

Do You Need the Owners Corporation's Consent to Your DA?



The case of ***Owners Strata Plan No. 50411 & Ors v Cameron North Sydney Investments Pty Ltd [2003] NSWCA 5 (Cameron's case)*** considered not only the question of when an owners corporation's consent is required for a development application lodged by a lot owner but also the question of when an owners corporation has an 'obligation' to provide such consent.

Consent not required

For a development application relating to works 'wholly within' the boundaries of a lot and not affecting common property, such application does not require the consent of an owners corporation.

Consent required

If a lot owner's works impact on common property, the consent of the owners corporation is required to the development application, but only prior to approval being granted by Council as outlined below.

Grey area

Questions arise frequently as to when a lot owner's works actually 'impact' on common property giving rise to an obligation of the owners corporation to consent to those works. This is still a grey area and depends on the circumstances of each case. Cameron's case looked to whether there '*may be some penetration of the common property by screws and other fastenings...significant alterations to planter boxes on common property...altering entrance arrangements to the lot to the DA (that) may change the use of common property...'*

There was no evidence in Cameron's case of 'penetrations' or that the works impacted on common property and accordingly, the owners corporation's consent was not required in that case.

Lot owner can seek orders against the owners corporation

If a dispute arises either by way of:

- a) an adverse decision at a strata committee meeting or at a general meeting ie. a failure to provide consent; or
- b) a failure of the owners corporation to consider the matter ie. a failure to exercise its function within 2 months of the making of the application by the lot owner (as set out in s232(2) of the *Strata Schemes Management Act 2015 (SSMA 2015)*,

a lot owner can apply to the NSW Civil and Administrative Tribunal pursuant to section 232(1)(f) of the **SSMA 2015** for orders to settle the dispute arising as a result of the owner's corporation's '*failure to*

exercise, a function conferred or imposed on an owners corporation under any other Act' (in this case section 78A of the Environmental Planning and Assessment Act 1979).

Pursuant to s232(6) for a dispute relating to consent to development applications *'The Tribunal must consider the interests of all the owners of lots in a strata scheme in the use and enjoyment of their lots and the common property in determining whether to make an order...'*

When is consent required to be provided?

The consent of an owners corporation is necessary for the development application to be approved by your Local Council, not necessarily before a development application can be lodged.

If you are a lot owner carrying out works and require assistance on determining whether consent of the owners corporation is required to your works or if your owner's corporation has failed to consent to your development application contact us for assistance.

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