership and management
- ☐ Your strata manager
- ☐ Your building manager
- ☐ Fair Trading NSW
- ☐ The Institute of Strata Title Management
- ☐ The Owners Corporation Network
- ☐ Members of the Executive Committee of your strata scheme
- ☐ People you have been in contact with who sit on the Executive Committees of other schemes
- ☐ The internet
- ☐ Friends
- ☐ Other property owners in your strata scheme
- ☐ Don't know
- ☐ Other - please specify: _____

B6. Have you had any problems getting general information about strata title ownership and management?

- ☐ Yes
- ☐ No → *Proceed to B8*



B7. What other information would you like to be able to access about strata title ownership and management?

B8. How would you rate your own understanding regarding your rights and responsibilities as an owner in your strata scheme?

- ☐ Excellent
- ☐ Good
- ☐ Satisfactory
- ☐ Not very good
- ☐ Very poor

B9. In your opinion, how good is the level of general understanding amongst other owners in your strata scheme regarding their rights and responsibilities as strata owners?

- ☐ Excellent
- ☐ Good
- ☐ Satisfactory
- ☐ Not very good
- ☐ Very poor
- ☐ Don't know

B10. Would you be interested in taking advantage of educational resources created for strata owners to provide information about the management of strata schemes?

- ☐ Yes
- ☐ No → Proceed to B12
- ☐ Maybe



B11. Please describe what sort of educational resources you would be interested in taking advantage of (e.g. information seminars, an online course, or DVD information sessions, etc.). Please give as much detail as possible, including who should provide this, what the cost should be.

→ Proceed to B13

B12. What would be your main reason for not taking advantage of educational resources such as information seminars, an online course or DVD information sessions?

- ☐ I do not have enough time
- ☐ I would not be willing to pay
- ☐ I do not think this kind of education is necessary for owners
- ☐ I am sufficiently educated about these things already
- ☐ Don't know
- ☐ Other reason - please specify: _____

The Executive Committee

The '**Executive Committee**' are elected members (or owners' nominees) who are responsible for assisting the owners corporation in the day-to-day management of the strata scheme.

B13. Are you a member of the Executive Committee of your strata scheme?

- ☐ Yes → Proceed to B15
- ☐ No



B14. How would you feel about being involved in the running of your strata scheme? Please explain your answer.

☐ I would be willing to join the Executive Committee – please explain your answer:

☐ I would not join the Executive Committee, but I already help out in less formal ways - please explain your answer and give examples:

☐ I would not join the Executive Committee, but I would be willing to help out in less formal ways – please explain your answer and give examples:

☐ I would neither join the Executive Committee nor be involved in less formal ways – please explain your answer:

☐ Don't know

☐ Other – please specify:



B15. Generally, how satisfied are you with the management of the scheme by the Executive Committee?

☐ Very satisfied – please explain your answer

☐ Satisfied – please explain your answer

☐ Neither satisfied nor dissatisfied – please explain your answer

☐ Dissatisfied – please explain your answer

☐ Very dissatisfied – please explain your answer



B16. Which methods does the Executive Committee use to communicate with owners about the running of your strata scheme? Tick all that apply

- ☐ A website or online forum for the scheme
- ☐ Attendance at general meetings
- ☐ Emails to each owner
- ☐ Home visits or personal conversation
- ☐ Letters to each owner
- ☐ Newsletters
- ☐ Notices in the lobby or at the entrance to the building(s)
- ☐ Phone calls
- ☐ Don't know
- ☐ Other – please specify: _____



Strata Managers

A '**strata manager**' (strata managing agent) is a qualified agent appointed by the owners corporation at a general meeting (or by an Adjudicator) and paid by the owners corporation to undertake management and administrative matters of the strata scheme that are delegated to them.

B17. How satisfied are you with the service provided by your strata manager? Please explain your answer.

☐ Very satisfied – please explain your answer

☐ Satisfied – please explain your answer

☐ Neither satisfied nor dissatisfied – please explain your answer

☐ Dissatisfied – please explain your answer

☐ Very dissatisfied – please explain your answer



B19. Has your scheme ever had a compulsory strata manager appointed by the Consumer, Trader and Tenancy Tribunal (CTTT)?

- ☐ Yes
- ☐ No → *Proceed to B22*
- ☐ Don't know → *Proceed to B22*

B20. Please explain why it was necessary to have a compulsory strata manager appointed.

B21. Did you find the compulsory strata manager effective in carrying out their duties? Please explain your answer.

- ☐ Yes – please explain your answer

- ☐ No – please explain your answer

- ☐ Don't know – please explain your answer

Building Managers

A **'building manager'** is not the same as a strata manager, but is rather a person who looks after the day-to-day running of the building, including maintenance and repairs.

B22. Does your scheme employ a building manager (or caretaker)?

- ☐ Yes
- ☐ No → *Proceed to B25*
- ☐ Don't know → *Proceed to B25*



B23. Does your building manager (or caretaker) own their own lot and live in the strata scheme?

- ☐ Yes
- ☐ No
- ☐ Don't know

B24. How satisfied are you with your building manager (or caretaker)? Please explain your answer.

- ☐ Very satisfied – please explain your answer

- ☐ Satisfied – please explain your answer

- ☐ Neither satisfied nor dissatisfied – please explain your answer

- ☐ Dissatisfied – please explain your answer

- ☐ Very dissatisfied – please explain your answer



Repairs and Maintenance

'Repairs' refers to rectifying building problems that have arisen due to age, a lack of maintenance or an unforeseen event (e.g. a storm or an accident). **'Maintenance'** refers to routine upkeep of the building (e.g. painting or clearing gutters).

B25. Have there ever been any problems in regards to having building repairs and maintenance carried out in your scheme to the best of your knowledge? Tick all that apply.

- ☐ No, there have been no problems that I am aware of
- ☐ Yes, the work that has been completed has been of an inadequate standard
- ☐ Yes, planning for repairs and maintenance has been inadequate
- ☐ Yes, budgeting for repairs and maintenance has been inadequate
- ☐ Yes, planning (and budgeting) for repairs and maintenance has been inadequate
- ☐ Yes, repairs and/or maintenance were paid for out of the sinking fund
- ☐ Yes, the owners corporation was unable to borrow sufficient funds to have the defects remedied
- ☐ Yes, there have been disagreements over whose responsibility it is to plan for and organise repairs and/or maintenance
- ☐ Yes, there have been disagreements over major repairs and/or maintenance expenditure (e.g. how much to pay, what standard of works are required)
- ☐ Yes, other – please specify: _____

Disputes and Dispute Resolution

B26. Since you have owned your strata lot, have there been any disputes between owners and/or residents or between the Executive Committee and owners and/or residents?

- ☐ Yes
- ☐ No → Proceed to B30
- ☐ Don't know → Proceed to B30



B27. What have the disputes in your strata scheme been in regards to? Tick all that apply.

- ☐ Access to common property
- ☐ Actions of building manager or caretaker
- ☐ Actions of strata manager (strata managing agent)
- ☐ Breaking of by-laws
- ☐ Financial costs to the owners corporation / owners
- ☐ Laundry displayed on balconies
- ☐ Noise
- ☐ Parking
- ☐ Pets
- ☐ Renovations within an individual owner's lot
- ☐ Repairs and maintenance of common property
- ☐ Rubbish
- ☐ Setting of levies
- ☐ Short-term letting
- ☐ Smells (including smoking complaints)
- ☐ Use of common property
- ☐ Other disputes over common property - please specify: _____
- ☐ Other - please specify: _____

B28. Were any of these disputes resolved before there was a need to take formal measures (such as issuing a Notice to Comply, undertaking formal mediation, seeking an order from an adjudicator etc.)?

- ☐ Yes
- ☐ No → Proceed to B30
- ☐ Don't know → Proceed to B30

B29. Please describe the ways in which the dispute(s) was/were resolved before there was a need to take formal measures.



B30. To your knowledge, what formal measures have been taken by your owners corporation in relation to a dispute? Tick all that apply.

- ☐ No formal measures have been taken by the owners corporation in relation to a dispute
→ *Proceed to C1.*
- ☐ The owners corporation applied to have a penalty imposed on an owner or resident by the Consumer, Trader and Tenancy Tribunal (CTTT)
- ☐ The owners corporation obtained an order from an adjudicator for compliance
- ☐ The owners corporation (or its Executive Committee) attended mediation through Fair Trading
- ☐ The owners corporation (or its Executive Committee) had a dispute determined by an adjudicator
- ☐ The owners corporation (or its Executive Committee) had a matter heard at the CTTT
- ☐ The owners corporation (or its Executive Committee) had a matter heard at the District or Supreme Court
- ☐ Don't know → *Proceed to B32*

B31. Please provide details of the formal measures taken by the owners corporation in relation to disputes in your strata scheme.

B32. Was/were the dispute(s) that were addressed through formal measures resolved as a result of those measures?

- ☐ Yes, the dispute was / all disputes were resolved
- ☐ Some disputes were resolved, while others were not
- ☐ No, the dispute was not / no disputes were resolve
- ☐ Don't know



C: WHERE TO FROM HERE?

C1. What do you think is the main problem that you have faced as an owner in your strata scheme?

C2. How do you think this problem could be addressed?

C3. Are there any challenges facing strata owners in regards to the management of strata schemes in NSW that you think are not adequately addressed by the existing legislation?

- ☐ Yes
- ☐ No → *Proceed to C5*
- ☐ Don't know → *Proceed to C5*

C4. What challenges do you think are not adequately addressed by the existing legislation?

C5. There has been recent discussion in NSW about the issue of winding up strata schemes in order to redevelop the land (termination of strata schemes). Are you aware of this issue?

- ☐ Yes
- ☐ No → *Proceed to C7*

C6. What is your opinion about the strata termination issue?



Appendix 6: A brief history of building certification in New South Wales

1998: The Environmental Planning and Assessment Act was amended to allow building certification by private certifiers, in part to speed up development times and deal with a backlog of applications in the lead-up to the Sydney Olympic Games. Previously all certification was undertaken by Council certifiers.

2002: This change led to significant community concerns and media coverage regarding the incidence of unidentified defects in newly built properties and a parliamentary enquiry was held into the quality of new buildings in NSW in 2002. The ‘Campbell Inquiry’ looked at licensing, building standards, consumer information, approval and planning processes and dispute management and resolution. The Inquiry found that the building regime was:

“Complex, messy and poorly understood by building practitioners as well as consumers. The lack of consistent definitions about what constitutes quality from the point of view of Building Codes, the certification process and the general lack of professional rigour in the system, disadvantages potential home buyers and leads to a reduction in consumer confidence.” (Joint Select Committee on the Quality of New Residential Buildings 2002)

The Inquiry found that the regulatory regime was fragmented, there was a lack of effective accountabilities and policing across the industry and that significant imbalances existed between sections of the industry and consumers.

2005-2007: A significant outcome from the Campbell Inquiry was the introduction of the *Building Professionals Act* (2005), which brought changes to the regulation of building certifiers. This included the introduction of the Building Professionals Board, an independent statutory body that now holds responsibility for the education, licensing and regulation of building certifiers. The Building Professionals Board replaced four separate bodies, who were previously responsible for licensing and regulation between 1998 and the commencement of full operations of the Board in 2007. The board prepared an accreditation scheme and code of conduct for certifiers.

2003-2008: In 2003, the Minister for Infrastructure, Planning and Natural Resources commissioned taskforces to

review parts of the planning system, the findings of which were published in 2007 (NSW Department of Planning 2007). This document contributed to a number of subsequent changes, including the *Environmental Planning and Assessment Amendment Act* 2008 and the *Building Professionals Amendment Act* 2008, which introduced significant changes to the planning and certification system in NSW.

Between 2007 and 2011 over 60 certifiers had been disciplined by the Building Professionals Board. Many of these certifiers had been disciplined multiple times. The worst sanction imposed has been the withdrawal of accreditation. The largest single fine issued has been \$15,000, although some certifiers have received multiple fines (Building Professionals Board 2011a).

Recent decisions of the Administrative Decisions Tribunal (ADT) have upheld the Building Professionals Board’s findings regarding standards of competent certification. In one case the ADT found that:

“Minimum professional standards of competence are not set by ‘industry practice’. The benchmark in this legislation is the standard of competence, diligence and integrity a member of the public is entitled to expect of a reasonably competent accredited certifier. In our view, a member of the public, with an understanding of the statutory role performed by an accredited certifier, would not have regarded it as acceptable at least as at 2004 and 2005 for a certifier to rely, blindly, on the word of an installer, without having formed an independent view of what standards should be referenced, making enquiries if the applicable standards were not referenced, and, wherever practical, performing simple, independent checks (for example, visual inspection of items externally exposed) to corroborate the sign-off provided. We doubt whether it would have been regarded as ever being acceptable practice for a certifier to sign off without ever having undertaken a careful site inspection of the finished works.” (Building Professionals Board 2011b)

Appendix 7: Examples of information currently available to strata owners in NSW

Organisation	Type of information	Contact	Content
GOVERNMENT			
Consumer, Trader and Tenancy Tribunal (CTTT)	Website, telephone information line and e-mail	online: www.cttt.nsw.gov.au/ phone: 1300 135 399; e-mail: ctttenquire@cttt.nsw.gov.au	Information about the dispute resolution process, and the strata and community titles schemes division of the Tribunal
Housing NSW Home Purchase advisory Service	Website, telephone information line and e-mail	online: www.housing.nsw.gov.au/Home+Buying+and+Building/ phone: 1300 468 746; e-mail: advisory@housing.nsw.gov.au	Information about buying a home, with specific information about buying into a strata scheme
NSW Fair Trading	Website, telephone information line and in person queries	online: www.fairtrading.nsw.gov.au/ phone 133 220	Information about strata living, the owners corporation, common property and the lot, resolving disputes, legislative changes, frequently asked questions
NSW Fair Trading	Strata Living booklet	online: www.fairtrading.nsw.gov.au/pdfs/About_us/Publications/ft045.pdf	Booklet explaining strata title living.
NSW Fair Trading	Video	online: http://www.youtube.com/watch?v=wDS0DyBD7f8&list=UU8O15SNsdBG_suQ0M3oAQkQ&index=3&feature=plcp	Video explaining owners' rights and responsibilities in strata
NSW Land and Property Information	Website	online: http://www.lpi.nsw.gov.au/	Title search, land values, deeds, location map, frequently asked questions
NSW Land and Property Information	Memoranda AG 520000 and AG 600000	online: http://www.lpma.nsw.gov.au/about_lpi/faqs/strata_scheme/How_can_an_Owners_Corporation_identify_common_property_in_a_strata_scheme	Memoranda to outline who is responsible for the repair, replacement and maintenance of items or areas contained within a strata scheme
NSW Department of Environment, Climate Change & Water	Noise guide for local government	Online: http://www.environment.nsw.gov.au/resources/noise/10799nlgfull.pdf	Information on the day-to-day management of local noise problems and the interpretation of existing policy and legislation
NSW Department of Environmental and Climate Change	Guide to dealing with neighbourhood noise	Online: http://www.cityofsydney.nsw.gov.au/Residents/documents/Noise/NeighbourhoodNoiseInfo.pdf	Information on what to do to prevent neighbourhood noise being an issue.
NSW Legislation	Website	Online: www.legislation.nsw.gov.au/	Access to all relevant legislation

Organisation	Type of information	Contact	Content
Victorian Building Commission	Guide to Standards and Tolerances	Online: http://www.buildingcommission.com.au/resources/documents/S+T_GUIDE_07.pdf	Indicates acceptable standards and tolerances for building work capturing both interpretation of building codes and quality benchmarks
PEAK BODY			
Law Society of NSW	Website	Online: www.lawsociety.com.au/	Information about buying a strata property, legislative change
Owners Corporation Network	Website	Online: www.ocn.org.au/	Links to relevant media articles, discussion forum
Owners Corporation Network	Workshops	Online: www.ocn.org.au/	Detail about upcoming workshops on specific issues
Strata Community Australia (NSW)	Website	Online: http://nsw.stratacommunity.org.au/	Consumer information, media, search for strata businesses & suppliers
Strata Community Australia (NSW)	Training	online: http://nsw.stratacommunity.org.au/page/education/	Information about training for managing agents and executive committee members ranging from half-day courses to Certificate IV in Property Services (Operations)
Strata Community Australia (NSW)	Who's Responsible booklet	Online: http://nsw.stratacommunity.org.au/resources/638/Who%20is%20Responsible.pdf	Guide to common boundaries between lot and common property
Strata Community Australia	Website	Online: www.stratacommunity.org.au/	Information about strata title (including the legislation applicable in each state and territory), living in strata title (including frequently asked questions), and links to state and territory chapters
Tenants Union	Strata scheme tenants factsheet	Online: www.tenants.org.au/publish/factsheet-13-strata-scheme-tenants/index.php	Information about the owners corporation, repairs, by-laws, disputes and keeping pets
NOT-FOR-PROFIT / EDUCATION			
City Futures Research Centre, University of NSW	Website	Online: www.cityfutures.net.au	Research reports on various aspects of higher density and strata living
Green Strata Inc.	Website	Online: www.greenstrata.com.au	Information about strata title generally and about environmentally sustainable apartment living. People can contribute case study examples to the website and participate in discussion forums
Home Building Advocacy Service	Telephone and in person	Online: www.macquarielegal.org.au/homebuilding.htm/ phone 8833 0911	Advice, mediation and representation to consumers with building disputes.

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