

Electric vehicle charger by-law resource

This document is part of the electric vehicle (EV) ready buildings suite of resources found at energysaver.nsw.gov.au/electricvehicles.

This information resource is designed to assist both owners' corporations and lot owners within all strata schemes across NSW with the installation, maintenance, and operation of electric vehicle chargers within their strata schemes.

Overview – common and lot property

Generally speaking, all land and buildings within strata schemes can be categorised as being either:

1. common property – which belongs to the owners' corporation; or
2. part of a lot – which belongs to the individual lot owner (this is often referred to as “lot property”).

The distinction between common property and lot property differs between strata schemes, and sometimes within strata schemes. Although the relevant concepts are defined in the Strata Schemes Development Act 2015 (NSW) (“SSDA”), determining what is common property and what is part of a lot depends on various factors in each case, including the relevant strata plans, but also various other issues that might not be easy to resolve in a given case.

In broad terms, under the SSDA, the boundaries of a lot will usually be the inner surface of the boundary walls, the upper surface of the floor, and the under surface of the ceiling. In those cases the lines marked on the relevant strata plan will generally depict boundary walls. A lot may comprise a number of areas defined by such walls—for example, the interior space, together with a balcony, terrace or courtyard.

The strata plan will also generally include notations to record how boundaries are to be determined in situations where there may be no ceiling above part of the lot (such as on an uncovered balcony or courtyard), no wall to enclose part of the lot (such as an open parking space) or no conventional floor below part of a lot (such as an outdoor garden area). Where the boundaries do not correspond with walls or other vertical structures—such as with a car parking space—the lines marked on the strata plan will generally simply represent an imaginary vertical plane.

Any part of the land or buildings that was within the boundaries of the lot when the relevant plan was registered is generally considered lot property, regardless of whether it is affixed to common property (for example, kitchen cabinets affixed to a boundary wall). Any part of the land or buildings which was not part of a lot when the relevant plan was registered is generally considered “common property”.

However, importantly, this is not a universal position, and the particular circumstances must always be considered. For example, improvements or alterations may have been made after the registration of the relevant plan, or further strata plans of subdivision may have been subsequently registered which alter the situation. A

unique notation on the plan may be of relevance, and in some instances to properly identify the location of a boundary may require the assistance of a surveyor.

In light of the above, distinguishing between lot property and common property is often a very technical and complex matter, and appropriate professional advice should be sought to assist.

Obligations regarding the land and buildings

Determining who has legal ownership of a given part of the land or buildings in a strata scheme does not necessarily tell you who has obligations in relation to that property, nor what those obligations are.

Those questions, in themselves, can have complex and technical answers of their own.

Broadly, the owners' corporation will usually have a statutory obligation to maintain and repair the common property, which arises under section 106 of the Strata Schemes Management Act 2015 ("SSMA"). What that obligation means in a given instance is not necessarily clear.

In some cases, the owners corporation may not have that obligation at all—for example, when a "common property rights by-law" has imposed the obligation on a lot owner—and in some cases the owners corporation may have additional obligations (for example, if the owners corporation is part of a community or neighbourhood association, a member of a Building Management Committee, or has obligations under a positive covenant registered against the land).

Lot owners have statutory obligations of their own regarding the common property—for example, they may not alter their lot to remove support from the common property, or use the common property in a way that causes a nuisance to other owners or occupiers.

Lot owners will generally share a right to make reasonable use of the common property, subject to limitations and exclusions that may be controlled in permitted ways by the by-laws of the strata scheme. Ultimately, lot owners must contribute funds to the owners corporation to enable the owners corporation to meet its obligations concerning the common property.

Other obligations arise outside of the relevant statutes. Duties may arise at common law, for example, such as a duty to take reasonable care to avoid risks of injury or damage to property.

Alterations and additions

Works that alter or add to the common property generally require approval of the owners' corporation by special resolution at a general meeting in accordance with section 108 of the SSMA. This obligation applies to both owners and the owners' corporation itself, and must be "specific" and "particular" to the work involved.

Some alterations may be able to be approved by different means—sections 109 and 110 of the SSMA deal with "cosmetic work" and "minor renovations" respectively. These provisions have complex and detailed exceptions that will often render them inaccessible in a given case.

If there is an approved addition or alteration to common property, the obligation to repair and maintain it will fall to owners corporation, unless that obligation is "passed on" to a lot owner by the making of a specific kind of by-law, known as a "common property rights" by-law. In order to make such a by-law, the lot owner on whom the

repair and maintenance obligation will be imposed must provide their prior written consent (subject to limited exceptions). The by-law must be adopted by a special resolution at a general meeting, and it must also then be registered on the common property title at NSW Land Registry Services.

In practical terms, putting effect to such a “transfer” of repair and maintenance obligations from the owners corporation to a lot owner is one of the main reasons why common property rights by-law are generally adopted with respect to alterations to common property.

Usually a “special resolution” is passed if, of the value of votes cast on the motion, no more than 25% were against it. (The value of a vote for this purpose is equivalent to the unit entitlement of the lot for which the vote is cast.)

However, where the resolution is a “sustainability infrastructure resolution”, a special resolution is passed if, of the value of votes cast on the motion, less than 50% were against.

Although the threshold for passing such a sustainability infrastructure resolution is accordingly lower, the owners corporation has additional obligations to consider certain factors (specified in sub-section 132B (1) of the SSMA), including factors such as the cost of the works and the infrastructure (including running and maintenance costs), who will do the relevant works, the ownership of the infrastructure, and its availability to owners and occupiers in the strata scheme.

Works concerning electric vehicle chargers

The installation of electric vehicle charging stations is expressly given as an example of “sustainability infrastructure” in the SSMA.

An owners corporation must therefore consider the factors set out in sub-section 132B (1) before passing a resolution that relates to the financing or installation (on the common property) of electric vehicle chargers, or changing the by-laws in that regard.

Although in some cases it may be possible for the installation of electric vehicle charging stations to be accomplished as “minor renovations” under section 110 of the SSMA, in most cases one or more exclusions will apply. As a result, it will usually be the case that the minimum level of approval required will be a special resolution under section 108 of the SSMA.

As mentioned above, it is also usually the case that, in order to “pass on” repair and maintenance obligations, a by-law is generally made when a lot owner undertakes works.

In that regard, several possible types of by-law may be relevant, including:

1. a by-law for works by a single lot owner to allow them to install an electric vehicle charger within their lot (usually, in their car space)
2. a by-law for works by multiple lot owners, where more than one lot owner (but not all) seeks to undertake such works
3. a by-law for generic approval of such works by all lot owners.

When an owners' corporation undertakes the installation of electric vehicle charges on the common property, it would also generally be advisable that a by-law be made to regulate its ongoing use, and protect the interests of the owners corporation.

Where a lot owner undertakes the works, it would be expected that the works would be connected to an electricity supply metered separately to their lot. Consequently, the lot owner would naturally bear the ongoing usage costs.

Where the owners corporation undertakes the installation, the common property powers supply would likely be used, and the ongoing usage costs would be an expense borne by the owners corporation, to which lot owners would contribute through the owners corporations budget (which generally must be paid by lot owners in shared proportional to their relative unit entitlements).

It may also be open to the owners corporation to allocate electricity usage costs in a particular manner as is appropriate for the particular scheme by entering into a services agreement with owners or occupiers of lots for such usage in accordance with section 117 of the SSMA. Alternatively, if the by-law that regulated the use of the electric vehicle chargers was made as a "common property rights" by-law, costs allocations of that sort could arguably be regulated by the by-law.

To learn more about some of these scenarios, including template by-laws and motions which may be appropriate for use in a given strata scheme, please read the following:

1. Single lot owner works by-law
2. Multiple lot owner works by-law
3. Generic works by-law
4. Owners corporation works and service
 - a. Proposed works, use and indemnity
 - b. Existing works, use and indemnity
 - c. Services agreements.

Important limitations and warnings

The information provided about EV ready buildings in this document on the Energy Saver website is generic in nature and is aimed at providing a broad and general overview of the matters that may be relevant with respect to the installation and use of electric vehicle chargers within strata schemes. The information provided is not legal advice contemplating your specific circumstances and is not a substitute for such advice.

Independent legal advice should always be obtained before relying on anything set out here.

A number of significant further considerations—on which independent professional advice should be sought—are set out below.

Planning Approvals

When contemplating works to the common or lot property, it is important to consider the relevant local planning laws for your Local Government Area, and whether any specific planning approvals are required.

In accordance with clause 104B of the State Environmental Planning Policy (Infrastructure) 2007 (“SEPP”), the erection of an electric vehicle charger is exempt development (that is, in summary, the work can be done without needing to obtain development consent from the local council or other consent authority) if:

the general requirements for exempt development are met under clause 20 of the SEPP;
the charger is for the private non-commercial use of an owner or occupier of the premises where it is located; and
the charger is located in accordance with the relevant Australian Standards (AS/NZ60079.10.1), being in an existing car park (which is relevant here).

Local planning laws and Local Council requirements can be complex and differ between Local Government Areas. Independent professional advice should be obtained prior to undertaking any proposed works, to confirm whether development consent, or any other form of approval, may be required in a given case.

Limitations of Template By-Laws

It is important to note that the information resources and template materials provided on this website may not be appropriate or relevant in all circumstances. There may be circumstances which apply to a given strata scheme which are not contemplated or accounted for. For example, a tailored by-law, or specifically legal advice, may be particularly important in various circumstances, including the following:

1. complex arrangements are in place or are contemplated for usage and electricity costs
2. specific and complex technical requirements are needed for the proposed works
3. if your strata scheme forms part of Building Management Committee, Community Association, Neighbourhood Association, is subject to positive covenants, or is bound by other agreements or arrangements (such as “umbrella deeds” or the like)
4. if your strata scheme is a leasehold strata scheme
5. if your strata scheme is subject to an embedded electricity network
6. the car parking spaces for lots in your strata scheme are common property
7. if your strata schemes already have existing by-laws that may be in place, or existing infrastructure has already been installed
8. if there are easements, covenants, restrictions as to use or other encumbrances on title that may impact on the ability to do such works or as to the approvals that may be required.

Technical matters

Advice should be taken from appropriately qualified professionals concerning the design, specification, installation and use of electric vehicle chargers. Those matters are regulated by various laws and standards which are not addressed here. Installation and maintenance works should always be done by suitably qualified and licensed people, and legal advice should be considered as to the terms and conditions of the arrangements that are put in place in that regard.