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What’s changed? Sustainability in strata schemes

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SNAPSHOT

- Sustainability is now an embedded concept in the *Strata Schemes Management Act 2015*, with a broad and flexible definition of sustainability infrastructure.
- A sustainability purpose need not be dominant, making it easier to frame upgrades as sustainability infrastructure.
- Reduced voting thresholds and new governance requirements have made sustainability upgrades to common property easier to approve.

Sustainability has become a key issue for strata and community title schemes, reflecting changing social expectations and the environmental and economic drivers underpinning recent legislative reform and litigation. Legislative change has been incremental. This article seeks to consolidate that reform and examine how it has shaped current case law.

In the *Strata Schemes Management Act 2015* (NSW) (‘**Act**’), the word ‘sustainability’ is mentioned 24 times. The term did not appear in the Act as originally passed and was introduced through amendments commencing on 24 February 2021 and 1 July 2025. Those amendments have altered the framework for decision making within schemes and informed subsequent case law. Their operation and practical effect are considered below.

The changes and their effects

On 24 February 2021, section 132B was inserted into the Act, providing for sustainability infrastructure resolutions and, in doing so, setting out preconditions for such motions and significantly changing how special resolutions are calculated. The change reduced the threshold of votes in favour needed for a sustainability infrastructure resolution to pass, from 75 per cent to 51 per cent of unit entitlements. Note it is still a special resolution, requiring votes to be calculated on unit entitlements of those present and eligible to vote, rather than by a simple majority of lot owners present and eligible to vote.

The definition of sustainability infrastructure is broad. A sustainability infrastructure resolution is a change to common property, a by-law or a motion to finance sustainability infrastructure. Sustainability infrastructure, in turn, is a change to all or part of a scheme’s common property for one or more of the following purposes:

a. to reduce the consumption of energy or water, or to increase the efficiency of that consumption;

b. to reduce or prevent pollution;

c. to reduce the amount of waste sent to landfill;

d. to increase the recovery or recycling of materials;

e. to reduce greenhouse gas emissions;

f. to facilitate the use of sustainable forms of transport; and/or

g. such other purposes as may be prescribed by the regulations.

A key question is whether it is sufficient for an owners corporation to have one or more of those purposes as a reason, or whether such a purpose must be the dominant purpose for a sustainability infrastructure resolution. The NSW Civil & Administrative Tribunal addressed this question in *Fegent v The Owners – Strata Plan No. 6544* [2025] NSWCATCD 205 (‘***Fegent***’).

Fegent concerned resolutions approving sustainability infrastructure works to replace single-glazed sliding windows said to be at the end of their life with awning windows, together with approvals for double glazing, increased costs and execution of the works contract. The Tribunal found:

- the purpose of the change to the common property was key, rather than the purpose of the majority of lot owners in voting on the change. The relevant question was whether the purpose of the change to the windows was to reduce energy consumption, increase energy efficiency or reduce greenhouse gases (at [22]–[24]);
- the general meeting agenda and its annexures made clear the purpose of the window change was to reduce energy consumption, increase energy efficiency or reduce greenhouse gas emissions (at [29]);
- there was evidence the change would reduce energy consumption, increase energy efficiency or reduce greenhouse gas emissions; and
- while light, ventilation, improved safety and security were also reasons for the change, it was sufficient for one of the purposes to be a sustainability improvement, and it need not be the key or dominant purpose (at [40]).

In *Fegent*, the Tribunal also considered the legislative preconditions for a sustainability infrastructure resolution — which include considering the scope of work to be conducted and its installation, operational costs and maintenance costs — finding that comparative maintenance costs for the types of windows were not required.

The lower voting threshold enabled the owners corporation in *Fegent* to install double-glazed awning-style windows, an outcome that would not otherwise have been possible as more than 25 per cent of unit entitlements were cast against all five motions.

The lower voting threshold, together with the requirement that sustainability improvement need not be the dominant purpose, has been used in other schemes. For example, to render a building to increase energy efficiency and reduce energy consumption (with the additional purposes of improving aesthetics and potentially value), to change landscaping to reduce water consumption and rates, and to install electric vehicle charging stations while upgrading the scheme’s meter board.

The second tranche of legislative changes commenced on 1 July 2025. These amendments require owners corporations to properly consider sustainability in relation to the common property. Section 79(2)(e1) of the Act now requires an owners corporation to obtain an estimate to install, replace or repair common property infrastructure, fixtures and fittings for the sustainable use of the scheme and to consider that estimate. Further, there must be a motion on the agenda of each annual general meeting to consider environmental sustainability including common property energy and water usage and costs (clause 6(f) of Schedule 1).

These changes have resulted in sustainability options and costs being included in capital works fund plans. However, the required agenda motion is often limited to ‘consider the common property annual energy and water consumption and expenditure’ rather than proactively proposing alternatives or broader environmental sustainability initiatives within the scheme. Similarly, the consideration of sustainability in the budget estimates has, in practice, been reduced to a consolidated line item. It is expected that future capital works fund plans will provide both costs for required repairs and the cost of repair with a sustainability purpose.

The July 2025 changes also restrict the ability of an owners corporation to prohibit the installation of sustainability infrastructure on aesthetic grounds where the common property is not heritage listed or in a heritage conservation area (section 139B). Such by-laws had been passed by some schemes. They will now be invalid pursuant to section 136(2).

While not itself a sustainability-focused legislative change, in *Laws v The Owners – Strata Plan 97230* [2022] NSWCATCD 131 (‘***Laws***’), a lot owner whose by-law motion to install solar panels was refused used section 149 of the Act to obtain an order prescribing that by-law be made. The refusal was based on concerns about fire safety, the manufacturing process, disposal of the solar panels, potential impact on future sales, aesthetics and potential insurance premium increases (although no investigation of the impact of solar panels on the scheme’s insurance had been made).

In *Laws*, the Tribunal, in determining whether the refusal was unreasonable, balanced the interests of the refusing owners and the rights of the applicant in their use and enjoyment of their lot. It determined that the refusing lot owners had failed to consider the benefits of the solar panels to the applicant. That failure, together with the failure to consider all relevant material, rendered the refusal unreasonable. The by-law was prescribed with Senior Member Ross noting the 'importance of sustainability infrastructure to the broader community', and that the reduced voting threshold reflects a balance between that importance and the concerns raised by the refusing lot owners 'about the manufacture and disposal of the panels' (at [20]).

What can we take from this?

Where a sustainability purpose can be identified, the legislative changes make it significantly easier to authorise upgrades or changes to common property — a perennial problem in strata schemes. A broad range of works by-laws will also benefit from being capable of being framed as sustainability infrastructure resolutions.

A wide range of by-laws will also be open to challenge. This will occur in two ways. The most obvious are by-laws prohibiting solar panels, awnings, pergolas, water tanks or even blinds on aesthetic grounds, which may be in breach of s 139B where they constitute sustainability infrastructure by meeting one or more of the purposes set out above.

The second is that social changes that have driven legislative change are being identified and considered by decision makers. This is likely to continue and to be raised in proceedings that, at first glance, do not relate to sustainability infrastructure. For instance, in the landmark case of *Cooper v The Owners – Strata Plan No 58068* [2020] NSWCA 250, contemporary community standards were considered relevant (although their effect was limited) in determining whether a by-law restricting the keeping of animals was harsh, unreasonable or oppressive, and therefore invalid under section 150 of the Act (per Basten JA at [28]–[29]). By-laws that restrict a sustainable purpose may be more readily amended and, if not, may be open to challenge as harsh, unconscionable or oppressive, in that they restrict proprietary rights in a manner inconsistent with current community standards favouring sustainability.

The requirement for a sustainability agenda item at each annual general meeting may prompt greater discussion of common property water and energy consumption and cost. However, without a sustainability champion within the scheme, these matters are likely to be noted only, with no alternatives investigated or provided to the owners corporation. The requirement to include costs for the installation, repair, maintenance and replacement of common property infrastructure for the scheme's sustainable use in its annual budget may also provoke change. This is more likely where each item in the capital works plan is costed for both a standard scope of work and a sustainable scope of work. However, this requires substantial work to identify potential sustainability infrastructure initiatives and to include them as separate line items in capital works fund plans and administrative fund budgets.

Allison Benson is principal of Benson Legal.