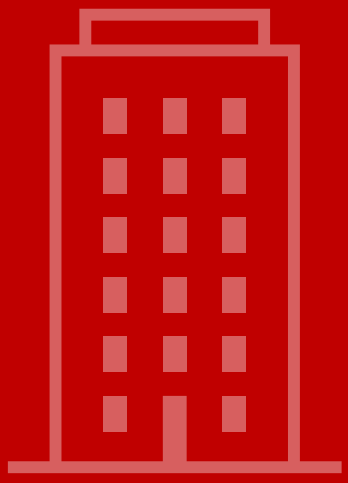
Construct NSW

Improving consumer confidence

Research report on serious defects in recently completed strata buildings across New South Wales



NSW GOVERNMENT

strata community association NSW

September 2021

Message from the NSW Building Commissioner

It is with great pleasure that I present this research report into the experience that NSW strata communities have had with serious building defects. It forms part of the Construct NSW transformation strategy to establish a customer-facing building and construction industry by 2023.

This research is the result of a partnership between the Office of the Building Commissioner and Strata Community Association NSW to produce clear data on the problem of serious building defects in NSW strata buildings.

It is a ‘first of its kind’ research project, demonstrating a new approach to gathering high-quality evidence for the benefit of government and industry stakeholders, strata managers and, most importantly, strata owners.

There are many opportunities for us to apply the outcomes of this work to help transform the experience of living in a strata community. Key opportunities include the design of legislation, responding to skills and capability gaps among strata managers and strata committees, options for digital innovation and the role of research within sector reform. Notably, these opportunities align with our focus areas of the Construct NSW transformation strategy.

I wish to thank Chris Duggan and the SCA (NSW) Board for their support, and the strata managers who took the time to complete the survey and provide us with such a rich dataset.

Finally, I wish to thank the NSW Government and the Hon. Kevin Anderson MP, Minister for Better Regulation and Innovation, for their ongoing commitment to restoring public confidence in the quality of NSW’s residential apartment buildings.

David Chandler OAM

Message from the President of Strata Community Association (NSW)

SCA (NSW) have been working in partnership with the NSW Government to deliver a better experience to the thousands of people that are housed and employed by strata communities. They are a vibrant part of our State's built environment, supporting our economic and social prosperity in many different ways.

One of the more challenging aspects of strata living is the resolution of defects. The buildings are complex, the impact on residents can be wide-reaching and their resolution typically involves many different stakeholders. Unfortunately, the practical reality is that the entire experience can be very challenging. It's time-consuming, expensive and emotionally taxing for everyone involved, particularly homeowners. We can all benefit from a better process.

That is why I'm so proud to have our members playing such a big role in the Construct NSW transformation strategy. This research aligns with our organisation's evolution, reflecting our new status as a professional organisation and embedding our focus to lead with cultures and practices that produce customer-centric outcomes. It is simple - we want to help deliver better buildings and happier strata communities.

Thank you to the NSW Government and Office of the Building Commissioner for recognising the value of strata communities, and thank you to my amazing members for your support.

Chris Duggan

1. Contents

2. Executive Summary

The NSW Government is committed to restoring consumer confidence in the residential building and construction industry through the Construct NSW transformation strategy. A key component of this strategy is the use of data and research to inform policymakers, industry and the wider community about the pain points and drivers of poor performance across the construction sector. As part of Construct NSW, the Office of the Building Commissioner (OBC) and SCA (NSW) partnered to produce baseline data on the prevalence and impact of serious defects in recently completed residential strata buildings.

Serious defects were defined as those which related to the five key building elements - waterproofing, fire safety systems, structure, enclosure, and key services. This definition applied the same objective criteria that is used in NSW's most recent building-related legislation. It was important for this research to focus on these particular defects as they exist in the common property of buildings and can have a significant impact on safety, amenity and value. The report also includes analysis of non-compliant cladding.

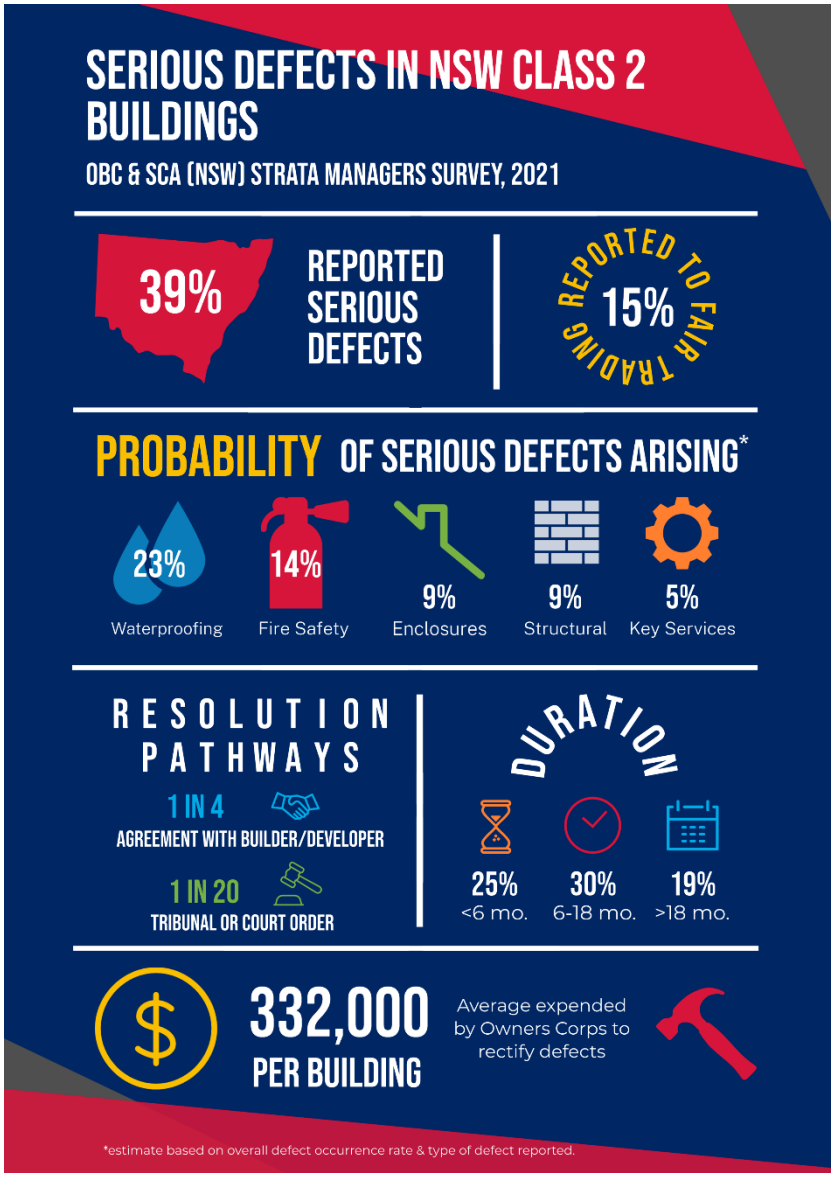
Building Commissioner and team members observing construction

The research sought to survey buildings that had been completed in the last six years and were over four storeys. This profile was chosen because it aligns with the statutory warranty period of six years for major defects and these buildings are not covered under the Home Building Compensation Scheme.[1]

A questionnaire was issued to over 1,400 strata managers and many questions received a sufficiently large response for their results to be statistically significant at the 95% confidence interval with a 5% margin of error. There were also follow-up interviews conducted with two

[1] The Home Building Compensation Scheme does not cover new builds but does apply to certain types of additions and alterations to multi-dwelling buildings. For more information visit www.icare.nsw.gov.au/government-agencies/our-funds-and-schemes/home-building-compensation-fund.

strata managers to gather deeper insights into the experience of managing buildings with serious defects.



Summary of findings from the research

2.1 Incidence of defects

The research found that 39% of strata buildings in the sample had experienced serious defects in the common property. The majority of serious defects related to waterproofing, affecting 23% of all buildings surveyed. Other serious defects related to fire safety systems (14%), structure (9%), enclosure (9%), key services (5%) and non-compliant cladding (6%). Most of these defects (51%) were identified through independent expert advice which had been commissioned by the owners corporation.

The incidence of defects observed in the research was compared to data collated by Fair Trading from the first 12 months of the Occupation Certificate (OC) Audit program, an inspection regime introduced under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (the RAB Act). This comparison showed a 29% reduction in the incidence of waterproofing defects, potentially pointing to improvements in the industry's performance since the audit program was established

2.2 Availability of key building records

Strata managers were generally able to identify the developer, builder and certifier involved in the construction of each building. However, most managers reported that they did not possess many of the key documents that should have been held by an owners corporation. For example, less than half were in possession of the building's as-built plans. This suggests that the NSW Government's implementation of enhancements to the NSW Planning Portal which will collect and store key building records digitally will provide significant benefits to strata communities.

2.3 Impact and resolution of serious defects

The incidence of serious defects generally led to significant financial and emotional stress for homeowners, tenants and strata managers.

Around half of the defective buildings in the sample had been rectified, and when this occurred it was generally achieved through an agreement with the developer or builder (27%). Legal action via the NSW Civil and Administrative Tribunal (the Tribunal) or Courts was likely to be inefficient, resolving defects in around 3% of buildings.

Building Commissioner talking with owners about defects in their apartment building

The most common barriers to resolving defects were sourcing funds (15%), lack of awareness about rights and responsibilities (14%) and disagreement amongst the owners corporation on the approach that should be taken (10%). Funds were commonly raised through special levies or increases in the scheme's capital works budget, with very few financial loans acquired.

It was estimated that around $331,829 per building was spent by owners corporations to resolve serious defects. Very few owners corporations reported being able to recover their costs. The time taken to resolve defects varied greatly across the sample, with around 38% of buildings taking over 12 months and 25% taking less than 6 months.

Strata schemes preferred not to involve Fair Trading in resolving defects, only lodging a complaint in around 15% of cases. The very low number of complaints likely reflected dissatisfaction with previous interactions, desires to preserve statutory rights and limitations in the agency's legislative powers. However, since the introduction of the RAB Act in September 2020, there have been significant enhancements to Fair Trading's technical capabilities, complaint handling processes and regulatory powers. Considering these changes, and the observations of this research highlighting the cost, time and outcomes of self-led action, the owners corporations who lodge complaints with Fair Trading in the future could expect to achieve better outcomes.

The research suggests that strata owners and strata managers would benefit from education on how to effectively resolve serious building defects and manage their buildings. Such education could be prepared by Fair Trading and implemented across the strata sector through a mix of voluntary and mandatory initiatives, such as continuing professional development for strata managers, lawyers and builders.

Beyond the management of defects, the research suggested that managed residential buildings are generally complying with their fire-related maintenance responsibilities[2]. Of the schemes able to provide details of their last Annual Fire Safety Statement (AFSS), most were current and a very small proportion (1%) appeared to be overdue by 6 to 12 months.

There are many possibilities for additional studies to expand upon the knowledge and insights provided by this research. For example, it is suggested that the survey is replicated every 2 years to build a longitudinal dataset to monitor residential strata performance over time. There would also be substantial public benefit in other Australian jurisdictions undertaking similar surveys to establish a nationally consistent quantitative dataset on serious building defects.

[2] For example, clause 106 of the *Strata Schemes Management Act 2015* provides that owners corporations have a duty to maintain and repair common property.

3. Introduction

Strata buildings are a vital part of NSW's built environment and provide a valuable and growing contribution to the economy. There are currently over 83,000 strata schemes in NSW that provide housing for around 15% of the population.[3] These numbers have grown significantly in recent years, with more than 40% of all strata schemes established in the last 20 years. The total insured value of strata schemes in NSW is now worth more than $400 billion.[4]

Strata living can offer many benefits to residents and the broader community. They provide a community-style environment and enhanced affordability through the sharing of common services. They also offer increased density to support growing community demand for housing across the State. Also, they are increasingly becoming part of the fabric of regional communities in areas such as the Hunter, Illawarra and Tweed.

This research was an initiative within the data and research pillar of the Construct NSW transformation strategy.[5] It sought to establish a baseline for the type and impact of serious defects in strata buildings. It also intended to better understand the experience of owners corporations and strata managers in resolving defects.

3.1 Research approach

The research sample was limited to residential strata buildings that appointed a strata manager from SCA (NSW), were 4 or more storeys above ground and were completed after July 2014. This building profile was chosen because it aligns with the statutory warranty period of six years for major defects under the *Home Building Act 1989,* and these types of buildings are not covered under the Home Building Compensation Scheme. Figure 1 illustrates the location of the total expected survey sample across NSW.

The OBC partnered with SCA (NSW) to help increase the accuracy and reach of the survey.[6] Around 60% of owners corporations in NSW appoint a strata manager as the delegated authority responsible for managing the strata scheme. In the case of serious defects existing in a strata building, the appointed strata manager typically acts as the main contact point to manage interactions with all involved parties (i.e. owners, builders, developers, consultants, legal services, etc). For these reasons, having strata managers as survey respondents sought to benefit from their higher awareness for defect-related experiences within buildings and their ability to access relevant data.

[3] NSW Government data, Office of the Registrar General (July 2021).
[4] UNSW City Futures, Australasian Strata Insights 2020, page 9.
[5] For more information on Construct NSW visit www.nsw.gov.au/nsw-building-commissioner.
[6] SCA (NSW) members manage around 75% of all strata managed buildings across NSW.

It is also important to recognise that SCA (NSW) identified that the research aligned with its charter as a professional organisation and commitment to supporting initiatives that benefit strata communities.[7] The partnership and responses provided to this survey were therefore undertaken voluntarily and at no cost to owners corporations.

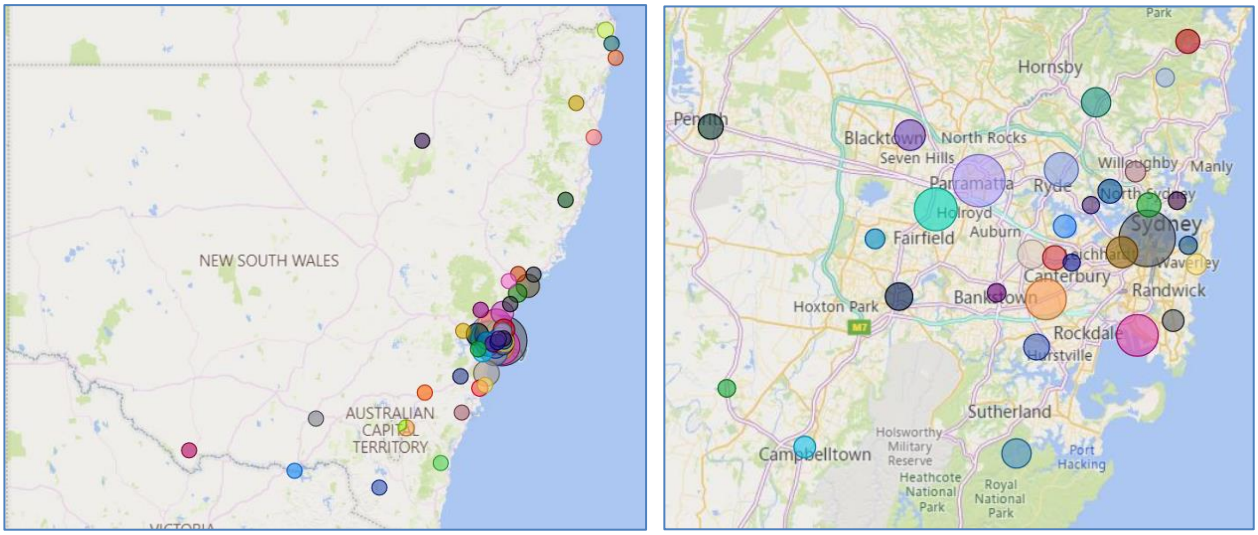


Figure 1: Location of total expected survey sample across NSW and the Sydney Metropolitan Area

To determine the total expected sample size a series of assumptions were applied to NSW Government's strata scheme registration data.

First, the number of lots in each scheme was used as a proxy for the building height, with 20 lots estimated to equate to a building of four storeys (i.e. total of 10,393 buildings). This assumption was required as strata scheme registration data only records the number of lots in each scheme. Second, the strata scheme registration data was filtered to remove all schemes that were below the 20 lot threshold. This calculation found that around 20% of all schemes registered in the last six years would be relevant to the survey (i.e. total of 2,079 buildings). Third, the sample population was further reduced by 25% to account for schemes not likely to be managed by SCA (NSW) members. Collectively this methodology estimated that the total sample size would be 1,559 buildings.

The project was progressed in three phases (Figure 2). In the first phase the survey questionnaire was created. This process included reviewing previous research and seeking feedback from key industry stakeholders involved in the Construct NSW data and research working group.[8] The final questionnaire was designed to seek the following information:

- The nature and profile of each scheme
- The identity of the developer, builder, certifier involved in the building's approval and construction

[7] In June 2021, SCA (NSW) was approved to operate a Professional Standards Scheme.
[8] Over 20 organisations were represented in these discussions, including the Owners Corporation Network (OCN), Housing Industry Association (HIA), Master Builders Association (MBA), Insurance Council of Australia (ICA), the Australian Institute of Architects (AIA), Engineers Australia (EA), the Urban Development Institute of Australia (UDIA) and the Property Council of Australia (PCA).

- The existence of serious defects in key building elements in the common property
- The resolution pathway followed by the owners corporation, and
- The cost and impact of the serious defects.

Several questions related to the nature and profile of each strata scheme were included as they were expected to be included in a new online strata registry that was being developed at the same time. Named the 'Strata Hub', it is an online register of key strata information which it is intended to improve and modernise the way the NSW Government collects, uses and stores information about strata schemes. The first version of the Strata Hub was publicly released in July 2021 and responses to this research survey were used to pre-populate fields where possible.

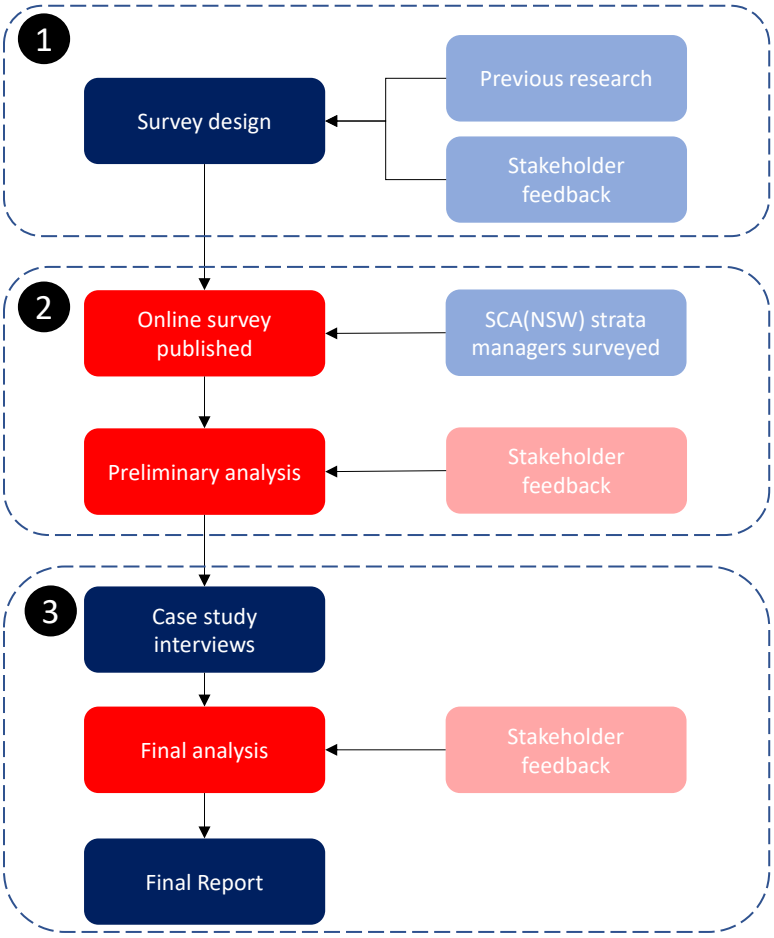


Figure 2: Research methodology

The definition and classification of the five types of serious defects applied in this research replicated the key building elements defined in both the *Design and Building Practitioners Act 2020* and RAB Act (Figure 3). This approach was taken to ensure that the research identified only those defects that impact the common property and are defined as 'serious defects' under the two residential building laws most recently implemented in NSW.

Figure 3: Serious defects were those that related to one of the 5 key building elements

In the second phase of the research an online survey was published on the NSW Government's 'Have Your Say' website. 1,450 strata managers from SCA (NSW) were then invited to participate. In the first half of 2021 the initial results were established and then shared with stakeholders for discussion and feedback.

Responses were received from many strata managers with valid data provided for 492 buildings. Although the response rate varied across the survey questions, most questions achieved a sufficient number of responses for the findings to reflect a statistical confidence level of 95% with a 5% margin of error.[9]

In the third phase, case study interviews were undertaken with two strata managers who responded to the online survey and whose strata buildings were affected by serious defects. These buildings were chosen as they provided contrasting experiences of dealing with and responding to defects. It was not possible to undertake additional interviews with buildings in the time available to complete the project.

The draft report was circulated for final rounds of stakeholder feedback and then published.

[9] Considering the total expected survey population (1,559 buildings), where there were over 309 responses to a question those findings are estimated to reflect a statistical confidence level of 95% with a 5% margin of error. The sample size (n) is stated for each of the findings (e.g. 'n=412' means that there were 412 responses).

4. Survey results and findings

The main findings are related to strata building profile, approval and construction information, serious defects in the common property, and resolution pathways and impacts.

4.1 Strata building profile

4.1.1 Location of responses

Responses were received from buildings located along the east coast of NSW, with the majority within the Greater Sydney Region (Figure 4). The most northerly response was from Tweed Heads and the most southerly from Merimbula, with a small cluster of responses from the Upper Hunter region.

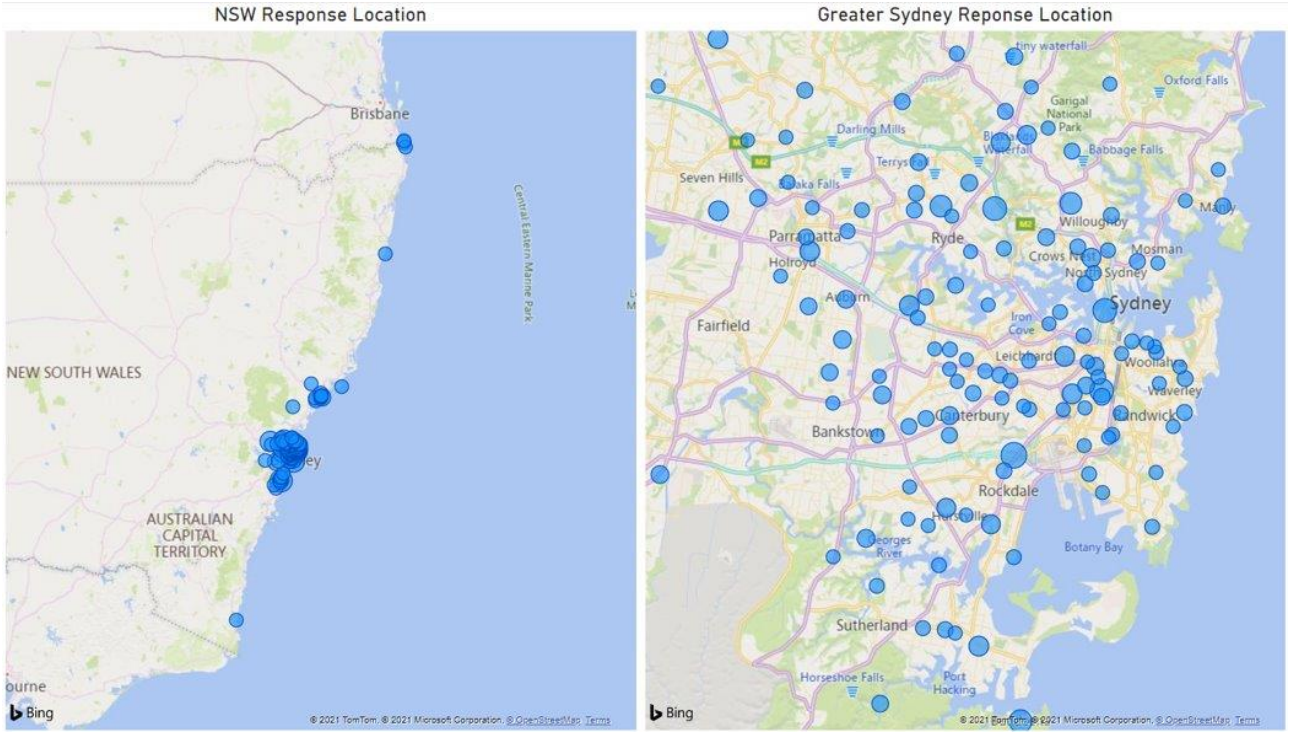


Figure 4: Location of the strata buildings schemes that responded to the survey

The spread of responses aligns with the location of all NSW strata schemes,[10] with the majority coming from schemes in the Greater Sydney Region.

[10] NSW Government data, Office of the Registrar General (July 2021).

4.1.2 Size of buildings

The survey sought to capture data on the number of storeys and lots in buildings to better understand the nature of the buildings in the sample. The responses to these two questions appeared to be of lower quality compared to other questions. Some responses indicated buildings were shorter than 4 storeys which was outside the scope of the research.[11] Other responses appeared to be inaccurate, such as the number of lots and storeys appearing inconsistent with a visual inspection of the building.

Responses that identified the building has less than 4 stories were removed from the data.

However, based on the data that was returned, the median number of storeys was 5, and the median number of lots was 58. The largest number of storeys was 56 and largest number of lots was 599. Despite the concerns noted about the accuracy of responses, these outcomes appear to broadly align with the strata scheme registration data which estimates around 50% of all schemes across NSW have fewer than 50 lots.[12]

4.1.3 Type of strata scheme

The majority (98%) of lots were residential, with a total of 42,619 lots (Figure 5). There were very few lots from other land use types, with the next most common being commercial (385 lots), followed by retail (228 lots), accommodation (195 lots) and then industrial (90 lots).

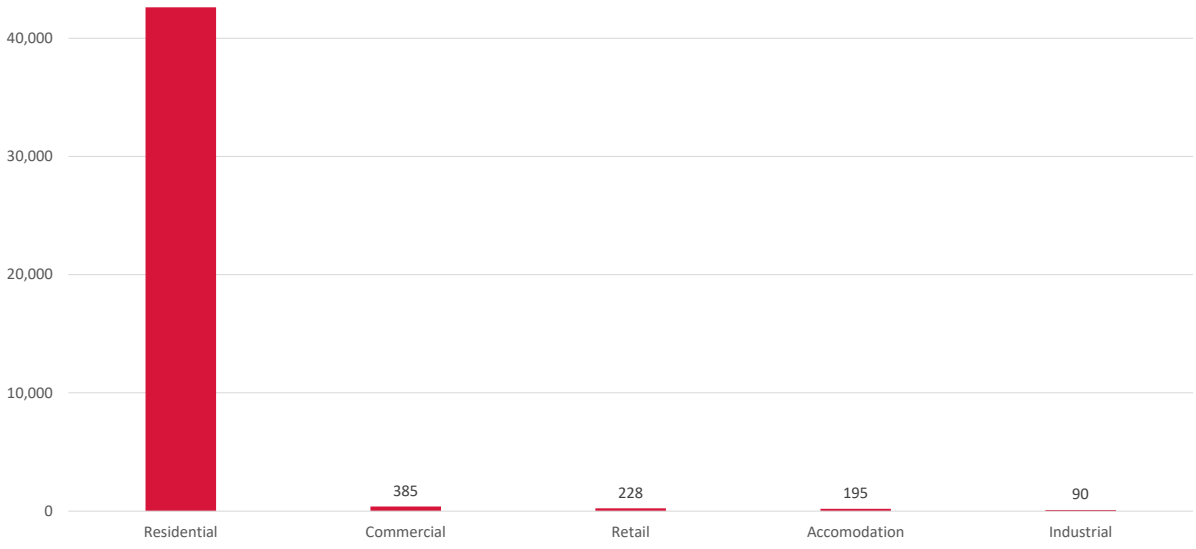


Figure 5: Number and type of lots in the sample (n=476)

[11] Reponses that stated a building was below 4 stories were deemed not valid and no other responses from that building were included in the final data.
[12] NSW Government data, Office of the Registrar General (July 2021).

Most schemes (60%) were not members of any official body or subdivision (i.e. a committee). 30% of schemes were part of a building management committee, with a small proportion (6%) being involved in a community association (Figure 6).

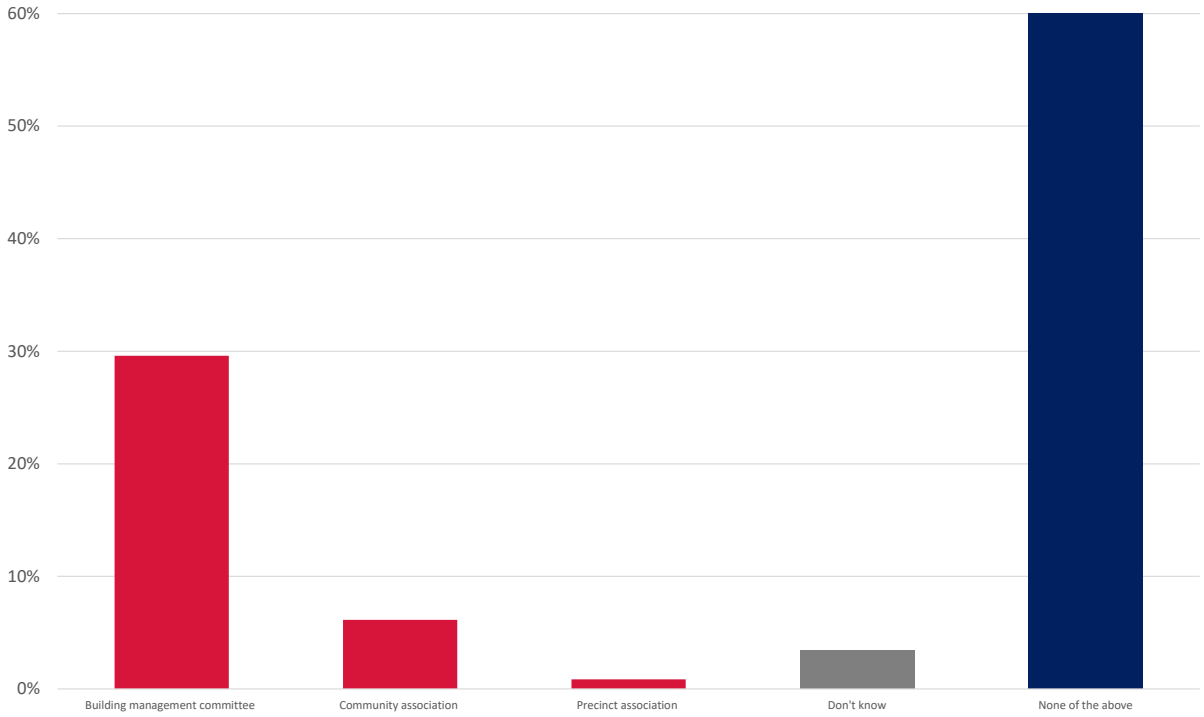


Figure 6: Type of subdivisions that applied to each scheme (n=462)

4.1.4 Insured value of the building

There was a wide spread of insured values (Figure 7), with most of the responses (over 50%) being below $200 million and the highest reaching $1.4 billion. The median insured replacement value of buildings in the responses was around $25.5 million.

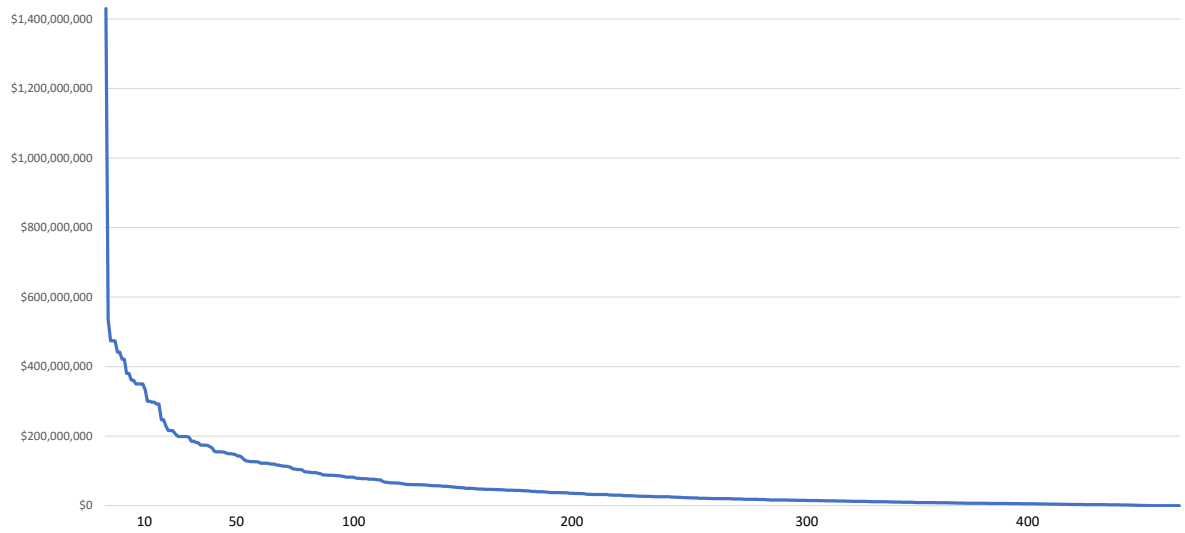


Figure 7: Spread of current insured replacement values across the sample (n=492)

4.1.5 NABERS rating

It is voluntary for buildings to participate in the National Built Environment Rating System (NABERS) scheme.[13] Ratings for apartment buildings quantify the building's energy and water performance within shared services (not individual lot usage) and provide a result from one to six stars.

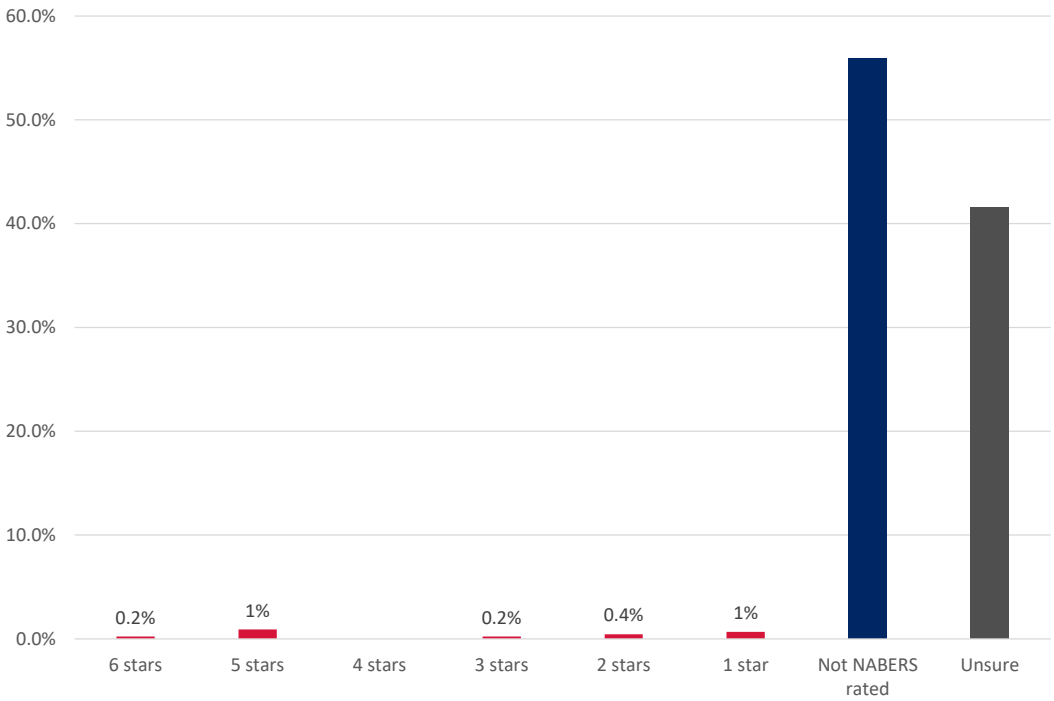


Figure 8: NABERS ratings (n=445)

Around half (56%) of the responses stated their building had not acquired a NABERS rating. A large proportion (42%) of strata managers were unaware if a NABERS rating existed for their building. These results likely reflect both the voluntary nature of the scheme and very low awareness amongst strata communities (Figure 8).

[13] For more information on the NABERS scheme refer to www.nabers.gov.au/apartment-buildings.

4.1.6 Building management

Around half of the schemes (52%) that responded to this question stated that they employed a building manager (Figure 9). It is noted that as all schemes in the survey were managed by a strata manager, this finding means that those schemes had employed both services.

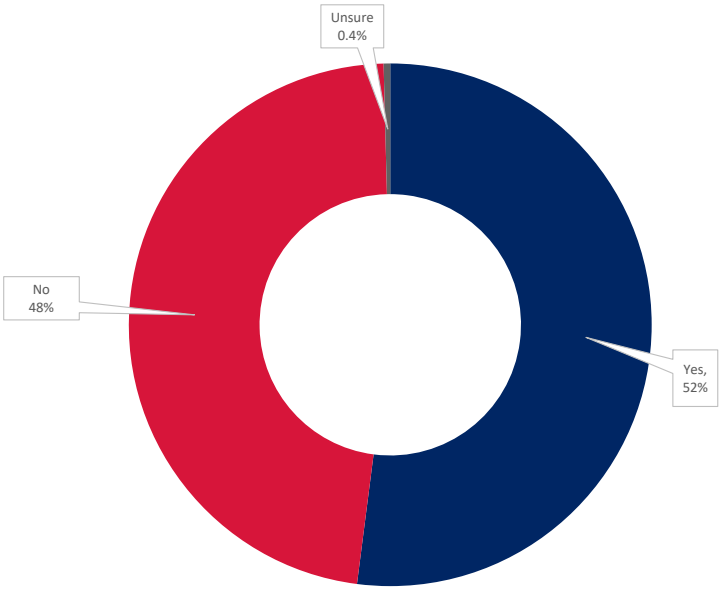


Figure 9: Appointment of a building manager (n=491)

4.1.7 Documentation

Reponses to the type of documents and building records held by strata schemes varied greatly as illustrated by Figure 10. The most common documents held were the Certificate of Title, the Fire Safety Certificate and the strata roll, with over 80% of strata managers indicating they held these records). However less than 30% of strata managers indicated they held other key building records including the Development Approval, sewerage service diagram and the depreciation schedule.

The responses provided to this question suggest that the implementation of the Strata Portal is likely to provide substantial record-keeping benefits to strata schemes.

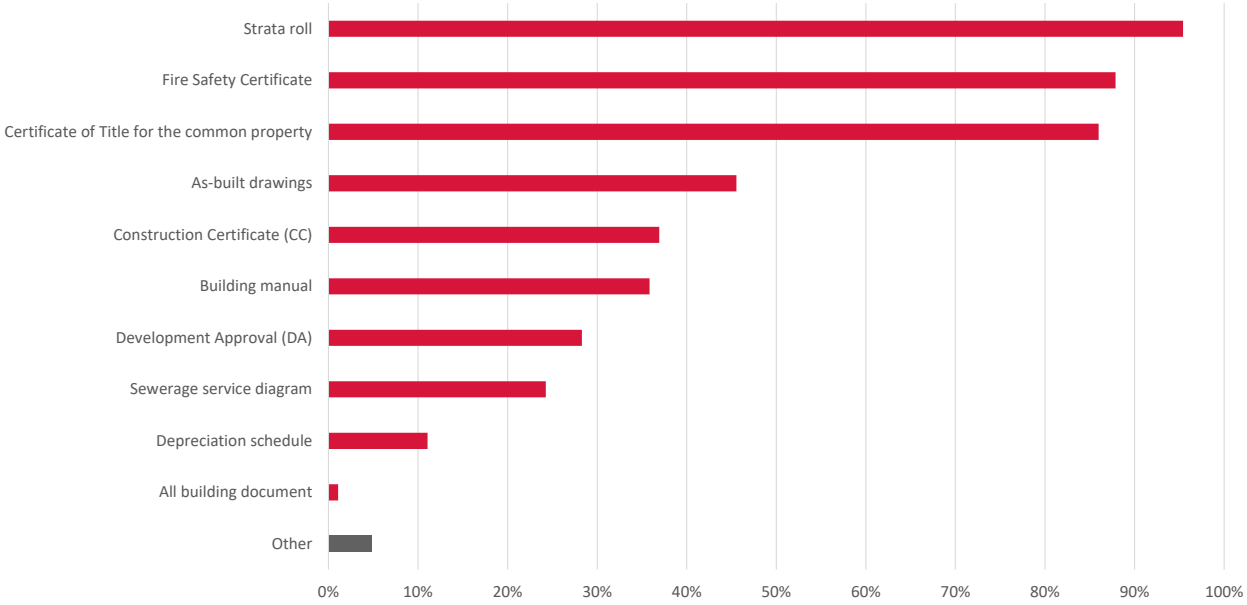


Figure 10: Key building records held by each strata manager (n=371)

4.1.8 Building age

The survey requested that strata managers provide the date that an occupation certificate (OC) was issued, with this information requested to determine each building's age. Figure 11 shows a relatively even spread of building ages across the sample.

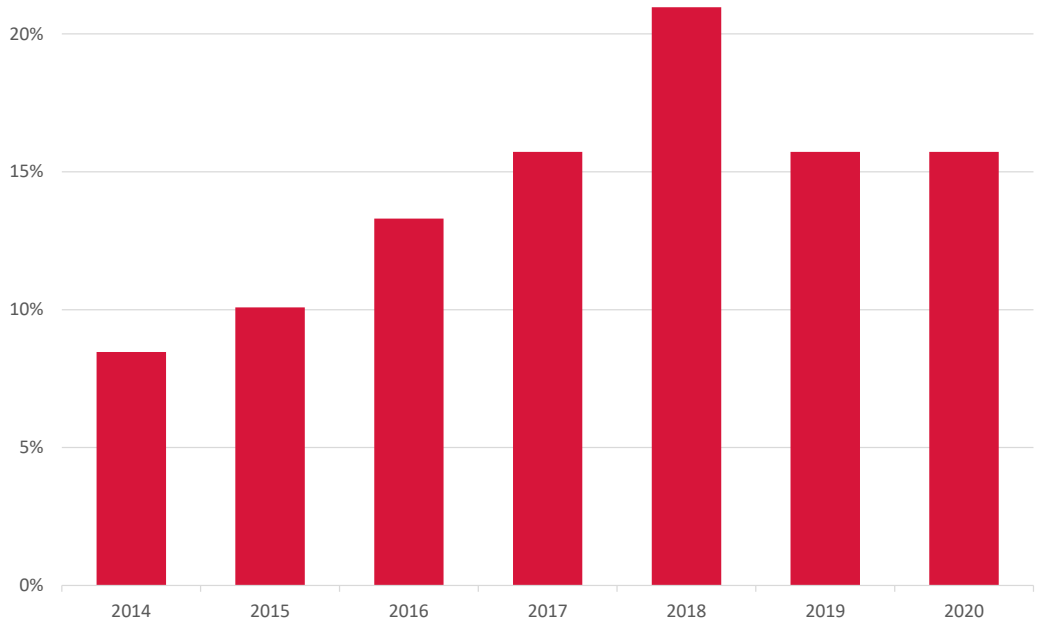


Figure 11: Year that an Occupation Certificate was issued (n=492)

The survey was only available to schemes completed after 2014 (i.e. within the last 6 years of the survey date) as the research is intended to provide baseline data on recent experiences. It is noted that there were some responses received for buildings completed before 2014 which were excluded as they were outside the scope of the research.[14]

4.1.9 Type of Occupation Certificate (OC) issued

Figure 12 illustrates that there was low awareness for the type of OC issued, with a large proportion (25%) of strata managers unsure whether the scheme had acquired either a final or interim OC. These outcomes are feasible because the issuance of either OC allows a building to be legally occupied.

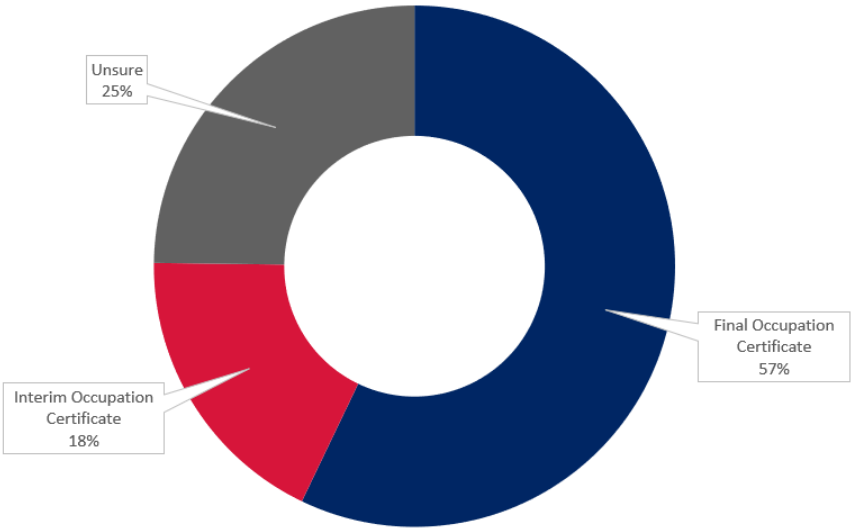


Figure 12: Type of Occupation Certificate issued (n=492)

It was expected that the responses would show a mix of final and interim OCs (57% and 18% respectively) due to changes made to the NSW Planning laws in 2017, which meant that interim OCs could not be issued for buildings certified after 1 December 2019.[15]

The results appear to highlight low levels of awareness for the technical difference between two types of OC, and for the legal requirement for buildings to achieve a final OC once the development is completed.

[14] Reponses that stated a building was completed before 2014 were deemed not valid and no other responses from that building were included in the final data.
[15] For more information on the 2017 reforms to Occupation Certificates refer to www.planning.nsw.gov.au/-/media/Files/DPE/Factsheets-and-faqs/faqs-EPandA-Part-6-occupation-certificates-2019-08-30.pdf?la=en

4.1.10 Profile of principal certifying authority

There were a small proportion (2%) of responses from buildings that had been issued with an OC by a Council certifier, with the remainder involving a private certifier (98%).

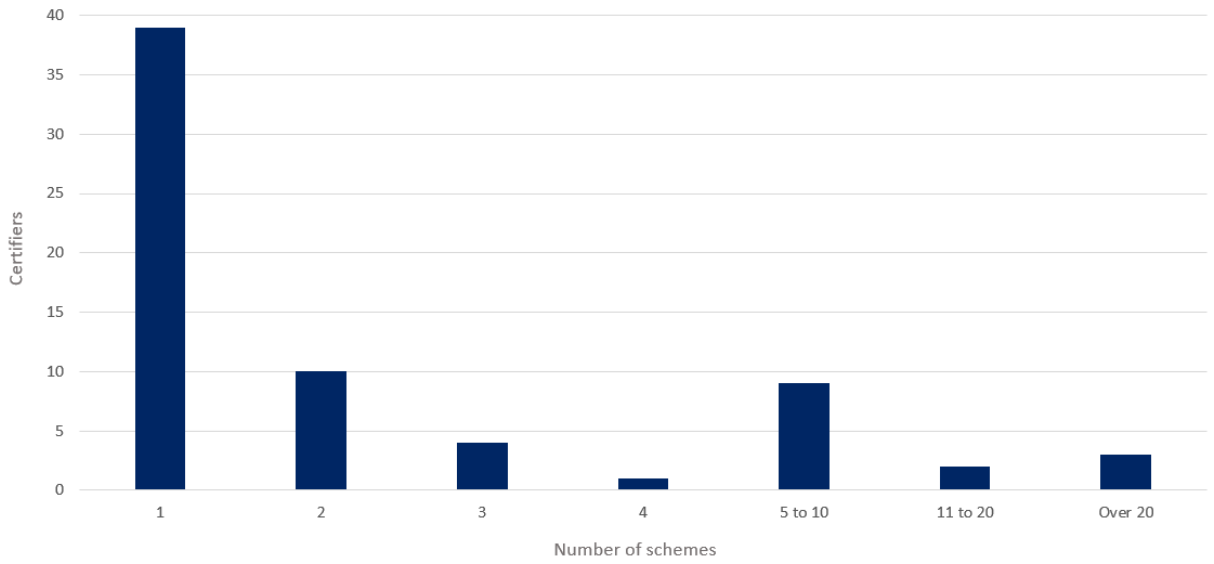


Figure 13: Certifiers that were involved in multiple schemes in the sample (n=259)

A total of 82 private certifiers were identified in the sample. Figure 13 illustrates the proportion of certifiers that were involved in multiple schemes within the sample. It shows that around 40 certifiers were only involved in 1 scheme and around 10 were involved in between 5 and 10 schemes.

Additional analysis is needed to determine if there is a correlation between the choice of certifier and the identity of other parties involved in the building's construction, such as the developer and/or builder.

4.1.11 Profile of developers

There were around 270 individual development entities in the sample, with very few responses (2%) unable to identify their developer. This is a positive outcome as knowledge of the developer's identify is required for the owners corporation to be able to engage with them to resolve defects and other issues.

Responses highlighted both parent entities and project-specific development entities (e.g. special purpose vehicles). It was not possible to determine whether any formal relationships existed between individual entities as further identifying information (e.g. ABN) was not captured in the survey. Without this detail it is not possible to calculate the precise number of unique development entities in the sample.

According to the sample, many development entities (209) were associated with just one scheme each, indicating a diverse pool of developers (Figure 14).

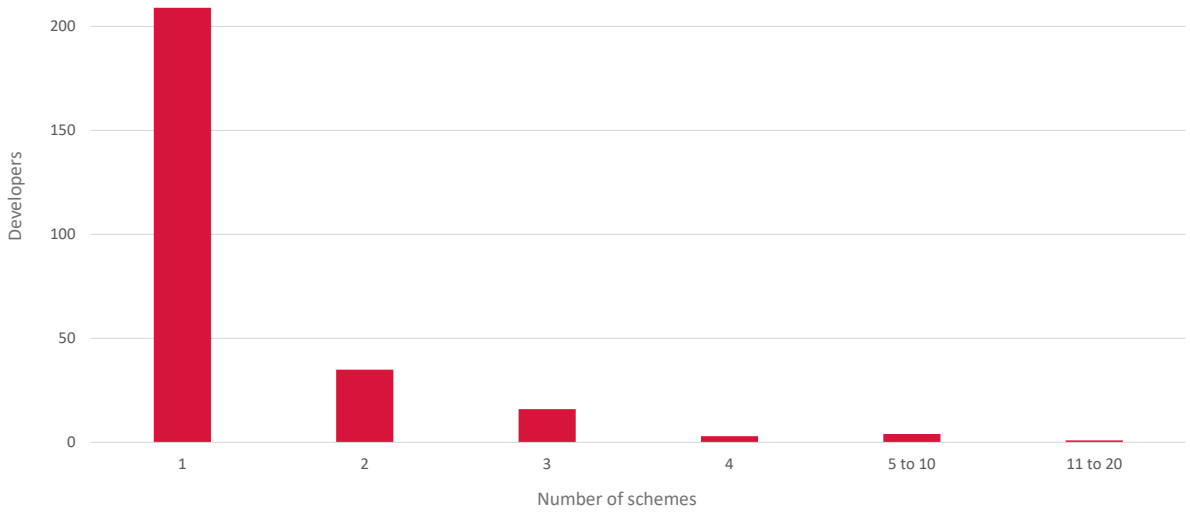


Figure 14: Developers that were involved in multiple schemes in the sample (n=401)

4.1.12 Profile of builders

Responses listed around 184 individual builder entities in the sample, with very few responses (3%) unable to identify a builder. Figure 15 suggests the sample had a reasonably wide spread of builders – as seen in previous sections with certifiers and developers – with 74 building entities reportedly associated with a single scheme each, and 13 with between five and fifteen schemes each.

It was not possible to determine whether any formal relationships existed between developer and builder entities as further identifying information (e.g. ABN) was not captured in the survey.

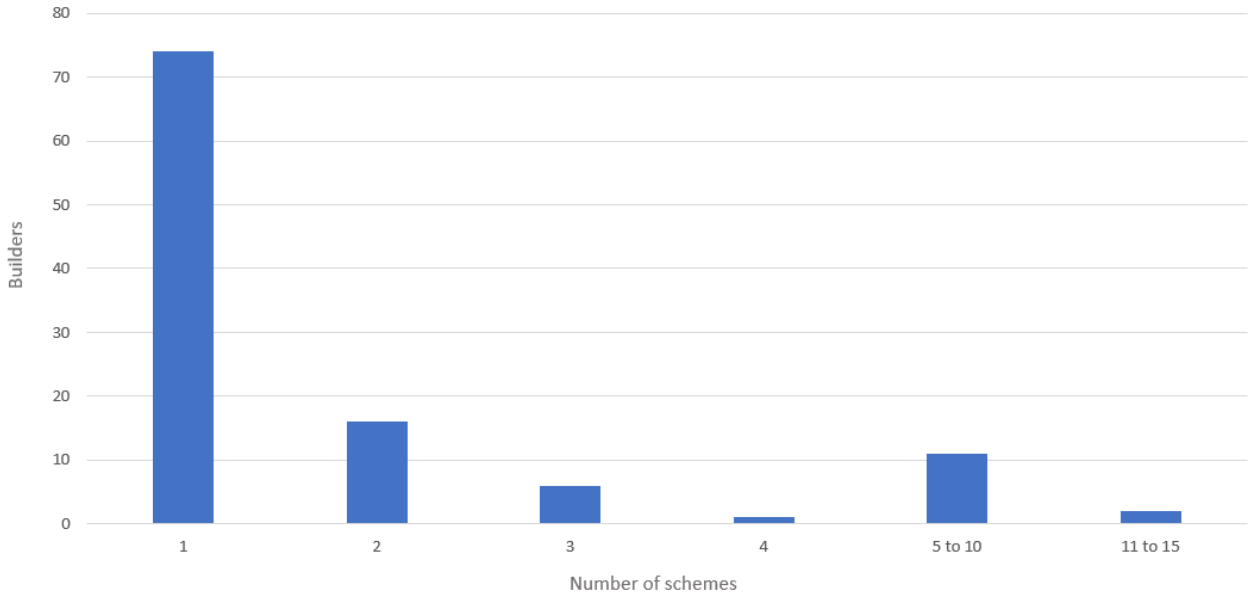


Figure 15: Builders that were involved in multiple schemes in the sample (n=399)

4.1.13 By-law consolidation

Responses suggested that most schemes (80%) had consolidated their by-laws or were in the process of doing so (Figure 16). By-law consolidation became a mandatory requirement from 30 November 2017 and the results are therefore a positive outcome as they indicate most schemes are likely to be meeting this legal obligation.[16]

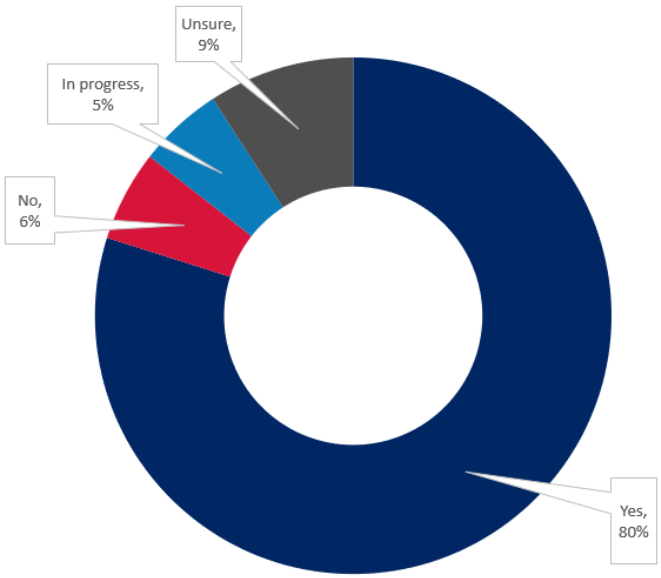


Figure 16: Proportion of schemes which had consolidated by-laws (n=463)

4.1.14 Fire Safety

Annual Fire Safety Statements (AFSSs) are required to be prepared annually to ensure that the fire safety measures in a building are functioning appropriately. Of the schemes that were able to provide details of their AFSS, the majority (93%) had been issued in the last 12 months (Figure 17), meaning most strata schemes appeared to be meeting their AFSS obligations. Just 7% of strata schemes had an overdue AFSS, with 5% outdated by less than 6 months and a further 1% outdated by 6 to 12 months.

There could be many reasons why AFSSs had not been renewed within 12 months and delays could be caused by contractors, the owners corporation and/or strata manager. The survey did not capture reasons why these AFSSs were overdue for renewal. Regardless, the research suggests a low level of non-compliance which is a positive outcome given the critical role that fire safety systems play in protecting strata buildings and their occupants.

[16] Refer to Schedule 3 of the *Strata Schemes Management Act 2015*.

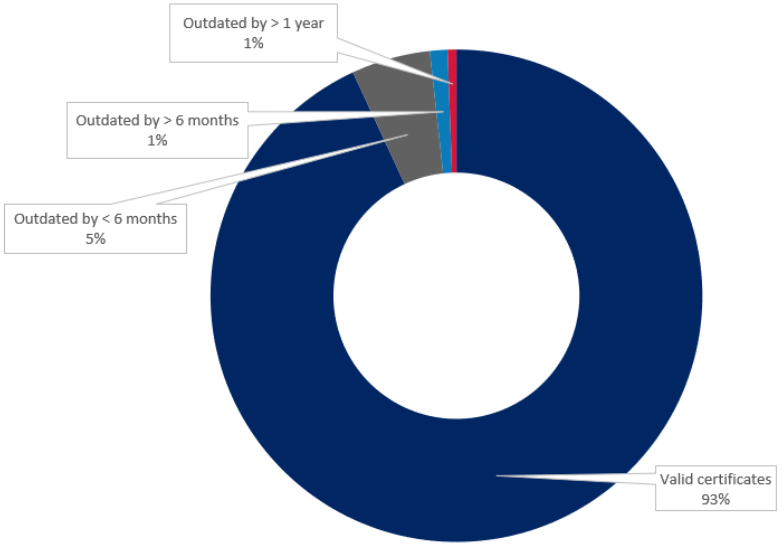


Figure 17: Issuance data of the most recent Annual Fire Safety Statemen (n=347)

The AFSSs held by strata schemes were issued by 115 contractors, with almost all managers able to identify their contractor. More than half of the contractors (75) were listed as issuing an AFSS to a single building each, with a further 30 issuing to two buildings each (Figure 18).

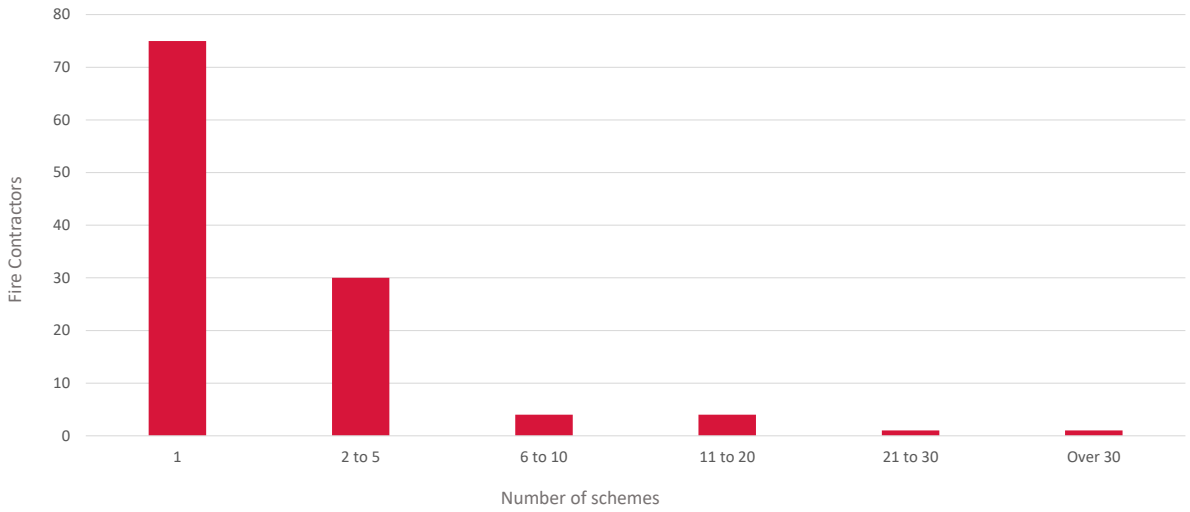


Figure 18: Contractors issuing AFSSs that were involved in multiple schemes in the sample (n=322)

Strata schemes tended to use the same contractor each year (Figure 19) with 38% having the same supplier for all previous AFSSs acquired.

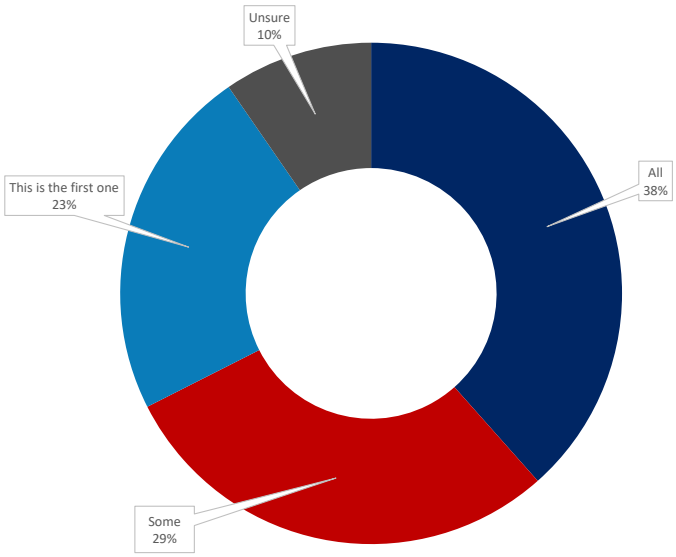


Figure 19: Proportion of strata schemes that used the same contractor for all AFSSs (n=385)

Responses from most schemes (82%) suggested they had not been issued with a Fire Safety Order from a Council (Figure 20). This is a positive finding as Fire Safety Orders are only issued when there is a significant fire safety risk to the building and its occupants.

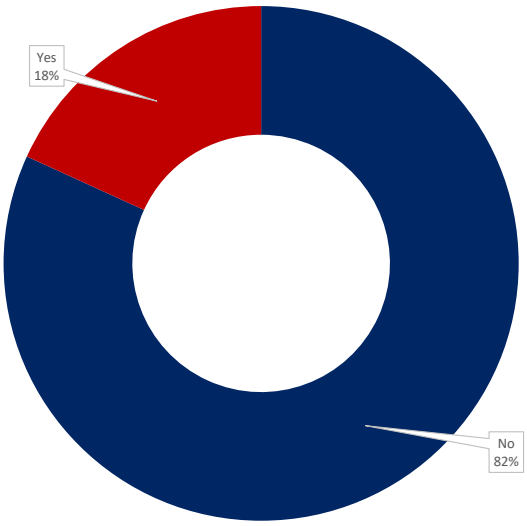


Figure 20: Incidence of Fire Safety Orders issued from a Council (n=198)

4.2 Serious Defects in the Common Property

This research defined serious defects as those which related to one of the five key building elements.

4.2.1 Incidence of serious defects

Of the 492 responses, 39% of strata buildings had experienced serious defects in the common property.

Around 2% of respondents indicated they were unsure if their strata building had experienced serious defects (Figure 21). In case study interviews with strata managers potential reasons for this finding were mentioned, including that the strata scheme's records were incomplete or the strata manager was newly appointed.

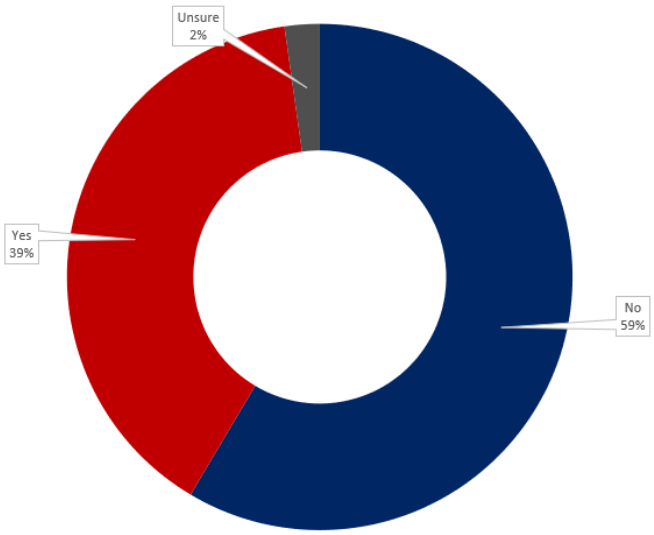


Figure 21: Proportion of buildings with serious defects (n=492)

4.2.2 Type of serious defect

Of the buildings that had a serious defect, the most common was waterproofing (63%) followed by fire safety systems (38%), structure (27%), enclosure (26%), key services (17%) and non-compliant cladding (16%). These findings are displayed in Figure 22.

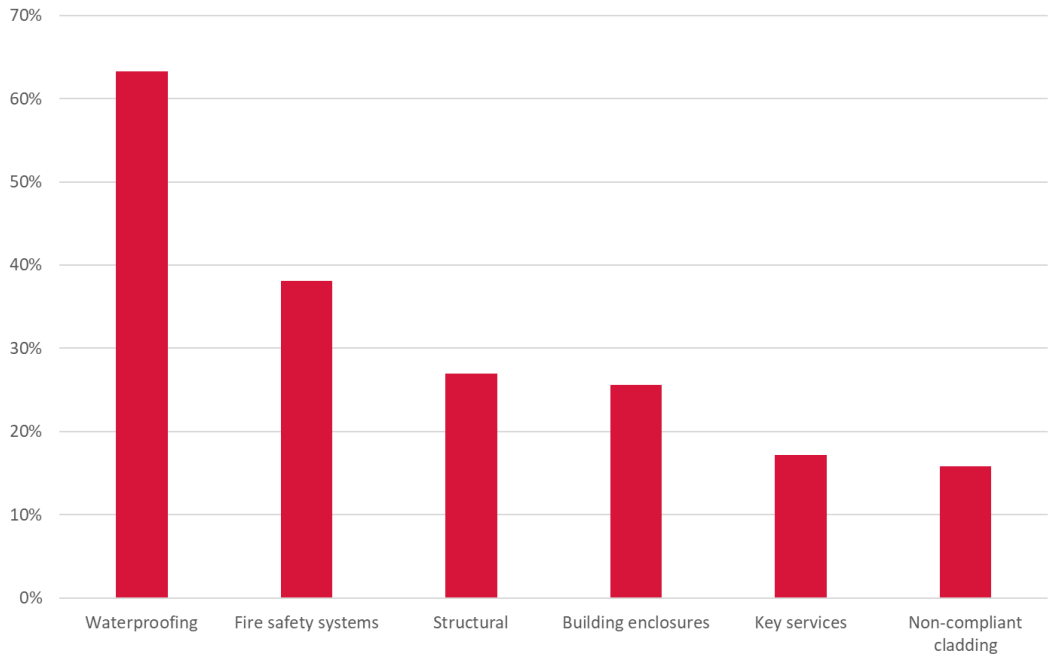


Figure 22: Proportion of serious defects by key building element (n=215)

4.2.3 Probability of serious defects arising

Combining the data on the incidence of serious defects in recently completed buildings (indicated in Figure 20) with the type of serious defects (indicated in Figure 22), it is possible to estimate the probability that each type of serious defect will arise in recently completed buildings. This result of this calculation is illustrated in Figure 23.

The calculation finds that a serious defect related to waterproofing is likely to arise in 23% of recently completed strata buildings, followed by fire safety systems (14%) structural and enclosures (both 9%) and key services (5%).

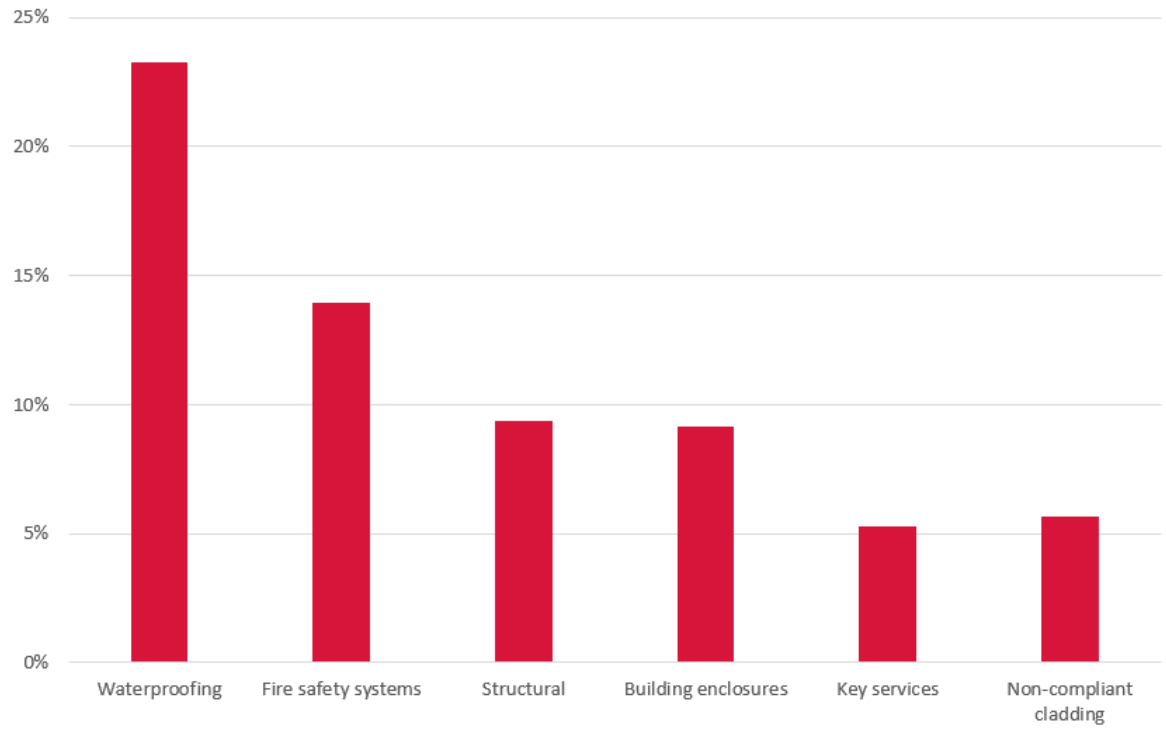


Figure 23: Estimated probability of each serious defect arising in recently completed buildings (n=215)

4.2.4 Strata manager attitudes to off-the-plan strata purchases

A voluntary poll ran concurrently with the survey asking strata managers whether they would be confident recommending an off-the-plan strata property purchase to family and friends. There were only 10 responses received to this poll question indicating that the results are unlikely to be reliable. Nine of the respondents said they would not be confident recommending an off-the plan purchase.

4.2.5 Comparison of survey results with Fair Trading's OC Audits

Since September 2020, Fair Trading has been applying the powers of the RAB Act to undertake proactive Occupation Certificate (OC) Audits on class 2 buildings under construction. The audits typically occur in the last six months of a building's construction and are focussed on projects where data and intelligence suggest there is a high likelihood of defective work. As of September 2021, Fair Trading had conducted around 80 audits.

Figure 24 compares the incidence of defects arising in each key building element as observed in audits and this survey. It shows that the type of serious defects observed in the audits generally aligns with the survey results across 3 of the key building elements, with a

significant variance observed for waterproofing and key services. While it is difficult to confirm the reasons for these variations, they may be partially caused by the audit program.

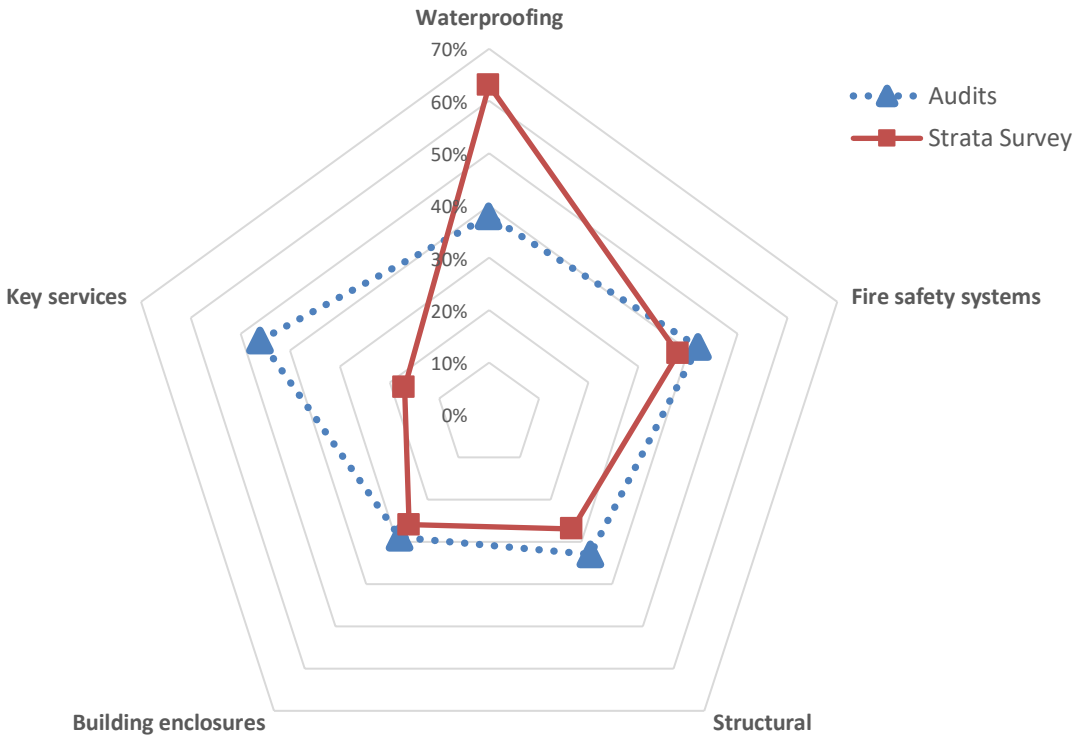
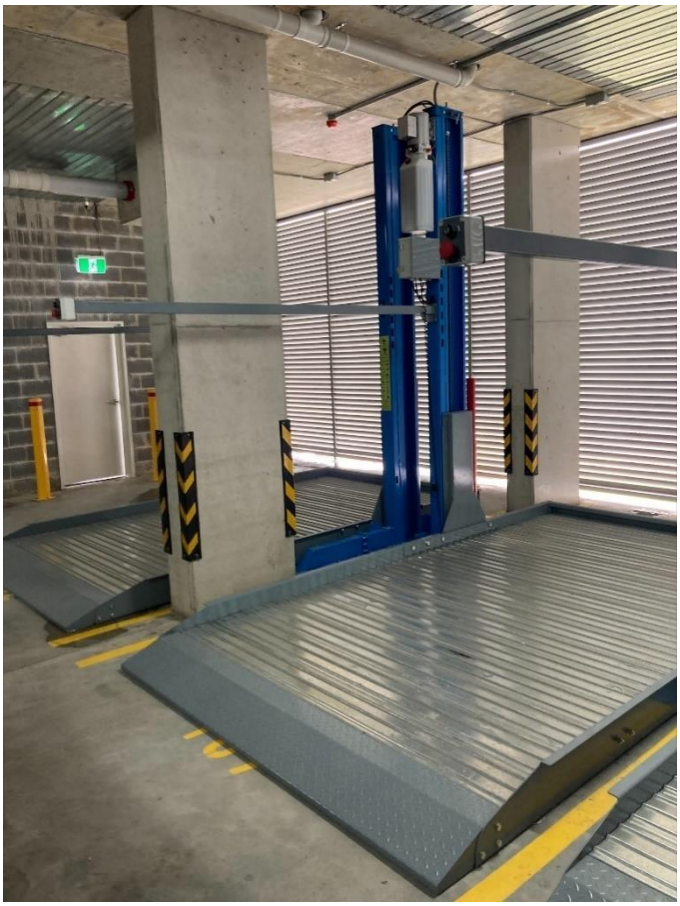


Figure 24: Comparison of serious defect data between this survey and Fair Trading audits

Waterproofing-related defects were 29% lower in the audits as compared to the survey and data it is suggested that some of this variance illustrates an improvement in the performance of waterproofing-related work over the last 12 months. It is also relevant to note that waterproofing-related defects have been an ongoing focus of industry education published by the OBC and Fair Trading since the audit program commenced.

Checking the degree of 'fall' in bathroom tiling

The incidence of defects in key services were 25% higher in Fair Trading's audit program compared to the survey and it is suggested that some of this variance is related to the nature of these defects. Defective car stackers have been the most common reason that an OC audit has found a serious defect in the 'key services' category. However, it is likely that the type of defects which audit inspectors have observed in these installations would have rarely been identified by homeowners. This is because in many instances the defective installations appear to function properly.



Example of a non-compliant car stacker

For example, non-compliances identified by the audits include that the device was not installed in accordance with relevant Australian Standards or manufacturer specifications, as well as unsafe installations that don't adequately protect users from injury risks (e.g. no safety barriers, no detection features to confirm whether people or object are beneath a falling platform, stop function not readily accessible).

4.3 Customer journey in resolving serious defects

4.3.1 Defect resolution method

From the responses provided, around 47% of buildings with serious defects had achieved a form of resolution.

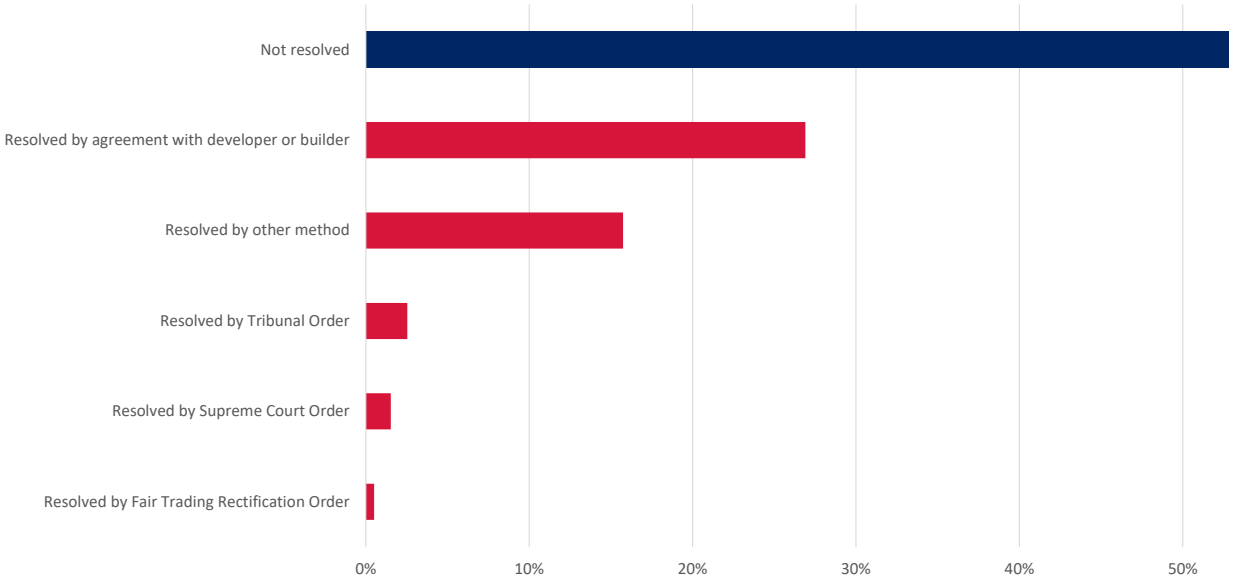


Figure 25: Defect resolution (n=211)

As shown in Figure 25, the most common resolution method was by agreement with the developer and/or builder (27%). A small portion of defects were resolved through legal processes including Tribunal Order, Supreme Court Order and Fair Trading Rectification Order.

Around 16% of strata managers indicated that the building's defects were resolved through another method. Though the survey did not capture data on what other methods were adopted it is possible that these responses reference the use of private settlements.

Unfortunately, around 53% of buildings with serious defects had not achieved resolution.

4.3.2 Duration of resolution process

For those buildings that were able to resolve their serious defects (around 47%), the time taken to reach that outcome varied across the sample (Figure 26).[17] Around 25% of defects were resolved in less than 6 months. Also, an equal proportion of responses indicated defects were resolved within 12 to 18 months, and more than 18 months (19% respectively). Together, these findings show that for most owners corporations (38%), defect resolution is generally a protracted process and likely to take 12 months or more.

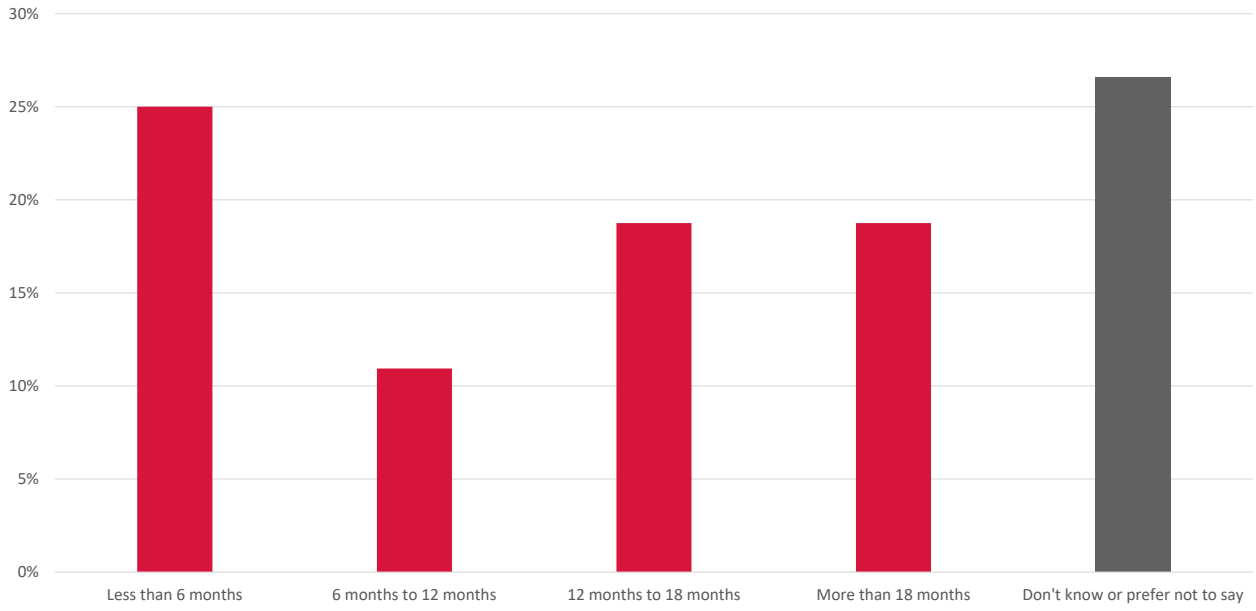


Figure 26: Time taken to resolve defects (n=187)

[17] The time estimates were requested with reference to the date at which the serious defects were first formally identified by the owners corporation through the methods identified in Figure 27.

4.3.3 Identifying the defects

As shown in Figure 27, the two most common means of identifying defects were from independent advice and reports from building occupants. Only around 11% of defects were identified through routine building inspections (e.g. as part of maintenance).

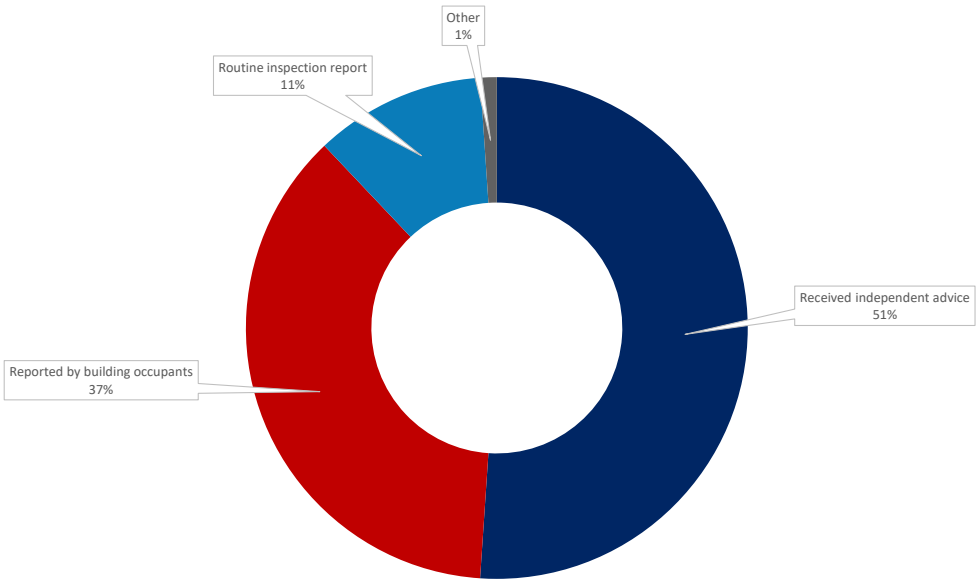


Figure 27: Method that the serious defects were first identified (n=199)

4.3.4 Type of scheme where serious defects were located

The majority of serious defects (89%) were in the residential segment of strata schemes (Figure 28). This result is expected as most schemes in the sample were almost exclusively occupied by residential lots (refer to Figure 5).

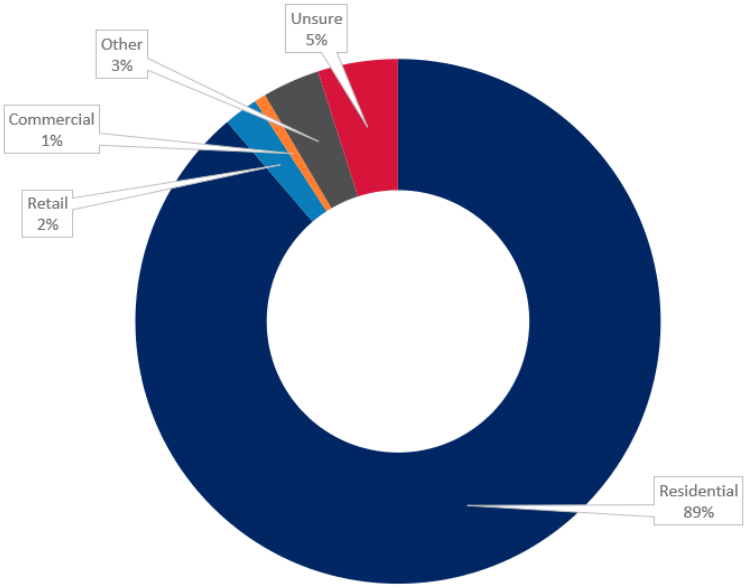


Figure 28: Type of schemes with defects (n=162)

4.3.5 Reporting serious defects to Fair Trading

Fair Trading applies different services to help reduce the number of defects in residential strata buildings including inspections, a mediation service and various rectification powers.[18]

Of the responses provided, most schemes with serious defects (70%) identified that they had not reported the serious defects to Fair Trading (Figure 29).

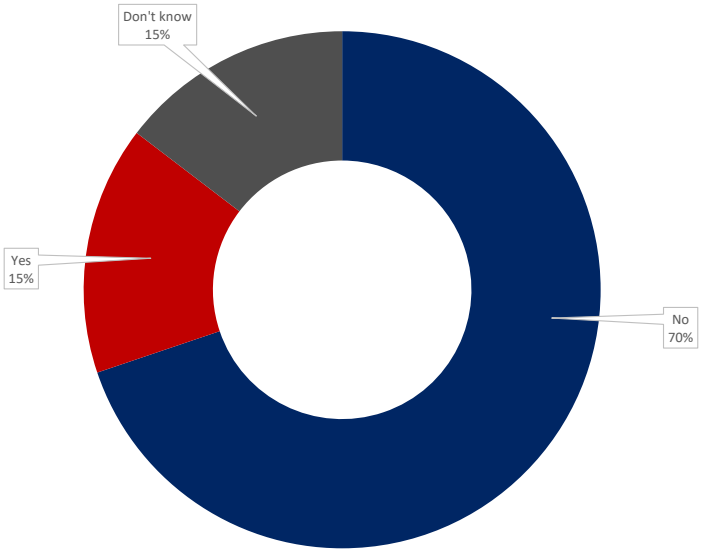


Figure 29: Proportion of defects reported to Fair Trading (n=212)

Figure 30 outlines the reasons that strata managers listed for not engaging with Fair Trading. The most common response provided was that the developer or builder was adequately responsive in their rectification efforts (30%), followed by not knowing it was an option (11%) and litigation being underway (9%).

[18] Visit Fair Trading's website for more information about how residential building complaints are handled - www.fairtrading.nsw.gov.au/about-fair-trading/our-services/resolving-issues/building-complaints

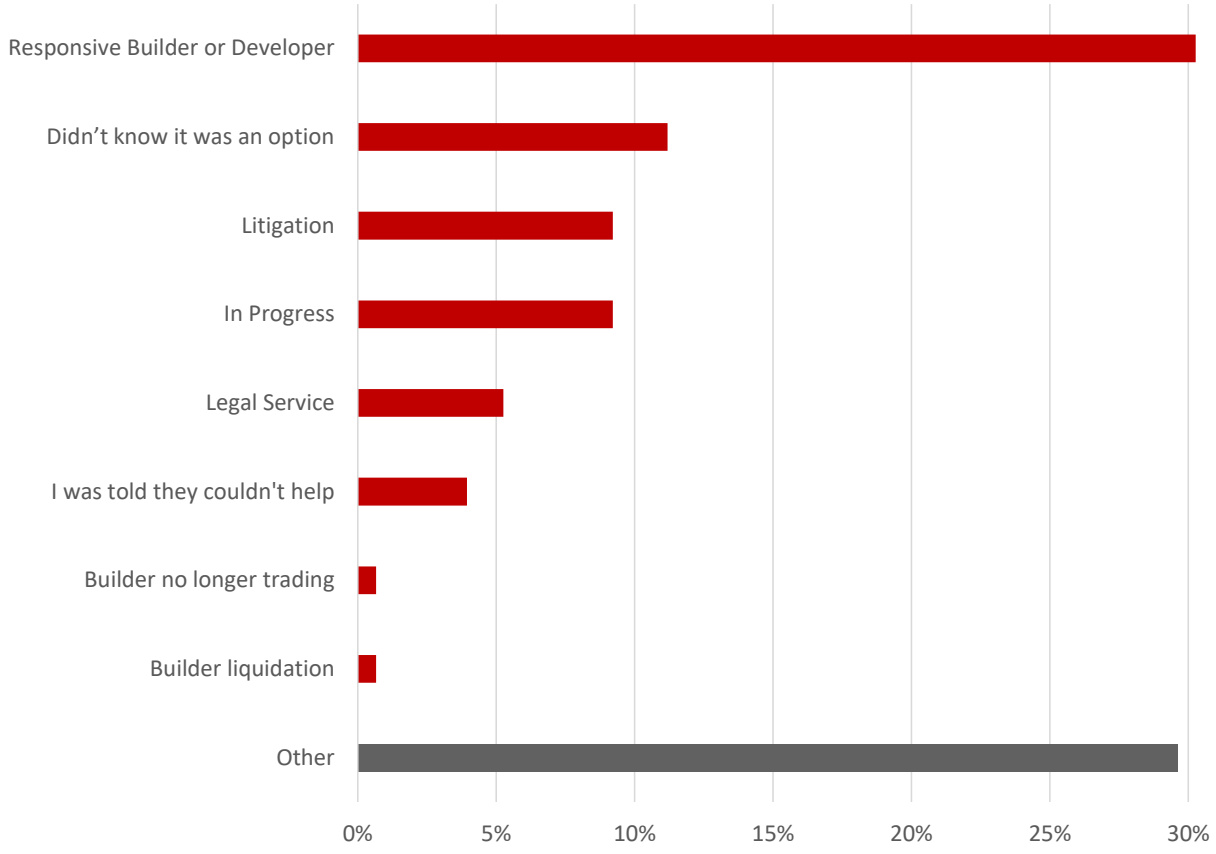


Figure 30: Reasons for not reporting defects to Fair Trading (n=129)

4.3.6 Alternative methods for reporting defects

For the 70% of strata schemes that did not report defects to Fair Trading, Figure 31 illustrates that the most common alternative reporting method was directly to the developer or builder (59%), followed by the Tribunal (16%) and Supreme Court (13%).

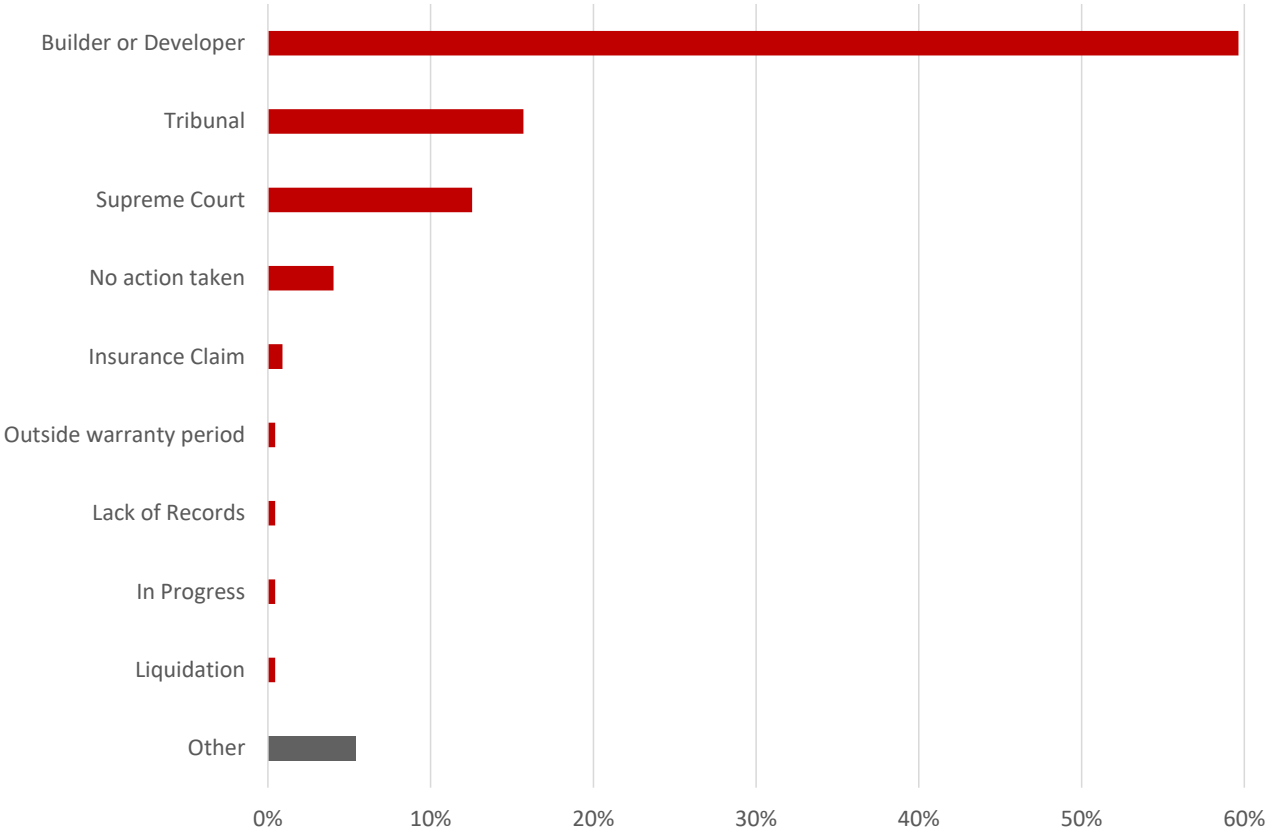


Figure 31: Alternative methods for reporting defects (n=156)

4.3.7 Barriers to effectively dealing with serious defects

Strata managers identified that the main challenge to respond effectively to serious defects was for the owners corporation to source funds (15%), followed by a lack of awareness about rights and responsibilities (14%) and disagreement amongst owners (10%). It is also notable that in 17% of cases there was no barrier identified.

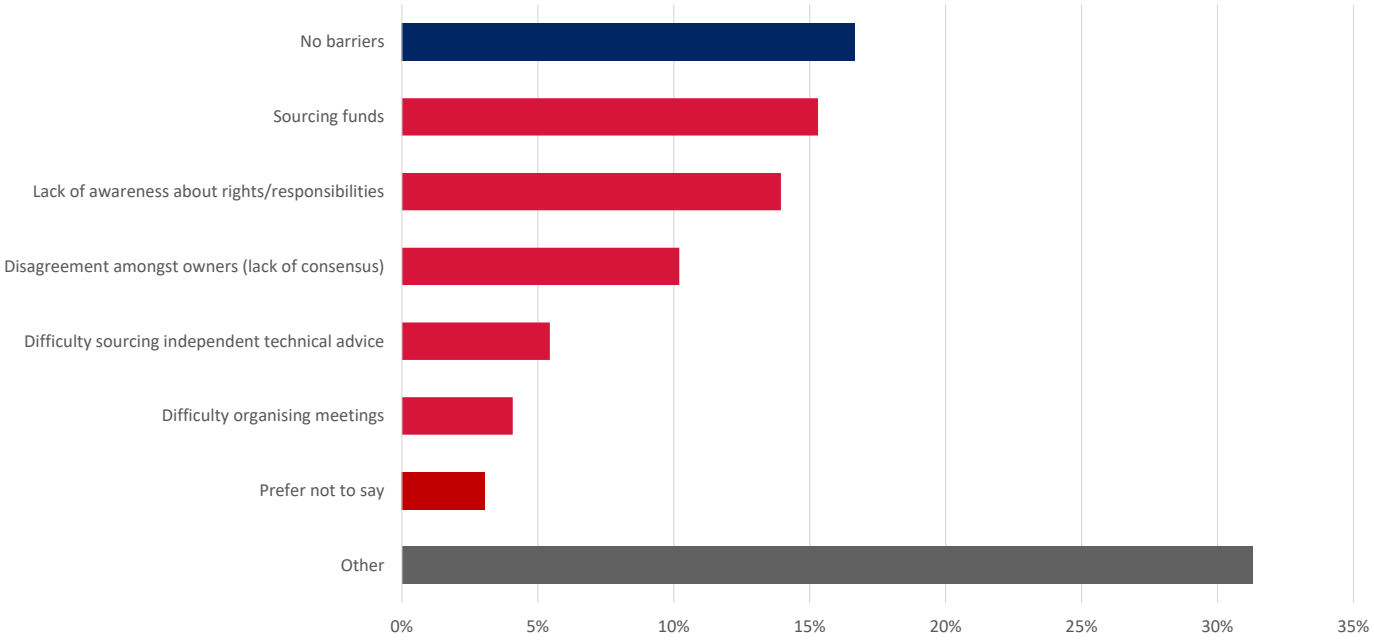


Figure 32: Barriers to an effective resolution process (n=211)

Some of those issues are also discussed in more detail by two strata managers that were interviewed as case studies (refer to Section 4.5).

4.4 The costs for owners corporations

The survey responses highlighted that resolving defects is likely to be an expensive process for each owners corporation. Across the buildings affected by serious defects around $69 million was reported to have been spent by owners corporations, representing an average cost of approximately $331,829 per building.

4.4.1 Cost categories

As shown by Figure 33, most expenses related to the rectification of the defects (79%), followed by legal fees (11%) and professional services (9%).

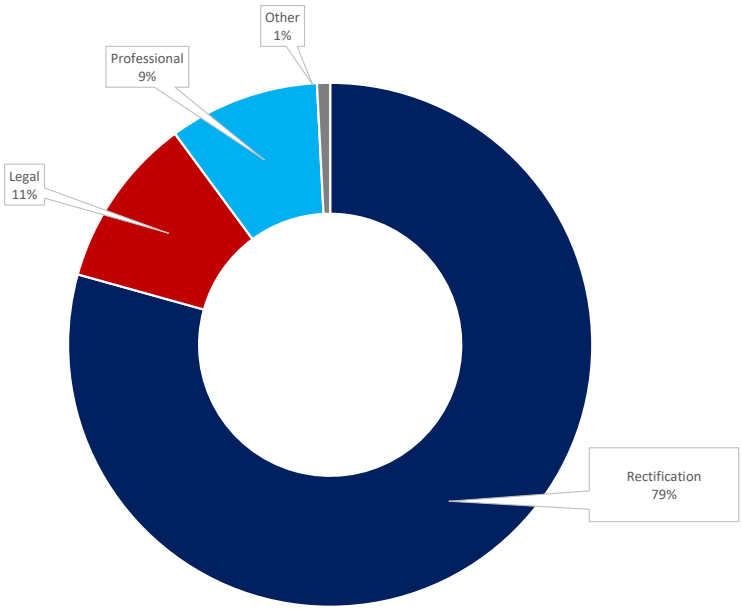


Figure 33: Type of costs associated with defect resolution (n=208)

4.4.2 Cost recovery

Only 7 buildings reported being able to recover any costs of defect rectification processes. The most common method used to recover costs was an agreement with the developer or builder. The largest amount reported as recovered was around 65% of the total expenditure on defect rectification.

4.4.3 Sources of funding for defect rectification

Special levies[19] were used as a source of funding for defect rectification processes in the majority (34%) of buildings where serious defects were resolved (Figure 34). The next most common method was increasing the annual budget (29%), with very few loans acquired (3%).

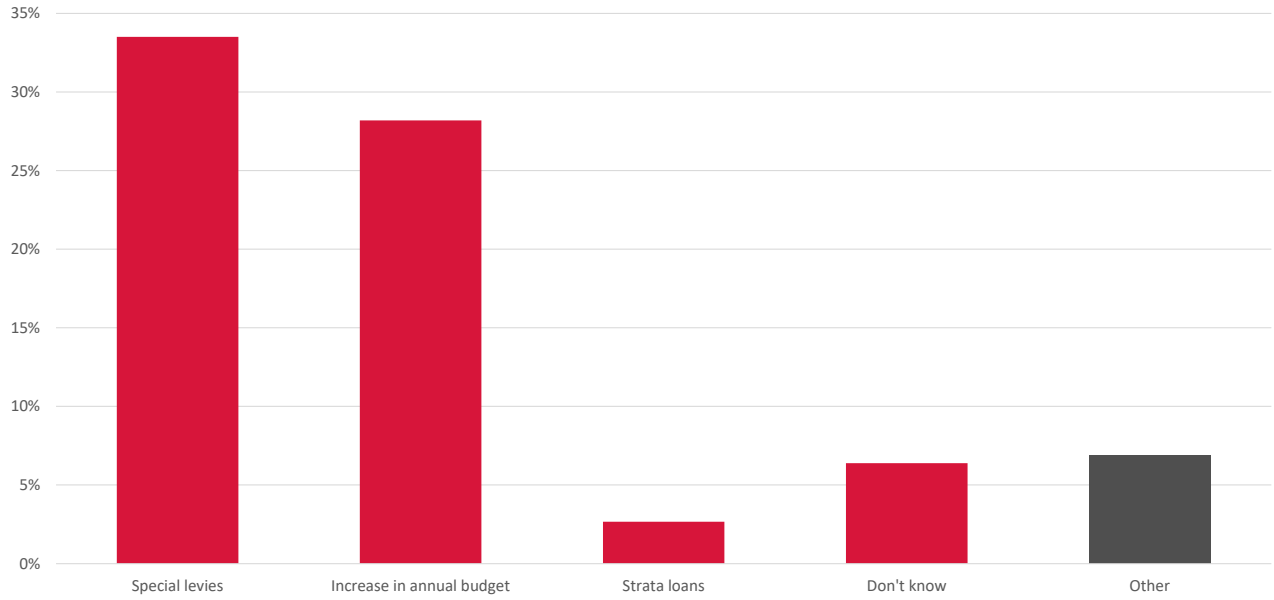


Figure 34: Sources of fund to rectify defects (n=163)

[19] A special levy is a way to raise funds to cover additional capital works or unplanned events.

4.5 Case Studies

To complement the quantitative data collected in the survey, follow-up interviews were conducted with two strata managers to produce case studies – case study ‘A’ and ‘B’. The experience of each building was discussed with the strata manager under the following categories:

- the type of defects
- the resolution of defects
- financial costs
- impacts on the owners, and
- impacts on the strata manager.

The purpose of these studies is to provide a qualitative narrative that helps to articulate the human impact of the defects, pain-points and positives of the current resolution pathways, and opportunities for improvement. Information that could be used to identify either the buildings or people involved has been removed.

Discussing research with industry stakeholders

4.5.1 Case Study 'A'

Location	City of Sydney LGA
Dwelling type	Mix of townhouses and low-rise apartments
OC issued	2018
Defects identified	4 key building elements (waterproofing, fire safety systems, structure, key services)
Cost to resolve	$204,000 ($30,000 recovered)
Time to resolve	Ongoing (at least three years)

The serious defects were raised by owners during the scheme's first Annual General Meeting (AGM). The owners corporation resolved to commission independent advice to identify the nature and scale of the issues in a defects report, hoping that by quickly acquiring this information this would lead to a more efficient resolution.

According to the strata manager, most of the defects were not visually obvious and there were very few signs of non-compliant work.

The serious defects were identified as follows:

Structural	Waterproofing	Fire Safety Systems	Key Services
• Flooring due to uneven substrate • Balcony installation • Balustrade height	• Efflorescence • Planter boxes	• Mechanical ventilation • Fire panel installation	• Hydraulic system • Acoustics (lack of roof insulation) • Lighting

Defect resolution

The builder allegedly refuted the owners corporation's views on the defects and commissioned their own reports. Relations between the builder and the owners corporation then progressively declined, with the owners corporation feeling that the builder continually sought to deflect blame with allegations that other contractors were liable. For example, it was stated that the builder contended that the defects in the fire safety panel were due to the design and installation by other contractors, and this position was taken despite the builder procuring these services directly.

> *"There are a lot of cowboy builders. It would be much better for everyone involved if they stopped trying to save a dollar now that will cost three to fix later"*
> **Strata Manager**

A further challenge was that the owners corporation had a single owner who did not agree with the approach taken by rest of the owners. This made decision-making very challenging for both the owners corporation and the strata manager. For example, it was stated that the

owners corporation had resolved to engage professional services worth $10,000 to rectify the defects relating to fire safety systems quickly. However, the dissenting owner decided to send the defects report to the local council who then issued a Fire Safety Order on the building.

Having exhausted various resolution efforts directly with the builder, the owners corporation agreed to pursue legal action and lodged a claim with the Tribunal.

The resolution process has now been ongoing for close to three years, and, despite progress, there are still outstanding items to resolve.

Financial costs

Total costs	**$204,000** Legal fees: $150,000 Professional services: $40,000 Other: $14,000
Amount recovered	**$30,000**
Net cost per apartment	**$9,667**

The owners corporation has spent over $200,000 on resolving serious defects, raising these funds through both special levies and an increase in their annual budget. Considering the building has only 18 lots, this represents a significant financial contribution for each lot owner.

When offered a settlement by the builder, the owners corporation faced a choice whether to continue litigation for an uncertain outcome or settle on the terms offered. The owners corporation chose to settle for $30,000 which was provided to help them cover some of their legal costs.

> *"In hindsight far too much was spent, but at the time the owners didn't know how long and expensive the process would be"*
> **Strata Manager**

Impacts on the owners

The impact of managing resolution of serious defects cannot be quantified through financial costs alone. For this owners corporation there were significant emotional and psychological costs as well as the time expended. It was stated that a resident with uneven substrate had their flooring replaced four times and was required to vacate the property on each occasion.

On several occasions when most of the owners corporation agreed on a viable course of action, one owner continually disagreed. This owner wanted further professional reports and

threatened legal action if their view was not supported. This demonstrates the complexities that owners corporations must navigate in democratic decision-making processes.

The stress of the rectification process and disunity among the owners was believed to lead to one owner selling their apartment.

According to the strata manager, this type of dysfunction among the owners corporation is a reasonably common obstacle to an efficient resolution process and major contributing factor to spiralling costs. This view corresponds with the survey, as disagreement amongst the owners corporation was stated as the third most prevalent barrier to defect resolution (Figure 32).

> *"Whatever the committee did it wasn't good enough. Even with minor issues. Money wasn't an issue for the individual, however, for the group it was costing a lot of time and money in legal fees. It became a power play"*
> **Strata Manager**

Impacts on the strata manager

The stress of managing the building's ongoing defect resolution processes had led to a high turnover of appointed strata managers, with a new manager appointed every year for three years. The building's original strata manager transferred the management to a colleague after suffering burn out from threats of defamation and personal legal action from the dissenting owner.

In addition to suffering from the abusive behaviour, the strata manager felt frustrated at the lack of outcomes after having invested a lot of time and energy into attempting to reach a successful solution for the owners corporation.

4.5.2 Case Study 'B'

Location	City of Sydney LGA
Dwelling type	Over 200 lots in high-rise apartments, including mixed use retail lots
OC issued	2016
Defects identified	Two building elements (waterproofing and fire safety systems) and non-compliant cladding
Cost to resolve	$150,000 ($75,000 able to be recovered)
Time to resolve	Approx. 2 years, excluding resolving non-compliant cladding

The defects were raised by owners during the first AGM and a defects report was commissioned to identify the full scale of the defects.

The serious defects were identified as follows:

Waterproofing	Fire Safety Systems	Non-compliant cladding
• Apartment balconies	• Non-compliant fire dampers • Incorrect placement of fire alarms	• Located in several areas of the building, including an architectural feature

Defect resolution

The strata manager discussed the defect resolution process with the owners corporation at the first AGM. This was intended to help manage expectations and commence the rectification work early.

> *"In my experience it's really important to engage early. Typically, issues can be avoided down the line by being up-front, open, and honest, and getting early input from builders and developers"*
> **Strata Manager**

The strata manager described the builder as responsive and professional in overseeing the rectification of the waterproofing and fire safety defects. However, while the resolution process may have been smooth, it still resulted in significant financial and time costs for the owners corporation to obtain expert reports and raise them with the builder.

The local council issued a notice of intention to issue an order for the non-compliant cladding. After obtaining a fire engineering report, the owners corporation proposed retaining the cladding as they considered the products to be safe. The matter had been under review by the local council for over a year and an outcome has not yet been determined.

The insurer had acknowledged the cladding issues but it had not impacted the cost of the building's insurance premiums. It was stated that the owners corporation had registered the building with Project Remediate in case it is determined that the cladding needs be replaced.[20]

> *"It is frustrating (the length of time taken). The owners corporation is trying to be proactive but there is a sense of stalemate as we wait on a resolution."*
> **Strata Manager**

When the building was nearing the end of 6 year statutory warranty period the owners corporation commissioned a further report on the waterproofing systems in the building. This highlights the ongoing nature of some owners corporations' experience with identifying and resolving defects.

Financial Costs

Total costs	**$150,000** Legal fees: $35,000 Professional services: $100,000 Other: $15,000
Amount recovered	**$75,000**
Net cost per apartment	**$355**

The owners corporation were able to fund the rectification expenses via their capital works fund and did not require a special levy.

The owners corporation agreed to a settlement with the builder which recovered around half of their expenses. Due to the large number of lots in the scheme, this left a relatively small expense to be paid by each owner.

The strata manager indicated that providing the builder with a proforma settlement deed reduced the need to engage solicitors until settlement was reached, which in turn reduced costs to owners corporation and made a less litigious environment. Despite not having to litigate, legal fees were still incurred and made up roughly 18% of total costs.

Impacts on the owners

In the strata manager's opinion, the experience had been relatively smooth for the owners due to the process followed and the willingness of the builder to rectify the defects.

[20] Project Remediate is a three-year program to help NSW owners corporations remove and replace combustible cladding from residential buildings. For more information refer to www.nsw.gov.au/customer-service/projects-and-initiatives/project-remediate

It was stated that one resident refused to provide the builder with access to their apartment to complete scheduled defect rectification. The builder then offered to cover the cost of temporary accommodation rather than delay progress of the work. In the strata manager's opinion this was "very generous" on the builder's part, as the rectification works did not make the apartment uninhabitable. The resident was very satisfied with this approach and the rectification work was able to be completed.

Impacts on the strata manager

The strata manager found the rectification process relatively straightforward. However, they acknowledged that dealing with defects creates an additional workload, requiring them to be across all the details and regularly following-up on progress.

The strata manager advised that in a well-functioning scheme there is less turnover of managers, providing a good continuity of service for the owners.

5. Results and Conclusions

This research set out to provide quantitative data on the nature of serious defects within NSW's residential strata buildings that are four storeys or higher and were completed after July 2014.

Strata building profile

- Responses were mainly received from strata buildings located within the Greater Sydney Region, with a small number of responses from the Tweed and Southern NSW.
- Most buildings in the sample contained only residential lots (98%) and were not part of complex subdivisions such as community schemes.
- The median number of storeys in a sampled building was five storeys, and median number of total lots was 58.
- There was a relatively even spread of responses within the 6-year building age range.
- Many of the responses were statistically significant at the 95% confidence interval (with 5% error margin) suggesting that strata buildings of a similar profile would experience similar outcomes.

Approval and construction information

- Strata managers were almost always able to identify the original developer, builder and certifier.
- Very few buildings had chosen to acquire a NABERS rating and many strata managers were unsure if their building had a rating, highlighting both low uptake and low awareness for this voluntary scheme.
- Many strata managers held an incomplete set of key documents for the building, with the as-built plans and development-related documentation (e.g. the Development Approval or Construction Certificate) held by less than half.
- Schemes reported high levels of compliance with their requirement to acquire an AFSS each year. Also, they tended to appoint the same competent fire safety practitioner each year, with 38% using the same contractor for all previous AFSSs.

Serious defects in the common property

- Around 39% of buildings had experienced serious defects in the common property, with the majority related to waterproofing (63%) followed by fire safety systems

(38%), structure (27%), enclosure (26%), key services (17%) and non-compliant cladding (16%).

- Defects tended to be identified through independent advice (51%) or observations by the building occupants (37%).

Inspectors observing the construction of a high-rise residential strata building

Defect resolution pathways and impacts

- Around 47% of buildings with serious defects were able to achieve resolution, with the time taken to achieve that outcome varying considerably and likely to take 12 months or more. The most common resolution method was via an agreement reached with the original builder or developer.

- Only 15% of buildings with serious defects reported these to Fair Trading, with a wide variety of reasons provided for not reporting.

- The most common resolution pathway for strata schemes was via an agreement with the developer or builder (27% of matters). Litigation via the Tribunal or Supreme Court was far less effective, reaching an outcome only around 5% of the time.

- The most common barriers to a strata scheme being able to resolve the serious defects were being able to source necessary funding (15%), a lack of awareness about their rights and responsibilities (14%) and a lack of consensus amongst lot owners (10%).

- Strata managers estimated that around $69 million was spent in resolving defects with the majority related to remediation work (79%) followed by legal fees (11%) and professional services (9%). This equated to an average cost of $331,829 per affected building.

- Very few schemes reported being able to recover any of the money they had spent on resolving defects.
- Serious building defects create significant financial and emotional stress for homeowners, tenants and strata managers.
- Strata managers are not confident they have the legal standing to report and manage serious defects without relying upon specific instructions from the owners corporation or strata committee. This becomes particularly challenging when there is a lack of consensus within either decision-making body.

Suggestions for further research

Considering the observations of this research project the following areas present opportunities for additional investigation and analysis:

- Replication of similar questionnaires across other Australian jurisdictions to produce a set of nationally consistent quantitative data on owners corporations' recent experience with serious defects.
- Replicate this research biannually over the next 6 to 10 years to build a longitudinal dataset that can help policymakers, stakeholders and strata communities assess the extent of initiatives that seek to reduce the incidence and impact of serious defects in residential strata buildings. This work could also measure public confidence to buy into a new or existing strata building.
- Undertake similar research for other classes of buildings to compare their experience with serious defects to those of the residential (class 2) sector.
- Research the owners' experience in managing defect rectification work, including the factors contributing to the relatively low levels of awareness on how to effectively respond to building defects.
- Research the public's experience with Fair Trading and the specific factors contributing to low defect reporting rates.
- Research into the specific defects occurring within each key building element to better understand the areas where reforms could be applied to reduce the incidence of defects (e.g. areas to focus education, compliance or law reform).
- Research into the skills and capabilities of strata manager to identify opportunities for issues that should be the focus of continuing professional development (CPD) or general education.

6. Appendix

6.1 Survey questions

These are the questions distributed to Strata Managers across NSW. The survey was titled "Improving consumer confidence in residential strata buildings".

Survey Questions
Section 1 of 4: About the Building
1. What is the Strata Plan number? For example, SP12345. This will be used to populate the Strata Portal.
2. What is the address of the Strata Scheme? (including post code)
3. What is the strata managing agent company name? This will be used to populate the Strata Portal.
4. What is the strata managing agent company licence number? This will be used to populate the Strata Portal.
5. What is the strata managing agent company phone number? This will be used to populate the Strata Portal.
6. Does the Strata Scheme have a building manager?
7. What is the name of the building management company? This will be used to populate the Strata Portal.
8. What is the ABN of the building management company? You can search at ABN Lookup. This will be used to populate the Strata Portal.
9. What is the name of the strata secretary? (Full Name). This will be used to populate the Strata Portal.
10. What is the email address of the strata secretary? This will be used to populate the Strata Portal.
11. What year was the Strata Plan registered?
12. Select all bodies that your Strata Scheme is a member of. This will be used to populate the Strata Portal.
13. Has the Strata Scheme consolidated its by-laws? This will be used to populate the Strata Portal.
14. What is the National Australian Built Environment Rating System (NABERS) Rating for the building? This will be used to populate the Strata Portal.

15. How many residential lots are in the building? This will be used to populate the Strata Portal.
16. How many commercial lots are in the building? For example, office space, childcare. This will be used to populate the Strata Portal.
17. How many retail lots are in the building? For example, shops, cafes. This will be used to populate the Strata Portal.
18. How many industrial lots are in the building? This will be used to populate the Strata Portal.
19. How many accommodation lots are in the building? For example hotel/serviced apartments. This will be used to populate the Strata Portal.
20. How many retirement village lots are in the building? This will be used to populate the Strata Portal.
21. How many above ground storeys does the building have?
22. Which of the following does the building have? ▪ Interim Occupation Certificate ▪ Final Occupation Certificate ▪ Unsure
23. Who issued the Certificate?
24. What year was the Certificate issued?
25. Who was the developer of the building? (This is the original owner/development entity that sold the land, and they should be listed in the Title documentation).
26. Who was the builder?
27. Please select the records you have for the building:
28. You selected “other”. Please list the other records you have for the building.
29. Does the building have an Annual Fire Safety Statement?
30. What is the date on the most recent Annual Fire Safety Statement?
31. Who is the contractor that issued the most recent Annual Fire Safety Statement?
32. How many Annual Fire Safety Statements has this entity issued for this building?
33. What is the current insured replacement value of the building?

Section 2 of 4: Defects and Managing Defects
34. Has the building had major defect(s)?
35. Do you have any of these major defects in this building? ▪ Structural (including foundations and footings, floors, walls, roofs, columns and beams) ▪ Fire safety systems (passive and active) ▪ Waterproofing ▪ Building enclosures (including façade, doors, windows) ▪ Key services (including mechanical, plumbing and electrical services, acoustics and lifts) ▪ Non-compliant cladding
36. Please select any areas where the building has had major defect(s):
37. You selected “other”. Please outline any other areas that the building has experienced major defect(s).
38. Has a Fire Safety Order been issued by the local Council?
39. Which building lots have had major defect(s)?
40. You selected “other”. Please outline other areas of the building that have experienced major defect(s).
41. How did you initially identify these majors defect(s)?
42. You selected “other”. Please outline other ways you initially identified these major defect(s).
43. Have you reported major defects to NSW Fair Trading?
44. Why didn't you report major defects to NSW Fair Trading?
45. You selected “other”. Please outline why you didn't report major defects to NSW Fair Trading
46. Select any of the following that you have reported major defect issues to:
47. You selected “other”. Please list any others you have reported major defect issues to.
48. How was your major defect(s) resolved?
49. You selected “other”. Outline any other avenues you used to resolve your major defect issues.
50. How long did it take to resolve all major defect(s) in the building?
51. What barriers are there for effectively dealing with major defect(s) in this building?

52. You selected “other”. Please outline the other barriers you experienced when dealing with major defect(s) in this building.
53. How much were legal costs, such as lawyers (excluding recovered amounts)?
54. How much were professional costs, such as technical statements (excluding recovered amounts)?
55. How much were other costs, such as strata management charges (excluding recovered amounts)?
56. How much was the rectification of defect(s), such as interim make good and fixing the defect, (excluding recovered amounts)?
57. Which of the following have been used to fund the remediation of these major defect(s)?
58. You selected “other”. Outline the other sources used to fund the remediation of major defect(s).
59. What amounts were recovered (if any)?
Section 3 of 4: Strata Management
60. How long have you been a Strata Manager for this building?
61. How many Strata Managers has this building had since it was built?
62. How many meetings does the Owners Corporation have per year, including the Annual General Meeting and Strata Committee Meetings?
63. What was the date of the last Annual General Meeting? This will be used to populate the Strata Portal.
Section 4 of 4: Continuing the Conversation
64. We may contact you following this consultation. We may hold focus groups to deep dive into your responses. This will help inform future building and construction industry reform initiatives. Would you like to make yourself available to be contacted?

www.customerservice.nsw.gov.au