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Strata Schemes Management Act 2015 Section 106 - Duty of owners corporation to maintain and repair property

(1) An owners corporation for a strata scheme must properly maintain and keep in a state of good and serviceable repair the common property and any personal property vested in the owners corporation.

(2) An owners corporation must renew or replace any fixtures or fittings comprised in the common property and any personal property vested in the owners corporation.

(3) This section does not apply to a particular item of property if the owners corporation determines by special resolution that:

(a) it is inappropriate to maintain, renew, replace or repair the property, and

(b) its decision will not affect the safety of any building, structure or common property in the strata scheme or detract from the appearance of any property in the strata scheme.

(1) The Tribunal may, on its own motion or on application by an interested person, make any of the following orders:

(a) an order removing a person from a strata committee,

(b) an order prohibiting a strata committee from determining a specified matter and requiring the matter to be determined by resolution of the owners corporation,

(c) an order removing one or more of the officers of an owners corporation from office and from the strata committee.

(2) Without limiting the grounds on which the Tribunal may order the removal from office of a person, the Tribunal may remove a person if it is satisfied that the person has:

(a) failed to comply with this Act or the regulations or the by-laws of the strata scheme, or

(b) failed to exercise due care and diligence, or engaged in serious misconduct, while holding the office.

MOTION 15: To consider a report from S Pogorelsky about the garden wall painting.

S Pogorelsky advised the meeting that the repair and repainting of the garden bed walls has now been completed. In order for this work to be completed, the hedges had to be trimmed back and tidied up. The EC expressed satisfaction with the completed works.

SP52948 Minutes of the EC meeting on 20th of February 2013 reported Mr. Steve Carbone tasked to remedy water penetration on garden bed walls

Garden bed walls. Steve, the new employee of the Building Manager, is to identify a section of garden bed wall that is showing significant signs of water penetration from the garden bed, scrape it back and paint it with a membrane based coating. This section of wall will then be monitored over a period of time to determine if the membrane coating has been successful in preventing water penetration / the leaching of salts & minerals etc. through the wall.

SP52948 Minutes of the EC meeting on 28th of August 2013 allegedly approved garden wall repairs in amount of \$5,170.00 incl. GST

Owners were also not told, or shown in any financial statements, that the budgeted and approved costs were doubled from those given in the minutes of the EC meeting.

BCS Strata Management falsely reported that they were repaired and repainted in 2013 at cost of \$5,170.00 (GST inclusive) as allegedly approved at EC meeting held on 28th of August 2013:

MOTION 7: To consider quotations for the re-painting of the central courtyard area.
The meeting reviewed quotations for the re-painting of the central courtyard area from Robertson's Painting and Decorating and Pierre Brush.
Resolved to approve the quotation from Pierre Brush, in the amount of \$5,170.00 including GST to re-paint the central courtyard area.

The real cost doubled and invoices paid to Pierre Brush were never disclosed to owners:

Cred. Code	Creditor Name	Doc. Ref. No.	Doc. Date	Doc. Total (GST inc.)	Chq. Date
37988	PIERRE BRUSH PAINTER	125/13	11/11/2013	\$5,500.00	19/11/2013
37988	PIERRE BRUSH PAINTER	115/13	8/10/2013	\$5,170.00	16/10/2013
			Total	\$10,670.00	

The repairs of garden beds create continuous stream of income for some service providers:

Creditor Name	Doc. Date	Doc. Total (GST inc.)	Chq. Date	Comment
HOWARD WEST - BUILDER	26/08/2015	\$654.50	01/09/2015	Supply and fit new custom made colourbond plates to damaged sections of garden walls throughout complex; drill and plug plates to garden walls, repair/adjust pedestrian fire door to rear ground floor of C Block
HOWARD WEST - BUILDER	19/05/2015	\$1,254.00	29/05/2015	Repair damaged garden walls throughout complex, supply and fit purpose built colourbond plates to walls as required, paint new plates to match, repair cement render to high rise garden wall adjacent C block entry, remove damaged render, supply and install one coat of waterproof render, finish render to affected area
HOWARD WEST - BUILDER	7/05/2014	\$1,353.00	21/05/2014	Common area: supply and fit colourbond capping to sections of garden walls, paint new sections to match, repair damaged aluminium handrail pickets adjacent to D block, refix pickets along entire section of railing, Block D: repair door and door frame of rear fire exit passage
HOWARD WEST - BUILDER	24/02/2014	\$753.50	05/03/2014	Common area: measure up plates for garden walls
HOWARD WEST - BUILDER	24/02/2014	\$704.00	05/03/2014	Common area: repair retaining wall adjacent to garage entrance, supply and install new sleepers
HOWARD WEST - BUILDER	19/02/2014	\$951.50	04/03/2014	Common area: repair leak to garden wall adjacent to pool area
HOWARD WEST - BUILDER	13/08/2013	\$831.60	21/08/2013	Common area: carry out repairs to garden walls, supply and fit folded colourbond panels to various cracks to garden walls, drill and fix new metal covers to brick walls adjacent to pool area and entry stairs
HOWARD WEST - BUILDER	7/12/2012	\$638.00	20/12/2012	Garden walls: supply and fit colourbond cappings to garden walls in main common areas over cracks/ control joints, paint new cappings
HOWARD WEST - BUILDER	12/09/2012	\$682.00	24/09/2012	Common area: repair damaged cement render to garden walls adjacent to entry stairs, supply and install new cement render

... Making the total costs of garden bed repairs in period of three years 2012-2015 above \$20,000.00.

Howard West Builder was using a unique substandard method by nailing metal plates on the front side of damaged garden beds without proper remediation work, leaving inner side of the bed exposed to water penetration, concrete cancer and movement as pictures show. Some of them are still kept on the walls, in spite of warnings about OH&S and the fact that did not help with protecting the walls.

Extract about tripping hazard due to uneven pavers from SP52948 Napier & Blakeley professional building report that was never presented to owners since July 2012

Napier & Blakeley charged the owners corporation \$12,144.00 (incl. GST) on 30th of July 2012 for their audit of the state of the buildings and the equipment in July 2012 (without the approval to engage them at any legally-convened EC meeting or obtaining alternative quotes).

The invoice was due for payment by 12th of August 2012, but BCS Strata Management and EC members deliberately delayed it until September 2012.

One of the issues raised in their report was tripping hazard due to uneven pavers in areas between the buildings.

Condition Report

Prepared for:

Raine and Horne Strata Sydney
Locked Bag 22
Haymarket
NSW 2000

Prepared by:

Napier & Blakeley Pty Ltd
ACN 006 386 278
Level 11
309 Kent Street
SYDNEY NSW 2000
Tel 02 9299 1899 Fax 02 9299 9525

July 2012

File Ref 2113061511 / J13290



Napier & Blakeley

COST ■ RISK ■ RETURN

Napier & Blakeley Pty Ltd
PO Box R608
ROYAL EXCHANGE NSW 1225

T 02 9299 1899
F 02 9299 9525
E accounts@napierblakeley.com

Invoice to

Peter Bone
Raine & Horne Strata Sydney
Locked Bag 22
HAYMARKET NSW 2000

52948

Invoice No PSI000023162

Invoice Date 30 July 2012

Payment Due Date 13 August 2012

Client Number CUS54623

TAX INVOICE

Description of Services

1-15 Fontenoy Road NORTH RYDE NSW 2113
Vendor Technical Due Diligence Report

11,040.00

Subtotal AU\$ 11,040.00
GST AU\$ 1,104.00

TOTAL AMOUNT DUE

AU\$ 12,144.00

Tripping hazard report:

The construction joints formed within the basement car park soffits allow differential movement of the structure. This is subsequently affecting the brick paving to the common circulation areas above as well as the dwarf walls to the planter boxes causing isolated areas of cracking and minor movement. Affected areas of paving have risen in line with the construction joints below potentially causing trip hazards. Affected areas should be repaired through ongoing routine maintenance to prevent any future trip risks. The dwarf walls can be cosmetically repaired with sufficient movement jointing incorporated.



Isolated raised paving

Lot 158 request for repairing pavers in common area between buildings to BCS Strata Management on 3rd of March 2015

This email is part of SP52948 documents that must be retained for at least seven years by strata agency (the new law is retrospective up to two years), as per Strata Schemes Management Act 2015 Section 180:

- (a) any records, notices and orders required to be kept under this Division or Part 10 of the Strata Schemes Development Act 2015,
- (b) minutes of meetings required to be kept under Schedule 1 or Schedule 2,
- (c) its financial statements and accounting records,
- (d) copies of correspondence received and sent by the owners corporation,
- (e) notices of meetings of the owners corporation and its strata committee,
- (f) proxies delivered to the owners corporation,
- (g) voting papers relating to motions for resolutions by the owners corporation and to the election of officers or the establishment of a strata renewal committee (under Part 10 of the Strata Schemes Development Act 2015),
- (h) a copy of any signed strata managing agent agreement or building manager agreement entered into by the owners corporation,
- (i) records given to the owners corporation by the strata managing agent relating to the exercise of functions by the agent,
- (j) any other documents prescribed by the regulations for the purposes of this section.

Maximum penalty: 5 penalty units.

 Tue 3/03/2015 9:43 PM

REQUEST FOR REPAIRS SP52948 3Mar2015

To Russell Young

Cc Billy.Cheung@bcms.com.au

Bcc strata@bcms.com.au; Mallory.Costen@bcms.com.au; MilicaP@bcms.com.au; RonS@bcms.com.au

 We removed extra line breaks from this message.

 Message  SP52948-broken-fence-second-time-unmonitored-backyard-entry-to-complex-3Mar2015.PNG (1 MB)

e) Tripping hazard on paving areas in the complex, as reported by Napier & Blakeley in July 2012. Pavers need to be removed and resealed to make even surface. This is OH&S risk.

Lot 158 Motion about tripping hazard due to uneven pavers for Annual General Meeting 2016 that was removed from the agenda without valid reason

Note: BCS Strata Management FAILED to include this as Motion in the agenda for AGM 2016

Motion: Caretaker's Non-Compliance with OH&S Pavers Tripping Hazard

That owners corporation confirms by ORDINARY RESOLUTION pursuant to Section 47 of the Strata Schemes Management Act 1996

Caretaker failed to comply with OH&S tripping hazard requiring pavers to be repaired as per Napier & Blakely's building report dated July 2012.

<http://www.nswstratasleuth.id.au/BCS-Strata-Management-hid-professional-building-report-from-SP52948-owners-and-CTTT-Napier-and-Blakeley-July-2012.pdf>

Lot 158 Motion about tripping hazard due to uneven pavers for Annual General Meeting 2017 that was removed from the agenda without valid reason

Motion: Building Manager's Non-Compliance with OH&S pavers tripping hazard

The Owners Corporation SP52948 by ORDINARY RESOLUTION, confirms the following:

- **BCS Strata Management and EC members failed to include this Motion in the agenda for AGM 2016 without due notice to the requestor of the Motion, and owners corporation denied a vote on the Motion,**
- **Building Manager failed to comply with OH&S tripping hazard requiring pavers to be repaired as per Napier & Blakely's building report dated July 2012.**

Explanatory Notes:

- Napier & Blakeley report from 2012:

<http://www.nswstratasleuth.id.au/BCS-Strata-Management-hid-professional-building-report-from-SP52948-owners-and-CTTT-Napier-and-Blakeley-July-2012.pdf>

- Reminder to Building Manager about pavers in 2015 and 2016:

<http://www.nswstratasleuth.id.au/SP52948-Building-Manager-Steve-Carbone-looking-for-excuses-about-poor-complex-management-6Oct2016.html>

SP52948 visual audit on 1st of March 2017 - joint visit by Mr. Robert Crosbie, Mr. Steve Carbone, and Lot 158

In spite of OH&S risk with tripping hazard due to raised pavers in the courtyard, as reported by Napier & Blakey in July 2012, the meeting acknowledged that building managers failed to act upon this risk.

SP52948 example of repetitive repairs to the same garden bed corner in front of Block A where raised pavers cause problems

Picture taken on 18th of October 2015:



Picture of the same corner taken on 23rd of December 2018:



SP52948 Example of garden bed repairs urgently done before AGM on 1st October 2018 in spite of allegedly excellent work completed in 2017

Another part of garden bed repaired in panic before the AGM 2018 on 1st of October 2018, only one year after the major maintenance works in SP52948 which cost owners \$646,200.00 plus GST (totalling \$710.820.000) and included undefined details for various structures in amount of \$66,000.00 (including GST). The structures allegedly included garden beds, louvres in the basement, swimming pool area, and similar.

This part of garden bed is repetitively repaired, without warranties, and at owners corporation expense.

Photo taken on 25th of August 2013:



Photo taken on 1st of October 2018, another repair just one year after major works in the complex:



Garden wall collapsing in front on Block D on 23rd of December 2018

Courtesy of Howard West Builder work in 2013: nailed metal plates on the front side of damaged garden beds without proper remediation work, leaving inner side of the bed exposed to water penetration, concrete cancer and movement as picture shows:

