GOVERNANCE AND DECISION-MAKING IN RELATION TO MAJOR REPAIRS IN MULTI-OWNED RESIDENTIAL BUILDINGS IN FINLAND AND NEW ZEALAND

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Abstract

The quality of multi-owned residential buildings and the capability to maintain that quality into the future is important in preserving not only the monetary value of such housing (Lujanen, 2010) but also the quality of life for its residents. The aim of this paper is to examine the governance and decision-making rules and regulations as they relate to the undertaking of major repairs in multi-owned residential buildings in Finland and New Zealand with particular regard to the Finnish Limited Liability Housing Companies Act 2010 (LLHCA 2010) and the New Zealand Unit Titles Act 2010 (UTA 2010). Currently, major building repairs are topical issues in both countries; in Finland as a result of ageing buildings requiring major re-fitting of pipes and other infrastructure, and in New Zealand as a result of earthquake damage in Christchurch and Leaky Building Syndrome nationwide. Major repairs can be a significant financial burden to unit owners and collective decisions can be difficult to achieve. Interestingly, new legislation that governs multi-owned housing was enacted in both countries in 2010. The recent enactment of this legislation provides an opportunity to examine the UTA 2010 and LLHCA 2010 with regard to how they address major repairs, improvements in housing stock and the financing possibilities associated with these undertakings. More specifically this paper explores housing intensification (i.e. building up, out or alongside existing multi-owned residential buildings on commonly owned land) as a means of financing major repairs. The comparison of governance and decision-making in two different shared ownership systems with different histories and cultural contexts provides a chance to explore the possibilities and challenges that each country faces, and the potential to learn from each other’s practices and develop these further. In this regard the findings from this paper contribute to the academic literature (Bugden 2005; Easthope & Randolph 2009; Dupuis & Dixon 2010; Lujanen 2010; Easthope, Hudson & Randolph 2013) concerning to the governance of multi-owned housing as it relates to intensive housing development and its wider social and economic implications.

Keywords: multi-owned residential buildings, governance and decision-making, Unit Titles Act (2010), Limited Liability Housing Companies Act (2010), major building repairs, housing intensification

Introduction

With many urban areas worldwide experiencing an increase in intensive and multi-owned housing developments, the importance of the governance and decision making arrangements for such housing has become increasingly important. This has been noted by commentators such as Bugden (2005), Blandy, Dixon & Dupuis (2006), Easthope & Randolph (2009), Dupuis & Dixon (2010), Easthope, Hudson & Randolph (2013) and Levy & Sim (forthcoming). One of the key issues relating to governance and decision-making in multi-owned housing developments is that of major repairs. Such repairs often concern commonly owned parts of the housing development (e.g. roofing, water and gas reticulation, wastewater, internal and external structures), and thus, require the collective agreement of the property’s many owners before repairs can take place. Thus, the various aspects of governance and decision-making in multi-owned housing

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developments play an essential role in terms of enabling and financing major repairs. From the perspective of individual owners, major repairs contribute to the preservation of the monetary value of their units, which are often their main source of financial investment (Easthope, Randolph & Judd 2009; Lujanen 2010). Such repairs can also be an important factor in maintaining the quality of living for residents. Simultaneously, major repairs can have wider social, economic, and political implications (Easthope, Randolph & Judd 2009). As outlined below these issues are particularly relevant in Finland and New Zealand; in Finland as a result of ageing housing stock, and in New Zealand as a result of earthquake damaged buildings in Christchurch, Leaky Building Syndrome (LBS), and the need to consider the repair and maintenance of multi-owned housing stock in the longer term.

Aims and structure of the paper

The aim of this paper is to examine the governance and decision-making rules and regulations as they relate to the undertaking of major repairs in multi-owned residential buildings in Finland and New Zealand in light of the Unit Titles Act 2010\(^2\) in New Zealand and the Limited Liability Housing Companies Act 2010\(^3\) in Finland. More specifically the paper addresses issues of decision making with regard to financing major repairs of such buildings by means of housing intensification (i.e. building up, out or alongside existing multi-owned residential buildings on commonly owned land). Such intensification has been undertaken in Finland to some extent but has yet to be considered on any scale (if at all) in New Zealand. Interestingly, prior legislation that governed the ownership and administration of multi-owned housing developments in both New Zealand and Finland was repealed 2010 and new legislation was enacted. This recently enacted legislation provides the opportunity to compare the UTA 2010 and LLHCA 2010 with regard to how they address the governing of major repairs, and how they enable housing intensification as a means of financing repairs. In this regard our paper provides a thematic comparison and analysis of relevant aspects of the UTA 2010 and LLHCA 2010.

On one hand Finland and New Zealand are not dissimilar in terms of geographic area, population size and density. On the other hand, Finland has been urbanized for a much longer period than New Zealand. Both these similarities and differences provide a productive cross cultural approach that is capable of highlighting key areas of strengths and weaknesses in each country, with regard to the governance and decision making aspects of major repairs in multi-owned residential developments in both countries. Furthermore, the possibility of housing intensification as a means of financing major repairs in the context of multi-owned housing developments has received little attention internationally, and thus, a cross cultural comparison between two different jurisdictions with a shared need for major repairs provides an interesting international outlook on the topic and grounds for outlining further research needs and opportunities. In addition, the comparison of governance and decision-making in two different shared ownership systems with different

\(^2\) Hereafter referred to as the UTA 2010.

\(^3\) Hereafter referred to as the LLHCA 2010. An unofficial English translation of the Act, provided by the Ministry of Justice is available at: www.finlex.fi/fi/laki/kaannokset/2009/en20091599. Please note that the marking of the section and subsections differ in the actual Act and the English translation. Subsections provided by the unofficial English translation are used in this paper.

\(^4\) (LLHCA 2010, Part 6, Chapter 6, Section 37; Ministry of Justice 2010, p. 120-121)
histories and cultural contexts gives a chance to explore the possibilities and challenges that each country faces, and the potential to learn from each other’s practices and develop these further. Findings will be of interest to countries dealing with the need for major repairs and the pressure to intensify housing in urban areas. In this regard the findings from this paper contribute to the academic literature (Bugden 2005; Easthope & Randolph 2009; Dupuis & Dixon 2010; Lujanen 2010; Easthope, Hudson & Randolph 2013) concerning to the governance of multi-owned housing as it relates to intensive housing developments and its wider social and economic implications.

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In the following pages we begin by establishing the context of major building repairs to multi-owned residential housing stock in Finland and then New Zealand. We then describe how residential units and commonly owned property is legally structured in Finland (where we refer to residential units as ‘flats’) and in New Zealand (where we refer to residential units as ‘units’). Next we discuss the general types of repairs recently being undertaken in Finland and New Zealand, before addressing the aims and key renewals of the Finnish and New Zealand legislation as it relates to major repairs. Decision-making with regard to housing intensification as a means of financing such repairs is then outlined, before drawing together the key points in the concluding section and outlining further research opportunities.

Finnish context

Multi-owned housing is an established form of housing in Finland and the housing company system has functioned in its current form since the 1920’s (Lujanen 2010). A substantial increase in such housing related to rapid urbanization in the 1960-70s. Now, concrete multi-storey buildings constructed in the suburban areas during that era are facing a huge need for major repairs. As these buildings accommodate over one million people (a fifth of Finland’s population) they comprise a substantial part of the nation’s wealth. In this regard, the required repairs have become one of the biggest challenges that face the Finnish housing sector (Environmental Committee of Finnish Parliament 2009; Luoma-Halkola et al. 2010; Ministry of Environment 2013). According to Vainio et al. (2002), problems relating to decision-making along with financial issues are the most significant issues slowing down major repairs in the context of residential blocks of flats and terraced houses in Finland. A key aim of the LLHCA 2010 was to respond, by various means, to the challenge of the building maintenance backlog (Environmental Committee of Finnish Parliament 2009). In addition, several policy decisions have been made in relation to the need for major repairs, and the building maintenance backlog that has occurred. The most recent policy decision has been the appointment of a Repair Group by the newly elected Housing and Communication Minister in August 2013. The Repair Group consists of a group of specialists who have been appointed to look at ways of repairing residential buildings, and to enhance their livability.

One of the key means of comprehensive improvement promoted by both national and local authorities is the promotion of housing intensification in suburban areas (Ministry of Environment 2013; Ryöti, Karjalainen & Aronen 2008). Such
intensification is usually regarded as providing economic savings by allowing the use of existing infrastructure, contributing to eco-efficiency (e.g. decreased car use and dependence) and, in some cases (Mangioni et al. 2012), by allowing the financing of major repairs in multi-owned residential buildings. The possibility of housing intensification as a means of financing major repairs was specifically discussed and clarified in the LLHCA 2010 and related explanatory literature. According to Luoma-Halkola et al. (2010) this allows the possibility of contributing holistically to the redevelopment of suburban areas.

New Zealand context

Multi-owned housing developments are a relatively new form of home ownership in New Zealand and the unit titles or strata titles legislation that governs most of this housing stock dates back to the early 1970s. Challenges concerning unit titles and the associated bodies corporate have been noted in academic literature and include power imbalances between a developer and title owners (Blandy, Dixon & Dupuis 2006), owners’ lack of awareness of the functions of a body corporate (Haarhoff et al. 2010) and owners’ dissatisfaction with body corporate management companies (Levy & Sim, forthcoming). However, as Levy and Sim (forthcoming) note, it is envisaged that more and more people will live in higher density and unit titled housing developments. It is also expected that multi-owned housing will become increasingly owner-occupied rather than investor-owned (ibid.). Such multi-owned housing stock is not limited to Auckland but is present in other parts of New Zealand including Christchurch, Wellington and other urban centres. Thus, in both the short term as a result of the 2010 and 2011 earthquakes in Christchurch and Leaky Building Syndrome (LBS) throughout the country, and in the longer term as older building stock requires major repairs and maintenance, New Zealand faces the challenge of major repairs, and relies heavily upon the decision-making rules and regulations within the UTA 2010 that govern these repairs.

Flat and unit ownership in Finland and New Zealand

In Finland, blocks of flats are, as a rule, owned in a real estate limited liability company form called a housing company. The purpose of a housing company is to own and manage a building or buildings for housing purposes. At least 50 per cent of the floor area must consist of residential flats. In the housing company system, the company owns the property unit as well as the building(s), and defined shares allow the owner to gain possession of a specified flat or some other part of the building or site (Falkenbach & Nuuja 2007). Thus, the housing company is a legal entity that owns the property on freehold or leased land, and takes care of the common parts such as building structures, insulating

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4 (LLHCA 2010, Part 6, Chapter 6, Section 37; Ministry of Justice 2010, p. 120-121)

5 Unit titles and bodies corporate are defined in the following section of this paper.

6 Although it is outside the scope of this paper, it should be noted that the state of New South Wales in Australia is also contending with major repairs to their strata titled housing stock that was built in the 1970s and the legislation that governs these repairs.

7 A ‘real estate limited liability company’ refers to a specialised form of a ‘limited liability company’ whose purpose is to own and manage a building or buildings for housing purposes.

8 In this regard the term ‘housing company’ has a distinctly different meaning in Finland, than in New Zealand where a ‘housing company’ more often refers to a development company which builds houses for sale to the open market. The term ‘apartment house company’ is sometimes also used in Finland.
materials, maintenance systems (e.g. heating, electricity, data communications, gas, water, sewer, ventilation and other similar utility systems) and facades (LLHCA 2010, Part 2, Chapter 2, Section 2). Shareholders are obliged to pay monthly maintenance payments to the housing company according to the number of their shares, which are normally calculated by the floor area of each unit. According to Falkenbach and Nuuja (2007), the housing company system can be viewed as a commonhold system where ownership is organized through a legal structure dividing the property into private and common areas.

The governance structure of a housing company is based on a limited company model. The highest decision-making body in a housing company is a general assembly where all the shareholders have a right to vote according to the number of their shares. It makes the most important decisions concerning the property. Most decisions require a majority vote (50%) in order to be passed. Day-to-day administration is managed by a board of directors (executive committee) usually together with the house/property manager, who has a legal position comparable to a managing director (Falkenbach & Nuuja 2007). In principle, a housing company can make a profit, but this is not its purpose as defined by the LLHCA 2010. Taxes would have to be paid over the profits and it would not be in the best interest of shareholders. Thus, the closing of the books is done with no profit (Lujanen 2010).

In New Zealand, the UTA 2010 defines a ‘unit title development’ as “the individual units and the common property comprising a strata estate” (Section 5(1)). This differs from a ‘unit’ which, “in relation to any land, means a part of the land consisting of a space of any shape situated below, on, or above the surface of the land … all the dimensions of which are limited, and that is designed for separate ownership” (ibid). The most common legal entity created to manage multi-owned residential developments is a body corporate as established under the UTA 2010. The body corporate comprises all the owners of the unit title development and the common property is owned by the body corporate. The owners of all the units are entitled to the common property as tenants in common in shares proportional to the ownership interest (or proposed ownership interest) in their respective units (UTA 2010, Part 2, Section 54(1) & (2)).

As with the general assembly body in the Finnish limited company model, the body corporate makes the most important decisions concerning the property. A body corporate of a unit title development of nine or fewer principle units may form a body corporate committee, whereas a unit title development of ten or more principal units must form a body corporate committee unless the body corporate, by special resolution (75% of eligible voters), decides not to form one (UTA 2010, Part 1, Section 112 (1) & (2)). Any matters at a committee meeting must be decided by a simple majority (over 50% of votes) (ibid. Section 113) and the body corporate committee must report to the body corporate on the exercise of its duties or powers (ibid. Section 114). While the operational rules of the body corporate are prescribed in Section 217(i) of the UTA 2010 and apply to all bodies corporate, these can be amended, revoked or added to by ordinary resolution (over 50% of votes) at a general meeting providing they are not inconsistent with the provisions of the Act or any other enactment or rule of law (UTA 2010, Part 2, Section 106(3) & (4)). One vote may be exercised for

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9 In comparison, each unit owner’s financial interest in New Zealand is fixed by a registered valuer on the basis of the relative value of the unit in relation to each of the other units, as per Section 38(2) & (3) of the UTA 2010. This ownership interest is used to determine the extent of obligation of the unit owner in respect of contributions levied by the body corporate.

10 In the earlier UTA 1972 a special resolution could only be passed by a unanimous vote.
each principal unit (ibid. Section 96 & 99) and at a general meeting of the body corporate, a quorum of not less than 25% of those entitled to vote (including proxies) is required and must comprise at least two members, if the body corporate contains two or more members.

**Common types of major repairs**

In Finland, major repairs in the context of blocks of flats usually refer to the refurbishment of the building’s structures (roof, facades, windows, balconies) and the renewal of pipelines (water and sewage pipes). In blocks of flats built after the 1960’s, refurbishment of the building’s structures is usually required in 25-35 years and the renewal of the pipelines (water and sewage pipes) after approximately 50 years (Virtanen & al. 2005). Other repairs sometimes take place at the same time and can include repairs to heating, air conditioning and electricity systems, as well as bathroom renovations and property development (Portal for Housing Companies 2013a). Major repairs might also be required for other reasons, as a result of mould damage, for instance. It should be noted that major repairs (in terms of maintenance) and modernisation are handled as different issues in the legislation. Modernization is designated as any refurbishment that increases the relative quality of a target, such as a lift installation (Glossary for Real Estate Business 2001).

In New Zealand major repairs in multi-owned residential properties have, and are, being undertaken as a result of the earthquake damage in Christchurch and LBS, as mentioned above. In the case of LBS, wooden framing that has failed to maintain the structural soundness of the buildings, and external cladding that has failed to ensure that the building is watertight has, in many cases, required complete replacement. In Christchurch, entire multi-owned residential buildings have required demolition, and vacant sites await re-building or re-development. In other instances earthquake-damaged land has been deemed too unstable to rebuild on, and owners face a prolonged wait while the insurance companies decide on if, and/or how much to recompense those who no longer have a home to live in.

With regard to LBS, Thomas notes that the new Act (i.e. UTA 2010) “includes measures expressly legislated to enable the body corporate to repair leaky buildings” (2010, 159). He also notes that, despite this, the High Court continues to settle a number of LBS cases under sections of the Act that were not written with LBS in mind

**The Finnish Housing Companies Limited Liability Act 2010: Major Repairs**

The essential aims of the new LLHCA 2010 were to meet the current demands of shareholders, housing companies and society, and to enhance the efficiency, safety and predictability of such housing. The aims include efforts to prepare for major repairs required in ageing buildings, decrease the maintenance backlog in housing companies, enable an ageing population to continue living in their flats, and enhance eco-efficiency in the existing building stock (Environmental Committee of Finnish Parliament 2009).

The actual decision-making rules concerning major repairs were not altered in the 2010 Act, and as a rule, repairs are paid by shareholders according to the number of shares they own or the floor area they possess. When a general assembly makes a decision on major repairs such as maintenance, a majority decision (a minimum 50% of all

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11 For instance section 74 of the UTA 2010 refers to the settling of schemes following destruction or damage and is more relevant to earthquake damaged buildings.
shareholder votes) is required (LLHCA 2010, Part 3, Chapter 6, Section 30; Ministry of Justice, p. 2010: 101). It should be noted that, unless otherwise stated in the articles of association (LLHCA 2010, Part 3, Chapter 6, Section 13(2)), one shareholder can present only one fifth of the total amount of votes in an assembly although the share value possessed by the shareholder might be greater. The equality of all decisions made by a general assembly is assessed by the equality principle and decisions on the funding of major repairs can require more than a majority decision in some cases, such as when a share issue or the selling of common property takes place.

However, several new or clarified sections of the LLHCA 2010 contribute to the governance of major repairs. These include the following sections of the legislation that aim to improve shareholders’ access to information and influence:

**LLHCA 2010, Part 3, Chapter 6, Section 3(2)(2): Long-term maintenance plan**

It is now required that maintenance needs for the next five years must be handled annually in general assembly meetings. This is considered as aiding the timing of major repairs, forecasting the development of housing costs, and contributing to shareholders access to information (Environmental Committee of Finnish Parliament 2009; Ministry of Justice 2010).

**LLHCA 2010, Part 3, Chapter 6, Sections 17 & 20 & 22: Facilitating participation to general assembly meetings and shareholders’ access to general assembly meeting materials**

Shareholders’ access to information and ability influence to influence decisions has also been improved by facilitating participation in general assembly meetings via the option of long-distance participation. In addition, the minimum invitation time for general assembly meetings has been extended from one to two weeks. Earlier access to general assembly meeting materials has also been provided for shareholders (Environmental committee of Finnish Parliament 2009; Ministry of Justice 2010).

Other key changes include taking the equality principle into account in collective decision-making in order to encourage the maintenance and modernisation of flats, as outlined below.

**LLHCA 2010, Part 3, Chapter 3, Section 32: Amendment of the obligation to pay with regard to maintenance and modernisation**

This part of the Act facilitates the use of the equality principle when distributing the costs with regard to maintenance and modernisation. The general assembly can decide by a majority vote on the reduction of the charge for common

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12 The LLHCA 2010 (Part 1, Chapter 10, Section 10) refers to the equality principle as (unofficial translation): “Equal treatment: All shares shall carry the same rights in the housing company, unless it is otherwise provided in the articles of association. The General Meeting, the Board of Directors or the Manager shall not make decisions or take other measures that are conducive to conferring an undue benefit to a shareholder or another person at the expense of the housing company or another shareholder.”

13 There are several ways to finance major repairs, such as via a personal loan, a loan taken by a housing company, reserve funds, partial state grants, selling common property or building rights, using unused buildings rights and combinations of the above (Portal for Housing Companies 2013b; Luoma-Halkola 2010). Share certificates of individual units or the whole property can also be used as mortgage collateral (Lujanen 2010).
expenses collected for maintenance or modernisation if the work already performed by the shareholder reduces the housing company’s costs (LLHCA 2010, Part 3, Chapter 3, Section 32(1)).

Although concerning modernisation rather than major repairs, a significant change to the Act was made concerning the decision-making threshold and obligation to pay. Prior to the 2010 Act, a lift that was installed for modernisation purposes required the consent of all shareholders. Now, it can be done by a majority decision, although the costs are also divided according to the benefits brought by the lift, “by using the criterion for the charge for common expenses as the division criterion, multiplied by the floor on which the owner apartment is located, determined on the basis of the entrance to the staircase” (LLHCA 2010, Part 3, Chapter 3, Section 32(3)). The aim of this change includes extending the possibility of elderly people continuing to live in their flats. Furthermore, the previous difficulties of reaching a decision to install a lift to an existing building were seen as contributing to the maintenance backlog in building stock (Environmental Committee of Finnish Parliament 2009).

In addition to the changes mentioned above, the boundaries between collective decision-making and self-determination of a shareholder have been clarified. However, these renewals were mostly concerned with minor repairs inside flats and related responsibility, notification and follow-up issues. Many of the changes also aimed to decrease the insecurity related to acting in a housing company and increase companies’ and shareholders’ de facto scope for action (Environmental committee of Finnish Parliament 2009; Ministry of Justice 2010).

**LLHCA 2010: Intensification as a means of financing of repairs**

This section of the Act provides a legal framework for decision-making rules for housing intensification as a means of financing major repairs in housing companies, and sheds light on housing companies’ scope for action according to the new law. In this regard the LLHCA 2010 has made the decision-making rules concerning sale of land or building rights clearer, and for the first time, the possibility of a housing company acting as a developer has been discussed in the legislative literature (Ministry of Justice 2010).

In the situation where the housing company owns the land, infill development can be executed in three main ways: issuing new shares, selling property and acting as a developer (Pynnönen 2013). The rules for decision-making differ in each of these three cases. In addition, individual housing companies can have their own rules (articles of association) that potentially make the decision-making rules stricter.

In the first case a housing company-driven infill development can be undertaken by issuing new shares. This is suitable, for example, where new floors are to be added to the top of the building, or a new residential building belonging to the same company is built on the plot, or attics are turned into residential units. As it is a share issue, a stipulated majority of two thirds of shareholder votes is required (LLHCA 2010, Part 3, Chapter 6, Section 27).

In the second situation, infill development can be undertaken by selling property (legally termed an assignment of asset). In practice, this means that a company sells a part of its plot (usually with building rights) to a developer for building purposes and a new company is established. According to the LLHCA 2010, the mutual consent of all shareholders is needed only in certain circumstances. For instance, a general assembly can decide on the sale by majority vote if it concerns only parts of the property and building that do not include spaces possessed by shareholders, and the assignment does not substantially impact on the use of apartments of shareholders or the financial costs derived
from the use of an apartment (LLHCA 2010, Part 6, Chapter 37, Section 5). A majority vote is also sufficient if the assignment is implemented with a fair price and the development has a similar effect on all shares. In practice this means that the sale should not decrease the value of any apartment. As defined by the equality principle, the actions of the housing company are judged by the effect of the value of shares for the individual shareholder, not by the personal preferences of a shareholder. An individual shareholder can, however, appeal the decision if the new building to be constructed covers the view of an apartment or is built very close to an existing building. However, as of yet, there are no court precedents of such cases or situations (Pynnönen 2013).

The third, and the most risky possibility for a housing company, is to act as a developer on its own accord. From a legal perspective, this is the most challenging of the three options as the legislation does not designate such a role to a housing company and the risks involved would be considerable. However, the current general understanding appears to be that a housing company can act as a developer provided this been consented to by all of the shareholders (Pynnönen 2013).

**The Unit Titles Act 2010 as it relates to major repairs**

The UTA 2010 replaced the UTA 1972 as a means of governing unit titles. The new Act states that the purpose of the Act is to “provide a legal framework for the ownership and management of land and associated buildings and facilities on a socially and economically sustainable basis by communities of individual owners…” (UTA 2010, s 3). The Department of Building and Housing (2012a) describes the 2010 Act as encompassing several improvements on the previous Act. Several of these relate directly to the governance of major repairs and are discussed below:

**UTA 2010, s 54 (1): Ownership of common property**

In terms of governing major repairs, the new Act states that the body corporate owns the common property. This differs from the UTA 1972 whereby individual proprietors were deemed as the owners. Thomas (2011:8) notes that the 2010 Act increases efficiency and enables the body corporate to have better control of the area in terms of repairs and maintenance, especially with regard to LBS. Repairs and maintenance of the common property by the body corporate is further enabled by the addition of the term ‘building elements’ in the UTA (2010) as defined and discussed below.

**UTA 2010, s 5 (1): Interpretation: building elements**

“…building elements include the external and internal components of any part of a building or land on a unit plan that are necessary to the structural integrity of the building, the exterior aesthetics of the building, or the health and safety of persons who occupy or use the building and including, without limitation, the roof, balconies, decks, cladding systems, foundations systems (including all horizontal slab structures between adjoining units or underneath the lowest level of the building) , retaining walls, and any other walls or other features for the support of the building” (UTA 2010, s 5 (1)).

In this respect the body corporate has the responsibility for maintaining not only the common property but also the building elements that relate to, or serve more than one unit. The body corporate has the right to require access to
individual units to carry out repairs or maintenance of the common property, building elements or infrastructure
(Department of Building and Housing 2012b)

**UTA 2010, s 116: Long term maintenance plan**

In order to responsibly maintain and undertake repairs of the common property, section 116 of the UTA (2010) requires the body corporate to establish and regularly maintain a long-term maintenance plan that covers a period of at least ten years from the date of the plan, or the previous review of the plan. The Act states the purpose of a long-term maintenance plan is to: (a) identify future maintenance requirements and estimate the costs involved; (b) support the establishment and management of the funds; (c) provide a basis for the levying of owners of principal units; and (d) provide ongoing guidance to the body corporate to assist it in making its annual maintenance decisions (UTA 2010, s.116(3)). In this regard the planning of long-term maintenance and associated financial planning are seen to secure proactive property maintenance and to protect the long-term value of the development (Ross & Wells 2011, p. 4, Thomas 2011, p. 9).

**UTA 2010, s 100, 117, 121 Voting rights as they relate to repairs and sale of property**

In general, an ordinary resolution (50 % of votes) is required before a body corporate can undertake repairs. However, if after such a vote, a poll is requested by a unit owner, the votes are re-calculated according to the ownership interest of each unit owner and a 50% threshold of votes according the new calculation is required (UTA 2010, s 100). However, in some cases, a special resolution (75 % of votes) is required. This is the case, for example, if the expenditure of a specific maintenance item over 10 % more than originally budgeted for (UTA, s. 117(3)), or if the body corporate decides to sell a part of its property as a means to finance major repairs, as discussed below. Repairs are paid from levies that are imposed on unit owners according to their ownership and utility interests, as per section 121(1) and (2) of the UTA 2010.

**UTA 2010, s 95(1) Quorum threshold**

In most cases a general meeting is required for an ordinary resolution to take place. A quorum of one quarter of eligible voters (including proxies) is required at such a meeting, whereas previously a third of eligible votes (including proxies) was required (Ross & Wells 2010, p. 4; Thomas 2011, p. 8). The intention of lowering the number of votes required for a quorum is to prevent hold outs from owners not participating in the statutory decision-making process (Thomas 2011, p. 8-9). It should also be noted that if a quorum is not reached in a general meeting, the meeting must be adjourned until the same day a week later unless the chairperson advises otherwise with a minimum of three days’ notice. The reassembled meeting must proceed with or without the quorum (Unit Titles Regulations 2011, s 13).

**UTA 2010, s 98(4): Special resolution threshold**

A further key change to the legislation includes the lowering of the voting threshold for a special resolution from a unanimous vote under the UTA 1972, to 75 % of the vote (UTA 2010, s 98(4), Ross & Wells 2010, p. 4, Thomas
2011, p. 8). Specifically, section 98(4) of the UTA 2010 states that “for a special resolution to pass, 75% of the eligible voters who vote on the resolution must vote in favour of the resolution”. As mentioned above, special resolutions are required for decisions that substantially affect the development or have significant consequences for the unit owners, such as selling part of the common property (UTA 2010, s 56(3)) or making an application for the cancellation of the unit plan by the High Court (UTA 2010, s 187(1)).

With regard to meeting issues and voting requirements, Greenwood (2010, p. 2) regards the lowered quorum requirement as one of the Acts most controversial reforms, while Thomas (2011, p. 24-25) states that it is now possible to undertake significant changes with little proprietor participation. For instance, Thomas notes that for an appropriate special resolution to be passed, the Act has been written in a way that states only 75% of the eligible voters who are present at the meeting must vote in favour of the resolution. 

Thus the body corporate may pass a special resolution undertaking significant changes ... by a vote of only 18.75% of the total proprietors within the development, through a combination of ss 95(1) and 98(4) of the 2010 Act, if a quorum is available (Thomas 2011, p. 25).

Furthermore, Thomas states that regulation 13 of the Unit Titles Regulations 2011 allows an even lesser proportion of proprietors able to pass a special resolution (Thomas 2011, p.25). As stated above, if a quorum is not reached in a general meeting, the meeting must be adjourned until the same day a week later and the reassembled meeting must proceed with or without the quorum (Unit Titles Regulations 2011, s 13). In this regard Thomas notes that if the default date for the adjourned meeting is a statutory holiday, the attendance of owners could be quite marginal (ibid.). While the UTA 2010 contains relief for owners with regard to special resolutions, Thomas points out that such relief can only be sought on limited grounds, as follows:

The party seeking relief must have voted against the resolution. Further, it must be shown the result was ‘unjust or inequitable’ on those who voted against the measure (United Titles Act 2010, Part 5, Subpart 3). Consequently, provided the meeting was properly called and notified, the grounds for overturning the measure are very limited (Thomas, 2011, p. 25).

Paraphrasing Thomas’ concerns, Greenwood (2011, p. 6) states that the move from unanimous decision-making in the UTA 1972 to a 75% special resolution decision in the UTA 2010 may be detrimental to owners who base their ownership on the false assumption “that their property rights are ‘inviolate’” (ibid.). If these owners do not choose to participate in the statutory decision-making process “they will in all probability have no right to seek relief” (ibid.). The possibility of undertaking significant changes with little proprietor participation includes the ability to intensify a unit title development by building up, or within property that is commonly owned by the body corporate, as discussed below.
The Unit Titles Act 2010: Intensification as a means of financing of repairs

While the Act does not specifically address the prospect of intensifying a unit titled development in order to finance major repairs in a development, it does not preclude this as an option. Furthermore, sections 8, 56, 68, 74, 119 and 130 of the Act provide guidance on issues that are relevant to the option of building up or within a unit titled development. In this regard Section 8 of the Act defines the meaning of ‘redevelopment’ including “the erection of one or more units on the common property” (UTA 2010, s 8(d)). Further on, section 56 refers to the ‘sale, lease or licence of common property’. Subsection 3 of section 56 states that “a body corporate, other than a subsidiary body corporate, may, after a special resolution to do so, sell part of the common property”. Subsection 4 refers to sections 212 to 216 of the Act that provides an objection process to the sale, lease or licence of common property, via a designated resolution process. Here, a notice of the special resolution must be served to every unit owner and every person who has a registered interest in, or has a caveat or notice of claim entered on the register over any unit (UTA 2010, section 213(1)) including mortgagees. Within 28 days of being served with that notice, interested parties can object to the resolution (UTA 2010, section 213(3)). Thus, a designated resolution provides all owners with the possibility to object to sale, lease or licence of common property, not just to those who voted against the resolution, as with a special resolution.

Section 68 of the UTA 2010 (Redevelopment requiring new development plan) applies to all redevelopments apart from those that consist solely of the adjustment of the boundary between one or more units and which do not materially affect the common property or other units (in which case Section 65 applies). Section 68 requires that the body corporate must ensure all owners of the units materially affected by the redevelopment have consented in writing to the new unit plan (i.e. redevelopment) in substitution for the existing unit plan. Section 68(4) provides guidance on how such a redevelopment might take place by stating that an owner of a future development unit is to be treated as a member of the body corporate. As with section 56, sections 212 to 216 provide an objection process to such proposed changes.

Section 74 of the UTA 2010 (Scheme following destruction or damage) allows the possibility for the High Court to settle a scheme providing for the reinstatement in whole or in part of the building or other improvement; or for the transfer of units to the body corporate so as to form part of the common property (subsection 3). Thus, in the case of earthquake-damaged unit titled developments in Christchurch, section 74 allows for reinstatement ‘or other improvement’ of buildings, and also for damaged units to be transferred to the body corporate as part of the common property. While the High Court may or may not support that ‘other improvements’ include the addition of further units within the unit plan or development, the fact that the Court can include the provision for the transfer of units to the common property owned by the body corporate allows for the provision of section 56 to take place (i.e. sell part of the common property). Section 74 also provides for the Court to make orders to direct payment of money by or to the body corporate or by or to any person, thus allowing payment to be made to proprietors whose damaged or destructed units are to be transferred to the common property of the body corporate. Two further sections of the UTA 2010 (118 and 119) provide for an ‘optional contingency fund’ and a ‘capital improvement fund’. Such funds are over and above the long-term maintenance ‘fund required by section 117.
While section 118 states that a body corporate may establish and maintain one or more contingency funds to provide for unbudgeted expenditure, section 119 allows for a body corporate to “establish and maintain a capital improvement fund to provide for spending that adds to or upgrades the unit title development if that spending is not provided for in the long-term maintenance plan” (UTA 2010, s119, emphasis added). The ability to ‘add to’ a unit title development is further supported by section 130(1) of the Act which establishes that the body corporate may spend, borrow invest any money. However, subsection 2 of section 130 partly withdraws this support by stating that “the body corporate may not grant a mortgage or a charge or any encumbrance over the common property”.

Thus, a number of sections within the UTA 2010 provide for major repairs to be undertaken and financed by the body corporate and, to a certain extent, parts of the Act support the financing of these repairs by allowing for additional building, development, intensification or redevelopment to take place.

**Conclusions**

Major repairs of multi-owned residential buildings not only help to maintain the value of the individual flats and the quality of housing for the residents, but have wider economic, social and political implications. These implications are particularly clear in both Finland and New Zealand, where the need for major repairs is evident despite differing contexts. In Finland, the maintenance backlog in the ageing building stock in suburban areas has triggered both policy initiatives and holistic redevelopment plans. In New Zealand, Leaky Building Syndrome, in particular, has put major repairs in the spotlight, although repairs related to the advanced age of multi-owned residential buildings has not yet occurred to any great extent. Nevertheless, the governance and decision-making aspects of major repairs, in the context of multi-owned housing developments in both countries, cannot be understated. Legislation governing multi-owned housing developments in both Finland and New Zealand was renewed in 2010, with the specific aim of enabling major repairs. This paper has examined the LLHCA 2010 and UTA 2010 with regard to these renewals and the possibility of housing intensification as a means of financing repairs. The comparison of these issues between two jurisdictions with different contexts and histories provides a cross cultural and international outlook on the topic and the possibility to develop the current practices in each country. A comparison and the implications of the results are discussed below.

In New Zealand, the UTA 2010 has provided significant renewals in terms of the ownership structure and the responsibilities of a body corporate. The statement that the body corporate owns the common property, and the introduction of the concept of ‘building elements’ increases the scope of the body corporate for action in terms of major repairs in an important way and provides the body corporate with more possibilities to undertake repairs. These changes, along with lowering the percentage of owners required for a quorum in order to prevent hold out problems, and the introduction of special resolutions can be regarded as fundamental in terms decision-making in relation to common property. These changes undoubtedly contribute to more efficient decision-making and to the ease with which major repairs can be undertaken. At the same time, concerns about property rights and participation of the owners have been raised (Greenwood 2011; Thomas 2011). As noted by several authors, there have been many problems surrounding the governance of multi owned housing developments and bodies corporate over the past decades. Thus, the transparency of governance, body corporate committees, management companies, and the participation and
knowledge of unit owners remains crucial in the decision-making processes and the ability to enable major repairs in a sustainable way. In this regard, proactive support for the planning of maintenance and repairs, and owners’ possibilities for financial planning has been enhanced by both the UTA 2010 and LLHCA 2010.

In Finland, however, the renewals brought by the LLHCA 2010 have not been as fundamental as the changes brought about in New Zealand as a result of the UTA 2010. For instance in New Zealand, common parts of the property are now owned by the body corporate. In Finland this was already the case before the implementation of the LLHCA 2010 and common parts of the property are owned by the housing company. Likewise, the equality principle existed as a protection tool for individual shareholders in the previous legislation. However, the LLHCA 2010 has clarified several issues in terms of the responsibilities of shareholders and housing companies, and facilitated the preparation of major repairs for both actors by proactively supporting owners’ access to information, and the planning of maintenance and repairs. Shareholders’ participation in general assembly meetings has also been facilitated, along with their access to general assembly material. Decision-making has also been made easier with regard to installing a lift in an existing building, via the lowering of the voting threshold from unanimous consent to a majority vote. In addition, obligations regarding payments have been redefined and the LLHCA 2010 has strived to account for the distribution of costs in a more equal way. Overall, the aim has been to make decision-making more efficient and equal, and the overall success of the governance and management in terms of undertaking major repairs remains crucial.

A particular focus of this paper was to explore, from a decision-making perspective, the possibilities of housing intensification as a means of financing repairs. In this regard, both the LLHCA 2010 and UTA 2010 appear to enable such development. In Finland, there are three main ways for a housing company to undertake infill development: via the sale of common property, via the issue of further shares, and via the housing company acting as a developer. In New Zealand, the UTA 2010 does not specifically address the prospect of intensification of a unit titled development in order to finance major repairs in a development, but neither does it preclude this as an option. In this regard, and from a decision-making perspective, the sale of land or property for housing intensification purposes is the easiest option in both countries. However, the processes as well as the possibilities for owners to object to such processes are different in each country, and unanswered questions remain in both countries, in terms of the feasibility of such intensification.

In principle, land sale for infill development purposes in Finland can be made relatively easy from a decision-making perspective as only a majority vote is required. The rule that one shareholder can usually present only one fifth of the total amount of votes (even though their share value might be greater) can be seen as a means of protecting other shareholders in the decision-making process. On the other hand, the equality principle means that a lone shareholder could prevent infill development if such a development could be seen to have a substantial negative impact on the value of their flat. However, the evaluation of the impact of the sale of land on the value of a flat could be difficult to assess, and for now, the lack of court precedents objecting to the sale of common property for housing intensification purposes makes it difficult to estimate the success of the equality principle. In this sense, while it is clear in the LLHCA 2010 that it is the economic value of shares, rather than the personal preferences of a shareholder that prevail, the Act is somewhat unclear in terms of defining what a substantial impact on a shareholder amounts to, and how the equality principle would operate in such a case.
In the New Zealand context, the sale, lease or licence of common property under the UTA 2010 is possible, and therefore the possibility of housing intensification as a means of financing major repairs is achievable. It can also be argued that such changes are too easy to effect. As such, changes to voting and quorum thresholds in the new legislation can result in significant consequences for those owners or interested parties who do not take an active role in the decision-making of the body corporate to which they belong. On the other hand, the objection process provided via a designated resolution process provides greater possibilities since all parties with a registered claim or interest can apply for relief, not only those who have voted against the decision as in a special resolution. Having said that, the UTA 2010 does not specifically address on what basis parties can object to the sale of common property, and while interested parties can apply for relief within a 28 day time period, applying for relief from the Tenancy Tribunal can be somewhat arduous and legal advice is advised. As in Finland, few if any court cases have yet to be found in this area, and so the success of these changes are difficult to gauge.

While it is necessary that the UTA 2010 does not preclude the financing of major repairs via the route of intensification, we argue that the current wording in the Act too easily allows for such intensification to take place via the sale, lease of licence of common property, without the consent of the majority of the owners. If, as the case has been to date, that the participation and knowledge of owners in terms of decision-making and governance of unit titles remains low, the distribution of power amongst unit owners remains unbalanced. In this regard, an introduction of a tool such as the equality principle in the LLHCA 2010 could give better protection for individual unit owners. In Finland, other main options for housing intensification as a means to finance major repairs include a share issue, and the housing company acting as a developer and undertaking redevelopment. At this stage however, acting as a developer not only requires the consent of all owners, but remains a contested issue under the LLHCA 2010. A further key issue relates to the stipulated majority requirement for a share issue in the instance where there is a proposal to convert attics into residential units. While the majority vote threshold of 50 % means that change can be effected with relative ease, a stipulated majority of 66 % potentially hinders or prevents such development.

In New Zealand, the UTA 2010 does not preclude the body corporate from undertaking redevelopment, but as with a housing company in Finland, the consent of all owners is required. Financing such a redevelopment constitutes a further challenge as section 130(2) states that the body corporate may not grant a mortgage or charge any encumbrance over the common property. This differs from Finland where the LLHCA allows housing companies to use the share certificates of the whole property as collateral.

Interestingly, little or no intensification/redevelopments of multi owned residential developments has yet taken place in New Zealand, despite the toll that the earthquakes in Christchurch, and LBS nationwide have taken on such properties nationwide. Nevertheless, owners and others who have a financial interest in such developments should be proactive in terms of keeping themselves abreast of matters concerning the body corporate to which they belong or are associated. We also argue that the upcoming amendments to the UTA 2010 should address those sections in the Act that currently allow significant transformations to take place, such as the sale, lease or license of commonly owned property, with the consent of only a small proportion of the unit owners. This is particularly important, given there is a mixture of investor-owned and owner-occupied units in multi-owned housing developments in New Zealand, and their different interests are considerable.
Other governance issues, that apply to both Finland and New Zealand, such as project management and successful communication to the owner-occupiers (Pennanen, Tiilikainen & Viitanen 2013), are likely to impact on the feasibility of housing intensification as a means of financing major repairs, as are factors such as land values, planning policy, zoning restrictions, suitable areas (suburban/inner city context) and taxation rules. In this regard further research is warranted. At its best, housing intensification as a means of financing major repairs in the context of multi-owned residential developments could support local and national efforts to intensify housing and redevelop neighborhoods in many urban areas worldwide.

While this paper has provided insights about the possibilities and challenges of undertaking major repairs in the context of multi-owned residential developments, and the possibility of financing such repairs via the intensification of such developments in Finland and in New Zealand, further research is required in order to provide a deeper understanding of these issues. As well as looking at the challenges and possibilities that face other countries, case studies of multi-owned residential developments that have or are planning to undertake changes, would also be a productive exercise.
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INTERVIEW


STATUTES


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