



**JS MUELLER & CO**  
LAWYERS



---

# UNAUTHORISED RENOVATIONS: UNSCRAMBLING THE EGG

**Adrian Mueller**

Partner | Senior Lawyer

B.Com LLB FACCAL

[Email](#) | [LinkedIn](#)

---

## UNAUTHORISED RENOVATIONS: UNSCRAMBLING THE EGG

---

The perennial problem of owners who carry out unauthorised works to common property continues to rear its head. There are different ways to deal with the problem. In this article we consider different strategies for dealing with unauthorised works and explore the problems that arise when an owners corporation ignores the problem for too long.

### **Introduction**

An owner who wants to carry out work that will affect common property normally needs to obtain the permission of the owners corporation to perform that work. If the work involves minor renovations, the permission can be granted by the owners corporation at a general meeting or by the strata committee if there is a by-law that delegates to the committee the power to approve minor renovations. In the case of major renovations, the owners corporation must approve of them by special resolution at a general meeting, and a by-law is necessary if the owner will become responsible for the ongoing maintenance and repair of those renovations. But what happens when an owner breaks the rules and does not obtain the approval of the owners corporation or strata committee to carry out renovations? How should the owners corporation deal with the issue?

### **The Aggressive Approach – Self-Help**

There are a number of different ways in which an owners corporation can deal with unauthorised renovations done by an owner. The most aggressive approach is for the owners corporation to exercise a self-help remedy and remove the unauthorised renovations and reinstate the common property affected by them to its previous condition. Generally, the law does not favour self-help remedies because they tend to lead to disputes and often it is not possible for an owners corporation to take matters into its own hands because the owner concerned will not give access to his or her lot to allow the unauthorised renovations to be removed. But exercising a self-help remedy is a possibility and can often be used when the owners corporation's contractors are able to access the unauthorised renovations and those renovations are relatively minor in scope. Exercising a self-help remedy can also save time and money. But this aggressive approach should be used sparingly and often is not the appropriate way for an owners corporation to deal with unauthorised renovations.

### **A Stern Approach – Stop Work Orders**

A stern approach for an owners corporation that is faced with unauthorised renovations to take is to apply to NCAT for an urgent interim stop work order against the owner as soon as it becomes aware of the renovations. These types of orders are currently able to be made by NCAT normally within 3-7 days of lodging an application with NCAT. The owners corporation will usually also apply to NCAT for an



order to require the owner to remove the unauthorised renovations and reinstate the common property affected by them to its previous condition. Alternatively, the owners corporation can ask NCAT to order the owner to pay compensation to cover the costs the owners corporation will incur reinstating the common property to its previous condition and any associated costs including insurance and legal costs. This approach can prove costly and usually requires strata committee members to give evidence in NCAT, but is often the preferable way for an owners corporation to deal with unauthorised renovations which it does not want to permit.

### **Making it Someone Else's Problem – Complaining to Council**

Often renovations undertaken by an owner will require some form of planning approval either by way of a development consent issued by a Local Council or a complying development certificate issued by a certifier. It is often the case that an owner who carries out unauthorised renovations does so both without the approval of the owners corporation and the Council or a certifier. Where that occurs, the owners corporation can complain to the Council about the unauthorised renovations and ask the Council to stop them. All Local Councils in NSW have broad powers to issue orders to require works that need (but do not have) planning approval to cease. In serious cases, the Council can apply to the Land & Environment Court for an injunction to stop unauthorised works. Complaining to the Council about unauthorised renovations has the advantage of leaving it to the Council to deal with the unauthorised renovations saving the owners corporation time and money. But in our experience, Local Councils are often under resourced and are not able to deal with the problem promptly or at all, and even if the Council writes to the owner to request that the unauthorised renovations stop or issues a stop work order, often the Council will not enforce the order if the owner ignores it, particularly if the renovations do not affect the external appearance of the building or involve structural alterations. This can leave an owners corporation sorely disappointed with the outcome when the Council does not come to the party and solve the problem on its behalf.

### **A Collaborative Approach – A By-Law**

A more collaborative approach involves the owners corporation approaching the owner and requesting that he or she agree to a by-law that will permit the unauthorised renovations to remain on certain conditions. This approach is only appropriate when the owners corporation is prepared to allow the unauthorised renovations to remain and is satisfied that the renovations have been carried out in an appropriate manner and have not caused damage to the building or will not have a detrimental impact on the amenity of other owners or occupiers. Typically, a by-law of this type includes conditions that will require the owner to maintain and repair the renovations and indemnify the owners corporation against any loss it suffers arising out of the renovations. In some cases, the by-law can also require the owner to obtain planning approval from the Local Council for the renovations within a certain timeframe and require the owner to remove the renovations if that approval is not obtained by then.



This approach often yields the best outcome because the parties end up resolving their dispute, the owner becomes responsible for the renovations and the owners corporation avoids the disruption and expense associated with the removal of the renovations or litigation concerning them.

### **The Ostrich Approach – Ignore It**

There are many owners corporations that simply do nothing about unauthorised renovations particularly whilst they are in progress. There could be a number of reasons for this. In some cases, the owners corporation might not become aware that the renovations are being carried out particularly if they are relatively minor in scope. In other cases, the owners corporation may not be concerned about the renovations because, for example, the renovations are confined to the interior of a lot, do not affect the external appearance of the building, do not involve any changes to waterproofing or structural alterations and are not likely to have a detrimental impact on the amenity of other owners or occupiers. But what are the consequences for an owners corporation that sleeps on its rights? What happens when after the renovations have been completed, the owners corporation decides to take action and wants to have the unauthorised renovations removed? In those cases, it can often be too late to unscramble the egg. In other words, once renovations have been completed, it can be too late to have the renovations removed or the common property reinstated to its previous condition.

### **A Case Study**

This situation arose in the relatively recent case of *The Owners – Strata Plan No. 68255 v Downs; Downs v The Owners – Strata Plan No.60255* [2021] NSWCATCD 34. In that case, the owner of a lot carried out extensive unauthorised renovations that affected the common property. The owners corporation was aware of the renovations and asked the owner to stop them. Unperturbed, the owner continued the renovations. By the time the owners corporation took action in NCAT regarding the renovations, they had been substantially completed. In the case, the owners corporation sought orders from NCAT to require the owner to reinstate the common property affected by the renovations to its previous condition but the owners corporation's building expert gave evidence that it was not practicable to do so as the renovations were already complete and could not be undone. For that reason, NCAT was not able to order the owner to remove all of the renovations. Instead, NCAT only ordered the owner to remove some of the renovations being those which the owners corporation's building expert considered that it would be possible to remove.

### **Conclusion**

There are a number of different approaches an owners corporation can take when dealing with unauthorised renovations. There is no one approach which is always the most appropriate one. Each

---

case depends on its own particular facts and circumstances. But when an owners corporation sleeps on its rights and does not promptly take steps to stop an owner carrying out unauthorised renovations, the owners corporation may find itself in the position where it becomes too late to unscramble the egg. The lesson to be learned is that an owners corporation should not sleep on its rights and should promptly take steps to stop unauthorised renovations in their tracks. Once that is done, the owners corporation can then decide on the approach it will take to resolve the problem created by the unauthorised renovations.

**Adrian Mueller**

Partner | 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.