



Maintenance vs improvement

Frank Higginson, Partner

Today's presentation

- Maintenance vs improvements
- How that applies to:-
 - Lots
 - Common property

The legislation

- *'Improvement'* includes:-
 - *The erection of a building;*
 - *A structural change;*
 - *A non structural change – i.e. installation of air conditioning.*
- *'Maintenance'* is not defined!

Adjudications

“It seems to me that the test, so far as one can give any test in these matters, is this: if the work which is done is the provision of something new ... that is ... an improvement; but if it is only the replacement of something already there, which has become dilapidated or worn out, then, albeit that it is a replacement by its modern equivalent, it comes within the category of repairs (i.e. maintenance) and not improvements.”

- Made simpler - is it like for like?

Lot owner maintenance

Must maintain their lot (s. 211 Standard Module) which means:-

- *keep in a clean and tidy condition the parts of the lot readily observable from another lot or common property;*
- *maintain the lot in good condition;*
- *maintain in good condition the utility infrastructure within the boundaries of the lot, and not part of common property and, if the utility infrastructure is in need of replacement, must replace it.*

Lot owner improvements – to lot

- Dealt with by by-laws and statute (i.e infrastructure)
- Approvals must be reasonable – but inside lots is generally an owner's domain

Lot owner improvements – to CP

- If the CP is an EU area – committee can approve if the cost of improvements are less than \$3,000 - s. 193 SM)
- If CP is not an EU area, committee can approve if:-
 - total cost is less than \$3,000;
 - improvement does not detract from the appearance of a lot;
 - body corporate is satisfied that the use and enjoyment of the improvement is not likely to be a breach of the owner's duties as an occupier (e.g. by causing a nuisance to others in the scheme).
- Otherwise – needs GM approval by ordinary resolution

Section 180 Standard Module

‘The body corporate must maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition’

Body corporate improvements to CP

- *‘Basic Improvement Limit’* is \$300 x lots in scheme – committee can approve if under that BUT remember committee spending limit might be \$200 x number of lots
- *‘Ordinary Resolution Improvement Range’* is more than BIL and less than \$2,000 x lots in scheme – which is then ordinary resolution but only once per FY
- Otherwise –special resolution

Don't forget

- Maintenance vs improvement characterisation
- Quoting requirements
- Spending limits (consider changing them)
- Acting reasonably;
- Documenting decision making

Contact



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