

Publication Date: 27 June 2024
YSP Podcast Transcript: 414. 3 Tips From Inside My Own Building's
Remedial Works Project

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Intro: Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate and bite-sized information from an experienced and authoritative source.

Amanda Farmer: Hello and welcome to this week's pod. I'm your host, strata lawyer, Amanda Farmer, and I have a solo episode for you today. You are here with me. I'm going to be sharing three tips for those of you who are about to start or maybe thinking about, or even already involved in what I'm going to call large remedial works projects. These are tips from my personal experience as an owner, as a strata committee member, and also as a lawyer, assisting owners in buildings where there is work going on.

Before we dive into those three tips, a quick reminder that this week is your last opportunity to join the Your Strata Property online membership community at the current low price of \$67 a month.

The 1st of July 2024 is just days away and not only is that the first day of the new financial year, it is also the day that we have a scheduled price increase across all categories of membership in our online community. We never increase prices for our current members so anyone who has secured an owner-level membership by midnight Sunday the 30th of June will never pay more than \$67 a month for the life of their membership.

That price is going up to \$79 a month on the 1st of July. That's an 18 % increase. So this really is your last opportunity to beat the price rise and secure your membership at the lowest possible price. And here's a tip, you can actually get your membership even cheaper than that when you choose to pay in full for the year. And maybe this is an expense that could be tax-deductible for some of you so have a think about that. Do check with your accountant of course that is not my area of expertise, but it could be another reason why you do want to get in and get signed up and get signed up by the 30th of June.

Our members typically stay with us for more than a year. So if you are an owner joining on a month-to-month membership by the 30th of June, you will save \$144 across the course of a year. When the new price hits on the 1st of July, \$144 is the annual difference between a \$67 a month membership and a \$79 a month membership. So there is a considerable saving to be had this week only. If you're ready to find out more about the benefits of membership, the level of strata law support that our members are accessing on the inside, the place to go is stratamembership.com.

That's also where you can sign up to join us. Just be sure to do that before midnight on Sunday, the 30th of June, 2024 that is to be the price rise. Now I have mentioned \$67 a month as the price of our owner-level memberships, our pro-level memberships, that's for our strata managers. Those prices are increasing too for new members. There is a 20 % increase scheduled for those. So if you are a manager who's been thinking about pro membership, perhaps as a way to claim your compulsory CPD points in New South Wales for the 2024-2025 CPD year, do head over to stratamembership.com and get that locked away this financial year or don't hesitate to reach out to me by email, amanda@yourstrataproperty.com.au I will be online this weekend, welcoming our new members and I'm happy to talk through with anyone owner or manager, what your best value option is if you are keen to join us on the inside.

Onto our topic for today. My three tips for strata communities involved in large remedial works projects.

Now large is a relative term. It may depend on the size of your building for some smaller buildings. A project that is priced at about \$100,000 might be a large project.

My building where I own an apartment at the moment is in the middle of a \$2 million remedial works project that involves a new waterproof membrane on the roof of our 45-year-old building and some balcony remediation works. I have a client who is currently involved in a \$5 million project. I don't think it matters what size your building is, how many lots there are in those buildings.

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These are big numbers. In my experience as a lawyer, a committee member, as an owner, there are a few things that you can indeed should be doing, be thinking about, be ticking off to help keep these costs under control, to reduce the risk of a legal dispute or at least an unnecessarily costly legal dispute and to try and get all residents, all owners through this difficult time as smoothly as possible.

Today I'm sharing three tips. That's not because that's all there is. There are plenty of tips from experienced players who have been through these projects. I will direct you to a couple of other podcast episodes on point towards the end of this chat. If you want to go over and learn a bit more. For three tips I can fit into our bite-sized podcast today.

Tip number one. Get legal advice. And I don't say this because I am a strata lawyer and I'm trying to drum up business for my own practice or those of my colleagues. I say this because I know how beneficial this advice has been to me as a committee member, to my fellow committee members and how with what is possibly a few thousand dollars investment in getting some advice. You can avoid potentially hundreds of thousands of dollars being wasted on a costly legal dispute down the track.

Dr. Nicole Johnston was here on the pod a couple of weeks ago talking about her research soon to be published about our aging buildings and after surveying a number of owners she said she was surprised by how few communities just do not get legal advice on their construction contracts.

Those contracts that are signed up between a builder and an owners corporation, contracts signed between an engineer and an owners corporation. These are in a lot of cases, as you've heard, multi-million dollar contracts. And there are communities out there that do not get a scrap of legal advice before signing them. Perhaps trying to save those few thousand dollars, I'm not sure. Perhaps it doesn't cross their mind that they can or should get some legal advice. They may take some comfort from the fact that the contract is in a standard form. Maybe it's the fair trading template contract.

Maybe owners or committees feel that there's no room for negotiating contract terms with a very busy builder or engineer who has essentially put those terms forward on a take-it-or-leave-it basis.

In my experience, there is always room for negotiation and perhaps even more importantly, there is great benefit in having a solid understanding of what the contract means, what the essential terms are, and getting a heads up on a few things to look out for. That is what a good strata lawyer is going to be highlighting for you when giving you advice on these contracts.

My building did get some advice on the \$2 million contract that it has recently entered into a number of clauses were changed by agreement ahead of that contract being signed and based on the legal advice that we received and our lawyer remains on call for any contract issues that may crop up during the course of the work. We do benefit in our community from having a couple of lawyers on our project subcommittee. I'm going to talk about subcommittees in a moment.

So we are alert to the potential for breaches of the contract. We are reasonably familiar with the terms of that contract. One of the examples that came up recently and it's the reason why I wanted to bring this chat to the podcast. I've mentioned that in my building there's some work being done on balconies and the contract was clear that external access only would be permitted. The contractors would not be able to come and go from inside the property disturbing residents in order to work on the balconies. The contractor would have to work out a way to access the balconies externally whether that was through swinging stages maybe even abseiling in some circumstances.

The contractor would have to work out a way and incorporate the cost of that into their pricing to access balconies externally only during the course of their work. Came up recently the contractor approached the residents and said we're coming in, in a week's time we're going to be working on the balcony make sure you're home. It's going to be about six weeks' worth of disturbance. We'll be in and out. And when those residents contacted the strata committee, let us know that that approach had been made.

The lawyers on the project subcommittee were able to go and have a look at the contract and say, hang on a sec. Internal access has not been agreed. It is not permitted under the contract. The contractors are going to have to access the balconies externally.

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And this attempt to gain internal access, while it may be a cost saving or a time saving for the contractors in the long run is not something that's going to be acceptable to the owners corporation simply because of the disturbance to residents.

Another example, and I share this because you may be coming across these, it's important to be alert to them. The balcony work is going to require the removal of some sliding doors and some large single-pane windows at certain lots in our building and it was put to the project subcommittee that the very large panes of glass that needed to be brought up to the upper levels of the building would not fit in the lift in one piece.

And therefore the contractor suggested instead of a single pane of glass being installed in a window the design of the window would change so that it had two separate panes of glass all because apparently it wasn't possible to get the glass upstairs in one piece in the lift. Now you can imagine if you are one of those owners in one of those upper floor units, some with a lovely view through that single pane of glass, you're not going to be too happy if the owners corporation in the course of repairing the common property leaves you with two separate panes of glass separated by a frame or some other divider that's going to interrupt your view it's certainly not going to be a like-for-like replacement and it is not what is stipulated in the contract.

The contractor was aware that the building had a lift, that the lift was a certain size, that they would somehow need to get single panes of glass, large items into the lift and upstairs. And if they had not factored into their pricing, the cost of bringing that glass up by a crane, for example, and over the balcony, instead of in the lift, then that is not the owners corporations problem.

The subcommittee in my building was alert to this, said to the contractor, nope, that is not acceptable. It is up to you to find a way to get those large single panes up to the balconies. It would be a breach of your contract if you were otherwise to install glass that does not meet the design. That has been agreed. Now I've told you there's a couple of lawyers on this subcommittee. Lawyers are not shy about stating their position, having difficult conversations, calling others to account.

Having experienced these couple of scenarios, I'm alert to the fact that you don't necessarily have lawyers on your strata committees, lawyers in your building who are involved in or happy to be involved in these kinds of projects. And these are possibly the types of situations where if left unchecked. If builders and contractors are not held to the obligations they've agreed to under the contract, you can end up with some sticky situations, end up with unhappy owners who have not received the result that they were promised.

You can end up with increases in costs because no one has quite understood what was promised under the contract. All of this highlights the need for legal advice and ongoing access to legal advice during the course of the project.

Strata managers tuning in, I suggest you recommend to your strata committees that they get legal advice on these contracts before they sign them. The way that it usually works for a large remedial works project is that the contract will be drawn up prior to the request for tenders going out. So if you have an engineer who has drawn up the scope of work, the specification for the work, prepared the designs for the work, they will also prepare a contract that the owners corporation is happy with. That contract goes out as part of the tender and the contractors, the builders who are quoting to get the job are quoting on the basis that they agree to those contractual terms.

And that's why there should be no surprises. During the course of the work the contractor has priced the project based on the requirements of the contract and it's also the reason why you should have plenty of time to get legal advice on that contract. Make sure that it's right. Make sure that you understand it before it goes out as part of that tender.

Strata managers making this recommendation to committees to get some quotes for legal advice. I completely understand those quotes come in. They're considered to be expensive. This is a building that's already facing significant expense. A special levy perhaps is being raised. A strata loan is being entered into the thought of more expense is challenging I know.

But I certainly would not want to be that committee member who said, no, I won't spend a few thousand dollars on legal advice ahead of signing the contract, only to become involved in litigation down the track that costs the owners corporation many

hundreds

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of thousands of dollars over an issue that could have been pre-empted and dealt with clearly in the contract had that legal advice been obtained.

So that's my first tip for communities involved in large remedial works projects. Please do get some legal advice. Keep that lawyer on call during the course of the project. If you are lucky enough to have lawyers in the building, perhaps give them a tap on the shoulder. Maybe if they are specialists in tax law, they may not be all that helpful. But most lawyers, I want to say should be fairly familiar with reading contracts. They might be good people to have on your subcommittee.

That leads me in to my second tip, appoint a subcommittee. I've referred to this as the project subcommittee, maybe the building work subcommittee. This is a group of owners. Maybe they're committee members, but they don't need to be. Could be two, or three. I'd suggest probably not more than three to keep this subcommittee at a workable level.

It's a group that is authorized to be the point of contact on behalf of the owners corporation during the course of the project. The group that has regular site meetings with the contractors, whether that's everyone in the subcommittee or whoever is available in the subcommittee from week to week meets with the contractors on site. These people become the point of contact for residents who want to know. Why is it suddenly so noisy? Why have I got a hole in my ceiling? Why is the water being turned off?

They are the group that liaises with the owners corporations lawyer, with the strata manager, and indeed they report back to the strata committee at each strata committee meeting with an update on how the project is going. They are the group that approves the invoices that will be coming through regularly during the course of the project, or perhaps one person on the subcommittee is authorised to approve invoices. It's important with these projects that there isn't too much delay when invoices are presented for payment. That kind of delay can hold up a job, it can even constitute a breach of the contract.

So, somebody who is going to be checking their emails regularly, not about to take off on a three-month overseas trip. The building subcommittee should probably have at least one person, preferably all three people, who are actually residents on site. So that they are there intimately connected to the project. Sometimes it's a little bit too intimate, I know, with the noise and the dust and the disturbance.

I've said that the building subcommittee needs to be authorized to do all of these things. How does that happen? In my view, the strata committee can meet, pass a resolution authorizing these chosen people to be members of the building subcommittee and making very clear in the minute of that resolution what it is that these people are authorized to do. I've listed a few suggestions there. Attend site meetings, liaise with residents, the strata manager, instruct the lawyer, receive the lawyer's advice, report back to the committee, approve invoices.

What about variations? If these crop up as they inevitably do, variations to the contract, maybe in lifting up the tiles on the balcony, it's discovered that the slab is not in the condition that was expected and there needs to be some more work done that hasn't been costed in. The contractor is going to submit a variation and the contract terms would usually require the owners corporation to approve that variation.

Does that mean you've got to go to a general meeting to get that variation approved? Do you have to go to a strata committee meeting if you have authorized your subcommittee to approve variations? Then they are the ones who make the decision on that variation. Some communities put a cap on that variations only up to a certain amount or a certain percentage of the total contract price.

I'm working with an owner in a building at the moment where we have discovered \$700,000 in variations has been approved during the course of a project. And there is a real question around who was authorized to approve those variations.

For some projects it may be the strata manager who is authorized to be the point of contact for a contractor, for a lawyer, the person who can approve invoices. If you're a strata manager in that position and you're happy to take on that role that's certainly

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possible but you do want to make sure that you have that authorizing resolution in place and as I've said I do think there is great benefit in having people who are actually resident on-site being part of a building subcommittee or a project subcommittee especially when we're talking about larger projects that may be ongoing for a number of months.

That's probably not the kind of project where it's appropriate to have the strata manager as the authorized representative of the owners corporation. So that's tip number two, appoint a building subcommittee, a project subcommittee. Do that properly with an authorizing resolution. I raise this because I see a number of buildings overlook this step until it comes time for the contractor to get an instruction from the owners corporation, approve a variation. And the question crops up, hang on, how do we do this? Who is authorized to approve this?

And everything comes to a screaming halt because we need to go to a general meeting or convene a Strata committee meeting at best to be able to make a decision that keeps the project rolling on making sure that your residents on site are aware of who the subcommittee members are. They have their contact details. Maybe there's a WhatsApp group that is set up to ensure communications can flow between residents easily that can be really helpful in these situations as well.

I know in my building where work is ongoing at the moment, the WhatsApp group has been running hot and has been incredibly important to alert subcommittee members to some goings-on, on site, including damage to the common property that contractors may be responsible for and making sure that that can be addressed promptly by the subcommittee in the next site meeting this kind of a setup really does ease the lines of communication.

Moving on to tip number three for our strata communities involved in large remedial works projects. And I'm going to say this one might be a little controversial, but again, it comes from experience. Keep a close eye on your engineer.

I've said earlier that an owners corporation may engage an engineer to prepare a scope of works, to prepare the specification, to prepare the regulated design that we now need in New South Wales. And that engineer is very likely for larger projects to remain a part of the project while the work is ongoing. They are probably going to be what we call the superintendent under the construction contract.

They are there in the important and necessary role of checking the contractor's work, signing off on the completion of each stage of the work, checking the quality of the work and also making sure that when the contractor issues their invoices, usually called progress claims under the contract, checking that the work for which they are claiming payment has actually been completed and has been completed properly. As many of you who have been involved in these large projects will be familiar with this process.

It is common for contractors to issue monthly payment claims or payment claims after each significant stage of work is complete. They expect their invoices to be paid promptly. Often the invoices need to be paid promptly so that the contractor can meet its own obligations to pay its employees, pay its subcontractors, and order materials.

It is incredibly helpful to have an engineer who is there working for the owners corporation on site, making sure that those claims are legitimate, they're accurate and clearly telling the owners corporation yes, this invoice is good to pay. I've told you my tip is to keep a close eye on your engineer. And I say that because there are some engineers out there who unfortunately in my experience are not keeping a close eye on the contractor.

I have on a couple of occasions in my role as a committee member dealing with different engineers, been presented with payment claims that the engineer has signed off on. They've said, owners corporation, here's an invoice from the contractor. It's for the following work we recommend that it be paid. And when I've had a look myself at what is being claimed by the contractor and I've had a chat to residents on-site to check whether in fact the work has been completed, I have found out that it has not been done.

And yet the engineer has signed off on it. The engineer has presented a payment claim and said this is good to go. Send through the payment. Now I hope that the engineers who are listening to this podcast are not in this category of engineer that I am talking about. And I am sure you are not the ones to be concerned about.

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But I do sometimes feel that owners, strata committees, maybe the subcommittee, if they have been appointed can be exhausted by this process, understandably so, and can feel that because they have an engineer on site who's checking work, who's checking invoices, who the owners corporation has engaged to represent its interests, they can feel that they're off the hook a bit. They don't need to check the work of the engineer. They don't need to have a close look at these payment claims.

The message that I want to send with this third tip is that is not the case. Please. Keep a close eye on your engineer, what it is that they're doing, the claims that they're signing off on, what they themselves are invoicing the owners corporation and whether that is in accordance with the contract that you have with your engineer.

Unlike work that is done on a freestanding home where a contractor or even an engineer if they're involved is dealing exclusively with one person, one owner, the principal under the contract, when it comes to strata, builders, engineers, project managers, they are dealing with what I have previously called the faceless entity that is an owner's corporation. And I think sometimes. It's easy to forget that the owners corporation is made up of people, human beings. Every owner who owns a lot in the building is a member of the owners corporation. It is not some corporate entity with a bottomless bank account that can be taken advantage of.

I think it's undeniable that we do see that happen in strata. I am hopeful that we're seeing less of it now as we have more qualified people serving our strata communities and indeed owners buying into strata who are more sophisticated, who have spent a lot of money on their properties and who are prepared to protect their investment.

That means never assuming that a professional you have engaged is immune from making mistakes, from overlooking things, from being tired themselves even though it is probably the last thing you want to be doing after a long day at work yourself if you are a member of the project subcommittee and you have been authorized to be keeping an eye on what the contractor is doing, what the engineer is doing. If you are the person who is signing off on these progress claims and approving them for payment, please do have a close look at them and do not assume that your engineer or superintendent is immune from making their own mistakes. They can be expensive mistakes.

Those are my three tips for strata committees involved in what I'm calling large remedial works projects. Number one, get legal advice. Number two, appoint a subcommittee. And number three, keep an eye on your engineer. That is what we can fit into a bite-sized podcast episode. If you have more tips, I know you do. Or comments on what I have offered here today do come and post those under the episode on the website. You'll find it at yourstrataproperty.com.au/podcasts episode number 414.

You'll also find in the notes under this episode links to two other podcasts that I think you'll find useful if you are involved in strata remedial work episode number 313, Navigating the Strata Remedial Works Minefield. I interviewed three guests in that podcast. Peter Johnson, Graham Vile and Caroline McConnachie, each an expert in Strata Remedial Works. We talked about why remedial works are so painful for apartment owners, the different fee structures that are used by contractors and consultants. How to keep costs under control and how strata managers can best serve their clients during one of these projects. So a deeper dive on some specific issues there. Episode 313, check that one out.

And it was shortly followed by a live chat over on our Facebook page between me and Caroline McConnachie. We took some of your questions and Caroline offered her expertise. The link to revisit that chat on our Facebook page is in the show notes for this episode.

And way back in episode 191, that was the first time I interviewed Caroline McConnachie when she was with Max Build. She was walking us through the essentials of remedial works projects including how owners can take control of their project, why tenants seem to be the least informed but most impacted parties and Caroline also offered us a framework that you can follow to ensure a smooth project from inception to completion. Who doesn't want that?

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So some more resources there for you to have a closer look at this topic. It is one that is, as you've heard, close to home for me at the moment. I hope that you have found those tips helpful. That is it from me today. I do hope to see many of you inside our online membership community this week, snapping up that end of financial year saving that is available until midnight.

Sunday the 30th of June stratamembership.com is the place to go. Have a fantastic week in strata. I'll catch you all next time. Bye for now.

Outro: Thank you for listening to Your Strata Property. The podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode by the show notes at yourstrataproperty.com.au.