Section 106 Fact Sheet

(Common Property Maintenance)

* An owners corporation has as strict obligation to maintain and keep in a good and serviceable repair the common property (Section 106(1) of the *Strata Schemes Management Act 2015* (NSW)).
* Where the common property can not longer be repaired, the obligation is to renew or replace it (Section 106(1) of the *Strata Schemes Management Act 2015* (NSW)).
* So long as the common property is functioning as originally intended, it is not required to be upgraded to modern standards.
* The fact it might be cheaper in the long run to upgrade rather than repair the common property, an owners corporation is not permitted to upgrade without obtaining first special resolution under Section 108 of the *Strata Schemes Management Act 2015* (NSW).
* The obligation to maintain under Section 106(1) of the *Strata Schemes Management Act 2015* (NSW) also includes to take steps to ensure the common property remains in the state as original intended. For example, an owners corporation cannot turn a blind idea to unauthorised alterations to the common property. Failure to take action, particularly if the ownership of the relevant lot changes hands in the meantime, can sometimes result in the owners corporation becoming responsible for the alteration (by way of acquiescence).
* When permitting a lot owner to alter or upgrade the common property, an owners corporation must be clear on who is responsible for the future maintenance and upkeep of the alterations/upgrades. Where responsibility is not specified, the owners corporation is responsible by default.
* The strict obligation to maintain common property can be changed or altered by the following:
  + A special resolution passed at a general meeting that it is no longer appropriate to maintain a particular part of the common property, but only where doing so would not affect the structural integrity, safety and/or appearance of the building or common property (Section 106(3) of the *Strata Schemes Management Act 2015* (NSW));
  + The terms of the common property memorandum, if such a memorandum has been adopted by a special resolution passed at a general meeting (Section 106(7) of the *Strata Schemes Management Act 2015* (NSW));
  + The terms of a common property rights by-law or by-law passed when permitting the common property to be altered under Section 108 (Section 106(7) of the *Strata Schemes Management Act 2015* (NSW)).
* An owners corporation may be able to defer compliance with its strict obligations if it has taken legal action against a person(s) in respect to damage to the common property (e.g. building defects claim), so long as doing so will not affect the safety of the building or the structural integrity of the common property. Deferring compliance may or may not pause an owners corporation’s liability for damages suffered by a lot owner.
* A lot owners is entitled to recover any reasonably foreseeable loss or damage resulting from a failure to comply with the strict obligation to maintain the common property (Section 106(5) of the *Strata Schemes Management Act 2015* (NSW)).
* A lot owner has 2 years from the date they first become aware of a particular type of loss to commence compensation proceedings under Section 106(5) of the *Strata Schemes Management Act 2015* (NSW). The limitations period may commence at different times for different types of damage.