

Dealing with Fire Orders Affecting a Lot Property

Fire Orders and Cost Recovery By-laws

An owners corporation is only responsible for the common property in its strata scheme. So how does an owners corporation deal with a fire order that requires it to do work to lot property? Can a Council issue a fire order against an owners corporation to do work to lot property? If so, can the owners corporation make a by-law to recover from owners the costs it incurs doing fire safety work in their lots? The answers might surprise you.

Strata Law

An owners corporation is the owner of the common property it is strata scheme. The owners corporation is responsible for managing and controlling the use of the common property and maintaining and repairing the common property. Those obligations arise under the *Strata Schemes Management Act 2015* (**Strata Act**).

An owners corporation does not own the lots in its strata scheme, and under that Act, the owners corporation has virtually no responsibility in relation to any of the lots. This is because the lots are privately owned and the owners and occupiers of the lots are generally responsible for managing and maintaining them. So, under the Strata Act, the owners corporation is generally not responsible for maintaining and repairing lot property. Further, in general, the owners corporation is only able to adopt budgets and raise levies to cover expenses associated with the common property, not lot property

Fire Orders

But what happens when a Local Council issues a fire order that requires an owners corporation to carry out work to both common property and lot property. Does the Council have power to issue that order? And does the owners corporation have power to comply with the order and do work that affects lot property?

Planning Laws

The *Environmental Planning and Assessment Act 1979* (**EPA Act**) gives a Local Council power to order the owner of premises to do things that are specified in the order in order to promote adequate fire safety in a building when provisions for fire safety in the building are inadequate to prevent, suppress or prevent the spread of fire. The EPA Act says that premises include a building and that an owner includes, in the case of land that is the subject of a strata scheme, an owners corporation. Therefore, the EPA Act gives a Local Council power to order an owners corporation to carry out work to improve fire safety to both common property and lot property.

Case Law

This was confirmed by the NSW Court of Appeal as long ago as 1985. In 1985, the Court decided the case of *Proprietors of Strata Plan 159 v Parramatta City Council*. In that case, the Council had issued a fire safety order to the owners corporation of a strata building which required the owners corporation to carry out fire safety upgrades principally in two lots which were to be used as a restaurant. The owners corporation challenged the order and argued that the order unfairly burdened other owners with the costs of carrying out fire safety upgrades predominately to those two lots. However, the Court concluded that the statutory language was clear in permitting a Council to issue a fire order against an

owners corporation that required work to be done to lot property. The Court acknowledged that this meant that sometimes the costs of complying with a fire order would be shared by all of the owners even when the need for fire safety upgrades was confined exclusively to the lots of some of the owners which may seem inequitable.

But the Court considered that there were two answers to this problem. First, if the legislation clearly allowed a fire order to require an owners corporation to do work to lot property the mere fact that might produce a sense of injustice between owners was not a reason for the Court frustrating the clearly expressed intention of the legislature and it was a matter for the Parliament to change the legislation to overcome any unfairness if it saw fit to do so. Second, fire is a phenomenon which endangers all owners and occupiers of lots meaning all owners have a common interest in fire prevention and fire safety. This meant that it made sense for the legislation to allow the Council to issue one fire order against the owners corporation rather than have to issue and monitor compliance with multiple fire orders against numerous parties. Ultimately, the Court considered that it was in the common interest of all owners for the Council to have the power to issue the fire order against the owners corporation. The Court's decision has recently been referred to with approval by NCAT.

Recovery of Costs

If a Council can require an owners corporation to carry out fire safety upgrades to lot property, can the owners corporation recover the cost of performing those upgrades from the relevant owners? There is no clear answer to that question. Many owners corporations have introduced cost recovery type by-laws that purport to allow them to recover costs from owners in a variety of circumstances. There have been several recent cases in which NCAT has invalidated cost

recovery type by-laws. But there are also cases where NCAT has upheld cost recovery type by-laws. Ultimately, if an owners corporation wants to seek to recover from certain owners the costs it incurs carrying out fire safety upgrades in their lots, a cost recovery type by-law will need to be put in place but there may be difficulty enforcing the by-law.

Conclusion

A Council is entitled to issue a fire order against an owners corporation that requires fire safety upgrades to be carried out to lot property. Where that occurs, the Strata Act gives the owners corporation the right to enter the lots in order to do the work required by the fire order. If an owners corporation wants to recover the costs it incurs carrying out fire safety upgrades in a particular lot, a cost recovery type by-law will need to be put in place for that purpose. However, NCAT has recently raised question marks over the validity of cost recovery type by-laws so the recovery of those costs cannot be guaranteed.



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Since 2002 Adrian has specialised almost exclusively in the area of strata law. His knowledge of, and experience in strata law is second to none. He is the youngest person to have been admitted as a Fellow of the ACSL, the peak body for strata lawyers in Australia. [Profile](#) I [Linked](#)

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