The fourth tier of governance: Managing the future of our cities
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Abstract

Urban consolidation policies and higher density housing development have become major drivers of urban change in Australia. The realisation of these policies relies almost entirely on the provision of strata titled dwellings. There is thus a need to explore the role of governance arrangements in providing the framework of complex rights and responsibilities for the multiple stakeholders involved. It is these stakeholders who are expected to deliver a functioning and sustainable urban environment for many years to come. This is especially true in the case of the management of repairs and maintenance of the common areas within strata schemes. Owners corporations are currently making vital decisions regarding the management of at least a quarter of all residential properties in NSW. They are also making decisions about the maintenance of billions of dollars worth of property and infrastructure. This paper draws upon 450 e-mails from strata owners, as well as a survey of 244 strata owners to outline some of the unresolved issues currently facing the strata sector in NSW in regards to the management of repairs and maintenance, through the lens of governance theory. It is imperative that dialogue around these issues is maintained between academics, policy makers, strata professionals, owners and residents if we are to continue to develop the mechanisms needed for the effective governance of the future of Australia’s cities.
Introduction

The focus on making cities more efficient, effective and sustainable in the face of population growth and land constraints has invariably led to calls for increased residential densities within existing urban centres. In Australia, urban consolidation is the dominant policy orthodoxy currently guiding strategic metropolitan planning. As Forster & Hamnett (2008:248-249) state:

All five major Australian cities have prepared revised metropolitan strategies in recent times which aim to accommodate at least 60 per cent of future urban development within growth boundaries.

This higher density will come in the form of strata titled properties. It is therefore essential for the future of these urban areas that their strata stock is managed efficiently and fairly. While strata title has been around since the late 1960s in Australia, it is only recently that these issues have come to prominence. This is due to a number of factors. Many of those properties built under strata title in the ten years following the introduction of the Strata Titles Act 1961 (NSW) are now over 30 years old and this ageing stock requires increasing attention in terms of maintenance and repairs. Furthermore, the metropolitan plans’ calls for increasing urban consolidation have led to incentives to build apartments (such as changes in planning restrictions) that have resulted in a significant increase in the number of strata titled properties in Australia’s major cities. Indeed, the population living in strata properties in Australia is estimated to exceed three million people. In Greater Sydney, over one quarter of the population already live in strata titled buildings. The growing number of strata properties has produced a
growing market for professional support services for this sector. The industry now employs an estimated 20,000 people nationally who service and manage property assets worth around $500 billion (Victorian Institute of Body Corporate Managers 2007). In NSW there are calls for increased organisation and professionalization from within the strata management sector, and there are both state (e.g. NSW Institute of Strata Title Management) and Australia-wide (National Community Titles Institute) bodies acting to represent strata managers. There are also numerous other professionals specialising in this area, including lawyers, financers and engineers. The peak body representing owners in NSW, the Owners Corporation Network, is also undergoing a period of growth and has sought the advice of other stakeholders (including the Institute of Strata Title Management, Fair Trading, strata management firms and academic researchers) on how best to go about formalising and growing their organisation and linking with existing and future owners corporation networks in other states and territories.

This paper is based upon research undertaken in NSW. The focus of this paper is not on the technical aspects of facilities management, nor the specificities of the relevant legal Acts and Regulations (for more detail on these, see Everton-Moore, Ardill et al. 2006; Sherry 2006; Paulsson 2007; Sherry 2008). Rather, it provides an example of how the issues facing the effective functioning of the strata system can be better understood through the use of governance theory, with a specific focus on repairs and maintenance.

Repairs and maintenance are arguably the most important aspect of strata scheme governance to get right. From a consumer perspective, they affect the lives of all of those people living, and investing, in strata title. These properties are people’s homes, and in many cases their principal financial investments. From a political perspective, the realisation of urban consolidation policies will rely almost entirely on the provision of strata properties and hence the success of these
policies relies upon the successful management of strata properties, including management of repairs and maintenance. Finally, repairs and maintenance are important from a governance perspective. Owners corporations are making vital decisions regarding the management and maintenance of tens of thousands of residential properties, and billions of dollars of property and infrastructure. There is a need to understand what is actually going on in the day to day management of schemes, in order to understand what is working well, and what is not, so that governments and other stakeholders can consider how to improve the situation. The remainder of this paper considers how theories of governance can aid in better understanding the framework of complex rights, responsibilities and practices for stakeholders involved in strata schemes.

The strata ‘issue’

This paper focuses on strata schemes in NSW. However, it should be recognised that the NSW strata title legislation was the precursor to legislation in other Australian states and territories, and also formed the basis of legislation in a number of other countries, including Canada, Singapore, South Africa, New Zealand, Indonesia, Malaysia and Brunei (Easthope and Randolph 2009). Hence it is likely that those interested in the governance of strata properties in these other areas will find the challenges faced in NSW of interest.

When a person buys a strata property, they are buying into an ownership model with three main components. First, they own a lot. This is the airspace bounded by the inner skin of the boundary walls (i.e. the paint) and the ceiling height and floor level (i.e. the space within the apartment, but not the building itself). Second, they become members of an owners corporation (a body corporate comprised of, and representing, all lot owners in a scheme). Not all owners have equal
weight within the owners corporation. The measure of their weight is called their unit entitlement and is generally based upon the relative value of their strata lot. The owners corporation will elect an executive committee (EC) which represents all owners and manage the scheme. The EC can manage the strata themselves, or appoint a strata manager to assist. Third, as joint members of that owners corporation, they also own a share in all other parts of the building, infrastructure and grounds (known as the common property), which are owned by the owners corporation.

The fact that people own a share in this common property has two major implications. First, they are responsible for a share of that common property and for the associated costs. Second, they are expected to make collective decisions about how to manage and maintain the common property. This is the major issue confronting the governance of strata developments - when many people try to agree on something (and especially when that ‘something’ is the place in which they live), there will inevitably be differences in opinion about the best course of action.

**Literature on communally managed housing**

Research into communally managed housing has a strong history internationally. In the UK, academics have focused on ownership, management and regulatory regimes (e.g. Hamnett and Randolph 1987; Bailey and Robertson 1997; Cole, Gidley et al. 1998). In the US, there has been a growing interest in communal ownership as a mechanism of organising and influencing urban social relations and urban development processes and outcomes, characterised as ‘residential clubs’ (Webster 2002; Glasze, Webster et al. 2006; Nelson 2006). Much research has focused on lower density gated communities with concerns raised that these have become exclusive domains with a resultant negative impact on social cohesion and good urban governance (Kennedy 1995; McKenzie 2006). Similar concerns have been raised in the UK context (Blandy, Dixon et al.
In Australia, a body of work is emerging on Master Planned Estates (Costley 2006; Kenna 2007; McGuirk and Dowling 2007). Research into vertical communally managed developments in Australia has also increased in recent years (e.g. Alves 2004; Bounds 2005; Costello 2005; Sherry 2006; Butler-Bowden and Pickett 2007; Sherry 2008; Easthope and Randolph 2009). The longer term implications of the strata system in terms of residential property relations, social relations and urban governance have taken several decades to emerge and research in this area is still developing.

The implications of this form of property title for social cohesion are profound. Large numbers of Australian property owners are finding themselves in a legally binding relationship with their neighbours for the communal upkeep of their property. The governance structures that have evolved to mediate this community-based property ownership represent a new form of urban governance at the local level, challenging conventional understandings of urban governance structures (Webster 2002; Shearing and Wood 2003; Hambleton and Gross 2007). With the development of ever larger residential strata complexes, owners corporations through their ECs and strata managers have become increasingly important in ensuring the maintenance of significant parts of our cities. ECs act in effect as mini local governments, with law making, taxation and enforcement powers. In larger developments, the remit of the owners corporation can extend over significant areas, comprising several blocks. Owners corporations (and their ECs and strata managers) therefore represent a largely unrecognised and almost completely unheralded fourth tier of urban governance (Easthope and Randolph 2009).
Research methods

This paper draws upon two sources of empirical information. The first is a thematic analysis (Boyatzis 1998) of de-identified e-mails sent by apartment residents and owners (the majority of whom were in Sydney, but some in other areas) to a Sydney-based journalist specialising in strata issues. This journalist provided de-identified e-mails from approximately 450 apartment owners and residents sent in 2007 and 2008 to the researcher for research purposes. As the majority of apartments in NSW are under strata title, it was assumed that the majority of e-mails were from strata residents and owners, although some may have been from people in different forms of title (e.g. company title). These e-mails should in no way be considered ‘representative’ of the total population of strata residents and owners in NSW, as they have been received from people with specific issues and problems they wished to share with a journalist. Furthermore, we have very little information about the personal attributes of the senders (age, sex, occupational status etc.), or of their properties (location, age, size etc.). However, these e-mails do provide a rich source of information about the types of concerns that appear to reoccur in strata schemes, and supporting qualitative data for our other findings.

The second is a survey carried out amongst owners of residential strata lots. This survey was carried out by the author and her colleagues as part of research project funded by the NSW Office of Fair Trading (Easthope et al. 2009). The survey asked owners about their knowledge, experiences and opinions regarding the management of repairs and maintenance in their schemes. The survey was conducted between August 2008 and April 2009 and 244 valid responses we received. The survey comprised respondents from a variety of demographic backgrounds who owned a range of strata properties. The geographical spread of the survey
respondents broadly reflected that of all residential and mixed-use strata schemes in NSW. Owner occupiers made up 72% of respondents in the survey, while 25% of respondents were investor-owners. In comparison, approximately 49% of residential strata units in NSW are investor owned, while 51% are owner occupied (NSW Department of Lands 2009)\textsuperscript{iv}, indicating that owner occupiers were over-represented in the survey. The majority of survey respondents owned a two-bedroom property (53%), followed by three-bedroom properties (33%), one-bedroom properties (12%) and studios (2%). These results reflect the distribution within the population of strata properties (with three or more lots), as we know from the 2006 Census that 66% of flats, units and apartments in NSW have 2 bedrooms, 20% have three bedrooms and 9% have 1 bedroom\textsuperscript{v}. The distribution of survey respondents by number of lots in their scheme was also similar to the total population of strata properties in NSW\textsuperscript{vi}. More detail about the survey respondents and the representativeness of the survey sample can be found in Easthope et al. (2009). For the purposes of this essay, it is important to recognise that while the survey respondents came from a variety of personal backgrounds and owned a range of different types of strata properties, this survey should not be seen as a representative sample of strata owners in NSW as survey participants were self-selecting and this is likely to affect the results. In particular, it is important to note that 71% of the survey respondents were currently, or had been, on the executive committee of their strata scheme. However, although consisting of only a small sample of the total population of strata lot owners in NSW, the findings presented in this report can be seen as indicative of the range of opinions and experiences of strata owners in NSW. Thus the findings provide an outline of some of the issues that have arisen in NSW regarding the management of major repairs and maintenance in residential strata, rather than a quantification of the extent of such issues.
Governance

This paper follows Chhotray & Stoker’s (2009:3) definition of governance:

Governance is about the rules of collective decision-making in settings where there are a plurality of actors and organisations and where no formal control system can dictate the terms of the relationships between those actors and organisations.

I also draw upon the work of Ostrom (1999) and Chhotray & Stoker (2009:3) and argue that there are two different types of such ‘rules of collective decision-making’.

The rules embedded within a governance system can stretch from the formal to the informal .... we are interested in both the formal arrangements that exist to structure decision-making and the more informal practices, conventions and customs ... what Ostrom (1999:38) refers to as ‘rules-in-use’.

On the one hand there are ‘hard rules’ such as government legislation. On the other, there are ‘soft rules’ - social (and often taken-for granted) rules about the most appropriate way to act in a situation (‘the way we do things’). Soft rules, such as common practice and best practice, will often be taken into account when formulating, or amending, hard rules such as legislation. Hence, while there is legislation that guides the form that relationships between actors and
organisations involved in strata developments can take, it does not fully ‘dictate’ these relationships.

What distinguishes management from governance is that governance is not only concerned with the rules that are in place (and the mechanisms in place to both enforce, and act in accordance with, those rules), but is also concerned with the ways in which such hard and soft rules are negotiated between different actors and organisations. In other words, governance is at the heart of the decision-making process, while management is concerned with the implementation of those decisions. Indeed, Chhotray & Stoker (2009:4) note that “the classic governance issues” are what to decide, who should decide and how to decide.

**What to decide?**

With regards to repairs and maintenance in residential strata, the issues that need to be decided are what repairs and maintenance to undertake, in what order to undertake them, how much to pay for them, how to source that money and who to employ to carry out the work.

The NSW legislation (or ‘hard’ rules) provides some guidance as to how to make these decisions. For example, the *Strata Schemes Management Act 2006* (NSW) stipulates that all owners corporations are required to estimate their expenses at each annual general meeting. The Act also stipulates that 51% of those people entitled to vote at a general meeting must agree on the moneys payable by owners to the administrative fund (from which maintenance should be funded) and sinking fund (from which repairs should be funded). However, while the Act does stipulate the mechanisms through which decisions can be made regarding repairs and
maintenance, the nature of the actual decisions remains largely up to the owners corporations and the other actors that influence them.

How much to pay for maintenance and repairs appears to be the decision that causes the most tension between actors. All owners are required to pay levies to the owners corporation proportionate to their unit entitlements. The total levies that the owners corporation collect must be decided collectively, however and this can lead to a number of problems. The first is that the levies collected may not be sufficient to cover the costs of necessary maintenance on the building or of repairs, as indicated by survey respondent 75:

_Not enough regularly collected for sinking fund ... The minimum is always collected so it's a constant battle for every item of repair or maintenance which should be done routinely_ (survey, 75^vii)

This situation is of great concern because where the majority of owners decide to keep levies low, buildings can fall into disrepair. This affects those people living in the building, leads to reductions in property prices and can lead to safety concerns both of residents and of the general public. Furthermore, the mechanisms for terminating strata schemes raise significant problems as more schemes reach the end of their physical life. Currently, it is very difficult to terminate a strata scheme in NSW where unanimous agreement is required and it is therefore essential that strata buildings are maintained for as long as possible (for detailed discussions see Sherry 2006; Easthope and Randolph 2009). Low levies also raise an equity issue, in that new owners may
find themselves paying special levies for repairs as a result of previous, or longer-term, owners paying insufficient amounts.

There are a number of reasons for situations where the levies collected are insufficient to cover the costs of repairs and maintenance. The first is an apparent lack of knowledge on the part of some owners of their responsibilities as joint owners of common property. Indeed, concern has recently been raised in a NSW government document that owners may not be aware of their rights with regards to the governance of their strata schemes (NSW Department of Planning 2007:117). The second is a difference of opinion between different ‘types’ of owners in a scheme about the appropriate levels of maintenance required and the amount of funds they are willing to put aside for maintenance and repairs. One of the big issues regarding the governance of strata schemes appears to be difficulties in negotiating between the preferences of different types of owners within a scheme. Many survey respondents pointed to the conflicting desires of different ‘groups’ of owners with regards to reaching any agreement about levies to be collected (see also Guilding, Warnken et al. 2003 in the Queensland context). Survey respondents pointed to differences between owners and owner occupiers; between the original owner (the builder or developer) and other owners; between owners who intended to stay in a strata scheme long-term and those that did not; and between newer owners compared to owners who had been in the building for a long time, as illustrated by the responses below:

investors tell [the strata] agent to keep costs down (survey, 103).
the individual owners are happy to pay more to enhance the value of their properties. The ... developer isn't keen to pay anymore, and underfunds the strata management agent (survey, 13).

people who intend to stay in the building longer term are more likely to see the need for contribution of funds towards possible future repairs (survey, 168).

some new owners are more happy [sic] to make contribution to address the problems. Those owners [who] live in the complex for over 15 years always disagree with increasing levy / special levy (survey, 22).

Indeed, the plurality of owner types in a scheme can lead to much discontent when collective decisions regarding repairs and maintenance need to be made. In order for such decisions to be made, in most cases only 51% of votes of those persons entitled to vote are required to pass a resolution. And this is only 51% of votes of those persons who are entitled to vote, and who actually turn up to a general meeting in order to vote. This means that where people do not have the knowledge required to participate in such decisions, they are effectively disenfranchised from the decision-making process. This issue is discussed further in the next section.

**How to decide and who should decide?**

You are not guaranteed what you want even in a system of formally democratic governance. Collective decisions involve issues of mutual influence and control. As such
governance arrangements generally involve rights for some to have a say, but responsibilities for all to accept collective decisions. (Chhotray and Stoker 2009:4).

The NSW legislation clearly states how decisions must be made (see Ilkin 2007:312-318 for a detailed description). The decisions that are made in strata schemes, however, are seldom made by the owners in those schemes without influence from other actors. There are, in the words of Chhotray & Stoker (2009), a ‘plurality of actors and organisations’ involved in the governance of strata schemes. As Easthope & Randolph (2009) have noted, negotiating the relationships between these diverse stakeholders is a complex matter. Conflict can arise between the multitude of stakeholders involved, including different owners, tenants, managing agents, building managers, members of the EC of the owners corporation, developers, and many others (for examples in other contexts, see Yip and Forrest 2002; Guilding, Warnken et al. 2003; McKenzie 2006).

While the NSW legislation places both the responsibility for, and control over, the management of repairs and maintenance squarely in the hands of the owners, in many cases owners do not appear to hold practical control over their developments. This is supported by Respondent 51:

There is no one taking responsibility - each is assuming someone else is responsible
(survey, 51)

The next section discusses the stakeholder groups considered the most important in regards to the management of repairs and maintenance.
The Executive Committee

Under the *Strata Schemes Management Act 2006* (NSW), an owners corporation is required to elect an EC to represent all owners. The EC is entitled to make decisions on behalf of the owners corporation in regards to some issues (e.g. decisions regarding the maintenance and repair of common property and recovering unpaid levies), but decisions regarding the setting of levies and seeking legal advice must be raised at a general meeting where all owners have a right to vote (Ilkin 2007:315-318). The EC is made up of volunteers and the existence of an effective EC relies on there being enough people in a scheme who are willing to take on the responsibilities that come with being an EC member. This is not always the case and often it is not a question of choosing between potential committee members, but of getting enough volunteers, as discussed in one e-mail:

*The process to form the committee is unclear - generally all who stick their hands up are taken* (E-mail)

A lack of willingness to participate on an EC does not necessarily result from a lack of time or motivation, but also from a lack of understanding amongst owners about how their scheme is actually run. The survey response below provides an example of such a situation:
There remains the problem of elderly and/or non English speaking owners. One lady thought that the quarterly levy was paid to me!! and so knocked on my door for any small problem and expected I would fix it (survey, 84)

This raises the question of whether strata owners are being effectively represented in their strata schemes and whether they have the information required to ensure that they are capable of self-management.

Whether it is purposeful or not, when members of an EC do not provide information to the other owners in a scheme, they are stifling the effective representation of owners through reducing their ability to participate in those decisions that they have a legislative right to participate in. A number of survey respondents commented that they were unhappy with their EC precisely because they did not receive any information from them regarding repairs and maintenance, as indicated by the comments below:

Basically no communication as a policy. We found out about the painting when the painters climbed onto our balcony ... We found out about the clothes line paving when we went to hang our clothes, and couldn't (survey, 71)

The Secretary, Treasurer and Chairwoman rule the estate using a mixture of lies, bigotry, manipulation and spite and maintain control by refusing to disseminate any information [e-mail]
Another concern regards the EC being pressured by particular groups of owners to act in a certain way, without taking into account the desires of all owners in a scheme, as voiced by survey respondent 94:

*EC does not accept responsibility for common property repairs ... Everything is done to thwart rectifying defects ... mainly because the majority of owners are investors with only commitment to present returns* (survey, 94)

In short, where the relationship between the EC and other owners is not one of mutual information-sharing and impartiality, owners are likely to find themselves without effective representation.

**Strata managers**

Not all owners corporations employ strata managers. Many smaller schemes in particular find that they do not need a managing agent, who provides assistance in such areas as undertaking the financial management and record keeping and coordinating maintenance. The owners corporation can choose to delegate certain responsibilities to a managing agent, including decisions regarding the maintenance and repair of common property (Ilkin 2007:317-318). Hence the strata manager is a very influential actor in the governance of strata schemes.

In the survey of strata owners, the most common complaint about managers was that they did not provide the EC and/or the owners with sufficient information and that they did not respond to requests for that information.
The Managing Agent seems to have total control of all activities and is very slow to act on carrying out repairs and maintenance. Owners and Executive are continually shut out of the process by the Managing Agent (survey, 232)

Again, a failure to share information with all of those people who are supposed to be involved in the collective decision-making (all owners) can hamper the possibility for effective representation. In some cases, the relationships between the different actors can become hostile, with reports of bullying relatively common amongst both e-mail comments and our survey respondents:

In the five years of existence of [strata scheme] we have had four [managers]. There has been a lot of mismanagement and as I have accounting qualification and undertook a thorough inspection which highlighted a lot of negligence, the EC refuses to look at the details with the rest of the Community. In fact, they have unleashed a hate campaign against me [e-mail]

We can also see that the plurality of actors and organisations involved complicates the issues. For example, some survey respondents (such as respondent 136) indicated that their strata manager’s hands were tied to with regards to the effective management of repairs and maintenance issues by the actions of other actors:
While I would like to see quicker responses to repairs, some of the problem lies with the slow action of Executive Committee (survey, 136)

The ‘original owner’

The owners corporation is made up of all of the lot owners in a scheme. When a scheme is first built, all of the lots are owned by the developer or builder (‘the original owner’) who therefore controls the scheme. There is legislation in NSW which specifically covers this time, called the ‘initial period’, which lasts until at least one third of the lots are owned by people (or companies) other than the original owner. However, even after the initial period has ended, the original owner can still hold influence in a scheme.

Indeed, concern has been raised in NSW regarding original owners maintaining complete control over developments, and the *Strata Management Legislation Amendment Act 2008* (NSW) attempts to address these concerns. This is a major issue facing some strata title schemes, not least because it represents a form of monocratic government – or governing by one person or organization - and therefore, according to Chhotray & Stoker (2009:4), means that there can be no governance arrangements in these schemes (as governance is in essence about collective governing):

Authority and coercion are resources available to some in governance arrangements but never in sufficient quantity or quality to mean they can control the decision-making process. The characteristic forms of social interaction in governance rely on negotiation,
signals, communication and hegemonic influence rather than direct oversight and supervision. (Chhotray and Stoker 2009:4)

For example, one survey respondent noted:

_The developer still owns most of the strata entitlements, and therefore controls the owners corporation, and therefore controls the strata management company. It’s in the interests of the developer (i.e. the owners corporation) to pay as little in strata fees as possible, resulting in little effort from the strata management company. This results in under-management (survey, 13)_

The 2008 Amendment Act introduced changes aimed at rectifying this situation. This included legislating that an original owner, or somebody connected with them, cannot cast a vote by means of a proxy or power of attorney that was obtained as a term of the sale contract for a property (schedule 1(3)). Further, any person who is connected with the original owner is not eligible to be elected as a member of an EC unless they disclose that connection (schedule 1(4)). Also, if a motion is proposed to determine if a person should vacate their office on the EC, the original owner has only one vote for every three lots they are entitled to vote in respect to (unless they own less than half of the lots). This makes it much easier for owners to vote the original owner (or their nominee) off the EC (schedule 1(5)). In addition, individual owners can now request that an inspector from Fair Trading enter and inspect the common property, without having to pass this through the owners corporation (as was the case previously). This means that
the original owner is not able to block owners from notifying Fair Trading of a dispute regarding the rectification of defects (schedule 2 (1)).

However, given the extent of comments from survey respondents undertaking the survey since the change in legislation, it appears that some owners were not aware of the changes, or of how to put them in practice in order to re-take control of their schemes. In other cases, it appears that the influence of the original owner is not one of monocratic control, but rather of influence. For example, some survey respondents noted that they were concerned that their strata managers were working in the interests of the original owner:

_The chairman of the executive committee was the real estate agent that had sold the units for the developer [and] they have had an ongoing commercial relationship. Circumstantial evidence suggests they are related. He bullied and influenced other less savvy members to vote down motions to attend to the building repairs and get a proper inspection for 3 consecutive years_ (survey, 46)

In summary, the representativeness of the formal decision-making procedures outlined in the legislation comes into question in those situations where owners do not cast those votes that they are entitled to. This may be due to owners not having the information they require to make decisions and/or feeling disenfranchised or apathetic about the difference that their vote might make in the face of voting blocs influenced by dominant actors such as developers.
Conclusion

Urban consolidation policies have become major drivers of urban change in Australia in recent decades and the success of these policies will rest on the effective governance and management of strata title developments. Indeed, strata title is a little understood but major new feature of the Australian urban scene. This complex arrangement of rights and responsibilities, negotiated across a range of stakeholders, is expected to deliver a functioning and sustainable urban environment for many years to come.

This paper has provided an example of how theories of governance can be utilised to try to understand this complex system, involving collective decision-making and a plurality of actors, which, while operating under a system of government legislation and ‘hard’ rules, nevertheless also includes a multitude of relationships and actions, which are not dictated by these rules. Further, it has shown how decision-making in a strata scheme can be strongly influenced by alliances between, and lobbying by, the different actors and organisations involved, including EC members, managing agents and original owners. These relationships in turn influence the processes through which collective decisions are made, with some actors in effect disenfranchised, and others holding power both through the control of information and through interest groups. This situation is of concern because it indicates that a process of collective decision-making, that is intended to be democratic and inclusive, excludes some actors, largely through the control of the flow of the information necessary to make an informed decision. It is important to keep in mind that this situation is all the more concerning when we remember that we are speaking about people’s homes and their most important financial investments.
It also indicates that decisions are being made which have led to a lack of maintenance and hence the deterioration of strata titled properties. This is further compacted when we remember that many of the properties built under strata title in the 1960s are facing increasing repairs and maintenance problems, that at present it is incredibly difficult to terminate a strata scheme, and that strata schemes already house millions of residents around Australia.

Indeed, we are not talking about an inconsequential sub-sector of the property market. Millions of people live in strata schemes around Australia. In NSW alone, there are currently over 570,000 residential strata lots (NSW Department of Lands 2009) and over one quarter of the population currently live in strata schemes in Greater Sydney. If plans under the Sydney Metropolitan Strategy (New South Wales Department of Planning 2005) are realised, by 2030 approximately 45 per cent of Sydney’s dwellings could be in the form of strata titled dwellings (Randolph 2006). Similar increases in strata titled properties can be expected in the other major Australian cities. The future of Australia’s cities will thus rely on the efficient and effective governance of strata titled properties. The first step (and the purpose of this paper) is to recognise the problems facing the effective governance of strata titled schemes and to acknowledge that these issues are of concern to individuals, businesses, society and government. The next, and more difficult, step will be to propose solutions to these problems.

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The Victorian Institute of Body Corporate Managers (2007) estimated that 3.5 million people lived or worked in body corporate schemes in 2007. This figure includes, but is not limited to, residential strata residents. Such schemes are not always referred to as ‘strata’ schemes in all jurisdictions. For example in Queensland they are referred to as community schemes.

Based on a figure of 1.9 people per flat unit or apartment in the Sydney Statistical Division, Calculated from ABS 2006 census data, 27.5% of the population lives in a flat, unit or apartment. Given that the vast majority of flats, units and apartments in NSW are under strata title (see note iii), this figure is likely to be relatively accurate. The figure may be greater when we consider that many townhouses are also under strata title.

The 2006 census reported that there were 801,418 semi-detached, row, townhouse, flat, unit and apartment dwellings in NSW (i.e. dwellings that could be strata titled). Of these, 533,034 were flats, units and apartments. The NSW Department of Lands strata database for 2007 reported that there were almost 600,000 strata lots in NSW. It can therefore be assumed that in NSW the majority of flats, units and apartments are under strata title.

Figures are based on a comparison of street addresses and contact addresses for owners, kept in the NSW Department of Lands’ strata database. The figures are also based on the records from those lots in schemes zoned as residential (and exclude those lots in schemes zoned as mixed-use).

However, the use of the Census data must always only act as a proxy in this regard, because we are also aware that there are strata properties that are not flats unit sand apartments and that there are flats, units and apartments that are not strata properties. However, unfortunately the NSW Department of Land’s strata database does not record the number of bedrooms in each property.

With the exception of the deliberate omission of 1-2 lot schemes amongst survey responses.

These findings parallel research undertaken by Blandy et al (2006), who found that the legal rights of owners in multi-owned residential developments in New Zealand are often not translated into practical control over the management of a development.

In 2009, there were 571,579 strata lots in schemes registered as residential only, mixed use and City of Sydney County Centre. It excludes those schemes that are registered as commercial, industrial and other special uses.