

STRATA COMMUNITY LIVING

The hub for strata information



Autumn 2024

Cleaning, cleaning and more cleaning

As Autumn arrives and the jumpers come out, it brings with it important considerations for homeowners, particularly when it comes to the care and maintenance of their roofs. As part of our ongoing series following the seasons, here are the key things to consider keeping your property problem free as the leaves begin to fall.

There's no way around it, as the trees start to lose their leaves in the autumn months, it's important to keep an eye on your roof and gutters and remove the excess. The falling leaves will clog your gutters and downpipes, leading to water damage to your roof and building, as well as damage to your gutters and downpipes. To prevent these problems, you need a routine gutter clean schedule.

In addition to removing leaves and debris from gutters, keep your roof clean in the autumn months to prevent other types of debris from accumulating. This can include twigs, branches, leaves, and dirt that quickly build up. If necessary, it can be worth trimming any overhanging branches to better manage the amount of falling debris. To ensure all of this is done correctly and safely, we recommend hiring a professional, particularly at this time of year. **Last year, AGC conducted over 2,000 roof and gutter cleans, along with a further 1600 leak requests, of which 26% were the result of clogged gutters and downpipes.**

A key reason why we always suggest a professional cleaning service are the for harder to clean, but just as problematic, downpipes. Clogging here can lead to water overflowing from your gutters and causing damage to your eaves, external areas, roof, and walls, as well as



damage to your gutters and downpipes. To prevent this problem, it's important your downpipes are checked and cleaned with the appropriate equipment to ensure that they are in good condition and functioning properly.

Ultimately, Autumn brings necessary attention to the ongoing requirements of your building. For property owners and strata complexes, good maintenance goes a long way in protecting your asset for the long term. Your building is unique, so it is important to receive tailored advice and servicing of your property.

Contact agcroof.com.au for expert advice





Making multi-site energy agreements easier. How strata managers can benefit from their strata energy portfolio.

There are now more than 2.5 million Australian's choosing apartment living, making strata communities a fast-growing part of the property industry. It's important then, that strata managers get the support they need to manage their portfolio's energy needs so they can pass benefits on to their strata communities.

For strata managers, multi-site energy agreements make it easier to roll their portfolio of sites together and allow them to get great rates for these community's common area energy.

As Australia's leading energy provider, Origin has a team dedicated to providing support to strata managers, helping them navigate their strata portfolio's energy needs now and in the future.

On-going support and advice:

There is no cookie cutter approach when it comes to supporting strata managers with managing the energy needs of their portfolios.

Origin has an Australian based team dedicated to helping strata managers access multi-site energy agreements for 10 or more communities in their portfolio.

This support includes accessing more competitive energy rates for multiple communities' common areas, energy savings tips, usage insights and data reports, and solutions to ensure they are on the right energy plan for them.

Tailored solutions for strata across our entire product portfolio:

At Origin, we're delivering the energy our customers need today and connecting them with solutions for tomorrow.

We want to ensure we provide solutions and opportunities for strata's across Origin's product portfolio that meet the needs of all the different

communities they manage. Our solutions span across:

- electricity,
- gas,
- LPG,
- broadband,
- solar,
- electric vehicle chargers,
- battery storage solutions.

Helping strata managers navigate each community's decarbonisation journey, whether it's big or small:

Origin's ambition is to lead the energy transition through cleaner energy and community solutions. With strata communities becoming more conscious of their building's energy impact, many are taking steps towards implementing renewable energy solutions.

With the strata manager usually being the key person who can help these communities start on their decarbonisation journey, its important strata managers have the right energy provider that can help provide informed advice and solutions.

Be it installing solar panels, driving the community forward with installing electric vehicle chargers or simply adding GreenPower or Origin Go Zero carbon-offsets, Origin can help to provide great solutions for each community.

Origin is committed to supporting strata managers and our communities wherever they are on their decarbonisation journey.

For more information about how we support strata managers and their portfolio of communities, please contact us on strata.partners@originenergy.com.au

**Origin's multi-site solutions do not apply to strata with Centralised Energy Services such as embedded networks. For Origin's Centralised Energy Solutions please visit Embedded energy - Origin Energy*

PREMIER PAINTING
COMPANY

LEADERS IN PAINTING SERVICES SINCE 1997

The Importance of a painting maintenance schedule for your strata building.

Maintaining a strata building requires attention to detail combined with a comprehensive painting maintenance schedule. Why? Regular painting maintenance not only preserves the aesthetic appeal of a building but also ensures its longevity and protects it from deterioration.

By regularly cleaning and touching up your surface coatings, you can extend their life expectancy by more than 50% - saving your tenants money and the overall disruption of re-painting the building.

Why Maintain your Paintwork?

Exterior paint acts as a protective barrier against harsh weather conditions, such as rain, snow, and sunlight. Over time, exposure to the elements can cause the paint to deteriorate, resulting in fading, chipping, and peeling. A painting maintenance schedule ensures that the exterior paint is regularly inspected, repaired, or replaced, thereby protecting the building's interior and exterior from costly damage.

“ A well-planned painting maintenance schedule is essential for the upkeep and preservation of any strata building. By preserving the aesthetic appeal, protecting the exterior from damage, implementing safety precautions, and managing the budget effectively, a painting maintenance schedule contributes to the overall maintenance and well-being of a strata property.

A maintenance program will identify potential and existing issues and act as a cost-effective solution to prevent these smaller issues from becoming major headaches!

Typical issues that can be managed under the care of a maintenance plan:

- Reopening of joints between wooden substrates
- Minor damage by wear and tear, animal scratching, water staining and damage in high traffic areas
- More significant damage such as damage caused by the impact of cars, bikes, and scooters
- Gutter leaks, downpipe damage and general leaks
- Moisture ingress causing mild flaking and paint peeling
- Rust and other steel degradation
- Windows and doors sticking and becoming non-functional.

By implementing regular cleaning and touch-up maintenance, we can prolong the life of your paint coating. Our goal is to keep your strata building looking and functioning at its best through regular maintenance and minor touch ups. We believe this increases tenant satisfaction and is a cost effective solution for strata building managers.

Through a simple visual inspection, here at Premier Painting we propose that all common areas be inspected annually to ensure that the applied coatings are performing as per expectations.

To learn more about our strata building painting and maintenance services please visit our website www.premierpainting.com.au



Quality of site management influences strata repairs

Owners corporations are tasked with appointing remedial builders for repairs to common property. The stakes are high in ensuring that all stakeholders – starting with lot owners – are satisfied during site work and on completion.

Now the Quality Manager for Paynter Dixon’s Tier 1 Remedial Division, Darren Gouge draws on decades of site management experience in a strata environment. He believes technical expertise is only one dimension of a high-performing site team.

Paynter Dixon guarantees full-time site supervision by a dedicated Site Manager who oversees all site matters. What are the qualities and benefits of a good Site Manager? Darren explains.

Aiming Straight

“If you’re working in a block of apartments, you may have the building manager, strata committee, 65 tenants and the client – all asking questions,” says Darren.

“Television shows like ‘The Block’ show construction completed in five minutes, but that is simply not the case. Stakeholder communication is complex, especially when the message is not rosy. Perhaps a hidden building defect has been uncovered, or rain has delayed the installation of a waterproofing membrane. Whatever the situation, it pays to be straight up. Good Site Managers lean into the issue and collaborate with all parties.”

Solving problems

“While I have 35 years of construction experience – I don’t know everything. We have a strong network of subcontractors, and we are comfortable in sharing knowledge. Electricians, plumbers, joiners and more. I’ll pick their brains and ask questions. It’s a dynamic to our partnering which works well in problem solving.”

Eying the details

Remedial work is routinely carried out in occupied buildings – from offices to apartments. “When our day ends, I’m locking construction gates in or near home environments. My responsibility is to make sure the work area is safe and secured.”

“An eye for detail is essential for a Site Manager. I’ll make sure the strata common areas remain spotless – no empty coffee cups or wrappers on my watch.” There’s good reason to be proactive when Paynter Dixon is front and centre on site signage. “I’m the first person to be contacted, but I welcome that responsibility.”

Adapting to changing situations

Paynter Dixon is renowned for planning and process-led delivery, but agility is always a factor of remedial work. “You may have a methodology and scope of works in hand, but when underlying building issues are exposed, planning can change in a heartbeat.”

The team steps up. “We re-evaluate the situation, amend the plan, communicate to stakeholders, obtain approvals and carry out the work to client satisfaction.” Paynter Dixon’s quality and safety management systems also underpin the response to ensure solutions are compliant and fit for purpose.

TO LEARN MORE, CONTACT:

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Email: Tim.kurniadi@paynterdixon.com.au

Website: paynterdixon.com.au/sectors/remedial/strata/



Easy window maintenance tips from the experts



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1. Why do windows need maintenance?

Consider the environment in which windows function. They’re subject to extreme weather temperatures from extreme dry to wet and humid conditions, not to mention wind, hail, ultraviolet light and more. Then there’s the regular openings and closings which overtime cause excessive wear and tear.

2. What happens when there’s no maintenance?

- Finishes fail
- Sealants lose flexibility
- Components rot or corrode
- Insects bore into wood and movable parts can deflect
- Window glass becomes loose, dangerous and cracks/shatters

Unfortunately, without window maintenance the damage becomes cumulative and eventually replacement may become the only economical option, so it’s best to attend to any damaged windows immediately.

3. How do I arrange window maintenance?

Simply contact ‘Express Glass Window Maintenance’ on 1300 666 234 or [book here now](#) and we’ll coordinate a time to fix your damaged windows.

All our inspections are tailored to the type of window and the symptoms specific to those windows so, whether your window type be:

- Aluminum
- Metal
- Wood
- Vinyl
- Fiberglass

We’ll look at wear and tear such as:

- Sash repairs
- Window film
- Corrosion and rust
- Glass damage
- Rot and decay
- Seals
- Install window locks

And much more!

4. What can I do in the meantime?

- Clean the tracks of your windows (and doors) and remove any dirt
- Check the sealant around the edge of your windows, it should be nice and tight
- Trim any low over hanging and overgrown branches away from your windows
- Secure or put away any loose items on your balcony, in the event of a storm you don’t want them flying around
- [Book in](#) with the Window Maintenance team to fix your windows.



For expert ‘Glass Window Maintenance’ team contact expressglass.com.au/online-services



Fire Risks of having Lithium-Ion battery operated devices in Apartments.

Lithium-ion batteries have seamlessly integrated into our daily lives, powering a many everyday items such as smartphones to electric vehicles. Despite their convenience, it's crucial to recognise the potential risks they pose if not handled properly, especially within strata properties where fire can spread rapidly throughout a building.

Incidents of fire and explosions linked to lithium-ion batteries have been reported globally, including but not limited to, recent fires reported in NSW.

A faulty battery is believed to have started the fire in a North Bondi unit in early January.

In one day, NSW Fire & Rescue responded to a 10-storey apartment block evacuated after an e-bike battery exploded in Bankstown, a blaze set off by an electric vehicle charging station in Berkeley, a garden hedger in Lake Macquarie, and a loose battery in a garbage truck passing through Silverwater.

In March, an exploding battery is believed to have sparked the blaze resulting in loss of life in a townhouse in Teralba near Newcastle.

These recent examples emphasise the necessity for understanding and mitigating these risks, particularly in apartment complexes.

To ensure the safe use of lithium-ion batteries in strata properties, adhering to best practices in safety, usage and storage is imperative. Here are some essential tips for minimising risks:

Choose Carefully:

- Purchase lithium-ion batteries exclusively from reputable manufacturers.
- Engage suitably qualified and certified contractors for permanent battery installations, such as solar panel battery banks.
- Avoid utilising cheap or counterfeit chargers; opt for recommended chargers.

Check Regularly:

- Periodically inspect devices and batteries for any signs of damage, such as swelling or leakage.
- Discontinue the use of devices exhibiting abnormalities.
- Stay updated on product recalls or safety notices concerning devices and batteries.

Use and Store according to instructions:

- Follow the manufacturers advice on storage and usage.
- Unplug devices once fully charged to prevent overcharging.
- Charge devices in well-ventilated areas and on a hard surface.
- Shield batteries from extreme temperatures, including high heat and humidity, to avert thermal runaway.
- Install and maintain a Battery Management System (BMS) for lithium batteries utilised in renewable energy systems.
- Monitor cell voltage, current, and temperature to forestall thermal runaway incidents.
- Avoid exposing lithium-ion batteries to temperature extremes during both usage and storage. If storing for an extended period, ensure they are partially charged (around 40-60%).

Dispose safely:

- Ensure responsible disposal of failed or redundant batteries.
- Utilise local recycling centres or electronic retailers offering battery recycling programs. Check with your local council, or some stores may also accept battery drop offs.
- Do not throw batteries into landfill bins for collection.

To minimise fire risks in strata properties, regular fire safety checks should be prioritised by the strata committee. It's essential to be aware of the mandatory fire safety requirements specific to NSW, ensuring your building complies. Fire safety equipment such as extinguishers, sprinklers, and smoke alarms should undergo regular servicing and maintenance to guarantee their functionality, and fire doors must be kept clear of obstructions.

If your committee is thinking of retrofitting recharge stations, or any retro fitting of electrical devices charged by battery, it is important to inform your insurer of the work you are doing and make sure it is installed by a reputable installer.

CHU, a leading strata insurance specialist has created a fact sheet, which you can print and install on your noticeboards or email to the strata committee. It is important to communicate the risks and recommendations effectively for the safety of your strata community.

CHU Fact Sheet can be found here:

https://chu.com.au/assets/CHU_LithiumBattery_factsheet_online.pdf

Managing the risk of Lithium-Ion Battery usage in strata properties - FACT SHEET



CHU, a leading strata insurance specialist has created a fact sheet, which you can print and install on your noticeboards or email to the strata committee.

Download here:

https://chu.com.au/assets/CHU_LithiumBattery_factsheet_online.pdf





LIABILITY

No Finger Pointing Allowed!

NSW Court of Appeal finds that proportionate liability DOES NOT apply to claims under the Design and Building Practitioners Act 2020

In a massive win for consumer rights in NSW, the Court of Appeal on Wednesday handed down its decision in *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* [2023] NSWCA 301, finding that defendants claims for breach of the statutory duty under section 37 of the Design and Building Practitioners Act 2020 cannot reduce their liability to a plaintiff by deflecting blame to other parties.

In this case, Grace Lawyers on behalf of the Owners Corporation successfully argued that the proportionate liability scheme under Part 4 of the Civil Liability Act 2002 (CLA) did not apply whatsoever to claims for breach of the statutory duty.

The decision is a welcome relief for Owners Corporation’s across NSW – mirroring the protections already afforded to homeowners and owners corporations under the Home Building Act 1989.

Why is the decision so significant?

The Pafburn decision is significant because it shuts down what was, until now, believed to be one of the biggest weapons in a defendant’s arsenal in defending claims under the DBP Act – being the proportionate liability scheme under Part 4 of the CLA. That was notwithstanding that s 39 of the DBP Act stated that the duty of care is “non-delegable”.

The proportionate liability regime, in effect, allows a builder/developer to a claim that it was somebody else involved in the construction that is responsible for the damage etc. What they are doing by naming these other parties – known as “concurrent wrongdoers” – is asking the Court to reduce the amount of damages payable by them to reflect the number of parties who caused that loss, and their degree of culpability. In other words, the defendant is saying “if it’s my fault, it’s not only my fault” and asking the award of damages to reflect that.

For example, in a claim brought by an owners corporation against a builder for \$1 million in damages arising from defective waterproofing, the builder might name any of the following parties as concurrent wrongdoers:

- The waterproofer who performed the work;

- More arguably, the principal certifying authority who issued an occupation certificate despite the defective work; or
- Even more arguably, the engineer who prepared the hydraulic blueprint for the building.

This could lead to a situation where the Court, accepting all four parties are responsible to some extent, “apportions” the damages amongst them accordingly.

In a perfect world, the builder, the waterproofer, the certifier and the engineer parties would all be parties to the claim, resulting in the Owners Corporation recovering its \$1 million from four different parties (in proportions determined by the Court). Unfortunately, apportionable claims are rarely that simple.

The difficulties created by the proportionate liability regime for plaintiffs (particularly owners corporations) include the following:

1. The possibility of some parties being insolvent. This is particularly prevalent in modern developments where companies are set up as special purpose vehicles for the duration of a development, before being put into liquidation afterwards

2. The fact that the plaintiff ‘bears the risk’ of not joining a party to the claim once they have been nominated as a wrongdoer. If the Court finds that a non-party is liable for a portion of the loss claimed, the plaintiff is simply disentitled to that amount.

This means that an Owners Corporation, when faced with a proportionate liability defence, is required to make an independent assessment of whether the party can or even should be joined to the claim. This is particularly onerous in the case of owners corporations, who are not privy to the contractual arrangements between parties involved in the building work before its time. As a result, these assessments are often conducted on nothing but the strength of the defendant’s pleading.

3. Commerciality concerns. Circling back to our example of the owners corporation with the defective waterproofing, let’s say the owners corporation is successful in obtaining \$1 million in damages against the defendant waterproofer (who is found 100% liable). The builder, certifier and engineer are found not to be liable to any extent.

That would probably result in the Owners Corporation being hit with costs orders in favour of those successful defendants. Those costs orders, depending on how complex the claim is, could very quickly swallow up the \$1 million in damages.

With these issues in mind, it is easy to see why owners have been wary of making of claims under the DBP Act. These risks, coupled with the eye-watering costs of multi-party litigation, can make these claims unattractive and expensive to pursue.

The Pafburn Appeal

In the Pafburn matter, the Owners Corporation sued the builder (Pafburn) and the developer (Madarina) alleging breach of the duty of care under s 37 of the DBP Act.

The builder and developer (together, the Defendants) defended the claim by trying to apportion the blame on others (they named 9 others including various subcontractors, the certifier, the architect and the project manager. Many of those parties were companies that had been deregistered. Others could not be joined due to the effluxion of limitation periods.

The Owners Corporation’s claim was simple in theory (but complex in legal terms). We argued that the duty owed by the builder and developer was “non-delegable”, and hence, the proportionate liability regime did not apply.

The primary judge found that the proportionate liability regime did apply, and allowed the builder and developer to run those defences.

The Owners Corporation appealed the decision.

The Appeal

The Court of Appeal allowed the appeal, finding as follows:

- Section 37 of the DBP Act both extends the scope of

the common law duty of care to owners and subsequent owners of land and creates a new cause of action deriving from statute which is to be treated as if it were a cause of action in tort;

- Section 5Q of the CLA should not be read down to exclude claims under the DBP Act, because doing so would undermine the statutory purpose of the provision. Section 5Q was intended to address the full scope of non-delegable duties. As such, liability for breach of the duty of care under section 37 of the DBP Act was characterisable as “liability in tort” for the purpose of section 5Q of the CLA;

- The proportionate liability regime under Part 4 of the CLA does not apply to claims for breach of the duty of care under section 37 of the DBP Act. The legislative intention was clear by s 39 of the DBP Act, which makes the duty “non-delegable”. The builder was thus vicariously liable for breaches by concurrent wrongdoers.

As a result of these the Court of Appeal’s findings:

- A defendant who has breached a non-delegable duty causing loss is liable for the entirety of the loss suffered by the plaintiff flowing from that breach. It cannot ‘offload’ liability onto others at the plaintiff’s expense;
- Whilst a defendant is entitled to file cross-claim against an alleged concurrent wrongdoer for a contribution, it cannot reduce its own liability to a plaintiff for the whole of the loss suffered. That is an important distinction because it shifts the risk of joining the wrongdoer (or an insolvent party) onto the defendant.

The decision is welcome one – paving the way for owners corporations to continue making claims under the DBP without the uncertainty and cost of the proportionate liability regime involved.

More importantly this decision also marks another win for the 19 lot Owners Corporation who were strong enough to fight for their rights.

Daniel Radman of Grace Lawyers acted for the successful owners corporation in this appeal, and in the court below.

Addendum: The matter is now on appeal to the High Court of Australia and the High Court has given leave for the matter to be heard.



Quatrix
SECURITY

Security Access Control systems and Fobs: what to look out for

The use of security fobs and cards to access strata buildings has significantly increased over the last 10 years. Residents of modern apartment buildings expect to live in a secure environment with keyless access and will often pay premium rates to live in this type of building.

Whilst the technology is available to provide secure and protected buildings, it's really important that these electronic systems are installed correctly and well managed by the Security Company, Owners Corporation and Strata Manager.

Over the last ten years of installing these systems Jeff from Quatrix has found some common areas of failure which the Owners Corporations should be aware of:

1. No key and fob register for the building.

- If your building is located in a high-risk area for overcrowding, illegal parking, or Airbnb, you need an annual audit of active keys and fobs.
- Consider upgrading your fobs and card readers to a higher encryption. You can keep the same Access Control system, so it's not that expensive and it will prevent fobs from being copied, which will significantly reduce the number of people with access to your building.

2. Unknown passwords and login to security equipment.

- Without these passwords, you are tied to the one security company and you are unable to manage the system yourself. It's your system and you need this information for your Asset Register. We can provide a template Asset Register for you.
- Many systems need passwords to access the database. Without the passwords, you need to default the system and start again. New fobs for everyone (unless you have a record).

3. Back-up battery failure.

- It is recommended to replace the back-up batteries on the Access Control system every 12 months. This ensures that the system continues to operate during a power failure for the designed length of time before it fails.

4. Obsolete Equipment managing Access into the Building

- Most quality Access Control systems are very reliable and work for years without a hiccup but at some point, every system will fail. As components age, so does the risk of failure. I see lots of 25-year-old systems still working well in buildings servicing 50 plus apartments. They are reliable systems and if left untouched they may work for another 25 years. But as they reach the end of their life, the risk of a small power surge affecting them increases. When they are old, the availability of spare parts is reduced which means that the chances of a quick restoration of service decreases. You need to decide what is the acceptable downtime of your system. If your building is in a high-risk area, do you want all of the doors left open for a week whilst you obtain three quotes for a new system?
- I recommend that you always have a provision in your sinking fund for a replacement system and an indication of costs so you know what to do if you have issues. Highlight which year the system should be replaced. This may be ten years away and you may only need to save \$1,000 a year, but it's important to set a date so you can include it in your finances.

Quatrix Security has secured Sydney's Strata Community with premium Intercom, Access Control and CCTV services for over 15 years.

We provide strata businesses with customised banking solutions.

To find out more visit macquarie.com.au/strata



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NCAT Enforces By-Law for Renovation Works Despite Owner’s Refusal

Recently the NSW Civil and Administrative Tribunal (the “Tribunal”) held that a lot owner must consent to the terms of a by-law relating to unauthorised works that he had carried out on the common property of a strata scheme. Pursuant to section 149 of the Strata Schemes Management Act 2015 (NSW) (“SSMA”), the Tribunal held that even though he had rejected the by-law, he was required to abide by its terms and replace the works.

Section 149: Order with respect to common property rights by-laws

Changes to common property can be expensive, they can take a long time to complete and can effect all occupants and lot owners of a strata scheme. For these reasons, a common property by-law requires the following:

1. The passing of a special resolution at a general meeting. Special resolutions can only be passed if less than 25% of the owners voting oppose the motion prescribing the by-law, pursuant to section 108 of the SSMA; and
2. The written consent of each owner on whom the by-law confers rights or privileges, pursuant to section 143 of the SSMA.

This high threshold ensures that works to common property only take place if the owners corporation is entirely (or at least mostly) on board with the proposed works. Typically, if a lot owner does not wish for a common property by-law to be made, they vote against it at a general meeting. If the by-law is made via a special resolution, the owner on whom the by-law confers rights or privileges can refuse to provide their written consent.

However, pursuant to section 149 of the SSMA, if the Tribunal perceives that a lot owner has unreasonably withheld their consent to the passing of a by-law, the Tribunal can order that the by-law is made regardless.

Dehlsen Decision

In the matter of *The Owners – Strata Plan No 19341 v Dehlsen* [2022] NSWCATCD (“Dehlsen”), the Tribunal held that a lot owner had unreasonably withheld his consent to a by-law relating to works that he had completed on his balcony. These works were completed in 2005 and consisted of the removal of artificial turf and the replacement of the existing waterproofing membrane. The works also included the installation of planter boxes and a drainage system around the perimeter of the balcony. These works were alleged to have caused damage to the common property and water penetration to seep into the lot below.

The owners corporation argued that these works were unapproved, as the works were not provided in any by-law that had been passed via special resolution prior to the lot owner commencing the works. The lot owner argued that the works he had undertaken to his balcony had been approved, as he had issued a letter outlining the nature of the works to the other lot owners in the strata scheme prior to commencing the works.

In 2022, the owners corporation, passed a by-law via

special resolution relating to these works specifically. This by-law provided that the lot owner was to be responsible for maintaining the works and that he must renew or replace the works “when necessary or when reasonably required by the Owners Corporation.”

The by-law established that the lot owner was liable for any damage caused to common property as well as other lots in the scheme that resulted from the work. The by-law also required that the lot owner must repair any damage and that he must indemnify the owners corporation against any costs or losses arising out of the works.

Unreasonable Refuse of a By-Law

The lot owner refused to provide his consent to the making of the by-law. The Tribunal rejected his refusal on the basis that this was unreasonable.

In determining whether the lot owner’s refusal was unreasonable, the Tribunal looked to the submissions of

the owners corporation and then to the actions of the lot owner refusing to provide his consent.

The Tribunal held that it was reasonable for the by-law to provide that the lot owner was to perform maintenance on the works and to replace the works when requested by the owners corporation. The Tribunal held that the letter he had issued to the other lot owners in 2005, provided mostly the same conditions that the proposed by-law intended to enforce. The only significant difference was that the letter did not provide that the lot owner was liable for the damage the works caused to the common property or the other lots in the Scheme. This letter would also not bind subsequent owners of the lot.

By-laws must be reasonable. Should you wish to pass a by-law for works relating to common property, or if a lot owner is refusing to consent to a by-law, please submit an enquiry with our By-law experts at by-laws@bannermans.com.au or on 02 9929 0226.

***The information contained in this article is general information only and not legal advice.



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