
NSW: Minor Renovations

When refusal is unreasonable

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In a recently reported decision, NCAT confirmed what is required to meet the standard of a 'minor renovation' under the *Strata Schemes Management Act 2015* and what is unreasonable refusal of consent by an owners corporation.

Minor renovation and general meeting approval

Minor renovations are a newer aspect of the *Strata Schemes Management Act 2015* (the Act) used in circumstances where an owner wants to undertake works, not of the nature or extent requiring a by-law but still needing approval in a general meeting.

Both Section 110 of the Act and Clause 28 of the *Strata Schemes Management Regulation 2016* (the Regs) set out examples of minor renovations and the criteria for seeking and obtaining approval.

Air-conditioning is a minor renovation

In *Ashbee v The Owners – Strata Plan No. 11761 [2018] NSWCATCD 80*, a lot owner wanted to install a reverse cycle air-conditioner. The owner had put a Section 110 motion, explanatory note and supporting documentation up to a general meeting of the owners corporation, where it was refused.

Firstly, NCAT made a declaration that the proposed air-conditioning was a minor renovation under the Act. Not only is domestic air-conditioning expressly referenced at Clause 28(d) of the Regs but the tribunal found the requirements of Section 110(4) and (5) had been met by the motion, explanatory note and supporting documents submitted. NCAT also held that the installation would not have the effect of changing the external appearance of the lot – if it had, it may not qualify as a minor renovation noting the exceptions set out in Section 110(7) of the Act.

Unreasonable refusal

NCAT then found that the owners corporation had been unreasonable in its refusal of the minor renovation. Not only had the owner put forward a number of proposals for air-conditioning, culminating in the minor renovation motion at the AGM, but the owners corporations failure to provide reasons for its refusal at the time of the meeting and to document those reasons in the minutes, was held to be a clear indication of unreasonableness. The decision also found that reasons given well after the meeting at which the motion was refused are insufficient to offset the unreasonableness of refusal. If reasons for refusal aren't given *at the time*, the refusal is unreasonable.

Lessons for all

Owners Corporations should be mindful that if refusing applications for minor renovations, they need to state the reasons for refusal at the time and to document the reasons in the minutes, or the refusal may be found to be unreasonable.



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Lot owners seeking minor renovation approvals should ensure the requirements of the legislation are met so as to not fail in the prerequisite of the application being declared a minor renovation under the Act. Specialist strata legal advice and assistance in the drafting of motions and the submitting of applications is recommended.

Speirs Ryan has a unique combination of both property and strata expertise that enables us to achieve successful outcomes for lot owners and owners corporations both within and beyond strata across a range of varied property matters including subdivisions and development, titling structures, easements and covenants, tree disputes, telco installations and development consents.

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