



THE INDEPENDENT  
VOICE OF STRATA  
OWNERS

# Owners Corporation Network (ACT) Newsletter

**Issue 8 – July 2023**

Although this Newsletter may contain references to legislation and cases, OCN is a member organisation providing general assistance only. OCN does not purport to provide legal advice. It is the responsibility of the recipient to seek professional advice appropriate to their specific circumstances. OCN will not be liable for any loss suffered in connection with this general assistance.

## **Strata and Apartment ACT Rates and Land Tax**

Home affordability for renters and owner occupiers is severely impacted by rates and land tax in the ACT. Over the past five years or so the Government has seen the benefit to the revenue stream coming from the strong growth in high and medium density homes, and this is the home sector where they have massively increased these rates and taxes by changing the method of calculation – a double positive for Government revenue. These homes should be the most affordable and contribute to solving our home cost crisis. OCN has been advocating on members behalf for several years via petitions to ACT Assembly (resulting in an Inquiry) and more recently in the media and to Federal ACT Senators. Prior to the next ACT Election, we need our members to support OCN in this endeavour if they agree there is an issue.

## **Affordable Home Supply**

OCN accepts that housing choice should be addressed by providing more land for detached housing as well as high and medium density living close to town centres and on transport corridors. These high and medium density homes should be the most

affordable as they use less of the ACT limited resources including land. However, the significant number of building defects and low regard for future maintenance costs has eroded affordability. Liveable housing supply could also be addressed in both public and private housing by better maintenance – too many homes are left damp and unliveable through water ingress. OCN continues to advocate on these building quality issues both at a Federal and ACT level.

## **Insurance**

Most OCs have experienced large rises in insurance premiums over the last few years as insurance companies find the costs of reinsurance are rising sharply in the face of natural disasters worldwide. Many OCs feel like sitting ducks as managers and brokers can find few insurers willing to offer cover and only at sharp premium rises.

One insurance expert, John Trowbridge, has undertaken a broad three phase study of strata insurance including disclosure practices, remuneration of managers, brokers and intermediaries, competition, removal of conflict of interest, affordability and availability of strata insurance.

One obvious take away from the third paper is that the better maintained a strata building is, the easier it is to get offers of insurance and the more competitive the price. So, raising levies and keeping up maintenance is a cost saving in the longer run and maintains owners' sale prices. Find the papers at <https://johnthrowbridge.com.au/strata-insurance/>

### **Certifiers**

The ACT is proceeding slowly with re-establishing independent publicly funded certifiers to undertake certification on complex structures like very large apartment buildings. OCN is participating in stakeholder meetings.

OCN is making submissions that these certifiers should be within the ACT Public Service, not dependent on keeping developers and builders on side in order to get future work – a clear conflict of interest! Rather, they should operate in the long-term interests of the ACT community. Government used to have the necessary skills within the Public Service and it can re-establish this capability if the community demands it.

Certifiers also must be able to issue stop work orders where work is not in compliance with building codes and ACT specific requirements. Issuing orders does generate costs and disruption for developers and builders, but poor workmanship has implications for owners and the wider community in the long run.

The OCN understands the Certifiers Peak Body (representing less than 30 Private Certifiers) wants to maintain the status quo – but the 70,000 odd unit owners need a strong voice to represent their interests.

### **Registration of Developers**

Following submissions from OCN and many other members of the community, a Building Defect Inquiry is currently underway. ACT Government partners Labor and Greens agreed that Developers play the lead role, hold responsibility and have significant

control over the quality and sustainable maintenance of complex multi owner residential buildings. Based on this they agreed to addressing the need for a form of Registration of Developers before the October 2024 election. The OCN has been contributing to these discussions with Government and intends to advocate for a suitable result. These discussions have also included the need to have registered professional architects and engineers involved in projects from start to finish.

### **More amendments to the UT(M)A have passed the Assembly**

Another round of amendments to several pieces of legislation have gone through the ACT Legislative Assembly and will come into effect shortly. Basically, the matters covered are fixing small anomalies or lack of clarity in the previous round of amendments.

A few points to note:

- OCs now must lodge the full set of alternative Rules each time a change is lodged
- If the resolution passing the rules was more than 3 months ago the changes cannot be registered and the resolution must be passed again
- If a Class B complex exempts itself from insurance that must be passed as a rule amendment and registered
- An OC can now sublease a small piece of common property for example to a coffee cart in the foyer of a mixed use residential commercial building
- The default rules are amended to add further examples where permission for the installation of sustainability infrastructure may not be withheld. An example could be installation and ongoing ownership of solar panels by the OC. Unfortunately an innovative approach possibly involving subleasing roof space for longer than 5 years is not allowed. This restriction prevents owners adopting alternative business cases more acceptable to them
- An existing mixed-use building can now opt-in to a Building Management Statement

- The fees and timing of the unit title certificates and registering sale and purchase of units on the corporate register are clarified and
- Which OCs require an annual audit is clarified.

See the Presentation Speech on the OCN ACT website under Alerts for more details.

However, two significant amendments have not been dealt with which we know are causing issues in OCs right now. OCN ACT has lobbied the Government and Opposition on both these issues and is disappointed that the simple path to assist owners has not been taken.

The UT(M)A has a sort of 'fail safe' scheme built into it that allows owners to prevent reduced quorum decisions from being put into effect after 28 days if 50% of owners give the EC a petition asking that some or all of the decisions do not come into effect. How useful that provision is in a large OC with a significant number of tenants is clearly open to debate. However, unless all owners receive the minutes of the reduced quorum meeting within 7 calendar days of the meeting being held, the decisions of the meeting cannot come into effect. It is as if the meeting was never held; the EC was not elected and the budget was not passed. Getting the information to all owners, including those overseas, within 7 calendar days is proving more and more difficult and is inconsistent with other legislation.

OCN lobbied for the time period to be extended to at least 14 calendar days with the support of Strata Community Association (the managers' peak organisation) and noted the provision was now, as a whole, unworkable in most OCs. The Master Builders lobbied for 21 calendar days.

Some OCs have been put into expensive administration arrangements (costing in excess of \$100,000) as the result of minutes not arriving within 7 calendar days. Others have not had a valid general meeting for a decade or more. One EC has been required to prove it was duly elected in an ACAT

matter. We know this provision is a problem but the Assembly chose not to fix it.

The second matter is about access to owners corporation records. The OCN always assumed that owners could apply under S119(4) for access to the records of the owners corporation. The ACAT decision in the Davidson Appeal has significantly restricted the access of owners to the information about the operation and financial probity of the owners corporation of which they are a member and key stakeholder. The information available to prospective purchasers, who may never finalise a purchase, is set out by legislation and regulation and guaranteed. Currently owners can only ask about their own unit, all because of the definition of eligible person in S119(8).

OCN is not advocating that owners should have the right to inspect fellow-owners' private affairs. Should that happen the EC and the manager can intervene to ensure that the release of purely personal information is excluded. For example, if an owner was becoming concerned that other owners were not paying levies, information requests can be diverted away from providing names of late payers into providing information on outstanding amounts in total and action being taken to ensure timely payment. Such information is usually provided to the EC monthly anyway.

OCN with the support of Strata Community Association asked for the definition of eligible person to be amended to allow owners, with skin in the game, to have the same rights as prospective purchasers. Again, the Assembly chose not to fix the issue.

Reform of the Unit Titles (Management) Act and associated Acts has now been handed over to JACS (Justice and Community Safety) but it seems the Government is not expecting active work on consultation and drafting further amendments. Probably the most sensible long-term solution would be a section in the Act dealing with prospective purchasers' access to information for a fee

and another section dealing with owners' access to information at minimal cost.

Maybe that situation can change if owners and their tenants – nearly 50% of ACT voters - make their concerns known to the Attorney General, Shane Rattenbury, on his email, [rattenbury@act.gov.au](mailto:rattenbury@act.gov.au)

### **Environment Related Submissions**

OCN has contributed with several submissions and dialogue to Government over the past few months. They include:

- The requirements for retrofitting Charging Infrastructure for EVs
- Replacing gas energy usage with electricity services. We are tracking and offering to contribute to the Suburb Zero initiative supported by the ANU, Saul Griffith and Senator Pocock
- Improved insulation for rental properties with balanced regard for both tenants and owners
- Retrofitting Solar PV on residential apartments
- Embedded networks for utility service supply

Status and copies of these submissions are on our website [www.ocnact.org.au](http://www.ocnact.org.au)

OCN has been advocating to Government that strata home owners should be given the same level of funding support to contribute to environmental solutions as is given to detached house owners. We need your support for this. On 26<sup>th</sup> June the ACT and Federal Governments have combined to provide some financial support to the strata sector for installation of solar panels. The impact of this is yet to be understood. The case study below shows how a new large OC installed solar.

There are also regulatory challenges looming on this front. For example, in many complexes the only option for charging electric vehicles (EVs) will be to tap into the common power. However, OCs would currently face major obstacles in recovering the costs of power usage from EV owners. Such barriers need to be dismantled if the

ACT Government's sustainability objectives are to be met.

### **Case Study on Solar**

On 26 June, the ACT Government announced a scheme to support solar installations in apartment buildings. Details have yet to be ascertained, but one element is expected to be an interest-free loan. The OCN welcomes the Government's turning its attention to needs in the strata community and will seek to engage the ACT Government on aspects of the scheme.

In the meantime, some high-rise complexes have already forged ahead and organised installation of a solar array to reduce the cost of communal electricity. "The Parade", on the corner of Anzac Parade and Constitution Avenue, is one such complex, having recently commissioned a 65 kW (kilowatt) array.

Funding was provided by way of a loan. Repayments with interest will be made from savings in communal electricity costs over a period not expected to exceed 3 years.

What enabled such a short payback period? Depending on their electricity plan, residential customers (including apartment owners) typically pay rates of 20-25c per kWh (kilowatt hour) plus a network tariff of the order of \$1 per day. In contrast, customers classified as commercial are charged a premium by EVO for every kWh consumed, culminating in costs approaching 50c per kWh during prime business hours.

As would be the case in many other complexes, The Parade's communal electricity use is classified as commercial. The 65 kW solar array will offset a major share of the complex's communal electricity usage during daytime hours at nearly 50c per kWh, with any excess during the high sunshine months being exported to the grid at a lower rate per kWh. Once the loan has been repaid, savings to owners and residents during the balance of the 25-year planning horizon are expected to be around \$800K.

With a solar solution now in place, The Parade is turning its attention to the other two major challenges on the sustainability front – supporting in-house Electric Vehicle Charging and replacing the gas-fired Hot Water System. The business case in these areas is more challenging, and the OCN is advocating on behalf of the strata community for relevant forms of Government assistance to facilitate the transition to an electrified future.

### **Appointment of an Administrator**

If an OC is insolvent or otherwise unable to make decisions and manage its affairs, ACAT can appoint an Administrator to take over “all the functions of the owners’ corporation to the exclusion of the corporation and its executive committee.” But this is not a simple or inexpensive remedy.

A number of OCs have recently been, or still are, “in administration” and finding the process very costly indeed. OCs are considerably better off working out how to manage themselves rather than turning to ACAT to appoint an external professional to do it for them. A recent example is an OC where owners could not come to agreement to address defect rectification and essential maintenance so costly that it could well result in many of them being bankrupt. The cost of Administrators appointed by ACAT (into the \$hundreds of thousands) has significantly added to their financial difficulties.

### **Owners ask Why?**

OCN was recently asked why the owners of a low UP number Class A structure were solely responsible for maintaining planter boxes on the external wall that they could barely reach to cultivate or water. They assumed the usual rule applied and the OC owned the outer wall and hence the planter boxes. The manager was not explaining the requirement - just contending that the owners were responsible.

OCN asked to see a set of the registered plans. For some reason the planter boxes were marked “S 1” against each unit. That

is Subsidiary 1 for each unit. The parking spaces were all marked “S 2”. The owners own the planter boxes just like they own their parking spaces and are responsible for maintaining them. A lot of time and debate could have been saved if the explanation had been given up front.

If you are told you own and must maintain something that seems counter intuitive, check the plans that are part of your purchase documentation and see if the argument stacks up. If you do not understand what you are looking at, go to ACTPLA and ask for help to interpret the plans.

### **Fences in Class Bs**

The owners corporation is responsible for half the cost of a fence between an owner’s title and the common property. Owners are responsible for half the cost of replacing the fence between them and the next-door neighbours. If the neighbour is unleased territory land, the whole cost of replacing the fence falls by default on the unit owner.

A useful document on ACT fences is [https://www.neighboursfromhell.com.au/PDF/act\\_fencing\\_policies.pdf](https://www.neighboursfromhell.com.au/PDF/act_fencing_policies.pdf).

A Class B OC can make a Rule under S24(1)(g) that the OC will take over all or part of the maintenance and replacement of fences. Fences then become a component of the Maintenance Plan and the Sinking Fund Plan. The OC ‘saves up’ to undertake the work as it falls due with potential significant savings to the owners.

### **Whose pipe is it?**

Just because a pipe is under your unit or in your cavity wall, it may not be serving your unit. That seems like a statement of the obvious. But owners are being told they must repair and maintain pipes that are actually common property pipes or only servicing other units.

Easements are not simple. Managers by and large do not understand the concept and the EC, looking at the balance of the Sinking Fund, is often too willing to agree that



proximity is everything. An easement is where one title, be it a unit or the common property, intrudes into, under or over another title. By way of some examples, eaves of a unit may extend over common property but the owner is responsible for maintenance of the roof. Pipes draining surface water from common property may appear on the unit title but the owners corporation is responsible for their maintenance. Pipes go through a cavity wall but if they do not service either of the adjoining units, they are either common property or belong to the unit they serve.

The answer is to require the plumber to report where the pipe comes from and goes to, and for ECs to insist that the OC has the money in Sinking Fund to take full responsibility for maintaining the common property.

### **Precincts**

Owners corporations around the various town centres and in various zones are banding together to pursue common interests in their immediate area and share information. Some committees have established themselves as associations while others are operating informally.

If you are in such an area, ask OCN if there is a precinct committee already in existence and for contact details. These groups often have unique needs they wish to address. Some precincts have a particular need for addressing short term rentals, others need all OCs to address hazardous material issues, while others have particular parking issues and maintenance of significant recreational areas in their precinct. All OCs in every precinct benefit from the work OCN does for the 'whole of ACT'. All OCs benefit from standing united for mutual interests.

### **Member Services**

OCN member services continue to be available to address individual and corporate member questions and these can be addressed to the OCN by the procedures on our website under the "Contact Us" link. This form of assistance to members can often help in addressing simpler problems that the OCN may have addressed before,

sometimes with reference to previous ACAT decisions or in understanding the Unit Titles Legislation. Sometimes it can help better define an issue or question before needing to engage legal assistance. OCN does not provide legal assistance or advice; rather it offers general advice.

### **Appeal for New OCN EC Member**

OCN needs an additional EC Member as a Communications Officer. We need to ensure our members are aware of the work we are doing on their behalf. It is so often too easy to get carried away in doing submissions and significant advocacy and the members remain unaware of the potential benefits we are trying to provide. The Communications Officer would prepare newsletters, the content for our website (we have technical support for the site), provide press releases and assist with use of social media. If you could assist in this please contact Gary or Libby whose details are provided below.

### **The Final Word and Member Request**

OCN ACT is working closely with OCN Australia (OCN(A)) to potentially deliver more benefits to our members and to create a stronger national body representing people owning and living in strata. Prior to the recent NSW Election OCN(A) provided a request 'to address the unique needs of the strata sector' to all potential candidates. OCN(ACT) intends to make a similar request prior to the ACT Legislative Assembly Election in October 2024. To ensure the politicians listen we need the strongest voice possible. We need many more members. If you are an individual member you can help by requesting your OC to join as a corporate member so all your fellow owners benefit. Otherwise pass the request to friends and Strata Managers.

### **Contacts**

Gary Petherbridge at  
[galyn1@bigpond.net.au](mailto:galyn1@bigpond.net.au)  
Phone 0414 627 080

Libby Amiel at  
[treasurer@ocnact.org.au](mailto:treasurer@ocnact.org.au)