



**Submission: Residential Buildings Mandatory Disclosure –  
Consultation Regulatory Impact Statement - July 2011**

## Overview

Strata Community Australia (SCA) is the peak industry body for the strata and community titled industry. SCA was formed in July 2011, when six state boards, (formerly the National Community Titles Institute), came together to form one national body under one brand. Our mandate is to promote professional standards and advocate on behalf of our members- the people who live, invest and work in various forms of strata and community title property around Australia. In particular, our role is promoting awareness of specific needs of the sector and ensuring our stakeholder concerns are well represented. The strata industry is often overlooked when developing policy in Australia thus disadvantaging a quarter of all Australian households who do not live in standard detached housing. This submission addresses the unique operational environment of the strata community which will impact the implementation of Residential Buildings Mandatory Disclosure. Of note is the issue of common property whose management lies beyond the influence of any one lot owner and yet whose carbon imprint may, in some cases, be larger than that of all the lots in the building combined. Considering the government objective is promoting environmental sustainability, there is the need to design measures that can be effectively adopted in strata and community titled buildings.

## Contact Details

<b>Name of Organisation:</b>	Strata Community Australia Suite 802/ Level 8 99 Mount Street North Sydney NSW 2060
<b>Name of Author:</b>	<b>Rumbidzai Zhou</b>
<b>Phone Number:</b>	02 89040450
<b>Email:</b>	ruby.zhou@stratacommunity.org.au
<b>Website:</b>	www.stratacommunity.org.au
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<b>Do you want this submission to be treated as confidential?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

### 1.0 Understanding the Strata and Community Title Industry

Strata Title, is a system first introduced into Australia in 1961 for handling the legal ownership of a 'portion' of a building or structure. This system is used to manage apartments, villas and townhouses around the country and related forms of community title are increasingly used in other forms of residential and commercial development. The 2006 Census found 22.5% of households in Australia lived in high density, mainly strata titled dwellings. This proportion is continually rising with units and townhouses accounting for almost 40% of new dwelling approvals in 2010.

The Consultation Regulatory Impact Statement fails to take into account the unique characteristics of the strata industry and these do have significant impact on the implementation of the proposed options for mandatory disclosure, whether regulatory or non regulatory.

In most Strata Schemes<sup>1</sup>, the lot owner owns the inside of the unit but not the main structure of the building. The four main walls, the ceiling, roof and the floor are classified as common property. The internal walls within the lot, for example, the walls between bedrooms, floor coverings such as carpet and fixtures such as baths, toilet bowls and counter tops are all the property of the lot owner. While it is a hard concept to envisage, a lot

owner effectively owns the airspace within their four<sup>i</sup> walls and all other areas (excluding designated parking bays or storage rooms) are classified as common property. Common Property comprises of stairs, driveways, visitor parking, roofs, pathways, gardens, main gates, garbage areas, exterior walls and windows, balconies, lifts, as well as recreational facilities such as gym, sauna, spa, swimming pool, tennis court, meeting room or golf course that are part of the property. The common property is owned by the Owners Corporation<sup>ii</sup> which is made up of all the lot owners as a collective body (May also be referred to as Bodies Corporate) . All owners must contribute to the maintenance of the common areas and facilities through paying a strata levy fee. The owners corporation often employs the services of a strata managing agency who then oversees the day to day function of the owners committee such maintenance of the property including paying building insurances and council rates. These intricate relationships are governed by a set of by-laws<sup>iii</sup> which are unique to all buildings.

## 2.0 Determining Energy Ratings

### 2.1 Individual Lot ratings

The proposed measures used in determining the energy efficiency, particularly those relating to the building shell may prove challenging within strata type settings.

Table 2.1 shows the measures used in the RIS and their probable implementation in Strata communities.

**Table 2.1 Energy Efficiency Measures And Their Feasibility In Strata.<sup>iv</sup>**

( Table B.4: Energy And Water Efficiency Measures Included In The Analysis)

Name Of Measure	Ease of Feasibility In Strata Communities	Processes In Implementation
<b>Building Shell Measures</b>		
Floor Insulation	This should be easy to determine if it relates to floor fittings like carpets. However, installing or replacing some floor fittings will also require an application to be brought before the owners corporation unless a by-law exists.	Requires convening of a general meeting of all lot owners
Ceiling insulation	This should be easy for the assessor to determine via access hatches. Most improvements to ceiling insulation will be restricted to top floor units.	Requires convening of general meeting for all lot owners as the roof space is common property.
Wall insulation	As the owner technically does not own the outer walls of his/her unit, this would prove difficult.	Requires convening of a general meeting, unless applied internally.
Double glazing (installation of windows)	Internal glazing may be installed by the owner, depending on a scheme's by-laws,	External glazing would need agreement of the owners corporation and potentially Council approval.
Installations of thick curtains/ pelmets	This depends on the building by- laws as some may have by-laws regarding window dressing.	Apartment owner's decision, where by-laws do not prohibit /restrict installation.
Installation of external blinds	External Blinds will most likely constitute common property.	Approval from Owners Corporation.
Window tinting	Feasible	Internal- lot owner External-Owners Corporation
<b>Equipment Measures</b>		
Fixed heating/ cooling upgrade or installation	Requires assessment on a building by building basis as many strata schemes have central plant.	Will require Owners Corporation approval unless located within the lot and not affecting common property.
Replacing halogen lights	Feasible	Apartment Owners decision, unless part of common property.
Hot water solar replacement	Requires assessment on a building by building basis as many strata schemes have central plant	Will require Owners Corporation approval unless located within the lot and not affecting common property.
Replacing gas for existing electric hot water system	Difficult	Difficult
installing low flow Shower Rose	Feasible	Apartment owners decision
Installing dual flush toilets	Difficult	Apartment owners decision with approval from Owners Corporation if changing the pan.

## 2.2 Whole Building Energy Ratings

SCA notes that all options for the proposed disclosure scheme rely on individual sellers and lessors obtaining an energy efficiency rating as part of the transaction. Any rating system that does not deal with the property as a whole, and just assesses individual spaces, would be of little value to a prospective purchaser or tenant in terms of providing meaningful comparative information within a Strata Scheme. Consequently, it would also have little value as a market mechanism.

To effectively determine energy rating within a lot, the energy rating for the whole building must be established. The cost of assessing the building including common property will be borne by the owners corporation as a whole. In large apartment buildings, the energy usage for the common areas surpasses the energy used by all the individual lots combined. This is because of energy consuming common amenities like elevators, heated pools, gyms and parking lots. The effectiveness of the policy in reducing greenhouse contributions of large strata buildings is dependent on cohesiveness between lot owners. An individual owner/buyer, though well intentioned, has little control over any energy saving decisions the body makes. For example in NSW the Strata Schemes management Act 1996 requires 75% consensus before any changes to the by-laws or the granting of exclusive use rights can be made. The impact analysis must take into account the opportunity cost involved in energy efficiency decisions for strata titled property owners.

In practice, the owners corporation would be required to maintain and regularly update an energy efficiency rating for the whole building for any such scheme to be effective. Otherwise, the normal sale and lease of property within the building would be contingent on the timely co-operation of the owners' corporation.

## 3.0 Cost Benefit Analysis (Chapter 5)

### 3.1 Lot Owners Opportunity Costs

To obtain a comprehensive report, the lot owner will need to cover part of the cost to obtain common property rating through the strata manager and/or copies of records as well as the assessment for their individual lot. Additional costs occur should they decide to improve the energy rating of their lot. The costs include time spent in organising a general or owners committee meeting. An application to convene a meeting is made through the strata manager for a meeting, either of the executive committee (for major changes in his lot) or a general meeting for changes to common property. Invitees need to receive the agenda 7 full days before the scheduled meeting. An owner must therefore give an average of 2 weeks for preparation and postage. Because the application will produce extra work for the strata manager, the lot owner may have to pay the strata manager extra fees for administering the meeting (organising venue, preparing and posting agenda).

### 3.2 Owners Committees Opportunity Costs

Owners committees do have scheduled meetings throughout the year. An extraordinary meeting can be called to consider an application. These costs are determined by the number of people in a committee, usually up to a maximum of 9 (in NSW) up to 18 (in Vic).

### 3.3 Owners Corporation Opportunity Costs

For changes to property that require a general meeting, other lot owners within the scheme will incur time costs in attending meetings.

### 3.4 Strata Managing Agents Costs

Another cost not included in the analysis is the cost borne by Managing Agents in implementing this Regulation i.e. organising meetings, training of strata managers and arranging for assessors when assessing whole buildings.

Additional administrative costs occur in copying/providing the document upon request – administrative fees may be passed on to the individual lot owner requesting or the Strata Scheme at time of sale and/or lease.

## 4.0 Uptake Rate

The additional time required to get approval for most energy saving measures will heavily impact the uptake rate once the policy is in place. With 1/4 of households living in apartments and the projected increase in apartment ownership over the life span of the Regulation, an updated uptake rate will need to be calculated that will take this into account.

#### 4.1 The Local Council

Individual councils also play a role in determining the changes that can be made to a building, particularly those to do with the external appearance of a building. Energy saving measures such as external blinds or window tinting are subject to the laws of the local municipality. Once again this will impact not only the cost of certain changes but the uptake rate as well.

#### 5.0. Recommendations

- The published RIS did not, in any way, examine the outworking of this Legislation in Strata. We, therefore, recommend that further impact analysis be conducted taking into consideration costs and uptake rates of the Regulation in Strata titled buildings. Because of the different Laws governing each state, we recommend a state by state analysis addressing the specific attributes in the Strata Industry before any legislation is put in place. SCA will be conducting one such study in Queensland. The study will look at the base energy rating of 20 buildings and make recommendations for energy saving changes. These changes will be quantified and thus give owners tangible evidence on the benefits of upgrading their energy efficiency.
- That, once an Impact assessment is done, apartment ratings be determined using two assessments, one for the individual lot and one for the building as a whole. (Owners committees, through their Strata Manger, will need to ensure that whole building rating is available at all times to ensure the smooth leasing or selling of lots.)
- Under the current CRIS, we recommend Option 2- simplified thermal assessment for whole building and Option 4-checklist assessments for individual lots although further analysis must be conducted to determine overall impact of the policy on strata
- That the Apartment assessments include energy saving options within the direct control of the lot owner such as, fixed appliances (stoves, shower heads, dual flush toilets).
- That the presence of by- laws<sup>v</sup> encouraging energy saving options such as clothes lines be included in the energy rating of whole buildings.
- That any penalties for not providing a sustainability declaration, or not completing it correctly, not include making a sales contract invalid.
- That consideration be given to 'off the plan' sales and possible conflict between newly constructed 6star design rated buildings, and subsequent performance assessment of these buildings; as well as the impact of any discrepancy between the two.
- That after the initial Energy Statement is obtained, it should only need to be renewed after a major change in either building structure or equipment, services upgrade or replacement. For new buildings the time frame for obtaining the initial Energy Statement may need to be defined

#### 6.0. Conclusion

The Strata Industry welcomes the implementation of a Regulation that will assist in alleviating the impact of greenhouse gas emissions on our environment. Mandatory disclosure encourages the market to take note of the advantages of energy efficient homes both financially and for environmental sustainability. A market driver such as this will assist Strata Schemes in improving and updating the current and aged building stock

The industry advocates for energy rating measures that are easy to implement and will encourage owners of apartments, villas and townhouses to adopt energy saving schemes.

Strata Community Australia is willing to work with Government to come up with Energy rating measures specific to Strata Communities, as a generic Regulation does not sufficiently address unique sector operational variables.

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<sup>i</sup> In Victoria ownership can vary from building to building. There is no legislation governing the plan and boundary set up. The boundary can be internal, external or the median and is defined within the respective plan. The limits and possibilities for upgrades change considerably.

<sup>ii</sup> May also be known as bodies corporate

<sup>iii</sup> the term 'Rules' can be used when referring to by-laws

<sup>iv</sup> For the purposes of this submission, common laws under each state are used. Differences will come up on implementation of the regulation, hence the need for a state by state analysis.

<sup>v</sup> Individual scheme by-laws may restrict uptake rates but the inclusion of these in strata energy efficiency rating encourages adoption of environmentally friendly options.