Sustainability Infrastructure Options for your Scheme

Strata owners corporations (**OC**'s) have an increasingly broad range of options for reducing their impact on the environment and potentially saving or even making some money in the process through the adoption of some form of sustainability infrastructure.

From 1 July 2025, the new strata legislation will require OC's to actively consider sustainability and sustainability infrastructure at their annual general meetings (**AGM**), including by requiring:

- the agenda for their AGM's to include an item to consider environmental sustainability within the scheme, including consideration of the common property annual energy and water consumption and expenditure; and

- the OC to estimate how much money it will need to credit to its capital works fund for actual and expected expenditure to install, replace or repair infrastructure, fixtures and fittings that are part of the common property for the purpose of the sustainable use of the scheme.

Ever improving technology and legislative changes in recent years have increased the range and benefits of such measures, as well as reducing the complexity of implementing them. Adding to this, the new strata legislation will from 1 July 2025 prohibit by-laws which prevent the installation of sustainability infrastructure for the sole purpose of preserving the external appearance of a lot or common property. Note however that this prohibition will not extend to properties which are heritage listed, or which find themselves in a heritage conservation area.

On top of that, various rebates and other forms of assistance in implementing sustainability measures may be available from third parties. For further information in this respect you may refer to Wattblock's blog on Incentives & Rebates from Government for Strata Sustainability in NSW.

So far as options are concerned, possible measures and their benefits include:

- measures adopted to reduce costs which would otherwise be borne by an OC and in turn defray levy contributions, e.g. solar panel technology, energy-efficient lighting, water-saving technology, improved glazing and insulation reducing common property utility costs;

- measures adopted to reduce utility costs incurred by some or all owners and/or occupiers directly, e.g. solar panel technology and efficiency measures benefiting specific lots, rather than common property;

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- measures adopted for the benefit of the community generally, e.g. landscaping works increasing green space or implementing recycling or composting facilities reducing or offsetting the environmental impact of the scheme;

- improvements made to available services or amenity, for the benefit of owners and occupiers generally, e.g. installation of electric vehicle charging stations within visitor car spaces, bicycle racks and landscaping works increasing green space; and/or

- improvements made to available services for the benefit of specific owners, e.g. installation of electric vehicle charging stations within lot owner car spaces.

Implementing these measures will typically involve altering or adding to common property and consequently require the making of a common property rights by-law, which in turn would ordinarily require a special resolution of the OC. Note however that where a resolution would concern sustainability infrastructure, the legislation reduces the requisite threshold for the resolution to that of a simple majority in most cases.

In determining the application of this lower threshold it is beneficial to consider the definitions under the legislation, which are quite broad in scope:

Sustainability Infrastructure *means changes to part of the common property (which includes the installation, removal, modification or replacement of anything on or forming part of that property) for any one or more of the following purposes:*

- *to reduce the consumption of energy or water or to increase the efficiency of its consumption.*
- *to reduce or prevent pollution.*
- *to reduce the amount of waste sent to landfill.*
- *to increase the recovery or recycling of materials.*
- *to reduce greenhouse gas emissions.*
- *to facilitate the use of sustainable forms of transport.*
  Note: For example, installing electric vehicle charging stations.

Sustainability Infrastructure Resolution *means a resolution to do any one or more of the following that is specified to be a sustainability infrastructure resolution:*

- *to finance sustainability infrastructure.*
- *to add to the common property, alter the common property or erect a new structure on common property for the purpose of installing sustainability infrastructure.*
- *to change the by-laws of the strata scheme for the purposes of the installation or use (or both) of sustainability infrastructure*

There are some challenges which may appear in implementing sustainability measures, but these are manageable. The most important which we recommend be considered upfront are:

- Determining the best means of regulating use of the infrastructure and which turn on the nature of the infrastructure, particularly who is providing and using it. In most cases, a common property rights by-law will be required, but there may be scenarios in which this is best addressed as an agreement by the OC to provide amenities and services to lot owners or as an agreement by a third party directly with lot owners.

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- The procedural requirements and matters which an OC is required to consider for the purpose of legislative compliance as well as ensuring valid resolutions and by-laws. Our team would be pleased to assist with these requirements where needed.

- Depending on the infrastructure involved, the outlay of upfront capital costs and ongoing maintenance/operational costs, including utility costs, which can be substantial and which an OC should determine how to recover (where necessary) before implementation is determined. Note that under the legislation an OC can only recover an expenditure by levying contributions on a basis proportionate to unit entitlements within the scheme, subject to limited exceptions such as an agreement to provide amenities and services to lot owners.

Private tax rulings

In particular circumstances an OC may apply to the ATO for a private tax ruling in respect of the costs and/or any funds received from the implementation or use of sustainability infrastructure.

The ATO has previously provided guidance in this respect through a (now expired) private ruling accessible through the following link.

For tax related matters for OC's, our following article may provide some further guidance: Taxation of Strata Schemes - What is TR2015/3?

Implementing sustainability infrastructure

An example of implementation of sustainability infrastructure within a strata scheme in NSW is as follows:

1. An OC considers environmental sustainability in the scheme at their AGM, following which they seeks an assessment and recommendations from a suitably experienced consultant.
2. The OC consider the consultant's input.
3. The OC or say, the strata committee, considers how the costs of implementation can be paid, whether from available funds in the OC's fund, by special levy, by voluntary contribution from lot owners, by agreement with the OC for amenities and services or otherwise.
4. The Strata manager or individual or group of owners, such as the strata committee, arranges necessary documentation for implementation, such as a by-law.
    (a) Our team is often asked by OC's to assist with such documentation, which can be particularly complex and/or bespoke, and would be pleased to assist where needed.
5. The OC holds a general meeting to vote on the proposed implementation, such as through a by-law.
    (a) If implementation is through a by-law, please note that following a satisfactory resolution the by-law will need to be consolidated and registered with NSW Land Registry Services to be effective. Our team is well equipped to assist with this process.
6. Upon approval of the requisite motion and/or registration of the necessary by-law (where applicable) the implementation (e.g. installation works) can commence.

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If you would like advice or assistance in respect of these types of matters, please do not hesitate to contact our team.

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Key takeaways

- From 1 July 2025, owners corporations must consider sustainability measures at their annual general meetings.
- The new legislation prohibits by-laws that prevent sustainability infrastructure installation for aesthetic reasons, except for heritage properties.
- Various sustainability measures can reduce costs and improve community amenities.
- Implementing sustainability measures may require a common property rights by-law and a simple majority resolution.
- Rebates and assistance for sustainability measures may be available from third parties.

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