



JS MUELLER & CO
LAWYERS



GET YOUR RENOVATIONS APPROVALS RIGHT!

Adrian Mueller
Partner | Senior Lawyer
B.Com LLB FACCAL
[Email](#) | [LinkedIn](#)

GET YOUR RENOVATIONS APPROVALS RIGHT!

A recent decision by NCAT has provided guidance on what needs to be done for an owners corporation to approve renovations done by an owner. The case produced a surprising outcome and is likely to change the practice that is followed by owners who seek owners corporation approval to renovate.

Introduction

The case of *The Owners – Strata Plan No. 63731 v B&G Trading Pty Ltd* [2020] NSW CATAP 202 involved a dispute between the owners corporation of a large mixed use building in Milsons Point and the owner of a commercial lot in the building. In about 2017, the owner wanted to fit-out his lot as an office. The fit-out involved some work to the common property and did so between December 2017 and August 2018.

The Issues

The owner thought it had the authority to carry out the fit-out work under the terms of by-law 32 and did not need the consent of the owners corporation to proceed with the fit-out. By-law 32 was a developer by-law registered with the strata plan. By-law 32 granted the owner the special privilege to carry out works on the lot that would alter common property without first obtaining the consent of the owners corporation. The owners corporation did not consider that by-law 32 granted the owner any authority to fit-out the lot without its consent. The owners corporation applied to NCAT for orders to require the owner to remove the fit-out work done to the common property and reinstate the common property to its previous condition and pay compensation. The owners corporation was unsuccessful and appealed to the Appeal Panel of NCAT.

The Decision

The Appeal Panel had to decide whether a developer by-law, such as by-law 32 could authorise an owner to carry out alterations to the common property in connection with the lot. The Appeal Panel concluded that it is not possible for a developer by-law to do so. Further, the Appeal Panel held that, similarly, a common property rights by-law is not able to authorise an owner to carry out works affecting the common property. The key finding of the Appeal Panel was that the only way in which an owner can obtain the authority of an owners corporation to carry out works that affect common property (apart from cosmetic work or minor renovations) is by a special resolution that is passed at a general meeting and which specifically authorises the owner to take the particular action proposed.



A Surprising Outcome

The case produced a surprising outcome. For many years, developers have made by-laws that are registered with strata plans that permit certain owners to carry out works particularly works to fit-out commercial lots. This decision means that it is not possible for developer by-laws to grant owners the right to carry out works that affect common property.

The case also produced another surprising outcome. For many years, common property rights by-laws have been used to authorise owners to carry out works to common property by granting them a special privilege to do so. This case means that common property rights by-laws cannot be used to authorise owners to carry out works to common property.

The Wash Up

There are several key messages to take away from the case. These are as follows:

1. All existing “works” by-laws and renovations by-laws should be reviewed to assess whether they property authorise owners to carry out works to common property and any necessary changes to be made those by-laws to ensure they are valid and enforceable.
2. Any owners who want to apply to an owners corporation for permission to carry out works to common property that are not cosmetic work or minor renovations needs to have that work authorised by a special resolution that is passed at a general meeting of the owners corporation.
3. Any motion or by-law that is proposed to authorise an owner to carry out work to common property must be carefully drafted to ensure it properly authorises the owner to carry out the work.

Adrian Mueller

Partner I B.Com LLB FACCAL
adrianmueller@muellers.com.au



About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collections.

02 9562 1266
enquiries@muellers.com.au
www.muellers.com.au



Disclaimer: The information contained in this newsletter is provided for your personal information only. It is not meant to be legal or professional advice nor should it be used as a substitute for such advice. You should seek legal advice for your specific circumstances before relying on any information herein. Contact JS Mueller & Co Lawyers for any required legal assistance.

