Owners corporation obligation to repair common property may be broader than you realise | Some guidance from the NCAT Appeal Panel

A recent NCAT Appeal Panel decision, The Owners - Strata Plan No. 37812 v Herbert [2026] NSWCATAP 313, has provided some guidance in relation to this recurring issue.

The case involved:

- A water penetration issue in a residential scheme, involving water penetration through a wall between a bathroom and ensuite and an adjoining bedroom in one of the lots, the wall being an internal/lot property wall.

- A waterproofing membrane system comprising a horizontal component across a floor slab and a vertical component within the relevant wall.

- There had been no owner renovations to lot property transferring common property repair and maintenance obligations to the lot owner.

- A scope of remedial work requiring complete removal of the waterproofing membrane system and installation of an entirely new waterproofing membrane system.

An argument by the owners corporation to the effect that it was not responsible for the requisite repairs, because they related to a defect in lot property, rather than common property.

What did the Appeal Panel decide regarding repair obligations?

The Appeal Panel's decision suggests that:

- It was open to the Tribunal to find that a scope of work "requiring the whole of the waterproofing to be replaced" was consistent with "it being one continuous system that cannot be replaced on a piecemeal basis", i.e. such a finding did not involve procedural unfairness on the basis that the party aggrieved with the finding had not been given a reasonable opportunity to make submissions in relation to the issue.

- It was also open to the Tribunal to find that, if the waterproofing membrane system was one system requiring replacement in its entirety, the component within the lot property wall

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represented common property (even if the wall itself did not) and the owners corporation was responsible for its maintenance and repair.

This in turn suggests that:

- Some items within the boundaries of a lot may in fact be common property for the purposes of the owners corporations repair and maintenance obligations under Section 106 of the Strata Schemes Management Act 2015, even if the items are not so described in the relevant strata plan.

- In this case, the items were components of a waterproofing membrane system, but the case has broader potential application than that.

- That might not be the case where there have been renovations transferring repair and maintenance obligations to the lot owner.

- Owners corporations and lot owners should consider their positions carefully, obtaining legal advice where required, if an owners corporation claims that a repair relates to a defect in lot property and attempts to shift repair obligations to a lot owner.

We have considerable experience with these issues and would be pleased to provide you with whatever assistance you may require.

Key takeaways

- The NCAT Appeal Panel decision clarifies that certain components within lot boundaries may be considered common property.
- Owners corporations may be responsible for repairs that relate to defects in lot property if they involve common property components.
- Legal advice is recommended for owners corporations and lot owners regarding repair obligations.
- The decision highlights the importance of understanding the scope of maintenance responsibilities under the Strata Schemes Management Act 2015.
- Renovations may transfer repair obligations to lot owners, impacting the owners corporation's responsibilities.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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