

Sustainability Infrastructure

Options for your Scheme

Strata owners corporations 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. This will generally involve adoption of some form of sustainability infrastructure. 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. On top of that, various rebates and other forms of assistance may be available from third parties. For more details please check out [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 the 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.
- 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.
- Improvements are to be made to available services for the benefit of specific owners, e.g. installation of electric vehicle charging stations within lot owner car spaces.

This will generally involve alterations or additions to common property and the making of a common property rights by-law, generally requiring a special resolution. However, strata management legislation provisions are such that this will constitute a "sustainability infrastructure resolution" and require only a simple majority in most cases. The relevant definitions are very broad, e.g.:

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.



T: (02) 9929 0226

E: dbannerman@bannermans.com.au

P: PO Box 514

M: 0403 738 996

NORTH SYDNEY NSW 2059

ABN: 61 649 876 437

W: www.bannermans.com.au

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- 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 issues, but these are manageable. The most important are as follows:

- A decision needs to be made as to the best means of regulating use of the infrastructure and that 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.
- There are some 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, but those are relatively straightforward.
- Depending on the infrastructure involved, upfront capital costs and ongoing maintenance/operational costs, including utility costs, can be substantial and an OC will need to determine how these will be recovered. This is where things can get a bit tricky. Generally, an OC can only recover expenditure by levy contributions pro rata to unit entitlements. However, there are exceptions, e.g. the possibility of a common property rights by-law or an agreement to provide amenities and services to lot owners. There is also some case law suggesting the possibility of what amounts to a user pays by-law, if framed carefully and in the right circumstances. There is also the possibility of framing arrangements such that they do not represent expenditure by the OC.

Private tax rulings

An owners corporation may apply to the ATO for a private tax ruling based on their particular circumstances.

A private ruling can only be relied upon by the applicant for the duration specified in the private ruling.

An expired private ruling in respect of a solar feed in tariff is attached to this link. It was available on the ATO website, but due to the fact it has now expired and was only applicable to the applicant it has been removed, please see the [following link](#).

For tax related matters for owners corporation, this link will also be of interest: [Taxation of Strata Schemes - What is TR2015/3?](#)

Need help implementing sustainability infrastructure

The normal flow for implementation and compliance in NSW would be:

1. Assessment and recommendations by a suitably experienced consultant.
2. Deliberations amongst the owners.
3. Identifying those willing to pay be it either an individual, a group of owners or the owners corporation.
4. Strata manager or individual or group of owners arranges documentation, such as, a by-law to be voted upon.
5. Often we would be asked by the owners corporation, individual or a group of owners to draw up suitable documentation to fit there scenario as there is no size fit all due to the legislative requirements, such as, specificity and owners consent to the vote.
6. General meeting held to vote on the proposal and by-law.
7. If approved, the by-law is consolidated and registered at the Land Registration Services NSW. We would normally assist this as well.
8. Then the installation works can begin.

There are other options, but we rarely see them taken up e.g. the owners corporation installs infrastructure and enters into utilities service agreements to sell the energy to the owners akin to an embedded network.

Feel free to reach out to our experienced team of strata lawyers for assistance.

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**Prepared by Bannermans Lawyers
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T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA