

Owners corporation works required motions and by-laws for use and indemnity

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.

Section 106 and 108 Strata Schemes Management Act 2015 requirements

Pursuant to section 108 of the Strata Schemes Management Act 2015 (NSW) ("SSMA"), an owners corporation or the owner of a lot may add to, alter, or erect a new structure on the common property only if a special resolution has first been passed by the owners corporation at a duly convened general meeting. In circumstances where the owners corporation is undertaking works to the common property, provided that such changes have been duly approved in accordance with section 108 of the SSMA, there is no further requirement for a by-law to be registered to regulate those works.

In the event that the relevant changes to the common property have already been made (such as the installation of a electric vehicle chargers and/or associated infrastructure), there will be no need to pass a further motion under section 108 of the SSMA, and a by-law for use and indemnity discussed below may be appropriate.

Section 106 of the SSMA imposes a strict obligation on the owners corporation to properly maintain and keep in a state of good and serviceable repair the common property.

To that end, in the event that common property facilities and infrastructure (such as common property electric vehicle chargers) are damaged or used in a manner which causes other losses, the owners corporation may be liable to repair and rectify the common property and may also potentially be liable for other costs or damages. However, an appropriately drafted by-law can govern the use of such common property facilities and infrastructure, and provide some degree of protection to the owners corporation.

By-law for use and indemnity

To protect its interests where a common property electric vehicle charger or chargers have been installed for the use and benefit of the owners and occupiers of lots in the strata scheme, it would be prudent for the owners corporation to consider making a by-law to regulate the use of the charger or chargers, and to provide reasonable indemnity for any damage caused as a result of a breach of those obligations.

Such a by-law can:

1. identify the relevant common property (in this case, the electric vehicle charger or chargers) and any restrictions on use; and
2. require the lot owners to indemnify the owners corporation for their breach of that by-law, including protecting the owners corporation in the event of misuse, damage or other loss.

For the by-law to be effective, it must be approved by a special resolution at a general meeting of the owners corporation and registered with NSW Land Registry Services within 6 months of the date of approval.

Generally, a by-law of this nature would be proposed by the strata committee on behalf of the owners corporation itself.

Template by-law for use of electric vehicle chargers and indemnity

To assist with regulating the permitted use of common property electric vehicle chargers and provide reasonable protections to the owners corporation, the following template by-law can be used: Electric Vehicle Charger Motions and By-Law--OC Installation and Management

The above template by-law will operate as follows:

1. To permit all owners and occupiers to use a common property electric vehicle charger or chargers, to charge an electric vehicle.
2. To require owners and occupiers to ensure that their vehicle is compatible with the relevant electric vehicle charger prior to use, and to otherwise use the charger in a lawful and careful manner.
3. To permit the owners corporation to impose further rules as it sees fit from time to time. Importantly, these rules cannot be inconsistent with the by-law itself, or any other law. An important source of law in this regard is the legislation governing strata schemes—for example, a rule could not purport to impose an obligation on a lot owner to repair and maintain common property, as that can only be achieved by making a common property rights by-law with their written consent. Legal advice should be taken before seeking to implement further rules under the by-law.
4. To require for the owners or occupiers using the electric vehicle charger to indemnify (hold harmless) the owners corporation for any damage, cost, loss claim, demand, suit or liability caused by their breach of the by-law.

The above by-law is generic in nature and has been drafted to apply to a broad range of situations to regulate the use of common property electric vehicle chargers by all owners and occupiers within the same strata scheme, and protect the owners corporation from issues arising from such use. This is an information resource only and is not intended to be legal advice contemplating your specific circumstances.

Before using this template by-law, you should consider the specific requirements of your strata scheme. In the event that you are unsure as to whether this template by-law is appropriate for you or are unclear about any of the associated rights and obligations dealt with in the by-law, independent legal advice should be obtained.

Next steps

If you believe this by-law is appropriate for your strata scheme, then you may provide your strata manager or the secretary of your owners corporation with the following documents which are provided with this information resource:

1. the motions.
2. the template by-law, with your strata plan number included in the relevant field.

In providing these documents to your strata manager or the secretary of your owners corporation, you should expressly request that they be included on the agenda of the next general meeting of the owners corporation for its consideration.

Generally, a by-law of this nature would be proposed by the strata committee on behalf of the owners corporation itself.

In accordance with section 132B of the SSMA, you should also provide your strata manager or secretary with details about the costs of installing, running, and maintaining the proposed electric vehicle charger, for the owners corporation to consider.

If the motions are approved by a special resolution at a general meeting of the owners corporation, the works may be commenced, noting that the by-law must be registered at NSW Land Registry Services within 6 months from the date of approval.

If you are unclear about any of these issues or are unsure about whether these template documents are suitable for your circumstances, you should seek independent legal advice.

It should also be noted that these template documents have been drafted in March 2021. The legislation and associated requirements may change from time to time, and this may not be contemplated in these template documents.