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Home Modifications in Strata Properties

Final Report



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Home Modifications in Strata Properties

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Executive Summary

Some residents have experienced difficulties undertaking alterations in strata schemes to improve access and useability, called 'home modifications', in the Leichhardt Council area. This issue was identified by Leichhardt Council through discussions with local residents. Similar concerns have been raised elsewhere in New South Wales (NSW) and Australia.

In order to respond to this problem, Leichhardt Council engaged the City Futures Research Centre at the University of NSW to examine the accessibility needs and challenges of people living in strata-titled properties in the Leichhardt Council area. This report provides a summary of the findings of this research. The research reports on:

- Home modification needs in strata schemes identified by residents, peak body representatives and other professionals.
- Existing policy and legislation that affects the process of undertaking home modifications in strata-titled properties.
- Challenges in undertaking home modifications and opportunities for change.

The findings reported in this document are based upon:

- A desk-based review of existing policy and legislation relating to the process of undertaking home modifications in strata-titled properties.
- Interviews with eight residents in the Leichhardt area with some experience of having home modifications undertaken in strata-titled properties.
- Interviews with ten professionals and peak body representatives working in NSW.

While the focus of the research is on the Leichhardt Council area, many of the findings will be directly relevant to other parts of NSW. The research will also be of interest to other states and territories in Australia, all of which have similar systems of property ownership.

Background

A large and growing proportion of Australia's population live in strata-titled properties. In Sydney (depending on the figures used) 19-25% of the population already live in a strata-titled property. In Leichhardt, one in five residents (approximately 10,000 people) currently live in a strata-titled property.

Approximately 5% of the Australian population, 4% of the population of Sydney and 3% of the population of Leichhardt LGA (2,000 people) need assistance with core activities. This group are under-represented in strata-titled properties in all locations. In Leichhardt, approximately 1% of residents in apartments (100 people) need assistance with core activities. However, many people with a disability will not need assistance with core activities and rates of disability in the community are likely to be much higher. Indeed, the Australian Bureau of Statistics 2009 Survey of Disability and Carers reported that 18.5% of the Australian population have a disability across all disability types¹.

Currently, approximately 10% of the Australian population are aged 70 years or above, and this is projected to grow to nearly 20% by the end of the century. In Leichhardt, approximately 7% of the current population (4,000 people) are aged 70 or above. This group are also under-represented in apartments, with approximately 4% of residents in apartments (400 people) being aged 70 or above. This suggests that apartments are less accessible and/or less desirable for older people and people with a disability.

Both the number and proportion of Australian residents who are older and/or have a disability who are living in strata-titled properties are likely to increase in the near future as a result of:

¹ ABS (2009)

- The ageing of the population.
- Government policies aimed at assisting people to stay in their homes as they age.
- The NSW Government's policy of increasing the numbers of medium and high density properties in existing urban areas in order to house a growing population.

These trends will result in an increase in the demand for home modifications in strata-titled properties.

The accessibility needs of people living in strata dwellings

Common home modifications in strata-titled properties are undertaken in both lot (private) and common (shared) property.

The majority of home modifications are made for older people and are generally relatively small-scale and unproblematic, such as the installation of grab rails. However, some can be difficult to manage and carry out. Difficult home modifications include those inside a person's property that affect common property, large modifications, modifications that are incompatible with the existing building, modifications that cannot be completed until other parts of the property are repaired, and modifications that require changes to Council-controlled land.

Organising home modifications in strata properties

There are two main ways in which a person can organise to have home modifications undertaken in their home. They can:

- Have modifications organised and provided by a government-funded Home Modification and Maintenance Service (HMMS).
- Organise home modifications privately through a private builder.

Whenever a home modification will require a change to common property, the owner needing the modification must make a formal request to their owners corporation to approve the works. In making a decision about whether to allow the modification, and how to manage the modification, the owners corporation needs to take the following into account:

- Is the resident a renter or an owner?
- Will the proposed modification impact on common property?
- Is the proposed modification maintenance or an improvement?
- How will the proposed modification impact on other owners and residents?
- Does the work require Development Approval?

The question of who should pay for a home modification can be a difficult one. When work is being undertaken on lot (private) property, the owner of that property must pay. However, when work is being undertaken on common (shared) property, as the common property is owned and used by all owners, these modifications should be paid by the owners corporation. However, there are some exceptions, such as when an owner wants to install a modification on common property that only benefits their property (e.g. a ramp to the front door of their unit). In these cases an exclusive use by-law can be written to allow for that owner to take responsibility for that modification.

Both legislation and case law are unclear on the legal responsibility to pay for a modification to the common property. In cases where agreement hasn't been reached by the owners corporation to approve a modification, it has been relatively common for individual owners to offer to pay (or partly pay) for a modification to common property in order to get approval. There is the potential to mount a legal case to require the owners corporation to pay, but such a case has not yet been tried, so the outcome is uncertain.

There are a range of mechanisms for organising payment for a modification to common property in a strata scheme. These are outlined in the report.

The time a home modification takes to be completed depends largely on the following:

- How long the landlord and/or owners corporation and/or Council take to give permission for the modification.
- Whether the modification is being undertaken through a HMMS or privately.
- The availability of skilled tradespeople and materials.
- How long it takes to organise finances for the works.

Difficulties in organising home modifications

In many schemes, getting agreement from the owners corporation for home modifications to common property is unproblematic. In these schemes, owners see the benefits of modifications in terms of safety and access. However, this situation is not universal. Difficulties faced by residents and owners corporations include:

- Understanding what is lot and common property.
- Concerns about the appearance of the modification.
- The cost of the modification and who should pay.
- The influence of existing social relationships on the decision-making process.

Service providers can also face difficulties in undertaking home modifications in strata schemes. These include:

- Finding parking for work vehicles.
- Storing tools and equipment on-site.
- Time limitations on when they can undertake building works.
- Shared services within the building (e.g. having to shut down water to the whole building to work on one unit).
- Accessing strata plans.
- Gaining permission to use the common property (e.g. to have a skip on a driveway).
- Having to deal with multiple owners from the same building, rather than a single contact person.
- In the case of HMMS providers, compliance with the Disability (Access to Premises – Buildings) Standards 2010 and AS1428 Design for Access and Mobility Standards in existing buildings.

Dealing with difficult cases

In those cases where an agreement hasn't been reached within the strata scheme to allow a home modification, the next steps are to consider whether the owners corporation has wrongfully denied the works. If this is the case, the owners corporation can be required (by a tribunal or a court) to approve the works.

Owners corporations have duties under State and Federal discrimination laws. Failing to fulfil these duties and make or allow reasonable adjustments to common property could be considered discriminatory. A case of discrimination can also be made on the basis of harassment and victimisation.

In cases where an owner feels that they have been wrongly treated, they can take the matter to the Consumer Trader and Tenancy Tribunal², the Anti-Discrimination Board or the Australian Human Rights Commission.

² The Consumer Trader and Tenancy Tribunal will be replaced by the NSW Civil and Administrative Tribunal in January 2014.

Opportunities for change

Changes to existing policies, processes and laws impacting upon the process of having home modifications undertaken in strata properties are needed to address the challenges that can be faced by people organising the home modifications they need to allow them to remain living safely and comfortably in their homes. Changes should be considered in two areas: improving the design, construction and certification processes for new buildings and; improving information and education provision, strata legislation and Council practices in relation to existing buildings.

There is a need for greater emphasis on accessibility in all new strata buildings. This includes:

- Better consideration of the impact of new design and construction methods on any subsequent attempts to install home modifications in properties, with design standards adjusted accordingly.
- A high standard of property certification, facilitated through improved further training and support for building certifiers to increase their awareness of the importance of accessibility in new strata properties, combined with audits of building certifiers.
- Education of strata property purchasers regarding the accessibility of their properties, facilitated by the promotion of existing property ratings schemes for accessibility.
- Strengthening councils' practices to ensure that new strata developments are reviewed to enhance access; the creation of development controls and design standards for strata properties to enhance the consideration of access at the design and DA stage; and the use of standard conditions of consent for new strata developments that require that checks are made at later stages of a development (Construction Certificate and Occupation Certificate stages) to ensure compliance with BCA and AS standards relating to access.
- Providing more adaptable housing within local government areas that is affordable to residents who currently rent or own property in the area.

There are also opportunities for improvements in the areas of education, legislation and Council practices in regards to improving the accessibility of existing strata properties. These include:

- Providing additional information and training for strata owners and residents, as well as strata managers, occupational therapists, and other service providers on their rights and responsibilities and on the processes involved with having home modifications undertaken in strata properties. This includes raising awareness of the excellent resources that already exist and providing support to advocacy organisations to distribute this information and advice.
- The establishment of a single contact point for older people and people with a disability to access all of their support needs, not only home modifications.
- Amendments to strata title legislation to clarify the responsibilities of owners corporations in regards to disability discrimination, and to speed up approval times for modifications to common property.
- Council allocating Development Applications involving home modifications to Council officers who have a specialist understanding of the issues.
- Council reviewing, in partnership with other relevant authorities, the process for strata residents to apply to make changes to Council controlled land such as footpaths for the purposes of installing a modification such as a ramp or grab rail.
- Examining the feasibility of a change in law to enable councils to require that the common areas of strata properties be brought up to current accessibility standards, where feasible without demolition and rebuilding, even when a Development Application has not been lodged with the local council.

It is important to address these concerns now, as the population of people living in strata schemes who will require home modifications will increase significantly in the future as more strata properties are built, and as the population continues to age.

1 Introduction

Some residents have experienced difficulties undertaking alterations in strata schemes to improve access and useability, called 'home modifications', in the Leichhardt Council area. This issue was identified by Leichhardt Council through discussions with local residents. This is a particular concern for older residents and residents with a disability.

This issue was also recently raised in NSW Fair Trading's discussion paper regarding the current legislative review of strata schemes³. A report about the online consultation that informed the discussion paper states that "several people wrote of the difficulties they had experienced when trying to improve facilities for disabled people in their strata scheme."⁴ The issue has also received some media coverage in different jurisdictions around Australia⁵.

In order to respond to this problem, Leichhardt Council engaged the City Futures Research Centre at the University of NSW to examine the accessibility needs and challenges of people living in strata-titled properties in the Leichhardt Council area. This report provides a summary of the findings of this research.

The research reports on:

- Home modification needs in strata schemes identified by residents and by peak body representatives.
- Existing policy and legislation that affects the process of undertaking home modifications in strata-titled properties.
- Challenges in undertaking home modifications and opportunities for change.

The research considers home modifications to both lot (private) and common (shared) property in strata schemes. This includes townhouse and apartment properties, and properties of varying ages.

The findings reported in this document are based upon:

- A desk-based review of existing policy and legislation relating to the process of undertaking home modifications in strata-titled properties.
- Interviews with eight residents in the Leichhardt area with some experience of having home modifications undertaken in strata-titled properties.
- Interviews with ten professionals and peak body representatives working in NSW.

The outcomes of this research will inform Leichhardt Council's *Ageing Strategy* and *Disability Discrimination Act Action Plan*.

While the focus of the research is on the Leichhardt Council area, many of the findings will be directly relevant to other parts of New South Wales (NSW). The research will also be of interest to other states and territories in Australia, all of which have similar systems of property ownership (strata- and community-title).

The following people were interviewed to inform the contents of this report:

- Toni Adams, Toni Adams Associates
- Catherine Bridge, Director, Home Modification Information Clearinghouse, University of NSW
- David Ferguson, President, Strata Community Australia (NSW)
- Annette Hanly, Divisional Manager, Occupational Therapy Services, SCOPE Access
- Poppy Lazarus, Manager, South East Sydney Home Maintenance and Modifications Service
- Chris McCutcheon, Coordinator, Leichhardt Home Maintenance and Modification Service
- Bryan Molan, Manager, Keystone Community Solutions and Vice Chair, NSW HMMS State Council
- Linda Ridley, Client Services Manager – Illawarra, SCOPE Access

³ NSW Government (2012)

⁴ Global Access Partners (2012: 82)

⁵ See for example Coslovich (2005) in *The Age*, and Richardson (2013) on Network 7's *Today Tonight*.

- Michael Teys, Principal, Teys Lawyers
- Brian Wood, Vice President, Owners Corporation Network of Australia
- Eight residents of the Leichhardt Council area who participated anonymously in this research

Always get independent legal advice

While every effort has been made to ensure this report is accurate, errors and omissions are always possible. The particular details of individual cases will influence the effect of the laws and regulations described, which could also have changed since the time of writing. The report is not intended to be a substitute for legal advice or guidance. The authors accept no liability for loss or damage arising from actions made based on the general information provided.

2 Background

This section provides background information about strata schemes, age and disability in Leichhardt Local Government Area (LGA), with comparisons to the rest of Sydney, NSW and Australia. It concludes by outlining important policies that will influence the demand for home modification services in strata schemes and affect how these services are provided.

2.1 Strata schemes

Figure 1: The estimated number of people living in strata apartments in 2011

1,990,000	across Australia...	...or about	9%	of the population
944,000	across NSW...	...or about	14%	of the population
828,000	across Sydney...	...or about	19%	of the population
10,000	across Leichhardt LGA...	...or about	18%	of the population

Source: calculated from 2011 Census of Population and Housing (see Appendix 1)

By measuring the number of people counted in flats, units and apartments in the 2011 census, but excluding those renting from a state housing authority, community housing provider, church group or cooperative (properties that tend not to be strata-subdivided buildings), we get an estimate for the number of people living in strata schemes. These figures will underestimate the total number of strata schemes because they do not include other dwelling types (particularly townhouse complexes) that can also be strata-titled. More detailed analysis⁶ suggests that the strata-scheme population across Australia – in nearly 2 million strata-title lots – is closer to 3 million people (cf the nearly 2 million in Figure 1), and equates to almost 25% of Greater Sydney's population (cf 19% in Figure 1).

In Leichhardt LGA, however, the estimate based on census counts of flats, units and apartments is close to that based on the actual count of strata schemes. In July 2011, there were 561 residential and mixed use strata schemes in Leichhardt LGA with 6,395 individual lots. Using an average unit occupancy rate of 1.6 people per unit, this gives an estimate for the strata-scheme population in Leichhardt LGA of 10,232 people (cf the 10,000 in Figure 1). As shown in Figure 2, this means nearly one third of dwellings in Leichhardt LGA are strata-titled, housing one fifth of the population.

Figure 2: The extent of strata living in Leichhardt LGA



⁶ Easthope et al. (2012)

2.2 Rates of disability

By counting the number of people identifying as 'needing assistance with core activities' in the 2011 census, we can estimate the number of people with a disability in Australia: about 5% of the population. However, many people with a disability will not need assistance with core activities and rates of disability in the community are likely to be much higher. Indeed, the Australian Bureau of Statistics 2009 survey of Disability and Carers reported that 18.5% of the Australian population have a disability across all disability types⁷.

Figure 3: The estimated number of people with a disability in 2011

999,000	across Australia...	...or about	5%	of the population
338,000	across NSW...	...or about	5%	of the population
193,000	across Sydney...	...or about	4%	of the population
2,000	across Leichhardt LGA...	...or about	3%	of the population

Source: calculated from 2011 Census of Population and Housing (see Appendix 1)

In Leichhardt LGA, the proportion is slightly lower than the Australian average at around 3% of the population. This is consistent with other research⁸ that shows that higher proportions of populations in low-cost areas (particularly outer suburban and rural-regional areas) have a disability. This trend is attributed to the more limited financial opportunities, and additional costs of living, for people with a disability and their carers.

higher density would offer significant advantages. Apartments would make inner city locations more accessible, enabling better access to social infrastructure

DisabilityCare and Property⁹

This has implications for areas experiencing high increases in house prices, and broader trends of gentrification, including Leichhardt LGA. People with a disability are more likely to be susceptible to such increases in house prices (and subsequent increases in rent). The DisabilityCare report¹⁰ also highlights that areas of higher housing costs are also often well located, with better access care and support and to neighbourhood centres and amenities. In other words, they are the very areas where people with a disability will be more able to maintain independence.

Figure 4: The estimated number of people with a disability living in strata apartments in 2011

55,000	across Australia...	...or about	6%	of all people with a disability
		...or about	3%	of all people living in strata apartments
24,000	across NSW...	...or about	7%	of all people with a disability
		...or about	3%	of all people living in strata apartments
18,000	across Sydney...	...or about	9%	of all people with a disability
		...or about	2%	of all people living in strata apartments
100	across Leichhardt LGA...	...or about	7%	of all people with a disability
		...or about	1%	of all people living in strata apartments

Source: calculated from 2011 Census of Population and Housing (see Appendix 1)

By comparing the population identified as being in apartments with those identified as having a disability, we can make some additional observations. Notably, across all scales the proportion of the apartment population with a disability is smaller than the comparable proportion of the overall population with a

⁷ ABS (2009)

⁸ Urbis (2011)

⁹ Urbis (2011:7)

¹⁰ Urbis (2011)

disability (as shown in Figure 3). This suggests that apartments are less accessible and/or less desirable to people with a disability.

2.3 Ageing population

Figure 5: The number of people aged 70 and above in 2011

2,106,000	across Australia...	...or about	10%	of the population
714,000	across NSW...	...or about	10%	of the population
396,000	across Sydney...	...or about	9%	of the population
4,000	across Leichhardt LGA...	...or about	7%	of the population

Source: calculated from 2011 Census of Population and Housing (see Appendix 1)

The 2011 census data also provides a count of people aged 70 years and above. Overall it is around 10% of the Australian population, although this is projected to grow to nearly 20% of the population by the end of the century (Figure 6). In Leichhardt LGA the population is slightly younger, with only 7% of the population aged 70 or over.

Figure 6: Projected distribution of age groups in Australian population, highlighting 70yo+

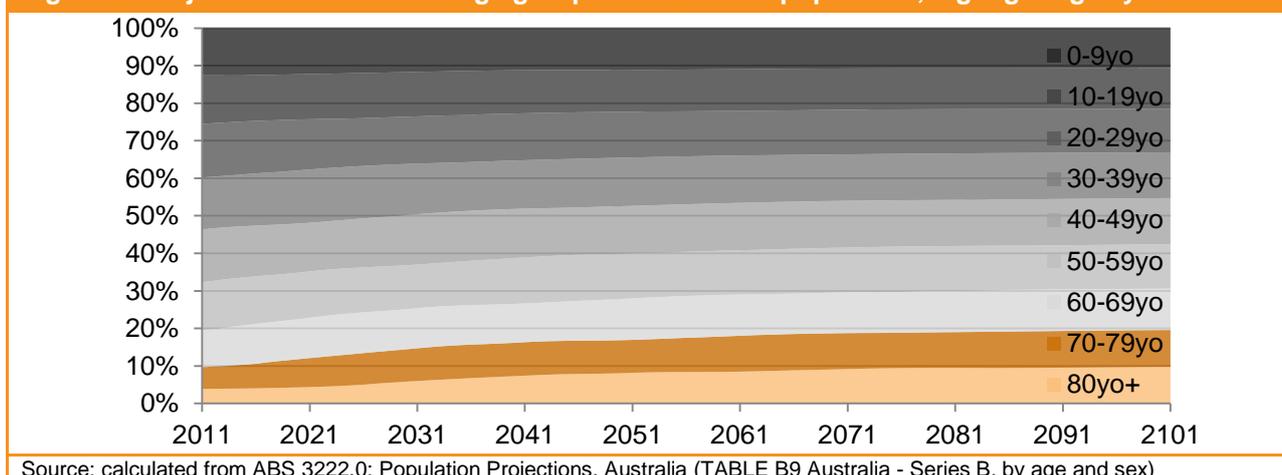
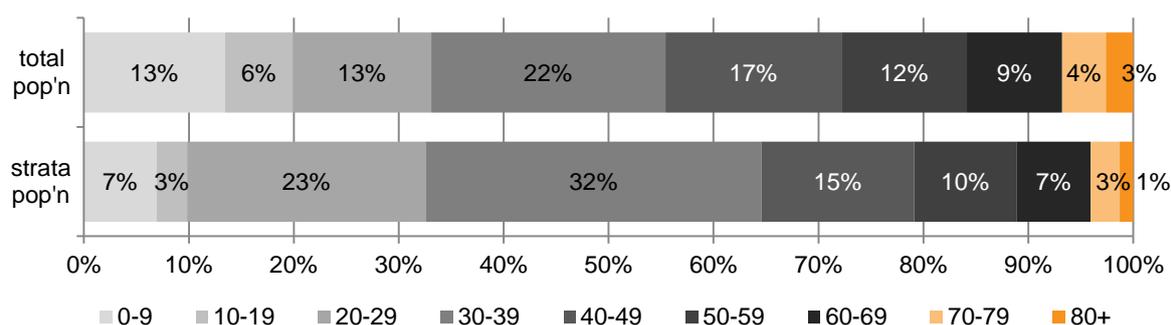


Figure 7: The estimated number of people aged 70 and above living in strata apartments in 2011

173,000	across Australia...	...or about	8%	of all people aged 70 and above
		...or about	9%	of all people living in strata apartments
71,000	across NSW...	...or about	10%	of all people aged 70 and above
		...or about	8%	of all people living in strata apartments
53,000	across Sydney...	...or about	13%	of all people aged 70 and above
		...or about	6%	of all people living in strata apartments
400	across Leichhardt LGA...	...or about	11%	of all people aged 70 and above
		...or about	4%	of all people living in strata apartments

Source: calculated from 2011 Census of Population and Housing (see Appendix 1)

We can also compare the number of people aged 70 and above with those living in apartments (Figure 7). The 2011 census data also allows us to compare the age profiles of the entire population Leichhardt LGA and the population living in strata apartments (Figure 8). It shows that 20-39 year olds are over-represented in the strata population and the other age groups are under-represented, including those 70 and above, which represents 7% and 4% of the respective populations. Despite this underrepresentation, it suggests about 400 people, or 11% of those aged over 70 in Leichhardt LGA are living in an apartment.

Figure 8: Age distribution of Leichhardt LGA's total population and apartment population, highlighting 70yo+

Source: calculated from 2011 Census of Population and Housing (see Appendix 1)

2.4 Policy

There are many government policies that have a bearing on the provision of home modification services in strata schemes. These include policies influencing metropolitan development, aged care and disability care.

2.4.1 Metropolitan Development

In response to concerns about the problems associated with urban sprawl and rising infrastructure costs, successive NSW state governments have promoted the concept of urban consolidation in their metropolitan strategies for Sydney since the 1988 *Sydney into its Third Century* strategy¹¹. Sydney is not alone in this regard; urban consolidation has also been promoted in the metropolitan strategies for Melbourne, Brisbane, Perth and Adelaide¹² and cities worldwide¹³.

Urban consolidation involves encouraging the development of new dwellings within the existing urban area, rather than continued expansion on the urban fringes. This is achieved by providing more medium and high density properties (townhouses and apartments). The vast majority of these apartments, as well as many townhouses, are strata-titled. Currently, the NSW Metropolitan Plan has a target of 70% of the 770,000 new dwellings built by 2036 (or 539,000 dwellings) to be in existing urban areas¹⁴, a large proportion of which are likely to be strata-titled, medium- and high-density properties.

...housing and job growth will be in and around the many centres within the Metropolitan Urban Area. This will deliver more and different types of housing across the city...

2013 Draft Sydney Metropolitan Strategy¹⁵

The implication of this policy direction is that an increasing proportion of Sydney's population will live in strata-titled dwellings in the future. Combined with the ageing of the population, this means that many more older people will be living in strata-titled developments in the future, increasing the demand for accessible strata-titled properties and for home modifications in strata-titled properties.

Both the number and proportion of Leichhardt residents living in strata-titled properties are likely to increase. The Central Subregion identified in the 2013 Draft Metropolitan Strategy¹⁶, of which Leichhardt is a part, will see significant growth of 26% over the next twenty years (Figure 9).

¹¹ Searle (2004: 378)

¹² Victoria Government (2008); Queensland Government (2009); Western Australia Government (2010); South Australia Government (2010)

¹³ OECD (2012)

¹⁴ NSW Government (2010: 14)

¹⁵ NSW Government (2013: 7)

Figure 9: Anticipated housing growth in Leichhardt LGA



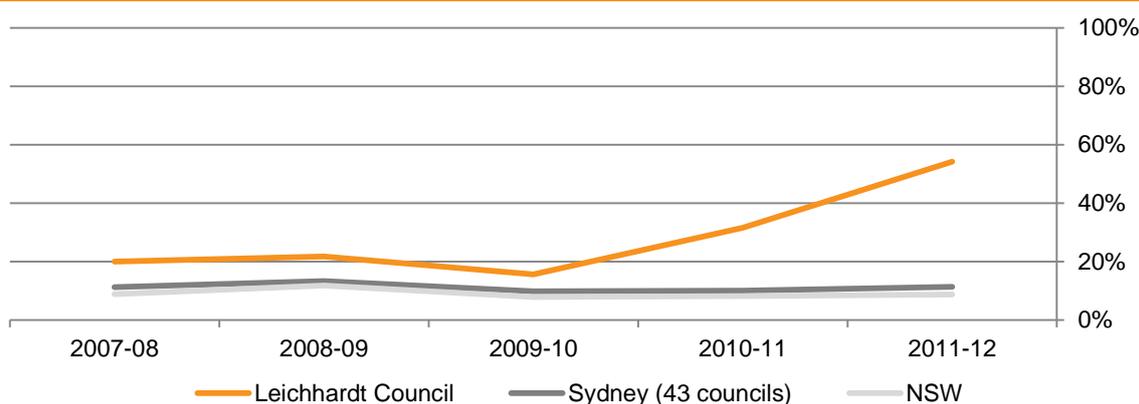
For every 20 dwellings already in the Central Subregion (which includes Leichhardt LGA), there will be:
3 more by 2021 (15% growth), and
5 more by 2031 (26% growth).

Source: Calculated from NSW Government (2013: 83)

By examining the types of housing developments in Leichhardt LGA, it also suggests that a significant proportion of that growth will be in strata schemes. This can be seen in NSW Department of Planning and Infrastructure’s ‘local development performance’ data, which details building applications (both Development Applications and Complying Development Certificates) determined in the last five financial years. Figure 10 shows an increasing proportion of building applications for housing in Leichhardt LGA are for developments likely to¹⁷ be strata-titled.

The numbers for Leichhardt LGA are small, so are likely to fluctuate and should be read with caution. What these figures show is that in Leichhardt LGA the number of developments not likely to be subject to strata title has remained steady (and even dipped a little) while developments likely to be subject to strata title have increased, particularly in the last two years. Given that such developments include more dwellings per application when compared with applications for single dwellings and dual occupancies, the proportion of actual households living in strata schemes will be higher again.

Figure 10: Proportion of building applications with housing likely to be subject to a strata scheme



Data table, shown as: no. likely to | no. not likely to (% likely to)

	2007-08	2008-09	2009-10	2010-11	2011-12
Leichhardt Council	11 44 (20%)	10 36 (22%)	5 27 (16%)	18 39 (32%)	26 22 (54%)
Sydney (43 councils)	951 7,470 (11%)	1,063 6,941 (13%)	922 8,403 (10%)	1,053 9,472 (10%)	1,201 9,316 (11%)
NSW	1,700 17,582 (9%)	2,116 15,769 (12%)	1,627 18,953 (8%)	1,694 19,080 (8%)	1,823 18,990 (9%)

Source: Calculated from DPI local development performance summary data (www.planning.nsw.gov.au/performance-monitoring)

2.4.2 Aged Care

Australian aged care policy has been strongly influenced by the notion of ‘ageing in place’, a term used in its broadest sense to refer to “the capacity for older people to live in their own home for as long as possible, without having to make involuntary moves”¹⁸.

¹⁶ NSW Government (2013: 83)

¹⁷ ‘Likely to’ comprises multi-unit, senior living and mixed-use developments; ‘unlikely to’ comprises single dwellings and second occupancies.

¹⁸ Jones et al. (2008: 27)

This is reflected in the introduction of a new aged care reform package in April 2012 called 'Living Longer Living Better'. Under this package, the Commonwealth Government committed \$955.4 million over 5 years "to assist older people to stay in their home through home care packages and a home support program"¹⁹. This program will not come into effect until 2015 but, when it does, it will bring together support currently provided by the Home and Community Care (HACC) program and the National Respite for Carers Program.

The HACC program, which is jointly funded by State and Federal governments, currently funds Home Modification and Maintenance Services like the one run by Leichhardt Council. This policy direction indicates that people will be encouraged to remain in their properties (including strata-titled properties) as they age, further increasing demand for home modification services in strata schemes.

2.4.3 Disability Care

The Commonwealth Government has announced that it will be introducing a new National Disability Insurance Scheme (NDIS), under which people will receive 'person centred disability supports' to provide people with permanent and significant disabilities with individualised care. The scheme will be rolled out gradually, and all NSW residents are expected to be covered by July 2018²⁰.

The introduction of the NDIS will have implications for the funding of home modifications services. Currently, home modifications services are block funded – that is, they are given a lump sum of money and asked to assist as many clients as they can with that funding. The introduction of NDIS with its focus on person-centred supports is likely to have an impact on this funding arrangement, with funding instead tied to individual clients.

¹⁹ Australian Government (2013b)

²⁰ Australian Government (2013a)

3 The accessibility needs of people living in strata dwellings

This section provides information on common home modifications required by people living in strata schemes, and discusses some of the most difficult home modifications in this context.

3.1 Common home modifications

Common home modifications undertaken in strata-titled properties are undertaken both in lot (private) and common (shared) property.

Inside the lot, common modifications include:

- Wall mounted grab rails.
- Bathroom modifications including adding grab rails, installing hand-held shower-heads, replacing shower doors with curtains, installing wedge ramps to allow access into the bathroom where tiling creates a step up, and removing the bath or the shower if it has a hob that a person has to step over to make a walk-in shower.
- Kitchen modifications including lowering benches.
- Handrails to assist with stairs inside the property.

In the common property, common modifications include:

- Installation of handrails next to stairs, including replacing existing unsuitable rails, adding a second handrail, or installing handrails where there are none.
- Wedge ramps to allow access from a property to balconies or into courtyards (this can require changes to both lot and common property).
- Installation of ramps and associated handrails.
- Installation of stair lifts or platform lifts.
- Changing floor materials (e.g. replacing slippery polished materials).
- Improving lighting.

3.2 Difficult home modifications

While the majority of home modifications are made for older people and are generally relatively small in scale and unproblematic, such as the installation of grab rails, other modifications can be more difficult to manage and carry out.

3.2.1 Modifications to common property

Some home modifications that are needed within a person's property will require that changes be made to the common property. An example is installing grab rails on walls that are common property and might have water pipes or electrical wiring running through them. In such cases such, owners corporations will require detailed information about what works are proposed and some guarantee that the works will not damage the common property.

Because of the difficulty of organising home modifications within a property that will affect the common property, it is advisable to use the existing fittings, inlets and outlets as much as possible, for example in bathroom or kitchen re-fits, to minimise any changes to the common property. This, however, is not always possible. An example is in bathrooms that have hobs that a person must step over to get into the shower. Many home modification services will not agree to simply file back the existing hobs in these cases, as cutting into the hob can lead to damage to the waterproofing in the bathroom, which can cause damage to the common property, and to other private property. This means that if a person needs a hob filed back, home modification services will often re-fit the entire bathroom. Some private builders will

agree to file back a hob without re-fitting the bathroom but, in these cases, the Owners Corporation will need to be convinced that no damage will be done to the waterproofing before allowing this work to proceed.

Some of the most problematic home modifications are those that need to be made to access points to a building (e.g. the front entrance to a building). This is because these areas are on common property, and used by multiple people. There is also often limited space with which to work and, where modifications are to be built to Australian disability standards (see page 25), it can be difficult to include a modification (e.g. a ramp) that complies with these standards within a limited space. Where modifications will have an impact on all owners in a scheme, such as in an entryway, this often means that there are concerns raised by multiple owners, which need to be negotiated. The larger the scheme, the more people will need to be consulted about the proposed changes and might raise concerns or objections.

3.2.2 Large modifications

For large home modifications, such as bathroom re-fits, moving an internal wall, or installing or upgrading a lift, as well as the cost and time implications of hiring qualified tradespeople to undertake these larger jobs, expert reports will usually be required by the owners corporation (such as engineers reports). While it is advisable to have such reports undertaken, these can also add both time and cost to the process.

3.2.3 Modifications incompatible with the existing building

Sometimes the design of a building means that some modifications are not feasible. For example, installation of a stair lift requires that the staircase is sufficiently wide to allow for clear passage past the stair lift once it is installed. On the other hand, installation of a bilateral handrail (i.e. handrails on both sides of a corridor or stairway) requires that a corridor is not too wide that the person using the handrails cannot reach both railings. This can be the case where corridors are also fire exits and are required to be wide. In some cases such as these, where the design of the existing building means that the desired modification cannot be made, alternative design solutions are possible (e.g. facilitating access through another entryway), or the person needing the home modification might consider moving to another property.

Another problem is the use of steel stud frameworks in new buildings. Sometimes the studs are not strong enough, or haven't been positioned correctly, to take the weight of a grab rail.

3.2.4 Modifications waiting on repairs

Sometimes the required modification can't be made until the common property has been repaired. For example, before installing a lift, electrical panel boards need to be upgraded to include a safety switch before the work can be done; and before a grab rail can be added to a stairway, worn and damaged stairs need to be repaired.

3.2.5 Modifications to Council land

Another difficult type of modification is those that require some change to Council-controlled land, such as a ramp or handrail that requires some alteration to be made to a footpath. For example, the footpath might need to be levelled to allow a ramp to start there, or the end of a handrail might need to be on the footpath to enable a person to step up to the first step to a property. This adds another level of complexity to the approval process before the works can commence. As well as requesting permission from the executive committee for works on common property, this also requires that a request be put to the local council for works on Council land. The processes for getting approval for works on Council land appear to be very difficult in some council areas, to the extent that they are prohibitive. They will often require the involvement of Council planners as well as any other agency involved with the footpath (e.g. Sydney Water if there is a stormwater drain). The question of whether the council or the owner requiring the modification pay for the alteration also appears to be unclear in some council areas.

4 Organising home modifications in strata properties

This section describes typical home modification scenarios, the role of home modification service providers, the time and cost of home modifications and the things owners corporations need to take into account when approving home modifications.

4.1 Who provides home modifications

There are two main ways in which a person can organise to have home modifications undertaken:

- They can have modifications organised and provided by a government-funded Home Modification and Maintenance Service (HMMS).
- They can organise home modifications privately through a private builder.

4.2 Typical scenarios

One typical scenario is that someone has been in hospital (perhaps for a fall, a stroke or a hip replacement). The hospital will put them in touch with an occupational therapist, who will determine what they will need in the home in order to be mobile. The occupational therapist will then usually write a letter to the owners corporation of the strata scheme on behalf of their patient (with their patients permission) explaining that they have been discharged from hospital and require particular modifications.

Another typical scenario is that someone has been living in their property for a long time and is having difficulty with access or mobility in a particular part of the property, and so requests that a modification be undertaken. If the person is eligible for a home modifications service then they will receive an assessment by an occupational therapist and assistance in determining the most appropriate modification for their needs through this service. If they are not eligible, then they will need to organise the modification through a private builder.

In both scenarios, the owners corporation will then discuss the issue at a general meeting and come to a decision. In some cases, the occupational therapist and/or home modification service provider might be invited to the meeting to discuss the proposed modifications.

The owners corporation might then come to one of a number of decisions. For example, they might:

- Approve the request and incorporate the proposal as part of an ongoing schedule of works.
- Approve the request but require the person requesting the modification to organise and pay for the works, and/or remove it when they leave the property.
- Refuse the request based on cost, aesthetics, or concern for its impact on other residents.

4.3 Home Modification and Maintenance Services

Home Modification and Maintenance Services (HMMS) provide subsidised services to frail and aged people and people with a disability and their carers to assist them to remain living in their home. HMMS will organise and install a variety of home modifications for eligible people.

Access to HMMS services is based on relative need and there are priority-based waiting lists. There are 87 HMMS in NSW, which are represented by the NSW HMMS State Council, which is a not-for-profit peak body organisation²¹. Leichhardt has its own home modification service:

Leichhardt HMMS
7-15 Wetherill Street

²¹ For more information, visit www.nswhmms.org.au or call (02) 92812680

Leichhardt NSW 2040
(02) 9367 9354
lhms@lmc.nsw.gov.au

If a person is receiving support from a HMMS, their home modification needs will be assessed by an occupational therapist. The occupational therapist will go to the client's home and work with the client to identify what they are struggling with. The occupational therapist will identify solutions to help address the difficulties the client is experiencing in moving around their home and will discuss what modifications the client is happy to have installed to meet their mobility needs. Once the occupational therapist has identified the issues and solutions and made a recommendation, they will prepare a document called a 'works request'. Where the proposed modifications will have an impact on common property, they will send this document to the executive committee of the strata scheme to request permission from the owners corporation for the works to start. The works request includes drawings and clear written specifications of the proposed works. The works request also includes the contact details of the occupational therapist who can be contacted for clarification.

Clients receiving HMMS services will also sometimes have a social worker or case worker helping them with a variety of tasks and it might be this person who helps a client to negotiate changes to their property with their landlord and/or the owners corporation.

The Disability (Access to Premises – Buildings) Standards 2010 and AS1428 Design for Access and Mobility Standards are used as a guide by the NSW HMMS industry for designing home modifications in all properties (unless an occupational therapist gives written approval for nonconformity with the standards)²². However, legally, these standards do not apply to all strata schemes or to all parts of a strata scheme (see page 25). For this reason, some people, if they can afford it, choose to have home modifications undertaken by a private builder rather than a HMMS, in order to have greater discretion in the design outcome. However, it is possible for HMMS to provide a modification that doesn't comply with the disability standards if an occupational therapist approves this and agrees that even if the modification isn't built to the disability standards it will be sufficient and appropriate for the person needing the modification. This option is only available when the modification will only be used by the person being assessed in their property.

HMMS currently provide home modification services at different levels. The Leichhardt HMMS is a Level 1 service, which means it can approve and carry out applications up to \$7,500. If the modification will cost more than this, then the application will be referred to the Wesley HMMS (a level 2 service for applications up to \$25,000). There is also a state-wide level 3 service that approves applications above \$25,000²³. The more expensive the application, the longer it can take to be completed. For applications at level 2 and 3, a panel must decide which applications to approve and prioritise their delivery. An occupational therapist must also write a letter to justify the cost and comment on whether the person should remain in their property.

Once a modification has received a signed approval from the owners corporation (and, if relevant, from HMMS for funding) the job is allocated to a contractor. In some cases, it is also necessary to find alternate housing for the client at the same time as the contractor is available, to enable the work to be undertaken.

4.4 What an owners corporation should take into account

Ultimately, the owners corporation must approve any improvement to common property. While in practice executive committees might approve relatively minor changes (e.g. the installation of a grab rail) on behalf of the owners corporation, under the *Strata Schemes Management Act 1996* (NSW), any improvement to common property requires a special resolution, so would need to be passed at an annual general meeting

²² For more information, see NSW HMMS State Council (2009)

²³ NSW Department of Family and Community Services (2012a: 5-6)

or extraordinary general meeting of the owners corporation. There are a number of things that the owners corporation (i.e. all owners) should take into account when considering approval for a home modification.

4.4.1 Is the resident a renter or an owner?

People who are renting their property must ask their landlord for permission to make home modifications whether there are needed inside the lot or in the common property. However, the landlord cannot refuse if this would be in breach of the disability discrimination legislation (see page 22 for more detail). Once approval has been granted by the landlord, then the same process applies as for owners (see below), with one exception. This is that Home Modifications Services will typically not subsidise home modifications to a rental property (and especially not level 2 or 3 modifications) unless the tenant can demonstrate that there is an intent on the part of both the tenant and the landlord for there to be longevity in the tenancy. As a result, NCOSS has reported that “HACC clients who did not own their own home were less likely to engage HMMSs in a number of studies”²⁴. In some cases landlords agree to pay for home modifications for their tenant, however landlords are not required by law to pay for these modifications.

4.4.2 Will the proposed modification impact on common property?

In strata schemes, property ownership is divided into lot property (owned by an individual property owner) and common property owned by the owners corporation (which is made up of all of the individual lot owners). In NSW, the buildings and grounds or a strata scheme are typically common property, and the airspace inside the apartment bounded by the ceiling, wall and floor coverings and including internal walls and fixtures and fittings are the lot property. This means that the outer unit walls and windows, for example, are usually common property.

In cases where a home modification will impact on common property, including changes within the lot that require a change to common property, such as drilling into a common property wall, the owner will need to obtain permission from the owners corporation for these works to proceed.

Box 1: Determining whether something is lot or common property

Exactly which areas in a particular building are common property is outlined in a strata scheme’s strata plan. The secretary of the executive committee and the strata manager should be able to provide the strata plan. If not, you can contact Land and Property Information NSW, who hold all strata plans for NSW. A good resource for identifying areas that are likely to be common property is NSW Fair Trading’s guidance available at:
www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Strata_schemes/Repairs_and_maintenance.page

In most cases where a home modification will not alter common property, an owner can make these changes without seeking approval from the owners corporation. An exception to this is when schemes have passed a special by-law that requires any building works to be approved by the executive committee. In schemes with this by-law even work within the lot will need approval before starting. Another exception is where significant disruption is likely (e.g. creating noise or dust, or tradespeople and using lifts or a common driveway). In such cases, an owner may need to get approval from the executive committee for any unusual use of common property, and negotiate conditions for the work to be undertaken.

4.4.3 If the proposed modification is on common property, is it maintenance, or an improvement?

The owners corporation is required to look after common property and undertake and fund repairs and maintenance. As this is a requirement; no vote is necessary. An example might include fixing a cracked

²⁴ NCOSS (2011:3)

pavement or securing a loose grab rail. The only exception to this is if the owners corporation decides by special resolution that continued maintenance is inappropriate for a particular item and failing to maintain it will not affect the safety or appearance of the strata scheme²⁵.

If the modification to common property is an alteration, addition or improvement (for example, changing a floor surface, adding lighting, or installing a grab rail), then it will need to be approved by the owners corporation through a special resolution (i.e. a vote where no more than 25% vote against a motion)²⁶. However, proposed changes to the Strata Schemes Management Act, which are expected to take effect in late 2014, may see changes to these voting requirements for different types of modifications²⁷.

4.4.4 How will the proposed modification impact on other owners and residents?

When deciding whether to approve a proposed home modification the owners corporation should be concerned about whether the change will be detrimental to the common property, or might have a negative impact on a neighbour (for example, if waterproofing was damaged). If not, then it is unreasonable for the owners corporation to refuse the request.

If there is a chance that the change could be detrimental to the common property or a neighbouring property, then the owners corporation can give approval on the condition that the owner obtains technical reports outlining the risks and how they will be mitigated before the works commence. It is usually not feasible to request these reports before the owners corporation gives conditional permission because of the risk that the owners corporation may refuse the works after the owner has already paid for these reports. The Owners Corporation could also require that the works be inspected by a professional to ensure that they have been carried out properly.

In some cases, some owners may be concerned about the aesthetics of the proposed modification. This will require negotiations between the individual owner (or tenant) and the other owners about aesthetics and alternative design solutions.

4.4.5 Does the work require development approval?

In some cases, a home modification might require development approval from the local council.

In general, development approval is necessary for significant modifications like construction of new building areas, major excavation, installation of lifts, and the reconfiguration of internal layouts (particularly where they affect fire safety).

As many home modifications are relatively minor building works, they often do not require development approval. In particular, some home modifications fall under 'exempt' development definitions, meaning that they do not need approval if they meet prescribed parameters²⁸. The following items, which would cover many home modifications, are classified as exempt development under NSW planning law²⁹:

- Access ramps.
- Carports, driveways and hardstand spaces.
- Minor internal building alterations, as long as they do not change the configuration of rooms or affect fire safety (exit options and distances).
- Minor external building alterations, including external fittings (this would include grab rails, provided the rail is below 1m above existing ground level).
- Pathways and paving; although both this and the access ramps subdivision are silent on hand rails.

²⁵ *Strata Schemes Management Act 1996* (NSW), S62

²⁶ *Strata Schemes Management Act 1996* (NSW), S65A

²⁷ To find out about changes to the Strata Scheme Management Act, visit www.fairtrading.nsw.gov.au/About_us/Have_your_say/Review_of_strata_and_community_scheme_laws.html or call NSW Fair Trading on 133220

²⁸ Note that these works only fall under exempt development if they meet specific standards.

²⁹ NSW Government (2008)

In addition, particular types of development are classified as 'complying' development. This means that they do not require development approval, only a 'Complying Development Certificate'. Complying development includes more major internal alterations to a dwelling, including internal lot property and common property that is internal to a strata building. This would cover more internal alterations than the exempt development provisions. Complying Development Certificates are quicker and cheaper to obtain, and can be issued by either the council or a private certifier.

Irrespective of the exempt and complying development regulations outlined above, most modifications to heritage listed strata properties and modifications to properties in heritage conservation areas will require development approval. While there are few heritage listed strata properties in the Leichhardt LGA, heritage conservation areas are common.

To find out more about whether a particular home modification would require development approval speak to the Council's duty planning officer³⁰.

4.5 Cost considerations

Ideally, as the common property is owned and used by all owners, home modifications to the common property of a strata scheme should be paid for by the owners corporation (i.e. by all owners through their levies). This will avoid the inequitable situation where an individual owner pays the full amount for a modification (for example a ramp into the main foyer of the building), and then other residents use the ramp for free (e.g. when a new resident moved into the building, or a person with a baby pram uses the ramp).

However, there are exceptions. For example, if a person wants to install a modification on common property that only benefits them or their lot, then an exclusive use by-law can be drawn up giving them the responsibility for the installation and maintenance of the modification, as well as exclusive usage rights³¹.

However, both legislation and case law are unclear on the legal responsibility to pay for a modification to common property without an exclusive-use by-law. In those cases where agreement hasn't been reached by the owners corporation to approve a modification, it has been relatively common for individual owners to offer to pay (or partly pay) for a modification to common property in order to get approval for the modification. There is the potential to mount a legal case to require the owners corporation to pay (see page 24), but such a case has not yet been tried, so the outcome is uncertain.

There are different mechanisms for organising payment for a modification of common property in a strata scheme. These include (but are not limited to):

- The owners corporation agrees to pay for the installation and maintenance of a modification to common property. In this case, the works will be added to the schedule of planned works for the property, and paid for out of the scheme's funds (ultimately through owner levies).
- An exclusive use by-law is created to give one owner the responsibility for paying for the installation and maintenance of the modification, as well as exclusive use of the modification.
- An owner (or group of owners) can make an *ex gratia* payment to the owners corporation to pay for the initial works of the modification, but it remains common property that is accessible to all owners and the owners corporation pay for its continued maintenance.
- The owners corporation can resolve to raise a one-off levy to the owner paying for the works. In the case of a sub-group paying a one-off levy to cover the costs of a modification, the amount they pay is based on their relative unit entitlements. Again, the modification would remain common property, and maintenance would be the responsibility of the owners corporation.
- If an owner (or group of owners) is prepared to pay for ongoing maintenance of a modification, an ad hoc by-law would need to be drafted to this effect.

³⁰ Leichhardt Council's duty planning officer is available between 8.30am and 4.30pm on business days.

³¹ *Strata Schemes Management Act 1996* (NSW), s51

The payment arrangements are further complicated for those people receiving assistance through HMMS, as these services provide subsidised services to individuals, and do not provide subsidies to owners corporations. This means that if an owners corporation were to agree to pay for a modification to common property, they would not receive the subsidy. For people being supported through HMMS, the amount they will have to pay for the modification is determined by the fees schedule of the HMMS they are receiving support from.

In Leichhardt, most HACC-eligible clients will pay the standard rate. A client can apply for a review of their fees if they are in financial hardship. The standard rate is based on a sliding scale according to household income, dependents and the total cost of the work required. For example:

- A couple on a full pension or benefit or income under \$74,997p.a. having a modification that costs between \$1000 and \$5000 would pay a minimum of \$650 up to a maximum of 50% of the total cost.
- A single person with an income over \$70,000p.a. having a modification costing over \$5,000 would pay a minimum of \$4,000 up to a maximum of 60% of the total cost.³²

4.6 Time considerations

One of the most important issues that separates the provision of home modifications in strata properties with that in detached properties is that the owners corporation has to give permission for works to commence if they will have an impact on common property. This takes varying amounts of time, and can delay the provision of the home modification, even in those cases where the approval is uncontested or unproblematic. This is because the person requesting the home modification has to wait until the next annual general meeting or request an extraordinary general meeting in order to obtain that approval before any works can commence. The length of this delay can have a significant impact on the health and safety of the person waiting on the works, especially frail aged and people with a disability who have been assessed by an occupational therapist as requiring these modifications. In the case of renters in strata schemes, the time taken to receive approval from their landlords to undertake works must be added to this delay. Finally, where development approval is required, the time to works starting can be longer still.

Aside from the time taken to obtain approval, the time a home modification takes to be completed depends largely on the following:

- Whether the modification is being undertaken through a HMMS or privately. Jobs undertaken through a HMMS must allow additional time for approval and clients may have to wait on a waiting list. HMMS works are scheduled in line with risk-based urgency.
- The availability of skilled tradespeople and materials to undertake the work.
- How long it takes to organise finances for the works. This includes the time taken for the owners corporation to decide whether they will pay for the works or require the owner to do so; the time taken for a HMMS to approve financing of the work (a consideration for more complex jobs); and any delay as a result of a client needing to apply for special consideration from a HMMS for a lower fee to be applied than the standard subsidised rates (delays can occur where clients delay informing the HMMS that they are struggling with obtaining the finance to complete the work).

All of these considerations also mean that the time taken to complete a home modification is often related to how complex the job is. The more complex the job, the longer it will take for approval through a HMMS, the longer it may take to find available skilled tradespeople to carry out the works, and the longer it may take to actually carry out the works.

For small jobs (under \$7,500) paid for through a HMMS service, these can be completed within a week, often before a person is discharged from hospital, provided the modifications are in lot property, or the owners corporation has given permission for the works. For larger jobs funded through HMMS, and jobs

³² NSW Department of Family and Community Services (2012b)

where the owners corporation does not immediately give permission for the works to commence, it can take much longer to have home modifications completed.

4.7 People who can help

When trying to organise a home modification in a strata property, the following people may be able to provide some assistance:

- A community worker
- Your occupational therapist
- Staff at an HMMS
- Your strata manager
- A Community Legal Service
- Aged care assessment team
- Discharge planner
- Disability and aged advocacy organisations

In particular, it might be useful to invite your occupational therapist and/or HMMS staff to attend an owners corporation meeting to explain what modifications are required, how they will be undertaken and what they will look like.

You can also take a support person with you to a general meeting if you would like some support when making your case to the meeting.

5 Difficulties in organising home modifications

The previous section outlined the process of organising home modifications, and how this should be managed. This section provides a summary of some of the difficulties that can be encountered by residents, owners corporations and service providers when trying to organise home modifications in strata schemes.

5.1 Difficulties faced by residents and owners corporations

In many schemes, getting agreement from the owners corporation for home modifications in common areas is unproblematic. In these schemes, owners see the benefits of modifications in terms of safety and access. However, this situation is not universal. The following issues were raised by interviewees (residents, peak body representatives and other professionals) as causing difficulties when trying to organise home modifications in some strata schemes.

5.1.1 Determining what is lot and common property

Some strata owners and residents have difficulty distinguishing where their lot property ends and common property starts³³. This can cause problems in the case of having home modifications undertaken as some owners might believe that they do not require permission for home modifications inside their unit when in fact they do. Examples are modifications that might have an impact on the plumbing or electricity supply in the building; or bathroom modifications where waterproof membranes under the bathroom floor might be affected. If these works commence without approval, this can cause significant difficulties for other residents affected and for the owner and owners corporation in attempting to rectify any damage caused.

5.1.2 Appearance

Some residents and owners raise concerns about how home modifications will look in common areas when deciding whether, and under what condition, to approve these modifications. This is especially the case with ramps. People are concerned that their property will become 'institution looking', or look like an old age home. In some schemes, concern has been raised by owners that the inclusion of a modification may have a negative impact on the value of their properties.

Box 2: The impact of home modifications on property value

There is no clear evidence of how home modifications affect property value, although some studies point to the issues. Smith et al. (2008) suggest there is a growing US market for housing with universal design. But Bringolf (2011) explains that developers are reluctant to incorporate universal design because the demand is too small to warrant the risk of changing business strategy. Saville-Smith et al. (2007) surveyed real estate agents and found home modifications in NZ could have an impact on house value, but it was not clear cut. Nunn et al (2009) may explain the mixed sentiment, as they surveyed buyers and found some accessible features are desired by homeowners, while others are not.

These concerns can result in the request for a modification being denied, or owners corporations not giving permission for a modification to be undertaken unless it complies with the design or colour scheme of a development. Aesthetic requirements such as these have cost implications both for installation and maintenance. For example, government funded HMMS usually use unpainted stainless steel on grab rails as this is the most cost-effective material that requires the least maintenance (it doesn't require re-painting). It is possible to organise for these to be powder coated, but the HMMS cannot subsidise this so

³³ This issue was also raised in Easthope et al. (2012:74)

the owners will have to pay the extra cost. The question then arises as to whose responsibility the cost of maintaining that item is.

"garrychadwick" said that access improvements in his building were consistently blocked by an intransigent minority, despite ten residents requesting a ramp to enter the property. The reluctance to introduce disabled and aged friendly access was in part based on a perception that such features would mark the building as suitable only for pensioners and reduce property values accordingly.

Summary of online consultation conducted for NSW Fair Trading³⁴

Box 3: Web resources for home modification design and material options³⁵

- Archicentre www.archicentre.com.au
- Australian Building Codes Board www.abcb.gov.au
- Australian Standards www.saiglobal.com
- Home Modifications Clearing House www.homemods.info
- Independent Living Centres www.ilcaustralia.org.au
- Lifetec www.lifetec.org.au
- Livable Housing Australia www.livablehousingaustralia.org.au
- NSW HMMS State Council www.nswhmms.org.au
- OT Australia www.otaus.com.au
- Independent Living Centre NSW www.ilcnsw.asn.au

5.1.3 Cost

In many schemes, there is a concern about spending money and a desire to keep levies low. Improvements to common property are perceived as one of the few perceived spending areas in strata schemes, which must pay utilities and management costs. Where there is a desire to keep costs low, requests for home modifications to common areas can be denied, unless the owner making the request offers to pay for their installation.

In addition to the costs of actually installing and maintaining the modification, there are additional costs that can be occurred in organising a home modification in a strata scheme associated with the need for specialist reports. For example, a bathroom re-fit in a strata building where load bearing walls and/or waterproofing will be affected may require plumbing advice, structural engineering advice and specialist electrical advice. These specialist reports can be costly and there can be disagreement about who should pay for these when the work is to be carried out on common property.

These concerns about cost can influence the decisions made by owners corporations with limited funds, as well as the decisions made by the owners who actually need the modifications, but who feel that they might not have the funds to pay for them. Owners in this situation should approach HMMS to determine what subsidies and support they might be eligible to access.

5.1.4 Social relations

In some cases, existing social relationships between individuals in a strata scheme can influence the outcome of a request for a home modification. For example, where some owners do not have a good relationship with the person requesting a modification, this request may be denied, where it would have been approved had a different owner made the request. This is an unfortunate situation and indicates that

³⁴ Global Access Partners (2012: 82)

³⁵ Scope Access (n.d: 9)

owners are not making the decision based on the potential impact of the modification on other residents and owners, but rather based on personal relationships.

This can become a very emotional issue. Social tensions within a scheme can result in people not speaking up during meetings for fear of being labelled troublemakers, not attending meetings because of concern they will be 'picked on', and not allowing their occupational therapists to write a letter to the owners corporation outlining the changes they require so as not to 'rock the boat'.

Direct discrimination against an individual resident by members of the executive committee or other owners can and does occur in these situations, for example when other owners discover that they will have to live with a modification they consider unattractive, or that they will have to pay an additional levy. (The legal issues relating to discrimination are discussed on page 22.) Where a resident takes the matter further and makes a complaint to the Consumer Trader and Tenancy Tribunal, the Anti-Discrimination Board or the Australian Human Rights Commission (see page 26 for a more detailed discussion), this can cause tensions both for the person making the complaint, and for other owners who may feel 'dobbed in'.

Added to these tensions is the concern by some owners to protect their own privacy, thereby hesitating to request permission from other owners in their scheme (their neighbours), especially for changes inside their unit, such as bathroom modifications that will impact on common property walls or waterproofing.

When social issues such as these are present, it is important for all owners to be clear about the proper procedure for assessing home modifications (see page 13). However, it appears that in some schemes, people don't understand the process and so emotional arguments, rather than rational discussions, are used to make decisions about approving or denying modifications.

5.2 Difficulties faced by service providers

As well as the difficulty of getting agreement from the owners corporation before commencing a home modification in a strata scheme, service providers can face other challenges when providing services to clients in some strata-titled properties. These include difficulties to do with the type of building, and difficulties to do with their negotiations with the owners corporation.

5.2.1 Building type

- **Parking:** It can be difficult for service providers to park their vehicles, especially in the inner west (including Leichhardt), inner Sydney and some parts of Northern Sydney. This may be because there is insufficient visitor parking, or because clearances into car parks might not allow for vans carrying specialist equipment to enter. There might be no legal parking available in the vicinity and the resident may not have an allocated parking space that could be used. This means that builders either have to park some distance from the property and walk their materials to the property, or park illegally and pay a fine. This can also increase the cost of the work as builders will sometimes add this cost to their quote.
- **Storage of tools and equipment:** In some cases, there is no suitable location to store tools and materials on the property when a job is ongoing. This means that tradespeople have to use portable tools and carry the tools and materials to the property every day while work is going on.
- **Time limitations:** Some strata schemes only allow access for trade vehicles at certain times, use of lifts for building materials at certain times and have noise restrictions for working at different times of day. This means that tradespeople cannot be as flexible in undertaking their work as they might be otherwise.
- **Shared services:** In buildings that don't have an isolation switch for the plumbing to a unit, when the water needs to be switched off to undertake a modification, the water has to be switched off for the whole building. This means that all residents need to be informed ahead of time.

- Complying with the Access to Premises Standards 2010 and AS1428: HMMS providers are required to comply with the Disability (Access to Premises – Buildings) Standards 2010 and AS1428 Design for Access and Mobility. This can be difficult in existing buildings (see page 10).

5.2.2 Dealing with the owners corporation

- Accessing strata plans: Especially in apartment buildings that have a steel construction, it can be important to identify where that steel framework is in order to identify where home modifications, such as grab rails, can be installed. Occupational therapists, who draw up the work plans for a home modification that will impact on common property sometimes work with builders who can assist in determining the best place to install a modification, but this is not always the case. It can be difficult for occupational therapists to access a strata plan when drawing up their works plan unless the client makes these available to them. Applying for plans through NSW Land and Property Information's website incurs a cost and can be a time consuming process for occupational therapists dealing with multiple buildings.
- Permission for use of common property: In some cases, service providers have to get permission to park their vehicles on common property driveways, have a skip on common property, have exclusive use of a lift, or otherwise use the common property in a way in which it is not usually used. This adds paperwork and time to the process of organising the work.
- No point of contact: Sometimes a HMMS is contacted by multiple members of the executive committee and other owners in a building, getting involved in the request for the home modification and asking questions. This can take a lot of time. Ideally, home modification service providers would deal with one member of the executive committee, and have that member channel all of the queries from the rest of the owners, as well as be available to answer questions and respond to requests by the HMMS.

6 Dealing with difficult cases

In those cases where an agreement hasn't been reached within the strata scheme, the next steps are to consider whether the owners corporation has wrongfully denied the works. If this is the case, the owners corporation can be required (by a tribunal or a court) to approve the works.

This section first provides information on the legal position regarding discrimination, who should pay for changes to common property, workplace and health and safety and access to premises standards and disability access provisions. It then provides a summary of the different options available to a person who wishes to take a matter further through a tribunal or the courts.

This information will also be useful for residents and owners in determining under what conditions they should approve a request for a home modifications and under what conditions they should agree to pay for these modifications.

6.1 The legal position³⁶

6.1.1 Discrimination

The definitions of disability in the Disability Discrimination Act (DDA) and the Anti-Discrimination Act (ADA) are very broad. They "include almost any health condition, impairment or disability that you can think of"³⁷. This means that the definition also applies to people who are frail due to old age. As such, the definition of disability as it relates to disability discrimination legislation will cover all people who require a home modification.

Disability discrimination is unlawful only in particular 'areas of life'. In relation the strata schemes, the relevant area is the provision of goods, services and facilities. However, to demonstrate that discrimination has occurred under the law, specific services have to be identified as having been actually provided by an owners corporation and it must be demonstrated that the discriminatory act was in relation to that particular service. Relevant legal cases in this regard are outlined in Box 4.

The outcome of the *Hulena* case suggests a different legal avenue for people wishing to obtain approval for modifications to common property. If the disability service had been categorised as 'improving or enhancing the common property' and the applicant had requested that the owners corporation authorise an addition to the common property, the alteration of common property or to erect a new structure on the common property, then refusal on behalf of the owners corporation would constitute a refusal of service that could form the basis for a legal case of discrimination based on a failure to make reasonable adjustments to the common property. Importantly, failure to make reasonable adjustments can be recognised as a result of either direct or indirect discrimination (see Box 5).

³⁶ We are grateful to Michael Teys of Teys Lawyers for his assistance in preparing this section of the report. Please note that the particular details of individual cases will influence the effect of the laws and regulations described, which could also have changed since the time of writing. The report is not intended to be a substitute for legal advice or guidance. Neither Teys Lawyers nor the authors accept any liability for loss or damage arising from actions made based on the general information provided.

³⁷ Australian Centre for Disability Law (2011:8)

Box 4: Some relevant legal cases

Hulena v Owners Corporation Strata Plan 13672 [2009] NSWADT 119 (25 May 2009)

This case held that an owners corporation provided services to the applicant owner. The services provided were 'provision of entrances and exits to and from common property'. While the Hulena case failed because the finding was that it was the developer that provided the entrances and exits to and from the common property, rather than the owners corporation, the court also noted that other areas of an owners corporations functions might also be a service for disability discrimination purposes, although these were not in issue in the Hulena Case. These areas included maintenance and upkeep of the common property; maintenance and upkeep of entrances and exits to and from the common property; and services relating to recreation.

C v A [2005] QADT 14

In an earlier case in Queensland, the applicant argued that the relevant service of an owners corporation (body corporate) included the ability to enter and exit the building in which her apartment was located and the pool area. The connection to the pool area was enough to trigger the definition that included recreation under the Queensland *Anti-Discrimination Act 1991*, which is almost identical to the definition of section 4 of the NSW *Anti-Discrimination Act 1977*. This suggests that a similar case in NSW would find in favour of the owner requiring the modification.

Box 5: Types of discrimination³⁸

Direct discrimination is "when someone treats you less favourably, or plans to treat you less favourably, than a person in similar circumstances who does not have your disability."

Indirect discrimination is "when a rule or practice might seem fair because it applies to everyone but in practice it disadvantages people with your disability."

There are other 'areas of life' in which discrimination is unlawful. One of these is the provision of accommodation. As an owners corporation does not provide accommodation, this definition would not be applicable in a case against an owners corporation. However, a tenant in a strata property could make a case against their landlord under this provision. For example, section 25(2) of the Commonwealth *Disability Discrimination Act 1992* states that it is unlawful for a person to discriminate against another person on the grounds of the other person's disability by refusing to permit the other person to make reasonable alterations to their accommodation if they have undertaken to restore the accommodation to its original condition before leaving the premises, it is practical for them to do so and likely that they will, if the alteration is at the tenant's own expense and if it doesn't involve alteration of the premises of any other occupier.

Another area of life is 'clubs or associations'. The Australian Human Rights Commission has suggested that disability discrimination is applicable to owners corporations because they are clubs or associations³⁹. However, an owners corporation is not a club or association, but rather a body corporate created under the NSW *Strata Schemes Freehold Development Act 1973*. As such, it is not clear whether any legal link could be made between strata schemes and the area of life of 'clubs and associations' and this has not been tested in any legal cases to our knowledge.

As well as 'failure to make reasonable adjustments', a case of discrimination can be made on the basis of harassment and victimisation, both of which can apply in the case of home modifications in strata schemes.

³⁸ Australian Centre for Disability Law (2011: 12)

³⁹ AHRC (2008)

Harassment is any form of bullying, intimidation or offensive, humiliating or hostile treatment that happens because of a disability. Harassment on the grounds of disability is unlawful under the Commonwealth *Disability Discrimination Act 1992* in relation to the provision of goods and services by the service provider (i.e. the owners corporation). While the case of *C v A* (see Box 4) was not argued on the basis of harassment, the facts in the case suggest harassment occurred and the judgement refers to the unpleasant behaviour of members of the general meeting of the body corporate which was offensive and for which the body corporate must bear responsibility. The compensation awarded in this case was \$25,000.

Victimisation is where a person makes a complaint about disability discrimination and is subsequently treated unfairly for doing so. This can also apply in the case of an owner requesting approval for a modification where they have complained about discrimination to the CTTT or Anti-Discrimination Board for example (see page 25).

6.1.2 Who should pay

It is clear that an individual lot owner (or their tenant) is required to pay for home modifications inside a lot. What is less clear legally is who should pay for a home modification on common property. Section 65A of the NSW *Strata Schemes Management Act 1996* is silent on this point. There have also been no decided legal cases on who should pay for a modification to common property for the purposes of access to our knowledge.

In cases of indirect discrimination, it may be harder for an applicant to argue a case if they haven't offered to pay for the modification and the cost to the owners corporation of providing the modification is considered an unjustifiable hardship by the courts. However, it is notable that in the *Hulena* case (see Box 4), the Tribunal noted that had the case been found in favour of the applicant, it would not have found a modification expense of \$16,247 plus \$3,000 for owner supply and ongoing maintenance of \$990 per annum an inappropriate burden on the owners corporation (this strata plan has 155 lots).

Determining unjustifiable hardship is largely subjective and unjustifiable hardship is not well tested in case law. Determining unjustifiable hardship balances the costs (per owner) against the benefits. This includes direct costs (e.g. the cost of installing a lift), indirect costs (e.g. the cost of maintaining the lift) and inferred costs (e.g. if the lift blocks views from unit windows making units less valuable). Section 11 of the *Disability Discrimination Act 1992* states that in determining unjustifiable hardship, the following should be considered:

- any resulting benefit or detriment for persons concerned;
- the effect of a disability of a person concerned;
- the financial circumstances and the estimated expenditure required to be made by the person claiming unjustifiable hardship; and
- in the case of the provisions of services, or the making available of facilities – an action plan given to the Commission.

6.1.3 Workplace health and safety

Workplace health and safety laws do not apply to residential-only strata schemes that have no employees. There have been no legal cases decided to assist in the interpretation of the residential-only exemption to the workplace health and safety laws.

Workplace health and safety laws do apply to mixed use strata schemes that include some commercial uses (e.g. shops or cafes). The weight of legal opinion is that if the laws apply to a strata scheme because it has commercial uses, then they will apply to all common property, not only the commercial parts. This is

influenced by recent decisions of the High Court and Federal Court that have been literal and hard on occupiers of property⁴⁰.

While workplace health and safety laws do not apply to residential only strata schemes, it is good practice to have health and safety audits carried out in residential schemes. This can help in the management of risk for insurance and the discharge of the common law duty of care owed by an owners corporation as the occupier of common property. As soon as a public liability issue is raised in a strata scheme (e.g. as soon as somebody sues an owners corporation for damages as a result of injuring themselves on common property), insurance companies will request a risk report, so it is good practice to have these prepared.

6.1.4 Access to premises standards and BCA disability access provisions

As of 1 May 2011, new standards were introduced for the erection of a building, major alterations and additions to an existing building and applications for a change in building use⁴¹, known as Disability (Access to Premises – Building) Standards 2010. These new standards were accompanied by changes to the Building Code of Australia (BCA) to introduce disability access provisions (AS1428) to bring the code in line with the new access standards. The disability access provisions in the BCA apply to all new “Class 2” buildings and to alterations and/or additions to existing Class 2 buildings. A Class 2 building is a building containing two or more sole occupancy units, each being a separate dwelling⁴². As such, most strata-titled buildings are Class 2 buildings. In practice, this means that the disability access provisions in the BCA apply in residential and mixed-use strata schemes in the following situations:

- For buildings where the application for building construction approval was submitted after 1 May 2011.
- For existing buildings that are undergoing building work that requires development approval.
- To the shared areas of the building (e.g. corridors, stairways, entranceways).
- To the internal spaces in the lot or apartment if the lot or apartment is being used for commercial or short-term letting uses; but not to the inside of private residential apartments⁴³.

Neither the access to premises standards nor the disability access provisions in the BCA apply to existing strata schemes where the application for building construction approval was submitted before 1 May 2011, unless they are undergoing building work that requires development approval.

There is some concern that new buildings have been certified as meeting access standards and provisions when they do not. These concerns are one part of broader concerns about the standard of building certification for strata schemes in NSW more generally⁴⁴.

6.2 Options for taking matters further

There are a range of options available to people who have been negatively impacted by decisions or actions influencing their mobility in, and access to, their homes.

6.2.1 The Consumer, Trader and Tenancy Tribunal⁴⁵

Owners and tenants in strata schemes in NSW can receive assistance from NSW Fair Trading to deal with disputes relating to home modifications in strata schemes. If talking with others in the scheme is not enough to resolve a dispute, then the next step is formal mediation. Mediation services are available in NSW through NSW Fair Trading, Community Justice Centres and independent mediators. The purpose of mediation is to help people to understand each other’s point of view and to reach an agreement about

⁴⁰ Such as *Strong v Woolworths* [2011] HCA 5

⁴¹ Building Professionals Board (2011)

⁴² NSW Building Professionals Board (2011)

⁴³ For more information, see NSW Building Professionals Board (2011)

⁴⁴ See for example, Easthope et al. (2012:65-71) NSW Government (2012:33-34)

⁴⁵ This section adapted from Easthope et al. (2012: 92-93).

what to do next that is acceptable to both parties. The mediator does not make decisions on behalf of the participants, or issue penalties. Independent mediators will require a fee for their services, Community Justice Centres provide a free mediation service, and mediation services provided through Fair Trading typically cost \$78. Fair Trading use customer service officers to provide information on strata legislation to the parties during mediation.

Once a formal request for mediation has been made, someone from Fair Trading or a Community Justice Centre will contact the other party (in this case the executive committee members as representatives of the owners corporation) and ask them to attend. Mediation is voluntary, and if the other party refuses to attend mediation this will be recorded.

The registrar at the Consumer, Trader and Tenancy Tribunal (CTTT) needs to be satisfied that mediation has been attempted before any further action can be taken through the CTTT. In some cases, where an adjudicator is satisfied that there is “a real and present danger to persons or property, or where the Adjudicator considers that if they do not make an interim order, the applicant will be disadvantaged in such a way that cannot be remedied by further orders”, an interim order can be made by the adjudicator without the need for mediation⁴⁶.

If mediation is not successful, or if the second party refuses to attend mediation, then the next step is to apply for adjudication through Fair Trading. Once the application is received, all interested parties are asked to lodge written submissions to the CTTT on the issue under consideration, usually within 28 days. There is no hearing, and the adjudicator makes a decision based on the written submissions they receive. The adjudicator makes an order (a decision about what the parties must now do) and provides written reasons for their order. If a person fails to comply with an order, an application can be made to the CTTT for a penalty for failing to comply with an order.

If parties are not happy with an adjudicator’s order, then they can appeal the decision by making an application for a Tribunal order. At the Tribunal hearing, parties will give evidence (in person) and the Tribunal member will make orders and give reasons for those orders. Legal representation is not required, although parties in strata scheme proceedings are automatically entitled to legal representation.

The CTTT can make a finding in relation to whether an owners corporation must approve a home modification, and who should pay for this. However, the CTTT is not able to make a finding in relation to discrimination.

It is possible to appeal a decision of the Tribunal through the District court in limited circumstances⁴⁷.

This process will change in the near future with the establishment of a new tribunal that will integrate more than twenty of the State’s current tribunals, including the CTTT. The NSW Civil and Administrative Tribunal (NCAT) will begin operating on the 1st of January 2014. Matters that are currently heard by the CTTT will instead be dealt with by the Consumer and Commercial Division of NCAT⁴⁸. More information about NCAT is available at www.tribunals.lawlink.nsw.gov.au.

6.2.2 The Australian Human Rights Commission, the Anti-Discrimination Board, the Administrative Decisions Tribunal and Federal Court

There are both State and Federal discrimination laws and depending on which laws a person believes are most applicable to them, they will go through different channels when making a complaint. A document prepared by the Australian Centre for Disability Law entitled ‘Using Discrimination Law in New South Wales’⁴⁹ provides an excellent explanation of the two laws and advice on how to choose which law to make a complaint under. If a complaint is made under Federal law, then this will be made to the Australian Human Rights Commission and then escalate to the Federal Court if there is no satisfactory outcome. If a

⁴⁶ NSW Fair Trading (2012).

⁴⁷ For more information, visit: http://www.cttt.nsw.gov.au/Divisions/Strata_and_community_schemes.html

⁴⁸ NSW Fair Trading (2013:40)

⁴⁹ Australian Centre for Disability Law (2011)

complaint is made under State law then this will go to the Anti-Discrimination Board and then escalate to the Administrative Decisions Tribunal.

If a person believes that they have been discriminated against in regards to the provision of, or approval for, a home modification in a strata scheme then they can write a letter to the Australian Human Rights Commission or Anti-discrimination Board outlining the issue and the nature of the discrimination based on their disability. They must do this within twelve months of the discrimination happening. The Commission / Board would then attempt to mediate the dispute. If the dispute could not be successfully mediated, then the Commission / Board will issue a 'notice of termination'. This means that the person who lodged the complaint has six months to take this to Federal Court / the Administrative Decisions Tribunal and force an outcome.

6.2.3 Making a case of negligence

There are a number of situations where a person may be able to sue for negligence in relation to home modifications in strata schemes.

For example, say a person requests a modification to common property (e.g. installation of a grab rail), that request is denied, and that person later falls in the place where the modification was requested and injures themselves. In this situation they would have a strong legal case if they were to sue the owners corporation for negligence. Importantly, the case for negligence would still exist if they had slipped and injured themselves and had not requested the rail, but the fact that the modification was requested and denied would improve their prospects of winning the case as the danger on common property was identified to the owners corporation.

Another example is if a building should have been built under the disability access provisions of the BCA (see page 25) and has been certified as compliant with the BCA, then a person could mount a case for negligence against the certifier, builder and/or developer.

7 Opportunities for change

This section provides some suggestions for changes to existing practices, processes, policies and laws impacting on the process of having home modifications undertaken in strata-titled properties.

7.1 New properties

While this report has focused on undertaking home modifications in existing strata titled properties, many of the challenges discussed here could be avoided in the future through better design, construction and certification of strata titled properties.

7.1.1 Design and construction standards

There is a need for a greater emphasis on accessibility in all new strata dwellings. This includes the need to consider the impact of new design and construction methods on any subsequent attempts to install home modifications in properties, and design standards adjusted accordingly.

- Example 1: The practice of using plastic piping for the plumbing in new units, as compared to the copper piping used in the past, means that in some cases, those pipes have been run through the walls with no clear indication of where they are. Because these pipes are plastic, they cannot be identified using a stud finder. Controls could be put in place to require that these plastic pipes are run vertically next to or away from a stud to allow them to be more easily identified, and avoid potential damage to pipes when, for example, grab rails are installed in bathrooms.
- Example 2: The use of steel stud frames that cannot take the load of a grab rail. Design standards should be amended to require that all homes have frames that allow for the installation of a grab rail.

As well as ensuring that properties are built to facilitate access and enable home modifications, it is also essential that certification of those properties be of a high standard. To this end, further training and support could be provided to private certifiers to increase their awareness of the importance of accessibility in new strata titled buildings. This could be provided through the NSW Building Professionals Board. Consideration could also be given to encouraging, and resourcing, the Building Professionals Board to conduct random audits of building certifiers on a regular basis to ensure that certification of access provisions has been carried out effectively.

It is also important to educate those people who will purchase new strata properties in the future so that people are informed about the accessibility of their properties when they are looking for a property to live in. The resulting consumer pressure can also impact on design and construction practice. Consideration could be given to providing an incentive to people selling residential apartments to rate these properties against the Livable Housing Guidelines⁵⁰ (for lot property) and the Disability (Access to Premises – Building) Standards 2010 (for common property).

7.1.2 Development approvals for new properties

Local councils can also assist in ensuring that new strata-titled properties meet the needs of people requiring a home modification in the following ways:

- While new strata developments are now required to adhere to the Disability Access Provisions in the BCA (see page 25), it is also advisable that all new strata developments are reviewed to enhance access at DA stage.

⁵⁰ For more information about the Livable Housing Guidelines, visit <http://www.masterbuilders.com.au/Livable-Housing-Guidelines>

- A component of a future review of councils' Development Control Plans (DCPs) could include the creation of development controls and design standards for strata properties to enhance the consideration of access at the design and DA stage.
- Standard conditions of consent for new strata developments can be introduced to ensure access standards are met. This would require that checks are made at later stages of a development (Construction Certificate and Occupation Certificate stages), to ensure compliance with Australian Standards for these specific issues. An example DA condition might be:

Assessments by a qualified access consultant or private certifier be undertaken at Construction Certificate and Occupation Certificate Stages to ensure access standards are met in communal/common areas and the X adaptable units, specifically:

 - (1) AS1428
 - (2) AS4299 Cl 4.3.3: Door hardware
 - (3) AS4299 Cl 4.5: Kitchen
 - (4) AS4288 Cl 4.4: Bathroom

7.1.3 Housing provision

Improving the provision of new adaptable housing has the potential to reduce the need for home modifications in existing properties. A common response when a person in a strata property requires home modifications, particularly where these are large, is 'why don't you move'? There are two answers to this question.

1. Some people feel attached to their property and do not want to move.
2. Some people would be willing to move away from their property, but cannot find suitable alternative accommodation in their local area.

Australian academics⁵¹ have found that there is evidence of increasing voluntary moves amongst older people in Australia⁵², and research to suggest that older people are more attached to particular localities than to particular dwellings⁵³. This raises the question of whether policies designed to promote aging in place and home modifications might be complemented by the provision of accessible and affordable properties, including some with a range of care levels, within an LGA to allow people to move property, but not neighbourhood, as they age.

Some of the Leichhardt residents interviewed were concerned that should they have to move away from their current properties, they would not be able to find any alternative appropriate accommodation in the area that was affordable and would have to move out of the area, away from their friends and family. This meant that the only viable option for them was to have home modifications undertaken, even if they would in principal be willing to move to a more appropriate property. This situation suggests two important considerations:

1. There is a need for more accessible housing, including seniors housing, to be provided within local areas that is at a price point that is affordable to people who currently live in (rent or own) apartments in that area. This is a complex undertaking, and would require cooperation between Council, State and Federal government, and developers⁵⁴. An interesting model is that of Auburn Council, which currently provides seventy-six self-care units for seniors⁵⁵.
2. There is a need to encourage people to consider their current and future mobility needs both when moving to a new property, and when making decisions about the appropriateness of their current property for their needs. The 'A way to stay' document prepared by SCOPE Access provides an excellent tool that can assist in this regard (see Box 6). Promotion of the use of this

⁵¹ Jones et al. (2008: 28)

⁵² Borowski & Hugo (1997)

⁵³ Olsberg & Winters (2005)

⁵⁴ For a discussion of incentives to provide accessible housing in Australia and overseas, see Scotts et al. (2007)

⁵⁵ Auburn City Council (2010)

tool by Council and peak bodies may assist in readying people to address their accessibility needs before these become urgent.

Box 6: A Way to Stay

SCOPE Access has prepared a tool called 'A Way to Stay'. It was created for people with a disability, but has been very popular with older people since its introduction in early 2013. The tool assists people in determining their home modification needs now and into the future, and can also allow people to come to their own conclusions about whether their current home is suitable for them. A copy of the tool is available at: <http://www.scopeaccess.com.au/pdf/Away%20to%20stay%20editable.pdf>

7.2 Existing properties

In regards to home modifications in existing properties, there are many opportunities for improvements in the areas of information and education, legislation, and Council practices.

7.2.1 Information and education

Concern was raised by some interviewees that some people appear to be unaware of their rights and responsibilities as strata owners. This reflects the findings of other academic⁵⁶ and government⁵⁷ publications. In the case of home modifications in strata properties, this can be particularly problematic when owners are not aware of:

- The distinction between lot and common property, and/or the fact that some parts of their unit are common property (e.g. external walls and windows).
- The duties of the owners corporation under the State and Federal discrimination laws.
- The fact that an owners corporation is an unlimited liability corporation, meaning each owner has a share in fulfilling the corporation's duties, and is liable to pay a share of any costs of failing to do so (e.g. if an owner successfully sues the owners corporation as a result of a fall on common property). While the owners corporation is required to have insurance for such events, if the owners corporation cannot demonstrate that risks on common property have been identified and addressed, an insurer might refuse a claim.

This suggests that strata owners require better access and awareness on information resources on these issues. Some excellent resources already exist (see Box 7), and additional information sheets have been developed as part of this research (see Appendices 2 and 3). The next step must be to encourage awareness of these resources. This can be facilitated by:

- Local Council officers informing residents of these resources.
- Libraries holding resources as part of the borrowing collection.
- Strata managers being aware of, and informing residents and owners of, these resources.
- Funds being made available to provide these resources not only online, but in printed form. This is especially important for older people who may not use computers and people without easy internet access.
- Provision of training and skills development for residents and owners of strata properties to assist in understanding strata ownership and strata living and in operational matters such as meetings, letter writing, asset management and maintenance planning.
- Supporting advocacy organisations to distribute this information and advice.

⁵⁶ e.g. Easthope et al. (2012)

⁵⁷ e.g. NSW Government (2012)

Also important is ensuring that strata managers and executive committee members are aware of the responsibilities of owners corporations in regards to both access and safety, including their responsibilities under both State and Federal disability discrimination legislation. If executive committee members and strata managers can clarify the situation early, this can help to stop disputes about the installation of home modifications from escalating.

Box 7: Useful existing sources of information

NSW Fair Trading, *Seniors Guide*, www.fairtrading.nsw.gov.au/pdfs/about_us/publications/ft115.pdf

NSW Fair Trading, *Strata Living*,
www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Publications/ft045.pdf

Australian Centre for Disability Law, *Using Disability Discrimination Law in New South Wales*,
www.disabilitylaw.org.au/wp-content/uploads/2012/03/Using_DD_Law_NSW.pdf

Strata Community Australia, *Strata Living*, www.stratacommunity.org.au/strata-living

Owners Corporation Network of Australia, *Strata Living Guides*, www.ocn.org.au

Australian Government Department of Social Services, *My Aged Care*, www.myagedcare.gov.au or 1800 200 422

It is also important that Occupational Therapists and other home modification providers are educated about the specific issues relating to home modifications in strata schemes, including an understanding of what areas of the building are likely to be common property and therefore require permission from the executive committee before works can commence. This could be facilitated by the NSW Home Modification & Maintenance Services State Council and Occupational Therapy Australia Ltd.

Councils and advocacy organisations could also provide information and training to local residents and executive committee members to assist in the preparation of Development Applications (DAs) involving home modifications to improve safety and access. This training could be used to encourage the inclusion of a justification for the modification to improve access, supported by a statement from an Occupational Therapist, in the Development Application. This would assist a planner assessing an application to understand the full reason from the proposed change and to assess the application on merit.

These identified training needs suggest that there may be opportunities for the inclusion of these issues in professional and community development courses and information sheets offered by professional peak bodies (such as Strata Community Australia and the NSW HMMS State Council), local and State governments, and educational institutions.

A number of Leichhardt residents interviewed also noted that they would like a central office or phone number that they could contact for all of their aged care and mobility needs, not only home modifications. In this way, they could approach the same service whenever they needed help, be that in organising a home modification, gardening, cleaning, home care, social outings, assistance with shopping or minor home maintenance. This approach has already been taken by some service providers in NSW. There is also a national information service for aged care run by the Australian Government's Department of Social Services that provides a point of contact for information on the aged care system and services (see Box 7).

7.2.2 Strata title legislation

Between 2012 and 2013 the NSW Government undertook a review of the strata title legislation. In November 2013, the Government released a Strata Title Law Reform Position Paper outlining proposed changes to the legislation⁵⁸. At the time of writing, the Government is drafting a Bill that will give effect to

⁵⁸ NSW Fair Trading (2013a)

the reforms outlined in the Position Paper, with the aim of tabling that Bill in Parliament in early 2014⁵⁹. The Position Paper includes a proposal that will have a significant impact on the need to obtain approval from the owners corporation for some types of home modifications, should it be introduced into law in 2014 (see Box 8).

Box 8: Proposal included in NSW Fair Trading Strata & Community Title Law Position Paper (2013) regarding owner renovations

“2.9 Establish new requirements with regard to owner renovations, so that:

- an owner does not need approval to make minor or cosmetic changes to the common property inside a lot (for example, inserting a picture hook; painting a wall or installing handrails around the house to assist elderly people);
- notice must be given to the strata committee⁶⁰ before changes are made to common property inside a lot that are not cosmetic (for example, refitting a bathroom or installing recessed light fittings); and
- owners corporation approval is needed for all renovations that change the external appearance of the lot, are structural or permanent, that require development consent or are likely to have a significant impact on the amenity of other residents (for example, installing hardwood floors, knocking out an internal wall, installing an air conditioning unit, or installing access ramps to the front door).”⁶¹

The proposal outlined in Box 8 is likely to make the process of undertaking home modifications such as installing grab rails and bathroom re-fits faster and more straightforward in strata schemes if it is introduced into law. Some further legislative changes that might be considered in order to clarify and streamline the process of organising home modifications in strata properties include:

- Making it clearer that the State and Federal disability discrimination acts apply to strata schemes. This might be achieved by adding a footnote to the new strata schemes management act referencing the relevant sections of the State and Federal discrimination acts.
- Reducing the voting requirements to approve home modifications from a special resolution (no more than 25% vote against) to an ordinary resolution (a simple majority).
- Where home modifications have been requested by an Occupational Therapist on behalf of a resident, implementing a required timeframe in which owners corporations must call a general meeting and respond to a request for home modifications. At the moment, these requests can be delayed until the next general meeting or until an extraordinary general meeting is called, putting the safety of the resident in need of the modifications at risk, sometimes for months. This may also potentially delay a person’s discharge from hospital.
- Where home modifications have been recommended by an occupational therapist on behalf of a resident, specifying that any cost of calling an Extraordinary General Meeting to allow for the approval of a home modification that will impact on common property be at a cost to the owners corporation, not the individual requesting the modification (e.g. the additional cost charged by a strata manager in convening and attending the meeting).

7.2.3 Council approval and property inspections

In regards to Council approval, there are two areas where councils can assist in making it easier for strata schemes to comply with Council requirements when undertaking home modifications.

The first is in regards to home modifications that require a Development Application. If there is a person in a strata property who requires a home modification that in turn requires a Development Application, it would be extremely beneficial if councils could allocate Development Applications involving home

⁵⁹ NSW Fair Trading (2013:4)

⁶⁰ The ‘executive committee’ will be known as the ‘strata committee’ under the proposals (NSW Fair Trading 2013:7)

⁶¹ NSW Fair Trading (2013:24)

modifications to a Council officer who has a specialist understanding of the issues. Consideration could also be given to having fewer requirements for information for Development Applications for home modifications that are relatively small-scale and to improve safety and access. These requirements can be onerous for HMMS and strata owners who do not usually have the in-house skills to complete these reports.

The second is to review (in partnership with other relevant authorities) the process for strata residents (and their occupational therapists) to apply to make changes to Council controlled land such as footpaths for the purposes of installing a home modification (see page 10).

In regards to property inspections by Council officers, the current situation is that if a DA is lodged for works to an existing building, Council can require improvements to the common property to facilitate both safety and access according to current BCA standards. However, in the case of some older buildings it is not always possible for these buildings to comply with the current standards, and this would be taken into account in the assessment. However, where a DA has not been lodged the Council cannot require that improvements to common property be made to current BCA standards, but if the Council receives a complaint about a safety matter, the Council's Compliance Team can require that the common property be maintained and repaired to facilitate safety and access, but only to the standard to which the building was constructed. This situation suggests two possible improvements to facilitate access in existing strata properties.

First, consideration could be given to Council providing additional resources to inform residents of their ability to make a complaint to their local council about a safety issue in the common property of their strata scheme. Council can inspect residential strata properties on the request of a resident of that property, and issue compliance orders for modifications to make that property safe and accessible to the standard to which it was originally built. This proposal has significant resourcing implications, as it would require an experienced staff member to undertake the inspections and liaise with residents and owners corporations.

Second, consideration could be given to the feasibility of a change in law to enable councils to require that properties be made accessible according to current standards, where feasible without demolition and rebuilding, even when a DA has not been lodged with Council. This would bring practice in regards to safety and accessibility in line with current practices regarding fire safety. Currently, councils are able to undertake inspections of existing strata properties to ensure their compliance with Fire Safety Standards and order upgrades where needed to ensure their compliance with current fire safety standards, regardless of when the building was constructed.

7.3 Summary

These are by no means the only opportunities for change in this area. We hope that these suggestions spark discussion and debate about the best ways to facilitate efficient and equitable processes for enabling home modifications in strata-titled properties.

It is important to address these concerns now, as the population of people living in strata schemes who will require home modifications will increase significantly in the future as more strata properties are built, and as the population continues to age.

Glossary

ADJUDICATION Written submissions are provided to an adjudicator by disputing parties. The adjudicator then considers the issues and makes an order outlining what actions are to be taken. This order is binding and penalties apply for non-compliance.

BY-LAWS A set of rules the residents in a strata scheme must abide by.

COMMON PROPERTY Property owned by the owners corporation. Typically this would include the buildings and outdoor areas and usually includes all property in a strata scheme that is not a privately owned strata lot.

CONSUMER, TRADER AND TENANCY TRIBUNAL (CTTT) Disputes are heard in a public hearing similar to Local Court. The Tribunal will make an order outlining what actions are to be taken. This order is binding and penalties apply for non-compliance.

EXECUTIVE COMMITTEE Elected members of the owners corporation (owners or owners' nominees), responsible for assisting the owners corporation in the day-to-day management of the strata scheme.

EXECUTIVE COMMITTEE MEETING A meeting of the executive committee members.

EXCLUSIVE USE BY-LAW A by-law that gives a particular lot owner the right to use parts of the common property for their exclusive use.

EXTRAORDINARY GENERAL MEETING A meeting of the owners corporation, which is not an Annual General Meeting.

HOME MODIFICATION An alteration made to a home to meet the needs of a person with physical limitations so that they can live safely and independently.

LEVIES Fees that must be paid by owners to the owners corporation. These can take three forms: administrative fund levies, sinking fund levies and special levies.

LOT Usually the airspace within the four mail walls, ceiling and floor, and anything included in that airspace including internal walls within the lot, floor coverings and fixtures. May also include car spaces and other areas or these can be registered as separate lots.

MAINTENANCE Routine upkeep of the building e.g. painting or clearing gutters.

MEDIATION A structured negotiation process in which a neutral and independent mediator assists parties to resolve a dispute.

OCCUPATIONAL THERAPIST A trained professional who works to enable people to participate in the activities of everyday life by modifying their environment or their occupation.

ORDINARY RESOLUTION A resolution passed at a general meeting of the owners corporation that requires a majority (over 50%) of votes of those present at the meeting and eligible to vote.

OWNERS CORPORATION A body corporate comprised of, and representing, all owners of lots in a strata scheme, formed when a strata plan is registered.

RESOLUTION A decision made at a meeting based on a motion raised and addressed at that meeting.

REPAIRS Rectifying building problems that have arisen due to age, a lack of maintenance or an unforeseen event e.g. a storm or an accident.

SPECIAL LEVY A lump sum contribution paid by the owners to cover expenditure not covered by the administrative and sinking funds (this may include unplanned or unexpected expenditure).

SPECIAL RESOLUTION A resolution passed at a general meeting of the owners corporation against which no more than one quarter of votes is cast.

STRATA MANAGER A qualified agent appointed by the owners corporation at a general meeting (or by an Adjudicator) and paid by the owners corporation to undertake management and administrative matters that are delegated to them. In NSW all strata managing agents must be qualified with a Certificate IV in Property Services (Strata Management) and registered with NSW Fair Trading.

STRATA PLAN The plan registered at NSW Land and Property Information showing the building on the land and the boundaries of the lots and common property.

STRATA SCHEME All of the lots, common property and rights and responsibilities associated with managing a single registered strata plan.

STRATA-TITLE The subdivision of land and/or buildings into units (LOTS), which can be owned separately, and **COMMON PROPERTY**, which is owned collectively. This subdivision is registered as a **STRATA PLAN**.

UNIT ENTITLEMENT the relative weight a strata owner has within the owners corporation, which is generally based upon the relative value of their strata lot. Unit entitlements regulate the voting rights of each owner and the amount of levies each owner must pay.

Appendix 1: Population, strata population, population with disability for various areas

Age	Leichhardt LGA				Greater Sydney				New South Wales				Australia			
	strata population with disability	strata population	population with disability	population	strata population with disability	strata population	population with disability	population	strata population with disability	strata population	population with disability	population	strata population with disability	strata population	population with disability	population
0-9	11	667	66	6,980	764	82,214	9,154	575,050	905	90,911	15,701	895,672	1,687	163,142	49,075	2,782,754
10-19	3	274	46	3,373	527	49,270	10,386	550,410	691	57,587	19,078	889,761	1,468	117,455	61,779	2,804,751
20-29	5	2,185	37	6,839	711	211,630	6,942	660,542	997	239,226	12,332	939,776	2,403	549,985	39,134	3,039,808
30-39	9	3,060	66	11,593	1,012	202,316	8,354	675,837	1,356	217,670	14,725	962,611	3,283	426,424	46,244	3,001,239
40-49	13	1,397	118	8,718	1,636	101,256	13,898	630,624	2,201	113,502	25,181	968,693	4,832	225,010	77,068	3,070,219
50-59	16	932	189	6,208	2,303	74,906	21,466	543,385	3,077	88,701	38,533	892,565	6,673	187,959	111,525	2,772,658
60-69	22	681	239	4,706	2,521	52,699	26,973	397,149	3,378	65,107	49,108	695,719	7,578	147,003	145,013	2,149,880
70-79	27	263	353	2,173	3,081	30,434	33,061	231,104	3,989	40,283	55,839	423,651	9,275	95,670	161,555	1,263,581
80-89	17	116	409	1,148	3,944	19,622	45,891	137,791	5,379	26,541	79,077	244,781	13,693	66,316	226,933	710,170
90-99	0	8	141	203	1,228	3,268	16,048	26,472	1,648	4,269	27,273	44,488	4,067	10,620	77,794	128,800
100+	0	0	8	6	33	67	502	672	38	76	828	1,093	74	155	2,482	3,298
Total	123	9,583	1,672	51,947	17,760	827,682	192,675	4,429,036	23,659	943,873	337,675	6,958,810	55,033	1,989,739	998,602	21,727,158

Data Source: 2011 Census of Population and Housing; compiled from tables generated using ABS TableBuilder © Commonwealth of Australia, 2012

Notes:

- Counts are of persons, by location on census night (place of enumeration)
- 'strata population' counts persons in Dwelling Structure (STRD) categories: Flat, unit or apartment in a one or two storey block, Flat, unit or apartment in a three storey block, Flat, unit or apartment in a four or more storey block, and Flat, unit or apartment attached to a house; but excludes persons in Tenure and Landlord Type (TENLLD) categories: Rented: State or Territory housing authority, and Rented: Housing co-operative, community or church group.
- 'with disability' counts persons in Core Activity Need for Assistance (ASSNP) category: Has need for assistance with core activities.
- Cells in this table have been randomly adjusted to avoid the release of confidential data. No reliance should be placed on small cells.

Appendix 2: Information sheet

Where can I get more information on making a formal complaint?

- » NSW Fair Trading
www.fairtrading.nsw.gov.au
- » Consumer Trader and Tenancy Tribunal
www.cttt.nsw.gov.au
- » Australian Human Rights Commission
www.humanrights.gov.au
- » NSW Anti-Discrimination Board
www.antidiscrimination.lawlink.nsw.gov.au
- » Australian Centre for Disability Law
www.disabilitylaw.org.au

Who should pay for modifications?

Payment for modifications in strata schemes is not always clear. This is a general overview.

You, the owner, typically carry out and pay for:

- » Any work that is not on common property
e.g. modifications of internal doors and walls.
- » Any modifications to common property inside your unit
e.g. attaching a shower grab rail to a common property wall.
- » Any modifications to common property outside your unit that only you will use
e.g. a ramp to your front door. (Note that an exclusive-use by-law will need to be approved by the OC for such modifications.)
- » Maintenance of any modifications subject to an exclusive-use by-law.
- » Potentially, removing any modifications to common property you have paid for
e.g. a ramp to your unit if you sell and move out.
- » Any expert reports the OC requests regarding modifications you propose.

The OC typically carries out and pays for:

- » Maintenance of common property outside your unit
e.g. fixing broken pavers at the building entrance.
- » Maintenance of common property in your unit
e.g. fixing windows.
- » Modifications or upgrades to common property that many or all owners can use, where the OC has voted to carry out these works, or where not upgrading would discriminate against a resident and the cost is reasonable
e.g. a ramp to the building entrance.

The law is unclear at what point the cost of a modification becomes unreasonable (called 'unjustifiable hardship'). Unjustifiable hardship also includes, among other things, the potential cost of maintenance and the potential loss in property value
(e.g. if adding a lift reduces the privacy or amenity to the units).

If you are prepared to, you can offer to pay for modifications to common property to overcome any unjustifiable hardship. While paid for by you, the works should be carried out by the OC.

This document is not intended to be a substitute for legal advice or guidance. The authors accept no liability for loss or damage arising from actions made based on the general information provided.

This information sheet should be read in conjunction with the document 'Home Modifications in Strata Properties' available from Leichhardt Council or the City Futures Research Centre at the University of NSW.



Organising home modifications in strata properties in NSW



When do I need approval from the owners corporation (OC)?

You need approval if you propose to:

- » Make any changes to common property *e.g. a ramp to your front door.*
- » Use common property differently during construction *e.g. parking a skip on the driveway or taking over a lift to transport materials.*
- » Disrupt other residents *e.g. creating noise or dust.*

Note that **common property** usually includes shared areas like courtyards, entranceways and stairwells, as well as windows, external walls, shared walls and waterproofing under your bathroom floor.

Some **strata schemes** have a special by-law requiring any building works to be approved by (or on behalf of) the OC. Ask a member of your building's executive committee or the strata manager for a copy of the by-laws if you are unsure.

How do I apply for approval from the OC?

You apply by writing and presenting a letter to a member of the executive committee. The letter must propose a motion, to be considered at a meeting of the OC (a 'general meeting'), that outlines the proposed building works or use of common property, preferably including drawings and clear specifications. If the motion passes, you have approval.

What about approval from the council?

Council and OC approvals are unrelated processes, and some modifications might need both. You or the OC need to get **development approval** from the council if you propose significant modifications like:

- » Major construction or excavation outside the existing building.

- » Changes to the internal layout of the building, particularly if it could affect escape during a fire; such as changes to staircases, adding or moving walls, or adding or moving a bathroom.
- » Changes to a heritage building, or changes in front of the building in a heritage conservation area.

Some minor modifications can be approved with a complying development certificate instead of development approval. Complying development certificates are quicker and cheaper, and can be issued by either the council or a private certifier. To find out if development approval or a complying development certificate is required, contact the council's duty planner.

Is it a different process if I'm renting?

People renting in a strata scheme need to obtain permission from their landlord to make changes either inside or outside of their unit. Their landlord (the property owner or agent) will then need to get any necessary approval from the OC.

Private landlords also have obligations under disability discrimination laws when providing residential accommodation. For example, refusing to allow you to make modifications could be considered discrimination, provided you cover all the costs, and can and will reverse the modifications before leaving the property.

What can I do if I'm having trouble getting approval?

1. Work with other owners and residents to find a solution that overcomes any concerns and suits everyone:
 - » Discuss alternative designs or modifications that would meet all residents' needs.
 - » Ask an occupational therapist to explain to other owners to why the proposed modifications are necessary for your safety and wellbeing.

- » Organise expert reports about the potential negative impact of the proposed modifications on the common property or other owners' lots and how these will be mitigated.

- » Offer to reduce the cost of the proposed modifications to the OC (but note that you should not feel that you have to do this).

2. If you still cannot get approval, explain to the executive committee and other owners that there are significant costs if they are found to be failing to fulfill their duties:
 - » The OC has duties under state and federal discrimination laws.
 - » If the OC does not make (or allow) reasonable adjustments to common property, this could be considered discrimination.
 - » An OC is an unlimited liability corporation, meaning each owner has a share in fulfilling the corporation's duties, and is liable to pay a share of any costs of failing to do so (e.g. if an owner successfully sues the OC).
 - » While the OC is required to have insurance for such events, if the OC cannot demonstrate that risks on common property have been identified and addressed, an insurer might refuse a claim.

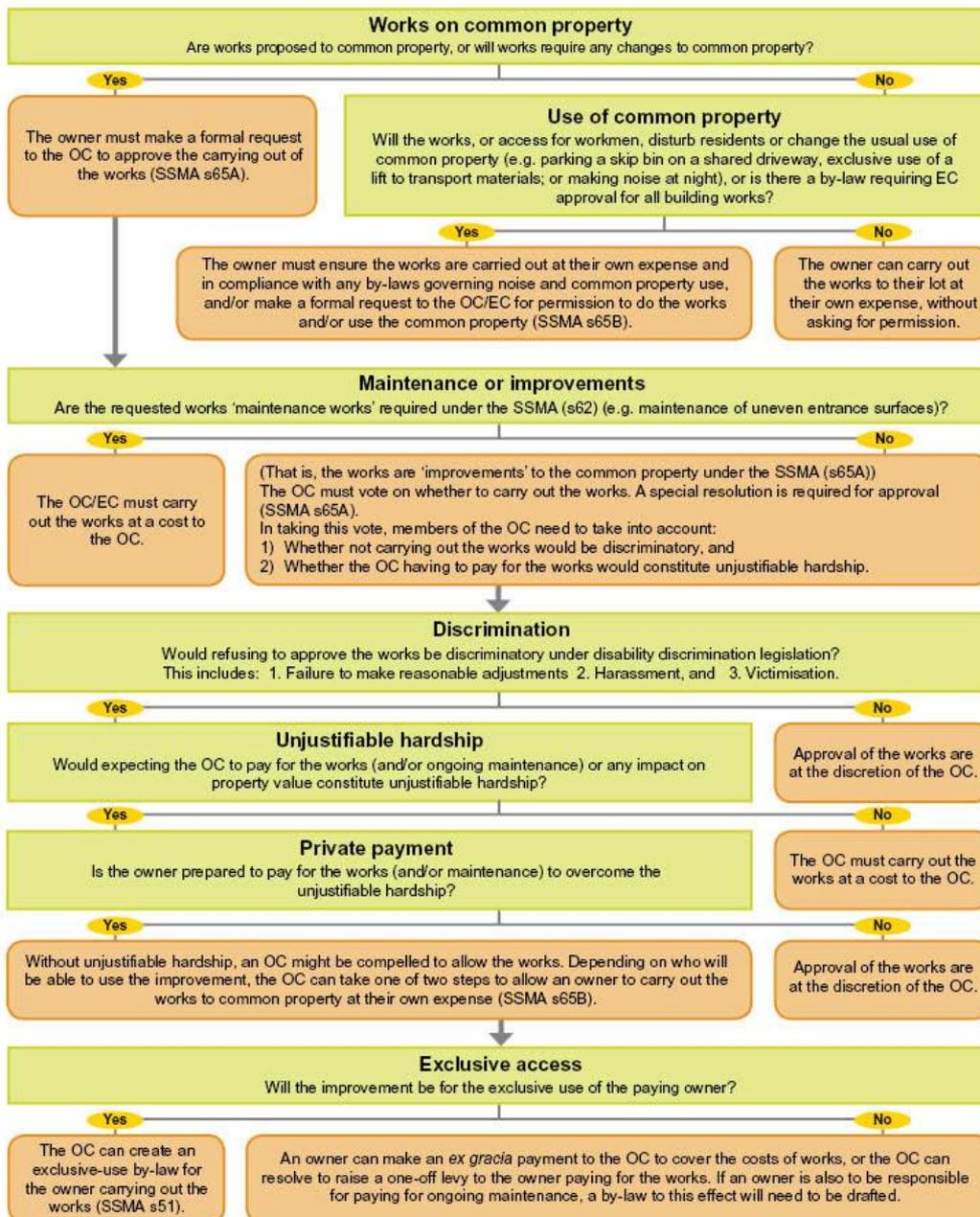
3. If you still feel the OC is failing to fulfill its duties, then you can commence a formal complaint against it:
 - » Apply to Fair Trading for mediation, and escalate this as far as the Consumer Trader and Tenancy Tribunal to find a resolution.
 - » Apply to the Australian Human Rights Commission or Anti-Discrimination Board within twelve months of the discrimination happening and escalate this to the Administrative Decisions Tribunal or Federal Court.

Appendix 3: Approval flowchart



Home modifications approvals in strata properties in NSW

Never Stand Still Built Environment City Futures Research Centre



Notes

Private renters: This diagram outlines the process strata property owners must follow to have home modifications undertaken in their properties. People renting properties in a strata scheme will first need to obtain permission from their landlord to make changes either inside or outside of their individual unit. Their landlord (the property owner or agent) will then need to follow the process outlined in this diagram on their behalf.

Also note that private landlords are subject to provisions in both the Commonwealth *Disability Discrimination Act 1992* and the NSW *Anti-Discrimination Act 1977* regarding discrimination in the provision of residential accommodation.

Multiple owners requesting modifications: Multiple owners can also collectively make formal requests to an OC for works/improvements, and make collective offers to pay for works and maintenance. Typically, any costs will be split in line with relative unit entitlements.

Definition of disability: The definitions of disability in Disability Discrimination Act (DDA) and the Anti-Discrimination Act (ADA) are very broad. They "include almost any health condition, impairment or disability that you can think of" (Australian Centre for Disability Law 2011:8). This means that the definition also applies to people who are frail due to old age.

Glossary

Common property: As well as common areas such as gardens, courtyards and corridors, common property usually includes shared walls, external walls, windows, and some plumbing and electrical wiring. To determine which areas in a particular scheme are common property, you will need to refer to the strata plan. The secretary of the EC or the scheme's strata manager should be able to provide this plan.

Disability discrimination legislation: This includes both the Commonwealth *Disability Discrimination Act 1992* and the NSW *Anti-Discrimination Act 1977*.

EC: Executive Committee, a smaller committee that can make minor decisions on behalf of the OC, including requests to use common property and to carry out maintenance works. Some limitations are imposed in large strata schemes (with over 100 lots) under s80A of the SSMA on how much money an EC can spend. ECs cannot pass special resolutions for additions to common property, alterations to common property or the erection of a new structure on the common property. Instead, a special resolution must be passed at a general meeting of the OC (SSMA s65A).

Formal requests (to OC/EC): This should be presented in writing to a member of the EC. The letter must include a draft motion about the specific matter that you want to be considered at an OC/EC meeting.

OC: Owners Corporation, a body corporate comprised of, and representing, all owners of lots in a strata scheme, formed when a strata plan is registered.

Reasonable adjustment: "a modification or an accommodation which you need, because of your disability, so that you are able to participate or access something equally to someone without your disability." (Australian Centre for Disability Law, 2011:13)

Special resolution: A resolution that can only be made by an OC if no more than 25% of votes oppose it.

SSMA: *Strata Schemes Management Act 1996* (NSW), the legislation governing the operation of strata schemes, including OCs and ECs.

Unjustifiable hardship: "where it is too hard not to discriminate, or the costs of making an adjustment outweigh its benefit ... Whether something is an unjustifiable hardship will depend on the circumstances of each case" (Australian Centre for Disability Law, 2011:14-15).



Reference: Australian Centre for Disability Law (2011) Using Disability Discrimination Law in New South Wales, http://disabilitylaw.org.au/wp-content/uploads/2012/03/Using_DD_Law_NSW.pdf

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