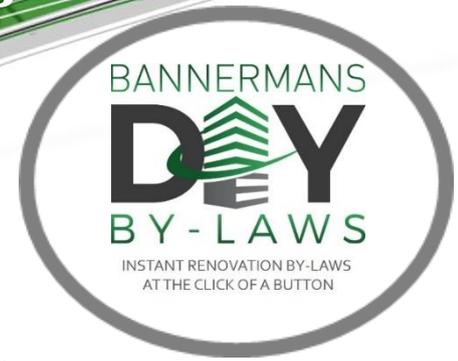


# Reasonable Grounds to be Unreasonable?

## Questions that arise when Owners Corporations refuse to allow works.



### **When can an owner corporation refuse requests by owners wanting to perform works or have exclusive use of common property?**

As strata schemes age, it is a common occurrence for lot owners to wish to renovate their units. However, it is often a source of conflict between the owner and the owners corporation over what require approval and what areas of common property are able to be affected by the works or granted rights over.

An owners corporation can refuse requests for owners wishing to perform works at any time in any circumstances.

There is no requirement for an owners corporation to provide reasons why an owner's works are approved or refused.

When considering an owners request to undertake works, an owners corporation may wish to take into account such things including:

- (a) whether the works add to, alter or affect common property and require approval in the form of a by-law;
- (b) whether the work could adversely affect owner(s), such as ongoing transmission of noise;
- (c) whether an engineers report has been provided advising that the works will not affect the structural stability or safety of the building;
- (d) whether the works are in keeping with the building;
- (e) whether an adequately drafted by-law has been provided;
- (f) whether adequate consideration has been paid for the use of common property such as in the case of an owner seeking to obtain the exclusive use of a car space or attic space; or
- (g) whether other owners wish to use the area of common property in considering an owners request to obtain exclusive use of a part of the common property such as an attic space or car space.

## **When can an owner apply for orders to obtain permission to permit works to common property or the obtaining of the exclusive use of common property**

If an owners corporation refuses a request, an owner can seek orders under section 126(1) of the Strata Schemes Management Act 2015 to:

- (a) approve minor renovations or other alterations to common property directly affecting the owner's lot; or
- (b) the carrying out of repairs to common property or any other property of the owners corporation directly affecting the owner's lot,

if the Tribunal considers that the owners corporation has unreasonably refused its consent to the minor renovations or alterations or repairs.

An owner can also seek orders under s 149(1)(a) of the *Strata Schemes Management Act 2015* that the owners corporation has unreasonably refused to make a common property rights by-law. The Tribunal can only make orders of this nature when:

- (a) The owners corporation has considered a by-law at a general meeting;
- (b) The owners corporation refused to make that by-law; and
- (c) The owner has attempted mediation with the owners corporation.

When considering the question of whether the owners has unreasonably refused to make a common property rights by-law, the Tribunal will balance the interests of all owners in the use and enjoyment of their lots and common property against the rights and reasonable expectations of any owner deriving or anticipating a benefit under a common property rights by-law.

### **The High Court's decision in *Ainsworth v Albrecht [2016] HCA 40***

In the case of *Ainsworth v Albrecht [2016] HCA 40*, the High Court considered the question of when it was reasonable to refuse the making of an exclusive use by-law in a community title scheme in Queensland.

The facts concerned a lot owner's wish to amalgamate two balconies in his townhouse together with the associated common property.

In this instance, the majority of the Court deemed that it was not to determine whether the outcome of the vote was a reasonable balancing of competing considerations but whether the opposition of lot owners to the proposal was unreasonable.

The Court held at paragraph 64 that the test for determining whether opposition to a motion was unreasonable was that:

*“The proposal in question was apt to create a reasonable apprehension that it would affect adversely the property rights of opponents of the proposal and the enjoyment of those rights. In these circumstances, opposition of the lot owners who dissented from the proposal could not be said to be unreasonable. “*

The Court also provided an inexhaustive list of factors that it could consider in determining whether opposition to a motion was unreasonable including:

- The unreasonableness of the opposition to the proposal is to be determined in a context in which lot owners voting in respect of the proposed resolution are exercising their right to vote as an aspect of their proprietary rights as owners of lots having regard to those lot owners interests in the scheme.
- Nothing suggests that a lot owner may be required by the Tribunal to assist another lot owner to enhance that lot owners interest, or be regarded as acting unreasonably in declining to do so at least where the enhancement of the proponent’s interest is reasonably viewed as adverse to the interests of the opponent.
- A person with a property interest may reasonably insist on conserving that interest even if it is not presently being employed to that person's material advantage. That is so, if for no other reason than that he or she may reasonably expect to be offered something in return for agreement to part with it to another lot owner.
- Opposition to a proposal that could not, on any rational view, adversely affect the material enjoyment of an opponent's property rights may be seen to be unreasonable.
- Opposition prompted by spite, or ill-will, or a desire for attention, may be seen to be unreasonable in the circumstances of a particular case.

### **A word of caution**

Depending on whether you are seeking to undertake works within a strata scheme or whether your owners corporation wishes to preclude an owner from undertaking works or obtaining an area of common property, it is wise to obtain specialist legal advice if you want to obtain the best results.

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