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Standing Committee on Legal Affairs
ACT Legislative Assembly
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The Australian Electric Vehicle Association (ACT Branch) welcomes this inquiry and thanks the committee for the opportunity to shed light on issues that are currently holding back electric vehicle (EV) ownership in the ACT. Our submission focuses on EV charging in strata complexes (items 5 and 7 of the terms of reference). This submission includes nine recommendations. Supplementary material that may assist in the inquiry is provided in an appendix.

Introduction

Over 40 percent of the ACT's greenhouse gas emissions are the result of private car use. To meet climate change targets and to address the high share of greenhouse gas emissions coming from private vehicles, the ACT Government promotes the uptake of EVs with such measures as stamp duty exemption, emissions-based registration, interest free loans, and a policy position that no new internal combustion engine vehicles can be registered in the ACT from 2035.

Switching to an EV is relatively easy for those living in free-standing houses with their own parking place since they can cheaply and conveniently do most of their charging at home using their own independent electricity supply. In contrast, the adoption of EVs by those who live in strata developments has been lagging. The main reason for this lag is a mix of actual and perceived impediments to setting up convenient home charging.

Why is home charging such a strong driver of EV adoption?

While public charging is important and necessary, charging at home whenever possible is preferred because it is cheaper (or should be, as discussed later) and more convenient. It does not need to be fast and it is not necessary to 'fill up' every time one plugs in (so-called 'petrol bowser thinking'). Even a top up at the very slow rate of 6 amps (1.5kW) for 8 hours overnight (the minimum requirement for new apartment buildings in the National Construction Code) results in nearly 100 kilometres of range added. Slower charging also means cheaper equipment. Home charging does not need to provide a profit to a charging provider, which also reduces the cost.

Recommendation 1: A default, overarching, presumptive 'Right to Charge' should be explicit in legislation to put it beyond doubt that a Right to Charge is the default position that should be understood from existing provisions in the Unit Titles (Management) Act 2011 (UTMA) or any amendments of the UTMA.

Without an explicit Right to Charge, EV proponents in strata need to do a lot of interpretation and EV opponents can find plausible-sounding arguments to assert that a special resolution is required for

an installation that could be approved by an ordinary resolution or just by the executive committee (EC).

Potential for confusion arises from the fact that there is no single best solution for strata EV charging that should or could be universally adopted. This arises because there is a wide range of strata typologies ranging from a handful of townhouses with surface parking to 30 storey apartment buildings with multi-level basement parking. It is not a trivial matter for even a highly motivated EC or owners corporation (OC) to find and evaluate the options that could work for their site. The lack of a consistent, obvious solution complicates the use of legislative measures that aim to remove barriers to EV uptake by strata residents. The legislation already has helpful provisions for the installation and operation of sustainability infrastructure but it is not always obvious how to thread a particular EV charging proposal through the needle of those provisions.

We draw the committee's attention to EV-specific 'Right to Charge' or 'Right to Plug' provisions in various European countries and some states of the USA. Both cited documents draw attention to similarities and differences and strengths and weaknesses between jurisdictions. In many of these jurisdictions, including France, Germany and Poland an owners corporation can only refuse permission to install EV charging equipment for 'serious and legitimate reasons'. These can include technical feasibility, safety, pre-existing EV charging equipment or that the OC has an intention to install charging infrastructure. Safety concerns have to be well-founded and not simply a misinformed fear of an exaggerated fire risk.

The UTMA, if interpreted in good faith, would seem to have fairly good 'Right to Charge' provisions but this is not as obvious as it could be and there are gaps:

- Permission to **install** sustainability infrastructure must not be unreasonably withheld but what about a situation where an EC unreasonably refuses permission to use existing power points on common property circuits with cost recovery, or even power points wired back to the unit owner's meter?
- From s.108, "an alternative rule is not valid to the extent that it results in the rules … prohibiting or restricting the installation, operation or maintenance of sustainability infrastructure in or on the common property or a unit" but what if there is no such restrictive rule, only an uncooperative EC or OC?
- A tenant of a unit does not have an obvious path to being able to charge a vehicle at home unless the owner of the unit advocates on their behalf.

An explicit 'Right to Charge' statement or section in the Act, which could be modelled on overseas examples, would help to cut through any obstruction or uncertainty.

Recommendation 2: EV charging equipment and other non-restrictive examples should be explicitly included in the definition of sustainability infrastructure. This would go a long way towards confirming a 'Right to Charge'.

Various provisions of the UTMA aim to simplify the installation of 'sustainability infrastructure' or provide that permission to install sustainability infrastructure 'must not be unreasonably withheld'. We assume that these provisions encompass EV charging equipment but that is not explicit.

In the UTMA Dictionary, 'sustainability infrastructure' is defined as infrastructure or equipment that improves environmental sustainability or reduces environmental impact of a unit(s) or the OC but there is no explicit mention of EV charging or any other specific measure. Reasonable cases could be made regarding many things as 'sustainability infrastructure': a clothesline, insulation, more efficient lighting, more efficient water heating or space heating systems, photovoltaic generators, electrical replacements for gas equipment, or a community vegetable garden. With the exception of solar

panels, no examples are provided in the UTMA that would put the inclusion of any of the aforementioned examples beyond doubt.

Notably, some parts of s.23 of the UTMA refer to the installation of "sustainability or utility infrastructure" while other parts refer only to "sustainability infrastructure". If EV charging equipment is sustainability infrastructure, then, from s.23(4), an OC could receive income from billing for EV charging and use that income to pay costs related to the installation and maintenance of the equipment but, if EV charging is only utility infrastructure, s.23(4) might not apply.

The income from billing residents for EV charging should not offend the prohibition on the conduct of business by an OC if residents are only billed for EV charging on a cost-recovery basis. Cost recovery should be interpreted broadly to include costs for financing, installation and maintenance, not just the cost of the electricity delivered. This would be put beyond doubt with confirmation that s.23 in its entirety applies to EV charging.

Recommendation 3: UTMA s.23 should explicitly take precedence over default rule 4 (Erections and Alterations) so that any EV Charging Plan that is fair and equitable among all unit owners can be approved by ordinary resolution. This should explicitly include any plan that requires granting of special privileges or permissions for installations by individual unit owners, whether connecting to shared infrastructure or their own unit.

It should not matter whether an OC's most suitable EV Charging Plan depends on OC-installed equipment on common property, approval for each unit to install their own charging equipment, or some blend of the two. We suggest that there should not be different thresholds (OC special or ordinary resolution) depending on whether a site's best charging solution would be an OC-installed system or individual installations (conforming to agreed specifications). Instead, s.23 could include a provision that the single, establishing, ordinary resolution can include setting the rules by which individual unit owners can benefit from, or connect to, shared sustainability infrastructure or install their own infrastructure.

As noted above, there is no singular optimal solution for strata EV charging that should or could be universally adopted. Similarly, there is little clarity about whether the approval mechanisms are the same or different depending on who is doing the installing.

On some sites, it would be practical and preferable for each unit owner to install a charging outlet in their allocated parking space that is wired back to their own electricity meter, or to at least allow units to do so where this would be practical. This would relieve the OC of billing and individual unit owners would retain control over their preferred electricity retail plan for EV charging. On other sites, this scenario might be impractical for some, most or all units and the OC may have no choice but to use some form of shared infrastructure.

UTMA s.23 provides that the owners corporation can approve the installation of sustainability or utility infrastructure on the common property via a single ordinary resolution (simple majority), subject to a range of matters being addressed in the proposal. This section also provides that the OC by ordinary resolution may "grant an easement or any other right over any part of the common property for the purpose of the installation, operation or maintenance of the sustainability or utility infrastructure". This seems to allow the OC to approve either the OC itself or individual unit owners to install EV charging on common property by ordinary resolution. It does not seem to us to be restricted to the OC authorising itself.

However, our reading of s.23 conflicts with p.128 of 'Kerin Benson Lawyers Guide to ACT Strata Law, 2nd Ed.' by Christopher Kerin, which asserts that s.23 applies only to the OC applying to itself to install sustainability infrastructure. Kerin asserts that default rule 4 must be applied to an individual unit owner making such an application, which would result in a special resolution being required.

If Kerin is right, we do not think that is a satisfactory outcome. What happens if the OC installs an EV charging 'backbone' of shared cabling in an apartment carpark authorised by an s.23 ordinary resolution with the expectation that unit owners will then pay to connect their individual charging outlets at times of their choosing? Individual unit owners should not need special resolutions to connect to an already-approved solution.

Similarly, if it were argued that wiring back to the individual unit meters required a grant of 'special privilege' or approval via default rule 4, both requiring a special resolution, then a preferable arrangement could be harder to achieve than a less optimal solution that could be approved by ordinary resolution. A solution would be to allow a special privilege relating to sustainability infrastructure to be granted by ordinary resolution as part of an s.23 EV Charging Plan.

Recommendation 4: Examples under the Sch.2.4 'minor use' provision should be expanded to include running cable over common property to connect a unit to a charging outlet in a parking space.

On some sites, cabling running back to individual meters might not interfere with anyone's use and enjoyment of the common property and the EC should be able to approve this pursuant to the UTMA Sch.2.4 'minor use' provision. The EC could include conditions limiting the maximum current draw or times of use to ensure no adverse effect on the electricity supply to the site.

Unless an EC was confident that a UTMA Sch.2.4 'minor use' provision was defensible and unlikely to be challenged, cautious ECs will likely revert to the harder-to-achieve 'special privilege' route, even for trivial and simple installations.

Recommendation 5: Guidance be developed for OCs, unit owners, and renters on safe charging practices and how to seek permission to charge from the OC.

Renters face particular challenges for charging their EV in a strata complex. Importantly, they have no way of advocating with the EC other than through their landlord, and the landlord can often only be reached via their rental agent. The unit owner is unlikely to pay for EV charging equipment to be installed while rental vacancy rates are low and fewer renters own EVs.

We are aware of issues in apartment buildings with tenants trying to find ways to charge their EVs such as running extension cords without permission to power points connected to common property circuits. The use of extension cords presents hazards for people tripping over them, possible circuit overloads, and the potential for electrical fires caused by overheating of poor quality extension cords. Moreover, these residents are using electricity that is billed back to the OC and this can stir resentment among residents.

We agree with OCs prohibiting unsafe practices, but this gives further reason why OCs should be thinking more about providing proper charging installations for their residents, including renters. All that might be required in the short term is a pedestrian cable cover.

Recommendation 6: If rule 4 is to be used as the instrument by which permission is given to install charging infrastructure, a stronger 'Right to Charge' statement should still be included in the UTMA to dissuade owners from opposing reasonable proposals.

Unit titles regulation provides a set of default OC rules. OCs can make 'alternative rules' to supplement the UTMA on a wide range of matters but "an alternative rule is not valid to the extent that it results in the rules … prohibiting or restricting the installation, operation or maintenance of sustainability infrastructure in or on the common property or a unit" (s.108).

Reflecting s.108, the default rule 4 on erections and alterations states: "A unit owner may erect or alter any structure in or on the unit or the common property only in accordance with the express permission of the owners corporation by special resolution … However, if the structure is sustainability infrastructure, the owners corporation's permission must not be unreasonably withheld. Rule 4 is one of the default rules that may be amended by special resolution. However, an amended Rule 4 would be invalid to the extent that it conflicted with s.108 of the UTMA. The text that says "if the structure is sustainability infrastructure, the owners corporation's permission must not be unreasonably withheld" could not be removed or amended to become more restrictive. A decision to withhold permission to install EV charging equipment would only be lawful if the permission was 'not unreasonably' withheld.

On the face of it, this comes close to providing a 'Right to Charge' similar to the European examples. However, by default rule 4, the individual unit owner would still need to put their proposal to a general meeting and have a special resolution passed. If more than 1-in-4 of those taking part in the meeting opposed, the motion would fail. No reasons would need to be given by individual owners voting 'no', and the only recourse available to the proponent would be to try again at another general meeting or to seek an order from the Tribunal to give effect to the failed motion on the grounds that objection to the motion was unreasonable. This puts the onus on the unit owner to present their proposal again for a merits review at the Tribunal. A clearer 'Right to Charge' statement and explicit inclusion of EV charging equipment as 'sustainability infrastructure' could avoid putting an owner through all this.

Recommendation 7: A 'Right to Charge' statement or other guidance should make it clear that access to charging should be equitable.

The finite electrical supply capacity of a building and space in utility conduits are common resources that should be shared equitably. It is reasonable to prevent early adopters from taking more than their fair share but it is also not reasonable to hold those early adopters back. Adequate interim arrangements are often possible.

Suppose an owner wishes to install a 7kW charging point without any form of load management. An OC might reasonably determine that it would not be possible for every unit owner to do that within constraints such as the total electrical supply capacity of the building or space in utility conduits for extra cabling. Since it is likely that eventually everyone, or nearly everyone, will want to be able to charge a vehicle, it would be reasonable for the EC or OC to exercise caution and not give away too much of the building's supply capacity to unit owners that wish to install EV charging earlier to the possible detriment of other units' ability to charge in the future. The reason would cite the example "equity of access to common property, easements, facilities or utility services".

A reasonable course of action could be to give temporary permission to the few early adopters to use 10A sockets, if they exist, as a stop-gap while a more comprehensive and sustainable EV charging plan is developed. Permission could be conditional on only charging outside the window of evening peak electricity demand and a mechanism for calculating or estimating the cost of the electricity used so that the OC can bill the unit owner for reimbursement. A small number of EVs charging at a slow rate outside the peak demand period is very unlikely to cause any problems.

Temporarily withholding permission (or preferably arranging a limited stop-gap solution) is allowed under French 'Right to Plug' legislation but the permissible delay before providing a planned, better solution is tightly limited. Claiming to have good intentions to install EV charging one day cannot be used to stall indefinitely.

Recommendation 8: That any 'Right to Charge' provision added to the UTMA should include a presumption that residents may use existing electricity outlets that could be used for charging subject to reasonable conditions around safety, equity and recovery of costs.

A useful interim arrangement that could buy time for an OC to work out their best solution could be to give permission to use existing power points, generally ordinary 10A sockets, where available. However, there is nothing that would compel an OC to allow a resident to use an existing power point on the common property unless it had been installed for the express purpose of EV charging. At best, one could point to the obvious intent of various provisions of the Act to encourage sustainability in OCs. This puts the onus back on individual residents to find solutions, without any guarantee that a workable solution will be agreed.

We are aware of an EC that refused permission to use a power point for fear of 'establishing a precedent' but this could be easily avoided by stipulating that the permission could be rescinded or amended at any time particularly once a better EV Charging Plan for the site had been developed and agreed.

Permission might be reasonably withheld in the short term while the EC has the integrity of the wiring checked and finds out which outlets are on which circuits. This informs where and how many EVs can charge without tripping circuits. This is discussed further in the appendix (under the heading "Condition of building wiring").

Recommendation 9: The option of funding EV charging infrastructure via the sinking fund should be included in any interpretive guidance provided by the ACT Government.

We are aware of an instance of some owners arguing strenuously that it was inappropriate to fund new sustainability infrastructure, or indeed any new infrastructure, via the sinking fund. In their view, a sinking fund was strictly for maintenance of existing structures. Fortunately, the UTMA now makes it clear that the sinking fund can be used for "the **acquisition of new property** or renewal or replacement of property that it holds" (s.83(1)(b)) and that "property includes sustainability or utility infrastructure" (s.83(2)).

Any OC with four or more units must establish and maintain a sinking fund (s.81). Spending must be consistent with the Sinking Fund Plan (s.88) but the plan can be amended at any time by an ordinary resolution of a general meeting (s.86). A note under s.88 further underlines that it is appropriate to use the sinking fund for sustainability infrastructure (with reference back to s.23) if it has been appropriately considered in the plan: "Expenditure from the sinking fund for the purpose of installing sustainability or utility infrastructure must be provided for in the sinking fund plan (see s.23)".

Conclusion

The varied nature of strata building typologies makes it difficult to consider EV charging solutions in a generic way. A wide variety of approaches are valid and the option to implement solutions all at once or incrementally adds complexity to the decision-making. Further compounding the complexity is uncertainty around the approval processes required for different solutions.

The UTMA in its current form attempts to make it easier for unit owners in strata to install sustainability infrastructure. We believe that without a 'Right to Charge' statement or, at the least, supporting guidance, it is proving too easy for ECs and OCs to leave EV charging in the 'too hard

basket’ or to refuse reasonable requests. Some of the objections being put forward are verging on scaremongering. Another critical point of this submission is that the costs to install charging infrastructure can be substantially reduced if OCs and residents understand that it is not necessary for home charging to be fast and that interim and staged solutions can buy time to develop more comprehensive solutions. The crucial thing is for OCs to have an EV Charging Plan.

We thank the committee for considering this submission.

APPENDIX

What reasons are being offered by OCs denying the installation of sustainability infrastructure?

Fire risk

This is perhaps the most common reason AEVA has heard from EV owners who have asked to charge in their strata complex. A number of points are made below about fire risk, but it should be stressed that we strongly support the adoption of standards and evidence-based procedures that will keep everyone safe, including strengthening the safety of first responders. However, we do not support measures that are not backed up by evidence and are used to slow down EV adoption and jeopardise decarbonisation efforts.

- Experience world-wide, where EVs are used in much greater numbers than Australia, shows that EV fires, where the **battery is involved,** are very rare events. These occur around 80 times less frequently than internal combustion engine vehicle fires. In some cases, EVs have caught fire for reasons unrelated to the battery and the battery did not become involved.
- The Australian Building Codes Board published an advisory note in June 2023 after examining international regulations in countries more advanced with EVs and after consulting respected researchers, EV FireSafe. The ABCB advisory note includes 15 low cost, best practice measures that should be followed when installing EV charging equipment in buildings. These include simple actions such as always using Australian Standards-compliant equipment, always using a licensed electrician, installing collision protection (bollards) around chargers and undertaking regular maintenance.
- In November 2023, the Insurance Council of Australia (ICA) issued a briefing note titled 'Managing fire risk from electrified transport in residential buildings' which assessed the risk of road-registered EVs such as cars and motorcycles as "**very low risk**". This compares with personal mobility devices such as e-bikes and e-scooters which were assessed as "high risk", for which the ICA provided some principles for users of such devices to follow.
- A November 2024 report from EV FireSafe classified the eight electric vehicle fires that had occurred in Australia up to that date: one case of arson, three cases of fire spreading to the EV from a building fire, three caused by high speed collisions, and one of unknown cause. The last of these occurred in a vehicle connected to a charging station but it was not charging at the time.
- When fires do occur, as we acknowledge that they will, fire fighters in overseas jurisdictions are gaining experience with fighting lithium ion fires with new equipment and procedures.

Ability to recover costs from EV users

Some OCs are concerned about the on-going energy costs for EV charging where electricity is taken from common property circuits. Different approaches can be used to recover costs without requiring extravagant metering solutions. For initial users of available power points, a low-cost inline kilowatt hour counter can be used. While not a metering grade solution that an electricity company would accept, it is sufficiently accurate for the purposes of recovering costs from EV users. It is not an onerous task for an EC member to periodically read the meters, enter the numbers into a spreadsheet and send the billing calculation to the managing agent. Alternatively, an estimate of electricity use could be based on a periodic vehicle odometer reading. Such estimates could be biased generously in favour of the OC to put full cost recovery beyond doubt and the EV driver will still be very happy with their motoring costs.

For more permanent solutions such as charging wallboxes, it is possible to similarly install a kilowatt hour counter in the circuit to the wallbox so that the unit owner can be billed for any electricity use.

Alternatively, an external charging provider can bill the EV user directly and reimburse the OC for electricity use but this comes with a cost overhead (see below).

We are aware of an ACT example where each of about 40 units has their own garage in a basement below the units on three levels above. Each garage has an ordinary power point on a common property circuit. Initially the EC refused permission to an owner to use the power point in their garage to charge their car. The managing agent asserted, incorrectly, we believe, that a grant of special privilege was the only available mechanism.

The EC engaged an electrician to check the existing wiring. It was determined that each of the circuits servicing the garages could support two EVs charging at 10A (enough to add at least 100 kilometres of range overnight) while leaving adequate capacity for other incidental uses. As there are several independent circuits supplying the garages, it would be possible to support simultaneous charging of about half a dozen EVs before a long-term solution would be needed. More than two EVs per circuit could be supported if the residents were to arrange a roster for charging at different times.

A new EC approved the use of the power points for charging if a kilowatt hour counter was installed inline to enable billing by the OC for the electricity consumed. The EC surveyed owners and found that most would prefer to have the power points in their garages wired back to their own meters. However, the survey also found some owners opposed to EV charging under any circumstances. They have now engaged a consultant to advise on options for when they have more EVs in the building.

Available electrical supply capacity

Another common concern expressed by OCs relates to the need to upgrade power supplies into a strata complex to cope with the additional load of EV charging. Many OCs will also be considering the need to electrify hot water systems as gas is phased out.

The electricity supply connection into a strata complex such as an apartment building is sized to meet the maximum demand of the building which typically occurs during the evening hours (5-8pm) when most residents are preparing dinner and heating or cooling their unit. Charging EVs in this window would increase maximum demand and necessitate an increase in supply capacity. However, electricity demand within a building fluctuates over a 24 hour period and experiences its lowest level in the early hours of the morning. Throughout much of the day and night, demand is considerably lower than maximum demand. This provides a large amount of “headroom” for slow EV charging to occur. The slower the charging occurs, the more vehicles can be simultaneously charged within the available headroom.

For more complex charging installations, load management systems can be employed. These systems manage the charging speed of all connected EVs, allowing vehicles to charge faster when more headroom is available for them to do so. Slow charging allows for simpler, lower cost installations and the ability to avoid costly supply capacity upgrades by using the available capacity in a smarter way. Ultimately, an upgrade may be required, but it might be many years before this is the case.

Condition of building wiring to support charging with high current over sustained periods

Some ECs have expressed concerns about the ability for older buildings with wiring of unknown condition to support EV charging. This is a well-founded concern. AEVA recommends that before any existing power points are offered for regular charging that a licensed electrician inspects the power points, the connections, the ratings of the circuit(s) and the ability for the circuit(s) to handle multiple EVs charging at once. This is a very low cost and prudent measure that may provide reassurance to ECs.

Expensive solutions

Due to the variety of options and their technical nature, a common step undertaken by ECs and OCs is to engage a consultant. An emerging theme is that the consultants tend to provide expensive all-at-once solutions without considering staged options and they tend to provide options that require an on-going relationship with a service provider.

We are aware of one OC where a consultant's proposal was more expensive yet less satisfactory than the solution developed in-house by the OC. The consultant ignored the fact that some of the townhouse units were sufficiently close to their allocated parking spaces in shared parking areas that owners could run cable traversing only a few metres of common property from unit meters to charging outlets in the parking spaces. Connecting those units to the common property supply would have disadvantaged residents because those who had solar generation would not be able to use it, and they would lose the opportunity to choose their own preferred electricity retail tariff.

The one-size-fits-all approach would also have disadvantaged the units that had no choice but to use common property supplies because the supply capacity at those parking areas would have been spread more thinly. With fewer units needing to use each common property supply point, load management could be simpler and cheaper than the consultant's proposal.

The consultant's proposal anticipated electronic billing and load management subscriptions that would lead to an on-going relationship at a projected cost of $540 per year per charging point on top of the cost of the electricity. On average, passenger vehicles in the ACT travel about 12,000km per year. Assuming that around 10,000km of those kilometres are supported by home charging, a typical vehicle efficiency of 15kWh per 100km, and a flat-rate electricity tariff of 25 cents per kWh, the total cost for home charging would be about $375 per year. If a $540 per year subscription per charging point were added, the 'effective' tariff becomes 61 cents per kWh, a rate that is within the price range of using public fast DC chargers. This very substantial cost is now being avoided by having simple kilowatt hour counters in line with each charging point. The meters are read several times a year at no cost by a volunteer EC member, who then forwards the costs to the managing agent for billing unit owners.

The EC could not recommend the consultant's solution and was fortunate to have a better solution of its own. Had the consultant's solution been embraced, would the OC have needed to pass a special resolution to enter into a service contract for longer than three years (UTMA s.60(3)) or would uncertainty about longer term costs have been further grounds to reject the proposal?

At another strata complex, an OC's consultant has suggested options of 1) a shared AC charging unit to be installed in a visitor parking space, 2) individually metered AC charging units to be installed in all individually allocated garages requiring various site upgrades, or 3) a fully managed system of AC charging units installed in individual garages, using common power. All options would be installed and managed by the consultant, with ongoing fees for billing services, consumption, maintenance and monitoring. It seems unlikely that the OC will agree to any of these options.

Not suggested for consideration was a staged approach, which could provide the specifications of an inexpensive, lower-powered charging outlet in their garage that each unit owner could have connected to their own unit's meter not very far away. If this were found to be physically feasible, each unit owner could defer the cost until they needed charging and they would require no on-going relationship with a service provider.