

# Can an Owners Corporation Charge \$300 to Consider a Pet Application?

Section 139(1) of the Strata Schemes Management Act 2015 (“Act”) provides that a by-law must not be “harsh, unconscionable or oppressive”. Over the last few years, there has been a series of cases contesting whether or not “no pets” by-laws are harsh, unconscionable or oppressive. However, in the recent decision of *Cooper v The Owners – Strata Plan No. 58068 [2020] NSWCA 250* (“Cooper”), the Court of Appeal held that a by-law that provided an outright ban on pet ownership was ‘oppressive’ pursuant to section 139(1) of the Act and declared the by-law to be invalid.

The Court of Appeal held in the decision of *Cooper v The Owners – Strata Plan no. 58068 [2020] NSWCA 250* noting:

*“A by-law may be harsh, unconscionable or oppressive is that it interferes with the property rights of a lot owner by controlling or prohibiting a particular use in circumstances where that use does not materially and adversely affect the enjoyment of any other lot, such a criterion may be implied from the language, context and purpose of s 136(1).”*

The Court of Appeal’s decision in Cooper affirmed the Tribunal’s original decision that previously deemed that the ‘no pets’ by-law had no force or effect.

Interestingly, the original decision contemplated incidences where a strata scheme could have a ‘no pets’ by-law in circumstances where they could objectively justify such a by-law including:

- (a) A very small strata scheme with a high number of absentee owners, high tenant turnover and that permits short term letting i.e. a strata scheme used predominantly for holiday accommodation; or
- (b) Where owners buying in to the building have clear notice of the ‘no pets’ by-law, have confirmed in writing that they are aware of the ‘no pets’ by-law and that they give a written undertaking that they will not challenge it.

In the case of *Roden v The Owners – Strata Plan No. 55773 [2021] NSWCATCD 61*, the Applicant sought to invalidate the following parts of a by-law:

- (a) the application form must be accompanied by a non-refundable administration fee of \$300;
- (b) applications must be limited to two animals per apartment except for goldfish or small birds in cages;
- (c) if an applicant wishes to change or replace the initial animal, he/she must sign a new application form;
- (d) it is the responsibility of the animal owner to ensure when entering and exiting the building with an animal, he/she traverses common property without delay;
- (e) it is the responsibility of the animal owner to ensure that the animal is not left on any balcony of the lot while the owner or occupant is absent;
- (f) animals that are visiting require approval by the owners corporation.

The Tribunal upheld the by-law, deeming its clauses were necessary for the proper management, administration, control, use or enjoyment of the lots of the strata scheme and the common property.

Interestingly, the decision was handed down on 30 August 2021. On 24 August 2021, section 137B of the Strata Schemes Management Act 2015 (“**Act**”) and clause 36 of the Strata Schemes Management Regulations 2016 (“**Regulations**”) came into operation. The amendments to the Act and Regulations were not referred to in the decision and it does not appear that the Tribunal took these sections into account when determining the matter.

Given the above list in the by-law conflicts with the exhaustive list of criteria outlining where the keeping of an animal unreasonably interferes with another occupant as contained in clause 36A of the Regulations, it is likely that the decision was determined incorrectly. As a result, we expect there will be further clarification from the Tribunal on acceptable restrictions in pets by-laws in future.

*The above is limited to a discussion about a fee contained within a pets by-law for which new pet law consequences of automatic approval for pets is granted in the event of an unreasonable delay or refusal. The Tribunal may consider fees for other requests differently, but we are not recommending those because if found to be invalid it could invalidate the whole by-law.*

**Prepared by Bannermans Lawyers**  
**10 August 2022**



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