

Owners Corporations withholding consent to the Lodgement of Development Applications

In order to obtain development consent conditions from a development application the Local Council needs the consent of the owner of the land.

If an owners application involves the common property the owners corporation's consent to the lodgement of that development application is required to enable development consent conditions to issue.

NSW Civil and Administration Tribunal under section 232(6) of the Strata Schemes Management Act 2015 has the jurisdiction to make an order to effectively provide that consent if the owners corporation refuses.

***“Disputes 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 relating to a dispute concerning the failure of an owners corporation for a strata scheme to consent to the making of a development application under the Environmental Planning and Assessment Act 1979 relating to common property of the scheme.”*

In the case of *The Owners – Strata Plan No. 91157 v Yoolee Holdings Pty Ltd; Yoolee Holdings Pty Ltd v The Owners – Strata Plan No. 91157 [2020] NSWCATAP 6*, the Tribunal's Appeal Panel considered and refused an application for such consent. Just briefly:

- Yoolee Holdings Pty Ltd (“Yoolee”) was the owner of 6 commercial and retail lots in the building that it wished to develop into a private college. The proposed development application consisted of a change of use to the lots together with works to the lots and the common property.
- Yoolee initially sought the owners corporation's consent to the lodgement of the development application, but it was refused.
- Yoolee then commenced proceedings in the Tribunal seeking orders that the owners corporation consent to the development application.
- At first instance in the Tribunal, Yoolee was successful and the Tribunal made an order that the owners corporation consent to the development application.
- However, the owners corporation appealed and was partially successful on appeal with the Appeal Panel overturning the Tribunal's original decision and remitting the matter back to the Tribunal for further consideration.

- In particular, one issue that the Appeal Panel highlighted the importance of was that in an application of this nature, 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 common property in determining whether or not to make an order.

The case is authority for the proposition that an owners corporation can still refuse to provide its consent to a development application. However, equally, the Tribunal has the power to make orders to compel an owners corporation to consent to the development application if an applicant is successful in the proceedings.

There still remains the ongoing 'chicken and egg' question as to what should an owner obtain first, being a by-law or the consent for the development application. However, the Appeal Panel did not consider this issue it really depend on the individual facts.

In light of the above, if you are having questions about a development application in your strata scheme, we have considerable experience and expertise in this area and can help.

Prepared by Bannermans Lawyers

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T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA