# 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, i.e. a failure to provide consent; or

b) a failure of the owners corporation to consider the matter, i.e. 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)*.

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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.**

## Key takeaways

- Consent from the owners corporation is not required for works wholly within a lot that do not affect common property.
- If works impact common property, consent is required before the local council can approve the development application.
- Lot owners can seek orders from the NSW Civil and Administrative Tribunal if the owners corporation fails to provide consent.
- The Tribunal must consider the interests of all owners in a strata scheme when determining disputes over consent.
- Consent is necessary for development application approval, but not for lodging the application.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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