

Lookup Strata: NSW Renovations: What you can and cannot do without OC approval

Allison Benson 15 September 2022

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RENOVATING IN STRATA: WHAT ARE THE RULES?

1. Some, but not all, renovations need the approval of the owners corporation.
2. It is really important to understand what approvals you need.
3. It is less risky to seek permission first rather than to seek forgiveness (and ratification) afterwards



RENOVATING IN STRATA: THE DO'S

1. If you are wanting to renovate the recommended steps are to:
 - (a) Check your strata plan – what is your lot property v common property?
 - (b) Check your scheme's by-laws & if you are in a stratum development check your building management statement/strata management statement:
 - Is there a general by-law covering general works conditions?
 - Is there a by-law covering the specific type of work that you want to do?
 - Is there a by-law that covers works in your lot?
 - (c) Check what you want to against the 3 tier scheme covering works under the *Strata Schemes Management Act 2015* (the "**SSMA**").

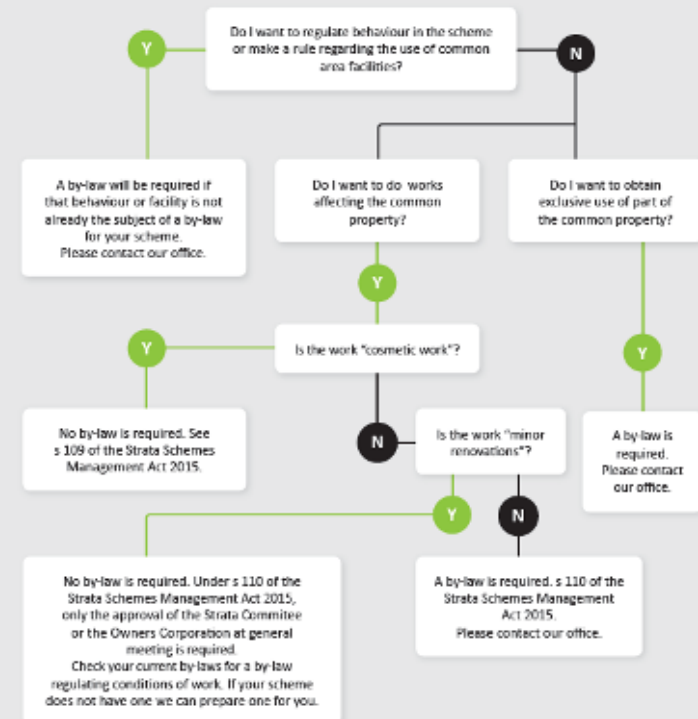


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RENOVATING IN STRATA: THE DO'S

- Section 109 of the SSMA covers "cosmetic works". "Cosmetic work" includes but is not limited to work for the following purposes:
 - (a) installing or replacing hooks, nails or screws for hanging paintings and other things on walls,
 - (b) installing or replacing handrails,
 - (c) painting,
 - (d) filling minor holes and cracks in internal walls,
 - (e) laying carpet,
 - (f) installing or replacing built-in wardrobes,
 - (g) installing or replacing internal blinds and curtains,
- ***This work does not require approval.***

DO I NEED A BY-LAW?



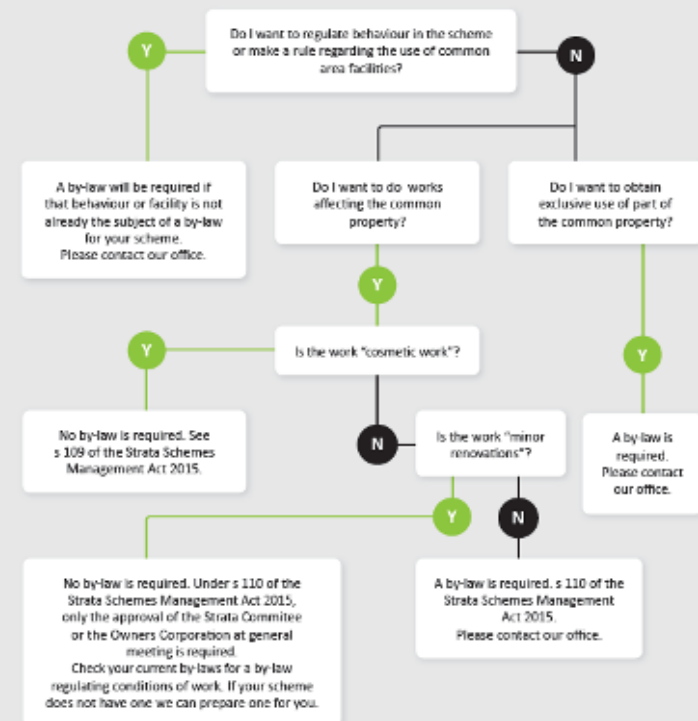
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RENOVATING IN STRATA: THE DO'S

- Section 110(3) of the SMA covers “minor renovations” being things like renovating a kitchen, installing or replacing wood or hard surface floors, installing or replacing wiring, installing a reverse cycle split system AC system, or reconfiguring (non structural) walls.
- This work requires approval.
- The strata committee may have been given delegated authority to approve it otherwise a general meeting is required for approval. This requires an ordinary resolution – 51%

DO I NEED A BY-LAW?



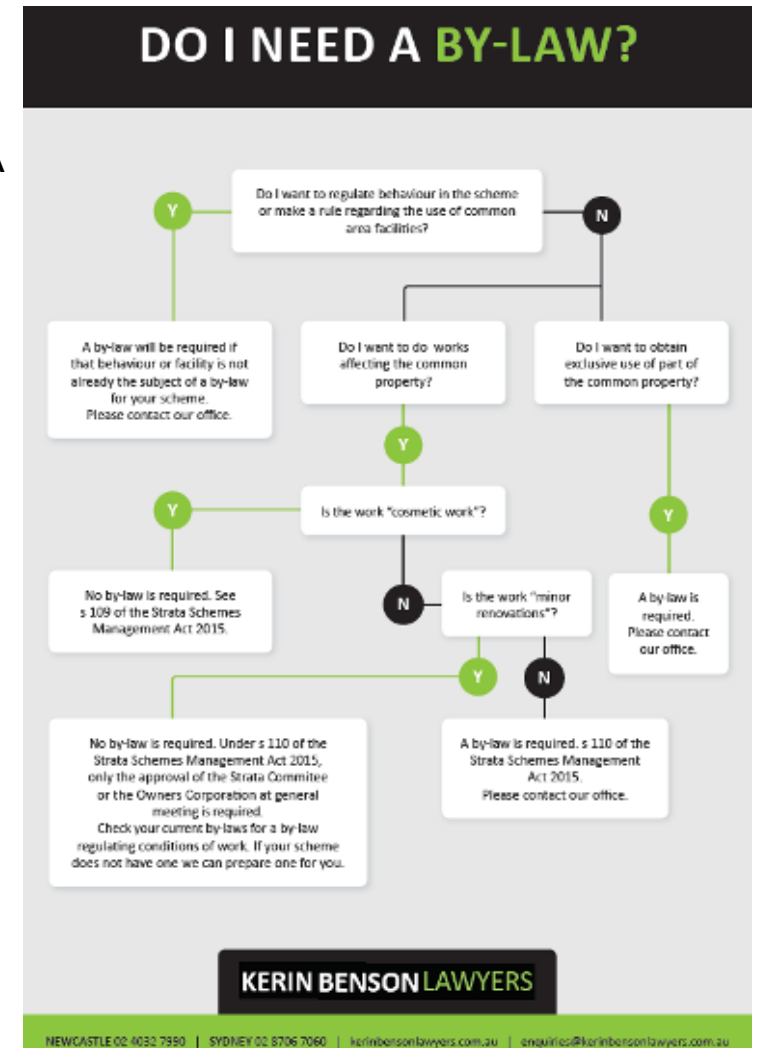
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RENOVATING IN STRATA: THE DO'S

1. Section 110(7) of the SSMA has the effect that any work involving structural changes, waterproofing or work that requires another consent (such as development consent) or work that changes the external appearance of a lot.
2. This work requires a by-law and a special resolution of the general meeting – 75%

BUT....



RENOVATING IN STRATA: THE DO'S

1. Section 6 of the SSMA has the effect that special resolution for a “sustainability infrastructure” motion only requires 51% of unit entitlement voting for it.
2. Sustainability infrastructure is defined under s132B of the SSMA:
 - work to reduce consumption of energy, water or to increase efficiency
 - to reduce or prevent pollution
 - to reduce waste or landfill
 - to increase the recoverability / recycling of materials;
 - to reduce greenhouse gasses
 - to facilitate use of sustainable forms of transport.



RENOVATING IN STRATA: THE DO'S

1. If you need approval for minor renovations:
 1. Ask your strata manager for assistance in drafting a resolution to approval it. If in doubt a basic resolution would be along the lines of:

That the Owners Corporation / Strata Committee authorise pursuant to section 110(3) of the Strata Schemes Management Act 2015 the owner of lot X to conduct the following minor renovations:

(a) insert detailed description of the work
as per the attached quotation/plans annexed to the notice of this meeting.
 2. Ask your contractor to give you a fulsome list of the work that you want to complete. If they will not / cannot do that, ask for a detailed quote or plans. Ask questions, get them to put in writing for you that the work does not require development consent and does not involve waterproofing or structural elements. Provide this to your owners corporation.



RENOVATING IN STRATA: THE DO'S

1. If you need approval by way of a by-law:
 1. Ask your strata manager for a recommended lawyer to draft it.
 2. Give the lawyer full details of the work you want to do and a copy of the registered by-laws for your scheme. Preferably you will also have plans detailing the works and if structural works are included confirmation from a structural engineer that the works if done in accordance with the plans will not adversely affect the structure of the building
3. Consider:
 1. Whether the work you want to do means pipes, drainage or wiring to be changed
 2. If you should offer compensation – especially where you are going to gain exclusive use of a part of the common property.
 3. Whether you should at the same time be requesting the owners corporation / strata committee consent to a complying development certificate or development application



RENOVATING IN STRATA: THE DO'S

1. Once the by-law is drafted send it together with a supporting pack to your strata manager. The pack may include details of:
 - Plans for the work (if they are not annexed to the meeting notice)
 - Why you want to conduct the renovations (e.g. bathroom is 50 years old, want to convert a laundry into an ensuite, want a covering so can use courtyard in the rain)
 - What colours and materials you will use- often this is the biggest area of concern for other lot owners
 - Your contractor's details (licence no, insurances).

The object is to make any refusal unreasonable.



RENOVATING IN STRATA: THE DON'T'S

1. Don't start work that requires approvals without obtaining the relevant approval. Why? You may find yourself the subject of a stop work order and eventually be ordered to remove the works.
2. Don't discount the power of approaching your neighbours first to gather support for your works and to discuss any concerns they may have (e.g. noisy work during lockdown).
3. Don't rush in and book a contractor. Holding a general meeting for approval takes time.
4. A by-law is not effective until it is registered. If you start work before the by-law is registered you run the risk that it won't be registered in time (only 6 months to register). If you an owners corporation you want the by-law to be registered to crystallise the obligations of the lot owner doing the work.
5. Don't be inflexible. You may need to negotiate the scope or manner of your proposed works.

REAL LIFE EXAMPLES

- A 6 lot industrial scheme. A lot is sold to a religious organisation.
- The new lot owner guts the lot, installs a mezzanine level and new bathrooms amongst other work as part of converting the lot to a mosque/prayer hall.
- The works have not been approved. The owners corporation commencing proceedings in NCAT seeking orders that the works be removed and the common property reinstated.
- NCAT decides in favour of the owners corporation.
- "16. Unauthorised works to the common property of a strata scheme are a serious matter. Such works, without strict controls, may endanger the structural integrity of a strata scheme building. There is good reason why the SSMA specifies procedures to be complied with for the adding to, or alteration of, common property of a strata scheme, whether by the Owners Corporation or a Lot owner. In particular, there must be a special resolution and where there is an addition or alteration to common property by a Lot owner, there has to be provision for ongoing maintenance of the addition or alteration." Senior Member Charles
- *The Owners Strata Plan No 75506 v Charitable Islamic Association of Beirut City Incorporated (unreported SC 17/21877 determined 23 November 2017)*

REAL LIFE EXAMPLES

- The lot owner admitted to completing works without authorisation but argued she should only need to provide a common property rights by law and be issued a small fine. The excuses?
 - She had only completed the works because the owners corporation was being difficult and sought to charge her for having the meeting to consider authorisation of the works.
 - The work had not adversely affected the common property; and
 - The owners corporation had not demonstrated that the work was defective.
- The Tribunal noted that it was not up to the owners corporation to prove the works were defective or was detrimental to the common property.
- The following orders were made:
 - The lot owner, at her cost, was to present a common property rights by-law in relation to the unauthorised works, including independent expert evidence that all unauthorised works were conducted in accordance with the relevant Australian standards & evidence that the works do not affect the structural stability of the building.
 - The owners corporation was not to unreasonably deny the making of the by-law
 - If this was not complied with, the lot owner, must at her cost, remove the unauthorised works and restore the common property to its previous state and repair any damage to the common property.
- *Owners Corporation SP 22607 v Yang* [2018] NSWCATCD (determined 24 January 2018) Senior Member Simon

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QUESTIONS?



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