strata community association NSW

Strata Schemes Development Act 2015 and the Strata Schemes Management Act 2015 Feedback

Strata Community Association (NSW) Submission
10 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.ada.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf
[2] Ibid, p.8-13
[3] Ibid, p.8.

strata community association NSW

SCA (NSW)'S RESPONSE TO THE DRAFT AMENDMENTS TO THE STRATA SCHEMES DEVELOPMENT ACT 2015 AND THE STRATA MANAGEMENT ACT 2015

Overall Feedback

SCA (NSW) welcomes the NSW Government's efforts to engage and seek feedback from stakeholders regarding issues associated with the implementation of recommendations from the Report of the Statutory Review of the *Strata Schemes Development Act 2015* (SSDA) and the *Strata Schemes Management Act 2015* (SSMA).

SCA (NSW) provided stakeholder feedback to the NSW Government's consultation paper regarding the Statutory Review of the SSDA and SSMA 2015.

Overall, a considerable number of recommendations are supported by SCA (NSW), while some require further amendments to strengthen the efficiency and effectiveness of the SSDA and SSMA 2015. SCA (NSW)'s feedback is provided in the same order in which the issues are raised in the consultation paper.

strata community association® NSW

Proposed Recommendations Feedback

Recommendation 76: Fees charged by Owners Corporation

Recommendation 76 suggested consideration needs to be given to whether the ability of Owners Corporation (OC) to charge fees should be addressed in the legislation – the inference was to curb such an ability.

SCA (NSW), in its response document to the Review, strongly opposed this recommendation.

SCA (NSW) is in favour of Option 3 – Maintain the Status Quo.

The section below details the reasoning behind SCA (NSW)'s position to support Option 3 – Maintain the Status Quo:

- SCA (NSW) is of the view that Options 1 and 2 present an over-regulation of the OC. The existing legislation provides that any by-law can be the subject of review by the Tribunal. The case of *Roden v The Owners – Strata Plan No. 55773 [2021] NSW CATCD 61* is an excellent example of the Tribunal doing its work of reviewing a by-law related to fees. It was alleged that the by-law was repressive and unreasonable. On both accounts, the Tribunal found for the OC, deeming that the nature of the fee and the quantum was reasonable. The decision, in Roden, clearly reveals the need for strata and community schemes to develop by-laws related to fees that they deem are specifically appropriate.

- SCA (NSW) does not want legislation changed to allow the Commission for Fair Trading officers to use their discretion to decide what by-laws are harsh, unconscionable, or oppressive. **The power of the Tribunal, pursuant to section 139 (1) and section 150 of the Act, should be maintained to review by-laws to ensure they are not harsh, unconscionable, or oppressive.**

- The intent of the legislation is that an OC can only charge fees in relation to the inspection of records (section 182) and producing a strata information certificate pursuant to section 184 of the Act. **SCA (NSW) rejects such a declaration as being legally unsound.** Section 9 provides a general responsibility for an OC to manage the scheme and to assist in relation to the management, administration, control, use or enjoyment of the lots or the common property and lots of a strata scheme. There is

strata community association NSW

no restriction on the ability of an OC, through a by-law, to charge fees other than the general requirement that any by-law should not be harsh, unconscionable, or oppressive.

- While Option 1 provides OCs with the most freedom, the current model of operation with non-existent limits on fees and bonds chargeable to individual owners creates contention in matters that are not covered adequately by case or written law. For example, the imposition of a $10,000 bond on an owner for the purpose of ensuring no damage is made to the common property while an owner conducts a major renovation is neither reasonable nor practical. This is not defined as prohibited under the current operation of the Act. Other prohibited fees/bonds could extend to:

  1. Fees relating to the consideration of any application to the OC, excluding proportional costs relating to the convening of a general meeting where it has not been convened by qualified request, such as renovation applications, key applications etc.

  2. Fees relating to the use of common property such as pools, gyms, recreational areas, or parking spaces.

- The application of bonds and charges within applicable by-laws such as lot renovations, moving in/out, charges when residents do not provide access to the lot for scheduled regulatory inspections are an essential deterrent in owners/tenants complying and evidenced by schemes having demonstrated success in scheme residents by:

  - Adhering with conditions of the by-laws
  - Preventing damage to common property areas
  - Eliminating requirements for the OC to pay for damages, and spending time pursuing owners/tenants to pay for repairs
  - Prevention of general dissatisfaction by residents over the appearance of affected CP and damaged assets
  - Reduction of applications having to be submitted to the Tribunal and additional costs to the OC through that process.

- By OCs appointing lawyers to prepare the required by-law including bonds and changes means that by-laws should be lawful, fair, and reasonable in support of the rules.

- Previous strata managers have failed to keep watch on contractor contracts and the contractor has sought to rely on an unfair automatic rollover provision of 5 or 10 years. They have only been successful with insisting the rollover was unfair pursuant to the Australian Consumer Law (ACL) because there was nothing in the SSMA to protect the OC. Strata managers need to be smart because there is always the precarious situation when the lift contractor has a monopoly on only the installer being able to maintain the asset.

Recommendation 108: Common Property and Defects

SCA (NSW) supports recommendation 108 of the Review's Report in expanding the list of items to be included in the initial maintenance schedule to more accurately reflect those items of common property that will be the subject of routine maintenance and renewal. This includes amending Regulation 29 to expand the list of items in the initial maintenance schedule to include: lifts; electric charging stations; solar panels and any other sustainable infrastructure; and any dedicated accessibility infrastructure.

SCA (NSW) suggests that any items that will appear in the capital works 10-year plan should be included in the initial maintenance schedule. It is impossible to be prescriptive as to what items, beyond the obvious inclusions, are to be in the initial maintenance schedule due to the variety of buildings. Requiring any items that will appear in the capital works 10-year plan will be an effective mechanism to capture common property items that may be unique or less common in other strata schemes.

The section below details the reasoning behind SCA (NSW)'s position to support recommendation 108:

- The additional matters proposed for inclusion within initial maintenance schedules should be required by the Act. Not only does this ensure that an OC is given a more accurate understanding of their individual maintenance and future capital expenses from the commencement of the strata scheme, but it also ensures that due notification is given to an OC from the original owner of the services. This provides further clarification to Owners and to the Tribunal as OC often fail to adequately maintain common property, partly due to their lack of knowledge as to the systems and services installed or constructed within the complex.

- The following additional items should be considered for inclusion within the regulations for initial maintenance schedules:
    - Hot water pumps, heaters, boilers, and storage tanks
    - Stormwater or sewerage detention tanks, pumps, and pits
    - Escalators, travelators, chair lifts and disabled access lifts
    - Building maintenance units and cooling towers

- For those schemes within a building management committee structure, initial maintenance schedules for OCs need to correctly identify CP assets that are owned and which are the responsibility of the OC to maintain versus those CP assets that are owned by the OC.

strata community association® NSW

- Not mentioned in the recommendation is a review of the existing timeframe that the developer is required to provide the initial maintenance schedule to the OC. The current requirement of only having to provide at least 48 hours prior to the holding of the FAGM is inadequate and redundant as far as providing proper disclosures to prospective purchasers and being an essential tool in the preparation of accurate capital works fund budget/levy estimates provided to purchasers during the sales process. This could be resolved by:

    1. Requirement for the developers/sales agents to provide the initial maintenance schedule or interim schedule to prospective purchasers during the sales process and prior to purchase. Consequently, this provides transparency and disclosures to prospective purchasers prior to deciding to purchase the lot and essential tools in the preparation of reliable capital works fund budgets/levy estimates.

- NSW could implement a similar requirement to that of QLD where a disclosure statement attaching the initial maintenance schedule containing all CP assets and other management agreements must be provided to prospective purchases so that there is appropriate transparency for purchasers as to what they are buying into, together with budgets and levy estimates provided that can be relied on.

    1. Given that the initial maintenance schedule is a critical element for an OCs compliance with their statutory duty to maintain and repair common property, the initial maintenance schedule should only be prepared by a qualified practitioner say as defined in the Design and Building Practitioners Act to ensure that the initial maintenance schedule is a reliable and trustworthy document and one that becomes the foundation of the first 10 - year capital works fund plan. This requirement will remedy current practices of the initial maintenance schedule being prepared in an ad hoc manner by builders, project managers, strata managers, and other unqualified persons where asset items are missed.

    2. A standard prescribed form per the Management Act would be beneficial in providing consistency and ensuring all required information is captured within the schedule. An OC can then use with confidence the initial maintenance schedule as the foundation in the preparation of its first 10 - year capital works fund plan. In addition to the above, developers should also be required prior to the holding of the FAGM to have transferred and signed

over ownership of all CP utilities. Such utilities include lift phone lines, and plant and equipment registrations with work cover from their name to the OC name. Making this requirement as part of the developer handover to the OC at the time of the FAGM would be beneficial.

Recommendation 109: Common Property and Defects

SCA (NSW) supports recommendation 109 and believes that the character of initial maintenance schedules and the supplying levy estimates are akin to the skill set required in providing capital work plans. It would seem appropriate that the professional experts undertaking independent reviews and initial maintenance schedules should have similar if not the same qualifications as the professional experts preparing capital work plans for schemes.

The section below details the reasoning behind SCA (NSW)'s position to support recommendation 109:

- Many professionals who prepare capital works fund plans may be suitable to provide estimates/budgets on attending to items of a capital nature; however, they may not have the information to know what regular maintenance contract prices may be associated with some equipment, i.e., window cleaning costs.

- Additionally, a large part of levy estimates is understanding the basic administration costs for a scheme. Within the first 1-3 years of a scheme, it is likely that the following items occur of which a quantity surveyor would have little intel on the cost of these items:
  - Review and change of by-laws
  - Installation of security upgrades (CCTV, lock upgrades etc)
  - If it is a large scheme, building management software costs
  - Strata management fees
  - Building management fees
  - Purchase of additional keys, remotes, and other access devices
  - Electricity costs (especially if the scheme is a part of an embedded network)
  - Water consumption costs
  - Stormwater filtration system contract prices.

- The quantity surveyor also would not know the insurance premium costs; therefore, the optimal solution is to leave it as is where the strata managing agent is able to consult with the developer and assist with initial levy estimates based on similarly equipped schemes under strata management.

- Professionals such as strata specialist engineers should be required to review, specify, and estimate initial maintenance schedules to guarantee that an OC is being provided with an accurate and reliable initial maintenance schedule that encompasses all aspects of required capital maintenance and replacement within the scheme. The

reason for this is mostly since strata specialist engineers are the service provider that provide the majority of OC with capital works fund forecasts, they are best placed from a practicality and educational standpoint to provide advice to original owners.

- At a minimum, the company or service provider that provides such service to an original owner should be qualified as below:
    1. Degree qualifications in Civil/Structural Engineering.
    2. Multiple years' experience in post-graduate engineering environment, with previous work completed within a Class 2, 3, 5 and/or 7 environment.

Recommendation 111: Common Property and Defects

The content of a 10-year capital works plan will be different for different strata schemes because of the different nature of the buildings themselves. The consultation paper suggests that section 80 be amended to include several additional items of common property that could be included in a 10-year capital works program. **SCA (NSW) supports recommendation 111 and has no argument in relation to the suggested additional items, but SCA (NSW) would stress that it must include what is described as required under section 80 (4) (d), i.e., "any other matter the OC thinks fit."**

SCA (NSW) suggests that a footnote to this subsection could indicate that this means the OC needs to audit the common property to ensure the items are appropriately considered and none are missed. The list of additional items that are suggested in the consultation paper is helpful in drawing attention to some items that are so familiar that they get overlooked. Given this, an indicative list over a comprehensive list is preferred to reduce emissions.

The section below details the reasoning behind SCA's position to support recommendation 111:

- A prescribed list/form for the completion of capital works fund forecast should be required within the legislation to guarantee that OCs are adequately aware of their capital expenditure for the future. Too often OCs do not engage suitably experienced consultants, which leads them to obtaining reports that do not cover the entirety of the scheme's capital funding requirements. This can lead to liability issues for office bearers undertaking their functions as it could be perceived as not undertaking proper due care and diligence in the exercising of the said functions.

- Furthermore, some OCs take it upon themselves to compile their own capital works fund forecast in a bid to save money and provide free expertise to their OC, which can have the same effects.

- Things such as the below should also be included within this prescribed form/plan:
  - Stormwater or sewerage detention tanks, pumps, and pits
  - Escalators, travelators, chair lifts and disabled access lifts
  - Building maintenance units and cooling towers
  - Waterproofing in bathrooms or common areas
  - Mechanical ventilation systems not exclusively for heating or cooling
  - Paintwork maintenance/replacement
  - Recreational areas and associated services such as a gym, sauna etc.

strata community association® NSW

  - These items' inclusion allows an OC better visibility of their required capital expenditure for the future, aiding them in the collation of their reports and further setting an expectation of future funding requirements.

- Section 80(2) should be amended to state that capital works fund plans must be prepared and tabled as statutory motion on the FAGM as opposed to 12 months later at a subsequent AGM. This will eliminate the current practice of capital works fund levies being proposed at the FAGM that are significantly less than required and large increases having to be implemented 12 months later once reports are obtained and requirements are uncovered.

  1. This also means that appropriate capital works fund levies are being collected from the schemes infancy and aligned with the commencement of the wear and tear of the assets. It should be the responsibility of the developer to have the capital works fund plan prepared and provided to the OC at the time the scheme is registered.

     i. This change should require developers to use suitability qualified persons as defined in the Design and Building Practitioners Act in preparing the plan like requirements for the preparation of the initial maintenance schedule.

     ii. It may also be helpful to assist smaller schemes to have a standard prescribed form that can be used to ensure the preparation of the plan meets its intended purpose.

Recommendation 115: Sustainability Infrastructure

SCA (NSW) does not support a recommendation for a blanket prohibition on by-laws that for any reason block sustainability infrastructure. Currently, sustainability infrastructure by-laws only require a threshold of most owners to vote in favour for them to be adopted by an OC – unlike other types of by-laws that require no more that 25% voting against for them to be adopted. Thus, by-laws that relate to sustainability infrastructure have a relatively low threshold to be adopted.

In relation to a blanket prohibition on by-laws that block sustainability infrastructure due to appearance (e.g., solar panels), SCA (NSW) recognises that a developer and/or an OC may wish to preserve the architectural and landscape standards originally approved for development. It is important that care needs to be taken where strata are part of a community title scheme which has by-laws that specify architectural and landscape standards.

In relation to a blanket prohibition on by-laws that block sustainability infrastructure due to issues other than appearance (e.g., vehicle charging stations and induction cook tops), SCA (NSW) is aware of reasons for such by-laws that go beyond the control of the scheme. In the example of vehicle charging stations and induction cook tops, a strata scheme made such a by-law to protect all lot owners because lot owners who had installed a charging station or induction cook top caused a power failure as the allocation of electrical power to the whole strata had been exceeded. The allocation of electrical power to the scheme will not be improved in the short to medium term and thus a by-law was adopted by the OC that prohibited the installation of these forms of sustainability infrastructure. **Thus, SCA (NSW) does not support a recommendation for a blanket prohibition to by-laws that block sustainability infrastructure for any reason but rather prefers to rely upon such matters being the subject of an application, on the merits, to the Tribunal.**

The section below details the reasoning behind SCA (NSW)'s position to not support recommendation 115.

- Prohibition of by-laws for all forms of sustainability infrastructure should be enforced as sustainable infrastructure is the future of apartment complexes and allows OCs to reduce costs and environmental impacts.

- In addition, there is no evidence to support claims that the installation of sustainable infrastructure has any negative impact on the perceived or actual value of a property.

- Buildings of heritage significance or subsidiary bodies of community, neighbourhood, or precinct associations should be considered exempt from this prohibition. The inclusion of these properties in these types of prohibition could potentially set a framework for judicial law to complete review and potentially overturn registered heritage significance or architectural standards by opening the door to allow some installations to supersede these standards. A caveat could however include that the above bodies (excluding heritage significant properties) could vote unanimously to allow for this infrastructure.

- It is not in the best interests of OCs in introducing a one size fits all approach given the diversity of schemes and differing requirements from one OC to another.

    - These schemes have site specific codes in place to maintain the architectural integrity of those sites. Purchasers buy into certain sites due to their external appearance and will perceive such modifications as diminishing the value of the scheme. Furthermore, these schemes that are subsidiaries of associations and form part of BMCs also have umbrella level codes and requirements that affect the overall development.

strata community association NSW

Recommendation 119: Utilities Contracts

SCA (NSW) supports recommendation 119 and believes that the definition of 'broad' should include all facets of the provision of services to a unit such as those mentioned within the proposal. This removes potential guesswork for buyers into these properties and mitigates any potentially shady sales, without full disclosure of potential lock-ins for a prospective purchaser.

The section below details the reasoning behind SCA (NSW)'s position to support recommendation 119.

- In place of recommending extended terms for the supply of electricity through an embedded network, NSW Government should be undertaking a detailed review of the suitability of embedded networks within residential apartment buildings and reforms implemented to improve fairness, choice and protections for OCs and their residents.

- Many residents are paying higher prices and do not have access to the same level of consumer protections. Embedded network customers need to be able to access the same competitive retail offers and consumer protections (e.g., standard electricity, water, and gas). This isn't occurring due to the anti-completive nature of these networks; thus, consideration needs to be given to whether embedded networks are appropriate for residential apartment buildings where OCs are left with no alternative but to adopt indefinite term agreements with embedded network companies.

strata community association NSW

Recommendation 121: Utilities Contracts

Since the Strata Review, market prices for the supply of energy have fluctuated and increased dramatically. In such circumstances, long term contracts can see OCs being significant winners or losers. That said, the market price has risen so dramatically that there is a widespread call in the community for government intervention. **SCA (NSW) supports recommendation 121 and proposes that any long-term contract to supply energy should be subject to a 'percentage corridor.'** The idea is that if energy prices drop or rise significantly – outside a percentage corridor, OC should have the option of terminating the contract or negotiating with the supplier to reduce the price to fit within that percentage corridor.

The section below details the reasoning behind SCA (NSW)'s position to support recommendation 121.

- The allowance for capital costs to be further spread across an initial period will maintain a margin of profitability for service installers which ensures a free market remains viable within the industry.

- A minimum standards framework should be established to ensure that minute systems are not being installed and signed over for significant periods of time, disadvantaging property owners and promoting profiteering.

    - A relatively balanced period for such infrastructure would be around the 5–10-year mark. This offers installers the ability to set up and provide reasonable sustainable infrastructure while also maintaining the OC's ability to free the government to not renew the contract at the conclusion of the initial contract.

- Termination conditions should be clearly stipulated, ideally with a buy out schedule available within the contract to provide OCs with the information they require to make an informed decision of whether to continue within their contract or to take over the sustainable services themselves.

- Additionally, anticipated but generalised figures on maintenance costs should be included so that OC are better informed to decide whether they should buy out of their initial contracts.

strata community association NSW

Recommendation 122: Utilities Contracts

SCA (NSW) is in favour of recommendation 122 – providing options for introducing a requirement that as part of any sale of strata scheme units, including off the plan sales, there is disclosure of which utility services are provided as an embedded network.

The section below details the reasoning behind SCA (NSW)'s position to support recommendation 122.

- A combination of some of the different options, i.e., amending conveyancing laws and property and stock agent's laws, could provide a more comprehensive solution. Additionally, Options 3 and 4 will require strata managers to disclose embedded network arrangements, which are sometimes exceedingly difficult to understand for strata managers.
    - An amalgamation of all three options would be optimal as it creates a multitude of touch points for notification of whether utility contracts exist within an OC prior to purchase as well as removing all possible ambiguity surrounding its existence.
- It is rare for OC to undertake strata search on brand new properties; however, if they did undertake property searches, they would see the inaugural meeting minutes which would highlight any embedded network contracts entered during the initial period.
- Developers should be required to provide the initial maintenance schedule during the sales process and prior to the sale process occurring.

Recommendation 126: Building Managers

The SCA (NSW) supports the recommendation of the Strata Review that building managers be subject to the same controls as strata managers. SCA (NSW) has previously advocated that building managers need to be the subject of licensing provisions like those applying to strata managers. It is noted that some strata schemes do not engage a strata manager but employ a building manager to perform many of the functions that are required of a strata manager.

The 12-month initial period appointment needs to be recognised as impractical for both strata managers and building managers.

The section below details the reasoning behind SCA (NSW)'s position to support recommendation 126.

- The consultation paper infers that "limiting initial terms for building managers to 12 months is not practical because the building manager may not commit to properly setting up the systems and processes to manage the property if they have no security of appointment beyond 12 months" (p.19). The 12-month initial appointment problem applies equally to strata management companies. Some strata companies will not tender for an initial period appointment for similar reasons. On the other hand, some strata companies get around the provision by holding a general meeting immediately after the AGM to appoint them for 3-years.

- A maximum of 24 months for the period immediately following the first AGM and 5 years for any proceeding period following this. This allows suitable setup of management of the complex while also balancing the governance and free-will of the OC as well as providing building managers the ability to prove their value of services to an OC. Following this initial period, an OC should be provided adequate information and advice from their strata managing agent.

- Declarations of interest and connection, like the requirements of strata committee members to declare pecuniary interests. In addition, the reduction of voting rights of an original owner pertaining to motions to appoint a building management firm. Similar to the reduction of voting rights relating to the appointment/management of building defects within a strata scheme.

    1. A caveat should be noted that a conflict of interest may not necessitate the termination of an appointed building manager, providing any conflict is

disclosed prior to the determination of their appointment at a first AGM. This ensures that companies are not placed in adverse operational positions as an OC identifies a connection with an original owner. This safeguards companies from ill-informed or malicious intending OCs from terminating a building manager on a perceived conflict in the operation of the OC's best interest.

- A greater understanding of the roles of the strata manager vs building manager would be beneficial in NSW Government's consideration of this recommendation. In several cases it is the strata manager coaching the ill-equipped building manager who has no strata or building asset management experience. Concerns mentioned by NSW Government around limiting initial terms for the building manager to 12 months is not practical because the building manager may not commit to properly setting up the systems and processes to manage the property as they have no security of appointment beyond 12 months,

    1. Contract terms need to be balanced for any management service providers to the scheme which should also capture on site concierge, security management and other applicable management service providers.

Recommendation 127: Building Managers

SCA (NSW) supports recommendation 127 and recommends that service providers be limited to a contractual period of 3 years and such contracts be excluded from having any automatic roll-over provision. To make such a universal provision for all will also assist where the contractor has a monopoly on only the installer being able to maintain the asset. This latter concern is also one that needs to be addressed through existing legislation.

The section below details the reasoning behind SCA (NSW)'s position to support recommendation 127.

- It should be recalled that the government went to great lengths in the strata legislation of 2015 to abolish roll-over provisions for one service provider and limit the period of their contracts to 3 years. That service provider is the strata managing agent. Many lift contractors have appointment periods for 5 or 10 years and rely upon the lack of monitoring of the contract provisions to renew their contracts automatically because they have a roll-over provision.

- There are a few significantly under governed areas within strata schemes where very tight notification periods are offered to OCs to terminate or amend a contract in place. These could include lift maintenance agreements or hot water service agreements as an example. OCs should be afforded the same abilities to review and terminate/vary the contractual agreement between all service providers without being locked into a contract that may not be provide expected outcomes. The contract terms offered under the above response for building management contracts offers service providers the same opportunity for set up. In addition, adequate management prior to an OC deciding on whether said service provider should remain engaged by the OC.

- The Act should provide a definition of common property contractors to ensure all areas of contractual agreements for OC are covered under the clarified definition. This includes holding all industries accountable for their service provisions to OC without the ability to challenge these amendments within a court of competent authority. Industries include, but are not limited to, the following:
  - Lift maintenance/upgrade providers
  - Fire safety maintenance/repair providers
  - Plumbing/hot water system maintenance providers
  - Electrical and communication providers

Additional Feedback - Accessibility Infrastructure

Outside the recommendations from the review, the consultation paper raises the issue of whether legislation needs to be changed to make it easier for owners to install accessibility infrastructure in strata schemes. It is suggested that such changes may be appropriate to ensure those with a physical disability and older residents who may require assistance, can access a strata building. Currently, OC has a responsibility to maintain existing common property; however, OC is not required to make additions or changes to accommodate specific owners unless a by-law states otherwise.

The section below details the reasoning behind SCA (NSW)'s position on supporting the need to make it easier for OCs to install accessibility infrastructure.

- The experience of SCA members has been that where the modification to the existing entry to the building are to be paid for by the person with a physical disability or person having difficulty in accessing the building, then OCs generally approve modifications. Wheelchair access and accommodating the use of walking frames have been the majority of those experiencing accessibility issues with strata buildings.

- More research than that provided in the consultation paper is needed to better understand the nature and scope of the problem. For example, there may be a distinction arising for OCs between new and existing owners seeking accessibility infrastructure. Existing owners who develop a physical disability through an accident might be seen differently from would-be new owners seeking accessibility infrastructure. However, the Tribunals already have processes in place to deal with unreasonable refusal and disability discrimination.

- Regarding defects arising from existing and older buildings, attention should be given to the requirements for building designs for new strata schemes. The issue with buildings of less than 3-stories is one area of concern when the aging population is seeking to 'down-size'.

- On multiple occasions, SCA has chaired meetings and managed OCs who have received requests for the implementation of accessibility infrastructure on both common property and within lot property.

  - Many owners who do not benefit from the implementation of this infrastructure perceive the cost of installation as a limiting factor for OCs to carry out these works. In those cases, the cost is also very restricting for an

individual owner to be responsible for and even if they are willing to cover the initial installation costs, there is a further expectation on the OC that the requesting individual also be responsible for the repair, maintenance and/or upgrades of the accessibility infrastructure.

- The Act should be amended to allow for ordinary resolutions to be passed as opposed to special resolutions for the purpose of installing accessibility infrastructure. This will ensure that the current disparity between able bodied owners and those less abled will close and reduce what could be seen as discrimination against those requiring access. The amendment to allow for these simpler voting exercises also removes the potential hesitation of less-abled persons from purchasing within a complex that may lack accessibility infrastructure as this could be more easily implemented where required.

- The Act should be amended to insert additional clauses for the approval of sustainability infrastructure to allow an owner or OC to resolve or expand common property for the purposes of installing accessibility infrastructure by way of an ordinary resolution. The Act should further include non-limiting examples of different types of accessibility infrastructure, such as:
    - Stair lifts
    - Wheelchair platform lifts
    - Hand railings for aiding movement through common property
    - Wheelchair accessible ramps
    - Disabled parking spaces

- Additionally, consideration must be given to banning anti-competitive practices in certain contractors installing company exclusive software preventing alternative service providers to be appointed without significant outlay from the OC.

    1. Management service contracts i.e., strata management, building management, concierge, security – remove initial terms and replace with maximum 3-year terms, no roll over periods with provision for OC to determine greater terms if required by way of special resolution.

    2. Utility contracts including embedded networks- maximum 3-year terms, no rollover periods with provision for OC to determine greater terms if required by way of the special resolution.

3. Common property maintenance contracts including cleaning, landscaping, pool maintenance, etc – maximum 3-year terms, no rollover periods with provision for OC to determine greater terms if required by way of special resolution. This is an important topic given the growing aging population and those with disabilities electing to live in strata schemes. For new developments, council requirements for accessibility versus OCs obligations to approve reasonable requested modifications are in accordance with provisions of the Disability Discrimination Act. An example of an application received to date asked OC to make a modification by installing a ramp to enable the resident to access the lift from ground floor. Advice obtained by the OC stated that they must act on what is reasonable. Considerations include:

   i. How current accessibility was affecting the resident's ability to access their lot?

   ii. What modifications were being requested to common property and were there alternatives?

   iii. Was their request for modification reasonable in accommodating the resident's disability and could the modification benefit other residents?

   iv. Would the proposed modifications impact common property, and would such modifications impact other residents of the scheme?

   v. Can the required modifications to common property be achieved wholly within the common property or may include council property?

   vi. Is the proposed modification deemed an addition to common property?

   vii. Who pays for the modifications?

- Advice received stated that the OC must demonstrate that it has considered how it can best promote access to the building, individual lots, and common property for disabled residents. If there are disabled residents in a strata scheme who cannot access their lots or common property and reasonable modifications can be made to

facilitate easier access, then it is highly likely that OC would be forced to make those modifications under the Anti-Discrimination Act. This is regardless of whether the OC voted against the addition to common property.

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