

I Don't Like What Is Proposed to Be Built Next Door – What Can I Do?

Objecting to a Development Proposal and how to do it effectively:

The laws in relation to planning consents and development applications have undergone significant change in the last few years.

On top of this planning documents such as:

- Local Environmental Plans (LEPs);
- Development Control Plans (DCP's); and
- State Environmental Planning Policies (SEPP's).

can create a confusing and complicated overlap of government controls and technical issues to be applied when authorities decide what developments should or shouldn't be granted Development Consent and built in certain areas.

In summary Owners Corporations and residents have the following rights which may assist in stopping, modifying or having mitigating conditions imposed on a new development.

On Notification of a Development Application from Council

Once notified of a Proposed Development by Council, persons (including Owners Corporations) that may wish to object should:

- a. attend Council's offices and inspect all documents and plans on exhibition in relation to the proposed development and make detailed notes and copies of relevant information;
- b. obtain advice/report if necessary from a lawyer in relation to legal aspects of the development and/or a planner or consultants in relation to planning or other impacts and compliance or breaches of relevant LEPs, DCPs or SEPPs i.e. in relation to height, overshadowing, view sharing, traffic/parking impacts, noise etc.
- c. lodge an objection - draft and lodge with Council a clear and precisely detailed objection within the stated period for objection, listing the legal or planning issues raised by the development proposal and why it should be refused, modified or certain conditions imposed;
- d. attend Council meeting – if the application goes before a council meeting attend the meeting and address the Council in support of the objection if possible.

Please note that slightly different, but similar steps need to be taken if the Development Application is Designated Development or State Significant Development in which case objectors to the Development Application can provide submissions:

- a. possibly as input at first instance as part of an Environmental Impact Statement (EIS); or
- b. as a written submission after public notification of the Development Application.

If Development Application is Approved

If a Development Application is approved an objector has limited but still some legal avenues to challenge the Development Approval by way of:

1. Application to the Land & Environment Court challenging the legal validity of the Development Consent due to a legal error or some deficiency in the procedure followed in granting the development consent, such applications need to be made within 3 months of public notification of the decision, however are not a merits based review of the development;
2. Application to the Land & Environment Court for a merits based appeal but only in relation to consents for Designated Developments, made within 28 days of notification of the decision and where you have previously lodged an objection;
3. As a third party to a developer's Class 1 merits appeal where the court is of the opinion that the person is able to raise an issue that should be considered in the appeal but would not likely to be sufficiently addressed if the person were not joined as a party.

Exempt and Complying Development Approvals

Under present planning laws some developments do not need to obtain a Development Consent from Council as they are deemed to be Exempt or Complying Developments.

Exempt Developments are certain developments that fall within strictly defined parameters that mean they do not require consent by way of a Development Application these include rear decks of a certain size and construction and maintenance work.

Similarly, Complying Developments are those developments (generally of a step up in scale from Exempt Developments) that fall within strictly defined parameters that allow consent to be obtained from a Private Certifier by way of a Complying Development Certificate ("CDC") thereby bypassing Council and the notification procedures. Such projects include certain house constructions, house extensions, granny flats or swimming pools.

Owners Corporations and residents may also need to deal with private certifiers and councils in relation to the construction of buildings under Exempt or Complying Development Approvals if it appears that:

- a. the Exempt or Complying Development approval should not have been issued in the first place as the project does not fall within the parameters of Exempt or Complying Development; or



T: (02) 9929 0226

E: dbannerman@bannermans.com.au

P: PO Box 514

M: 0403 738 996

NORTH SYDNEY NSW 2059

ABN: 61 649 876 437

W: www.bannermans.com.au

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- b. the conditions of the Exempt or Complying Development approvals are not being complied with during the construction.

Bannermans Lawyers have a team of people experienced in all reasons of planning and construction law that can assist in objecting to a Development Application or in seeking enforcement of planning laws and controls.

By Bannermans Lawyers

2 October 2015



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