



5 March 2021

Strata Schemes Statutory Review  
Policy & Strategy, Better Regulation Division  
Department of Customer Service  
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## Re: Statutory Review of the NSW Strata Laws

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Thank you for the opportunity to make a submission to the Statutory Review of the NSW Strata Laws as set out in the Discussion paper November 2020. Strata living is an important consideration for our communities and our councils' planning controls.

The Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of eleven local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of about 1.7 million, one third of the population of Sydney.

SSROC seeks to advocate for the needs of our member councils and communities to bring a regional perspective to the issues raised around important legislative reviews and reforms.

SSROC population and housing data<sup>1</sup>, in the period from 2011 to 2016, reveals a very diverse socio-economic area marked by rapidly rising numbers of dwellings and underlying growth in the number of households in the area. The estimated resident population increased by over 150,000 during this five year census period. Strata schemes are increasingly their home of choice.

Unlike other vested sectional interests, local councils perform a wide-ranging integrating function with ongoing responsibility for balancing the needs of their local government area, their communities and organisations doing business in their area. They can bring a unique holistic approach grounded in local evidence with positions informed by mandated public consultations that are specifically geared to informing land use, environmental protections, as well as infrastructure and service planning.

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<sup>1</sup> Source: Australian Bureau of Statistics, Census of population and Housing 2011 and 2016, compiled by id <https://profile.id.com.au/ssroc/>

This submission focuses primarily on promoting sustainability infrastructure<sup>2</sup> within existing and new strata schemes.

## **Our Understanding**

Strata living can provide a friendly attractive community-style environment. Strata laws affect more than one million people living and working in strata schemes across NSW. This will increase as the population grows.<sup>3</sup>

Strata living continues to change and evolve over time to meet the changing needs of residents, their communities and our shared physical environment.

The NSW Government is reviewing the laws under the *Strata Schemes Management Act 2015* and *Strata Schemes Development Act 2015*.

The wide-ranging review covers diverse areas of interest – including managing common property, resolving disputes, by-laws including animals, committee and owners corporation meetings, mixed-use schemes, and strata renewal. However, this SSROC submission focusses on issues related to sustainability infrastructure as a contributor to improved environmental performance of strata schemes. It recognises that strata schemes are an increasing proportion of the urban fabric and need to be engaged an important pathway to achieving net zero emissions.

The NSW Premier's 2019 strata sustainability election commitment signalled the Government's interest in reducing barriers to the uptake of sustainability infrastructure such as solar panels in strata schemes. In June 2020, the Government introduced the Strata Schemes Management Amendment (Sustainability Infrastructure) Bill 2020 to reduce the voting threshold for sustainability infrastructure resolutions to a simple majority.

Among many other things, this review seeks community feedback on possible further reforms to the strata laws to facilitate the uptake of sustainability infrastructure in strata schemes. The NSW Government is looking to change the law to make it easier for strata schemes to install sustainability infrastructure such as solar panels, batteries, digital meters, hot water systems and electric vehicle (EV) charging stations.

## **1. General Comments**

SSROC welcomes the opportunity to comment on the Statutory Review of the NSW Strata Laws as set out in the Discussion paper November 2020. SSROC strongly supports the legislative review to update the laws and embed a strengthened approach to sustainability infrastructure in strata schemes.

### *The state of play*

Along with state and federal governments, many local governments have sought to adopt policies and practices that prepare for the unavoidable impacts of climate change (adaptation) and minimise the risks to the community through limiting carbon emissions (mitigation).

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<sup>2</sup> As defined in the Statutory Review of the NSW Strata Schemes Laws, Strata Schemes Development Act 2015 Strata Schemes Management Act 2015, Discussion Paper November 2020, <https://www.haveyoursay.nsw.gov.au/strata-statutory-review-2020>

<sup>3</sup> <https://www.haveyoursay.nsw.gov.au/strata-statutory-review-2020>

All eight Australian state and territory governments have committed to, or have stated aspirations to, have net zero emissions by 2050 or sooner. In February 2021, the Prime Minister said that Australia should reach net zero 'as soon as possible, and preferably by 2050'.

Local government is well placed to lead and influence local planning processes according to the needs and expectations of their communities. Councils can help to reduce energy costs while providing a healthy, resilient and liveable environment.

Many local councils are keen to ensure that new strata developments meet strong environmental standards through reduced carbon emissions from building construction as well as over their operating life as they deploy sustainability infrastructure to strengthen energy and water efficiency performance. In major part these goals are achieved through private investment in sustainability infrastructure and compliance with BASIX targets for thermal comfort, water use and energy use.

Sustainability infrastructure reduces water/energy usage, reduces greenhouse gas emissions and pollution, or facilitates recycling and the reduction of waste. Examples include solar panels, more energy-efficient upgrades to air conditioning, ventilation and lift systems, and electric vehicle charging stations<sup>4</sup>. Sustainability measures provide benefits for communities as well enhanced environmental performance for residents of a strata scheme.

While the sustainability requirements embedded in planning system can play a critical role in increasing resilience to a changing climate and reaching the NSW Government's net zero emissions objective more effort is required. Sustainability measures incorporated with strata schemes will increasingly be required to support NSW Net Zero Plan and Electricity Strategy and complement Greater Sydney Region Plan's low carbon city objective District Plans' priority of reducing carbon emissions.

#### *Tenure Issues*

Recognising tenure and equity issues is important for achieving improved environmental outcomes. Overall, the proportions of renters and owner-occupiers in apartments are broadly equal, renters make up 48% of strata residents, with the remaining 52% either owned outright or with a mortgage. While this mix varies across schemes, the mixture of renters and owner occupiers affects the take up of sustainability infrastructure.

Laws and regulations to give tenants a say in their housing are a step in the right direction. The Act allows for tenant participation in a meeting if a building is over 50% tenanted and for a tenant representative to attend a meeting if they are on the strata roll.

However, tenants living in strata schemes cannot vote or put motions at general meetings, it is appropriate to promote additional measures to positively preference the deployment of sustainability infrastructure and improved environmental performance for the benefit of all households residing in the premises.

Coordinating private and public goals operating in strata schemes will be important for translating the intent expressed in many local councils Local Strategic Planning Statements for improved environmental performance of new and refurbished buildings and lower costs for housing consumers.

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<sup>4</sup> Statutory Review of the NSW Strata Schemes Laws, *Strata Schemes Development Act 2015 Strata Schemes Management Act 2015*, Discussion Paper November 2020, page 60

## Rooftop solar

Rooftop solar panels are becoming an increasingly popular part of sustainability infrastructure as they can help lower electricity costs and act in part as an insurance policy against ever increasing electricity rates.

While rooftop solar has been increasing in Australia, Stratacare estimates that only around 0.5% of strata schemes nationwide have had solar installed<sup>5</sup>. More clearly needs to be done to remove the barriers to their application in strata schemes.

While it is possible to install solar panels in strata titled buildings, for many strata properties there are numerous barriers for lot owners to install solar panels on either their own property or common property.

This is due to the interaction of a multiplicity of factors including:

- Perceived complexity of installing solar can act as a disincentive;
- Strata scheme decision-making processes;
- The difficulty in determining whether there is a solid financial case for investment in solar;
- Finding ways to 'split up' the solar energy equitably, ensuring that there is a way to track how much solar energy is being produced, and which units or common areas are using how much of it;
- Strata apartments often have flat and concrete roofs, which can mean additional costs when it comes to ballasting and tilting the panels;
- Tall buildings may have additional costs related to extra-long cable runs and additional costs for transporting the panels and other equipment to the roof;
- A strata complex is often a mix of renters and owner-occupiers where the incentives for getting solar may differ depending on their tenure status;
- Establishment costs<sup>6</sup> which include legal fees and the cost of an extraordinary general meeting can as much as \$1,000 to \$2,000 to the cost of the project.

Adding an electric vehicle charging point is the equivalent of adding an additional apartment electricity load into the apartment block<sup>7</sup>.

## Specific options raised in the Discussion Paper

### Prohibiting certain restrictions in by-laws on installing sustainability infrastructure

*One option is to prevent by-laws that prohibit or restrict the installation of sustainability infrastructure in certain circumstances. Queensland laws<sup>8</sup> prevent bylaws that prohibit or restrict solar panel installations merely to enhance or preserve the external appearance of a building.*

The Queensland amendments targeted body corporate by-laws, residential development building covenants and similar rules that sought to restrict owners from using a range of sustainable building features.

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<sup>5</sup> <https://www.stratacare.com.au/installing-solar-in-strata/>

<sup>6</sup> <https://www.thefifthestate.com.au/business/government/unfair-strata-rules-need-to-be-changed-to-enable-sustainability-upgrades-in-apartments/>

<sup>7</sup> [https://www.wattblock.com/uploads/4/4/9/8/44984189/solar\\_on\\_strata\\_whitepaper.pdf](https://www.wattblock.com/uploads/4/4/9/8/44984189/solar_on_strata_whitepaper.pdf)

<sup>8</sup> Strata Schemes Management Amendment (Sustainability Infrastructure) Bill 2020. <sup>4</sup> Section 180(8) of the [Body Corporate and Community Management Act 1997](#) (QLD) and Chapter 8A, Part 2 of the [Building Act 1975](#) (QLD).

The amendments provided that covenants or by-laws that prohibit or restrict the installation of solar panels on the roof or other external surface of a prescribed building merely for the purpose of preserving the external appearance were of no force and effect.

Additionally, where consent was required to install solar panels, the consent could not be withheld merely to enhance or preserve the external appearance of a building.

The proposal to prevent by-laws prohibiting or restricting the installation of sustainability infrastructure due to appearance in NSW strata schemes is **supported**.

#### Additional model by-laws to assist with the installation of sustainability infrastructure

*Another option is to consider whether additional model by-laws can be developed that might assist strata schemes with the installation of certain types of sustainability infrastructure.*

Model standard by-laws could usefully be developed for certain common types of infrastructure and building types and installations. Model by-laws could address common issues and provide well thought through protections and save on legal costs. Issues that could be covered potentially include:

- The upgrading of main switchboards and electricity meters for EV charging stations
- Individual or collective solar panel arrangements
- Smart meter networks (embedded electrical network)
- Private metering for solar panels
- Installation and operation of storage batteries
- Installation and operation of heat pumps
- Retention of rights to perform emergency repairs or necessary maintenance by the owner Corporation.

This proposal to prepare additional model by-laws is **supported** as they can assist owners corporations to quickly agree, install and then effectively manage the operations of different types of sustainability infrastructure. Effective management of this infrastructure is critical to realising improved environmental performance and creating an attractive point of difference for marketing by developers.

#### Enabling approval function to be delegated to strata committee

*Another option is enabling the owners corporation's function of approving sustainability infrastructure resolutions to be delegated to the strata committee (similarly to section 110(6) of the Management Act). This might make the approval process faster. The ability to delegate could be limited to certain types of installations.*

This proposal is **not supported** as it appears this measure might risk undermining owner support and likely to impose costs on owners whose cooperation will be paramount for the successful operation of the sustainability infrastructure.

## Audit of common water and energy usage as a mandatory agenda item

*Another option is to make consideration of an audit of the energy and water usage in a scheme's common areas a mandatory agenda item for annual general meetings. Schemes could decide on the type of audit, for example, self-assessment or a more formal assessment (such as, through the National Australian Built Environment Rating System (NABERS)).<sup>5</sup>*

This proposal of making the energy and water usage in a scheme's common areas a mandatory agenda item for annual general meetings is **supported**. It will help owners to understand their opportunities for reducing long-run costs.

## Additional considerations under 10-year capital works fund plans

*The Department of Planning, Industry and Environment has suggested that owners corporations should be required to consider the need for sustainability infrastructure upgrades and whether electricity meter boards need to be replaced, as part of their 10-year capital works fund plan.*

This proposal to require owners corporations to consider the need for sustainability infrastructure upgrades including metering as part of their 10-year capital works fund plan is **supported** to take advantage of technological advances.

## What other changes to the strata laws could encourage the uptake of sustainability measures in strata and how would they work?

The Department of Planning Industry and Environment has recently placed on exhibition the Design and Place EIE. The SEPP will, once adopted, guide the shape and operation all new strata developments and redevelopments of existing schemes in numerous ways especially around the provision of sustainability infrastructure.

It recognises that apartment living and by implication strata schemes are continuing to rapidly grow in our urban areas. One of the SEPP's five guiding design principles is the *Design resilient and diverse places for enduring communities*. It will involve the repeal of SEPP (Building Sustainability Index: BASIX) 2004 and incorporate an updated BASIX into the new SEPP. Its introduction will continue to drive energy and water efficiency, and sustainability commitments for housing in NSW through improved targets.

It is recommended that review of Statutory Review of the NSW Strata Laws investigate for policy and practice alignments to further the Design and Place principle about resilience and their connections to the provision of sustainability infrastructure.

## 3.0 Conclusion

SSROC member councils cover a large portion of Greater Sydney. As place managers, Local Councils have a direct interest in supporting the improved sustainability and resilience of our neighbourhoods, particularly as strata developments form an increasing and important component of our built environment. With the expectation that half the population of Greater Sydney is to be living in strata titled apartment towers, townhouses and apartment blocks of flats by 2040 they can make a major contribution to climate adaption and progress efforts to achieve net zero carbon emissions by 2050 or earlier.

SSROC strongly supports additional measures and further reforms to the strata laws to facilitate the uptake of sustainability infrastructure in strata schemes.

In order to make this submission within the timeframe for receiving comments, it has not been possible for it to be reviewed by councils or to be endorsed at a formal meeting of SSROC. I will contact you further should any issues arise as it is reviewed. If you have any queries please do not hesitate to contact me or Mark Nutting, SSROC's Strategic Planning Manager on 8396 3800.

Again, thank you for the opportunity to comment on the Statutory Review of the NSW Strata Laws and we are keen to participate in any further consultations about sustainability changes that will particularly impact on Local Councils and their communities.

Yours faithfully

A handwritten signature in black ink, which appears to read "H Sloan".

Helen Sloan  
**Acting General Manager**  
**Southern Sydney Regional Organisation of Councils (SSROC) Inc**