



Off the Plan Contracts for Residential Properties Feedback

Strata Community Association (NSW) Submission
15 February 2023

INTRODUCTION

1. Strata Community Association (NSW) Overview

Founded in 1980, Strata Community Association (NSW) was formerly known as the Institute of Strata Title Management. SCA (NSW) serves as the peak industry body for Strata and Community Title Management in New South Wales. The association proudly fulfils a dual role as both a professional institute and consumer advocate.

2. Membership

SCA (NSW) boasts a membership of over 3,000 members, including lot owners, suppliers, and professional strata managers who oversee, advise, and manage a combined property portfolio estimated to be worth over \$450 Billion.

3. Strata and Community Title Schemes in NSW

NSW is home to 89,049 Strata and Community Title Schemes. A significant 95 per cent of these schemes are comprised of residential lots. Altogether, the total number of Strata and Community Title lots in NSW stands at 1,043,690.¹

4. NSW as a Leader in High-Density Living

According to the 2022 Australasian Strata Insights Report, there are 2,501,351 people residing in apartments across Australia. A majority of these apartment dwellers (51 per cent) are in NSW.² NSW also leads the way in the trend to higher density living in Australia and boasts the highest proportion of apartment households relative to all occupied private dwellings, standing at 22 per cent.

5. Employment Impact

Strata is a significant employer, directly providing jobs to 1,413 managers throughout NSW, as well as an additional 1,317 other related employees.³

6. Promoting Professionalism

1. SCA (NSW) is dedicated to fostering a high standard of professionalism in the strata industry with initiatives like the Professional Standards Scheme (PSS), which contributes to ensuring strong consumer outcomes for over 1 million strata residents in NSW.
2. SCA (NSW) membership encompasses a wide range of entities, from large corporate companies to small family businesses to dedicated volunteers. Members possess expertise in all aspects of strata management, service provision, and governance.

For further information about this consultation, please contact Dylan Lin, Policy and Advocacy Officer, SCA (NSW). Dylan.lin@strata.community

¹ Hazel Easthope, Danielle Hynes, Yi Lu and Reg Wade, Australasian Strata Insights 2022, City Futures Research Centre, UNSW, Accessed at https://cityfutures.adu.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf

² Ibid, p.8-13

³ Ibid, p.8.

SCA (NSW)'S RESPONSE TO THE OFF THE PLAN CONTRACTS FOR RESIDENTIAL PROPERTIES DISCUSSION PAPER

Overall Feedback

SCA (NSW) welcomes the NSW Government and The Office of the Registrar General's efforts to engage and seek feedback from stakeholders regarding issues associated with off the plan contracts which have long been a feature of the volatile property market.

SCA (NSW) provided stakeholder feedback to the NSW Government's discussion paper regarding the effectiveness of off the plan contract laws.

In summary, SCA supports improvements proposed in the discussion paper to strengthen the efficiency and effectiveness of off the plan contracts. The SCA feedback has been provided in the same order of themes and respective question(s) as presented in the discussion paper.

Discussion Paper Feedback

Pre-conditions to a sale

Question 1

SCA Response

SCA agrees that additional provisions should be in place for purchasers to recover their deposited money, including an interest component. As an example, purchasers could recover the equivalent bank interest amount when developers pull out.

Limits around the sale

Question 2

SCA Response

SCA believes that it is in the developer's and purchasers best interest for the developer to own the land before being able to sign sales contracts with purchasers. There should be a transition to a new model where laws should:

- Have a statement in the contract advising that the land is not owned
- A clause allowing an exit of the contract by both parties should the land not be purchased within 6 or 12 months.

Limits around the sale

Question 3

SCA Response

SCA believes a six-month prescribed period in which a vendor must become a registered owner of the land is reasonable. In addition, the purchaser could continue to wait a further **six 6-months** as there may be delays caused to the developer. This creates the need for a roll-over clause where the developer should notify the purchaser 2-4 weeks prior to the six-month cut-off period. A consequence of not completing the sale is the payment of interest based on the deposit amount to be paid to the purchaser.

Limits around development consent and lodging plans for registration

Question 4

SCA Response

SCA suggests that once the developer has received development consent, only then should the land be offered for sale.

Limits around development consent and lodging plans for registration

Question 5

SCA Response

Given that a minimum level of development approval should be obtained, SCA believes that there should be a disclosure statement in the off the plan contract which states that the final development approval may vary from the concept approval along with a mechanism for variation.

Limits around development consent and lodging plans for registration

Question 6

SCA Response

SCA agrees with imposing a statutory requirement requiring a developer to make reasonable endeavours to obtain approval given that land is sold before development approval. Alternatively, a lower deposit amount could be considered where approval has not been obtained (e.g., 2.5%) and then the balance of 5% or 10% paid upon development approval being provided.

Limits around development consent and lodging plans for registration

Question 7

SCA Response

SCA proposes that purchasers should be able to exit the contract after a period of 12 months where development consent is not forthcoming to better protect purchasers while also providing greater flexibility for developers.

Additional disclosure obligations and penalties

Question 8

SCA Response

SCA believes additional disclosure methods like WA and VIC models should be imposed. These include:

- Whether the developer is the registered landowner
- Whether there are any agreements to acquire the land
- Additional and transparent information about the development approval process

Additional disclosure obligations and penalties

Question 9

SCA Response

SCA agrees that penalties should apply for a vendor's failure to meet any conditional sale obligations. A failure by a developer to meet conditional sales obligations should provide the purchaser with a right to rescind, a fine worth \$25,000, and/or any interest on the deposit.

Additional sunset events

Question 10

SCA Response

SCA agrees that existing protections in the sunset provisions is sufficient.

Additional sunset events

Question 11

SCA Response

SCA agrees that the definition of 'sunset event' should be expanded to reduce the likelihood of delays in completing contract obligations.

Estimates of owner contributions to common property expenses in strata schemes

Question 12

SCA Response

SCA believes that an off the plan contract disclosure statement should contain information about likely expenses and contributions that a lot owner will be required to make after settlement. It is already a requirement that the developer provide an initial maintenance schedule at the Annual General Meeting (AGM). **Additional expenses should be left for the Owners Corporation (OC) to determine as the budget is the decision of the OC at the first AGM and each AGM thereafter.**

Estimates of owner contributions to common property expenses in strata schemes

Question 13

SCA Response

SCA believes that the definition of necessary information should include expenses related to the initial maintenance schedule and inspections of common property. This includes:

- Estimates of levies, council rates, and water rates
- An additional disclosure statement which discloses that a purchaser in a strata scheme is required to pay mandatory costs (e.g., insurance costs) and optional costs (e.g., strata management fees).

Estimates of owner contributions to common property expenses in strata schemes

Question 14

SCA Response

SCA suggests that developer estimates should be amended and issued to purchasers where there is intent to make significant changes that will likely increase or decrease costs. Such changes include:

- Involvement of embedded networks
- Addition or removal of the intent to have a building manager
- Additional or removal of infrastructure.

Estimates of owner contributions to common property expenses in strata schemes

Question 15

SCA Response

SCA believes that estimates and levies provided to off the plan purchasers as a requirement of section 89 of the Strata Schemes Management Act 2015 could be extended as the NSW Civil and Administrative Tribunal requires the original owner to pay compensation for inadequate estimates and levies set in the initial period. Another remedy is to impose a fine ranging between \$10,000 and \$25,000 to the developer for inadequate estimates.

Disclosure statement – additional matters

Question 16

SCA Response

SCA believes that there is no matter disclosed in the Disclosure Statement that shouldn't be disclosed.

Disclosure statement – additional matters

Question 17

SCA Response

SCA believes that there are currently no other improvements that could be made to the off the plan Disclosure Statement other than the ones already suggested in the discussion paper.

Size of the contract

Question 18

SCA Response

SCA agrees that the 10 business day cooling-off period is adequate because it provides sufficient time for the purchaser to obtain legal advice and to fulfil their obligations with diligence.

Size of the contract

Question 19

SCA Response

SCA believes that a mandatory requirement for electronic off the plan contracts to include a one-page summary is not required because a summary does not contain enough comprehensive information for all parties to fulfil their obligations. However, a one-page summary could be beneficial for regulators to mandate the scope of what could be included in the one-page summary.

Size of the contract

Question 20

SCA Response

SCA believes that there are no other improvements that could be made to off the plan contracts and agrees with all recommended improvements as highlighted in the discussion paper.

For further information about this consultation, please contact Dylan Lin, Policy and Advocacy Officer, SCA (NSW). Dylan.lin@strata.community