



APPROVAL OF RENOVATIONS

Owners of lots in strata title schemes often wish to undertake renovations and the approvals required to carry out and use those works varies from scheme to scheme. Fortunately, this approvals process has been simplified for some works by the Strata Schemes Management Act 2015 (“SSMA 2015”) and Regulations under that SSMA 2015.

This article assumes that the Owners Corporation has adopted the model by-laws contained in the Regulations under the SSMA 2015 or former Regulations under the Strata Schemes Management Act 1996. Different requirements may apply if the owners corporation has adopted other by-laws.

This article does not represent an exhaustive list of all approvals which might be required. One should always consider whether any of the following additional approvals are required:

- Statutory approvals, including development consent/complying development certificate, construction and occupation certificates from Council or a private certifier and plumbing approvals from a water services coordinator.
- Notification to the architect who designed the building, in some cases, where the architect’s moral rights under the Copyright Act 1968 might otherwise be infringed.
- Community Association approval, where the property forms part of a community title scheme.
- Building Management Committee (“BMC”) approval, where the owners corporation is a member of a BMC administering properties of its members under a strata management statement.

The last two are much more likely where the works are visible from outside the lot, e.g., in relation to roofing, balconies or windows, which could be seen as impacting the visual theme of the area.

Other options may need to be considered. For example, a strata subdivision (to transfer part of the common property to the relevant lot), rather than a section 108 approval/section 143 by-law, may be more appropriate in the case of substantial works.

Classification of works and approvals required?

Under the SSMA 2015 and Regulations under that SSMA 2015, works are now separated into the following separate classifications, each having particular approval requirements:

Cosmetic works – Section 109 – No approval required.

Types of works: Cosmetic works are very minor internal works to common property such as:

- installing or replacing hooks, nails or screws for hanging paintings and other things on walls;
- installing or replacing handrails;
- painting;
- filling minor holes and cracks in internal walls;
- laying carpet;
- installing or replacing built-in wardrobes;
- installing or replacing internal blinds and curtains;

However, certain classes of work are excluded, such as:

- minor renovations for the purposes of section 110;
- work involving structural changes;
- Work that changes the external appearance of a lot;
- work that detrimentally affects the safety of a lot or common property;

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APPROVAL OF RENOVATIONS

- work involving waterproofing or the plumbing or exhaust system of a building;
- work involving reconfiguring walls; and
- work for which consent (for example development consent or complying development certificate) or another approval is required under any other Act. The State Environmental Planning Policy (Exempt of Complying & Development Codes) 2008 may apply. If so, it is worthwhile considering, especially for air-conditioning, wherein, for instance, air-conditioning above 1.8 units from existing ground level or which reduces the existing fire resistance level of the wall is not exempt development. See link: <http://www.legislation.nsw.gov.au/#/view/EPI/2008/572>

Approvals and notifications required: No approval or notifications required. An owner may simply undertake the works.

Minor Renovations – Section 110 and Section 28 – Approval by ordinary resolution at a general Meeting.

Types of works: Minor renovations to common property in connection with the owner's lot includes but are not limited to work for the purposes of the following:

- renovating a kitchen,
- changing recessed light fittings,
- installing or replacing wood or other hard floors,
- installing or replacing wiring or cabling or power or access points,
- work involving reconfiguring walls,
- removing carpet or other soft floor coverings to expose underlying wooden or other hard floors,
- installing a rainwater tank,
- installing a clothesline,

- installing a reverse cycle split system air conditioner,
- installing double or triple glazed windows,
- installing a heat pump, and
- installing ceiling insulation.

However, certain classes of works are excluded, such as:

- cosmetic works for the purposes of section 109;
- work involving structural changes,
- work that changes the external appearance of a lot;
- work involving waterproofing;
- work for which consent (for example, development consent or complying development certificate) or another approval is required under any other Act; and
- work that is authorised by a common property rights by-law or a by-law made under Part 6 of the SSMA 2015

Approvals and notifications required: Approval of the owners corporation given by an ordinary resolution at a general meeting. A special resolution authorising the work is not required.

Works approved under a common property rights by-law – Section 143 – Special resolution and by-law required.

Types of works: We anticipate that in relation to renovations and alterations, common property rights by-laws will be reserved for those situations where the works fall within the scope of section 108 and require approval by special resolution.

Procuring such a by-law will provide the lot owner with benefits including that it will have a clearly documented and registered right to retain the works in place.

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APPROVAL OF RENOVATIONS

Approvals and notifications required: The grant of a common property rights by-law requires:

- Approval by special resolution at a general meeting; and
- the prior written consent of each owner on whom the by-law confers rights or special privileges.

Works changing common property – Section 108 - Otherwise, requiring approval by a special resolution and possibly a by-law.

Types of works: Any works that include additions to the common property, alter the common property or erect a new structure on common property for the purpose of improving or enhancing the common property, but excluding:

- Cosmetic works (under section 109); and
- Minor renovations (under section 110).

Approvals and notifications required: Approval under this section requires:

- Approval by special resolution at a general meeting; and
- If the lot owner is to be responsible for maintenance and repairs (as is common):
- A by-law authorising the works and addressing the maintenance and repair obligations; and
- The prior written consent of each owner on whom the by-law confers rights or special privileges.

Frequently Asked Questions

1. Why bother with a motion and by-law?

From the owners corporation's perspective:

- A by-law can create a clear and transferable right and obligation.

- A by-law can allocate maintenance obligations in relation to the owner and subsequent owners of the relevant lot.

From the lot owner's perspective:

- The owners corporation can require removal of works and reinstatement of the common property if works have not been approved and approval was required.
- An owner may not have a right to exclusive use of the works without a by-law.
- Registration of a by-law will make the lot more attractive to a buyer, removing a legal concern.

2. How do I get approvals and by-laws?

Where approval is required, the lot owner should provide the owners corporation with the following for approval:

- details of the proposed works, including plans and specifications and ideally a report from an appropriate expert consultant, particularly if structural works are proposed;
- duration and times of the work;
- details of the persons carrying out the work, including qualifications to carry out the work; and
- arrangements to manage any resulting rubbish or debris.
- draft motions, approvals and, where applicable, by-laws.

Once all required items are required, the owners corporation may convene a meeting for the purpose of considering and possibly passing motions effecting those approvals and, where applicable, by-laws. However, unless certain requirements are satisfied, it would be open to the owners corporation to wait until the next general meeting

rather than convene a special one for your works.

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APPROVAL OF RENOVATIONS

3. What happens if the approval is not given and/or the by-law is not passed?

In these circumstances, it may be necessary for the lot owner to make an application to the New South Wales Civil and Administrative Tribunal seeking appropriate orders.

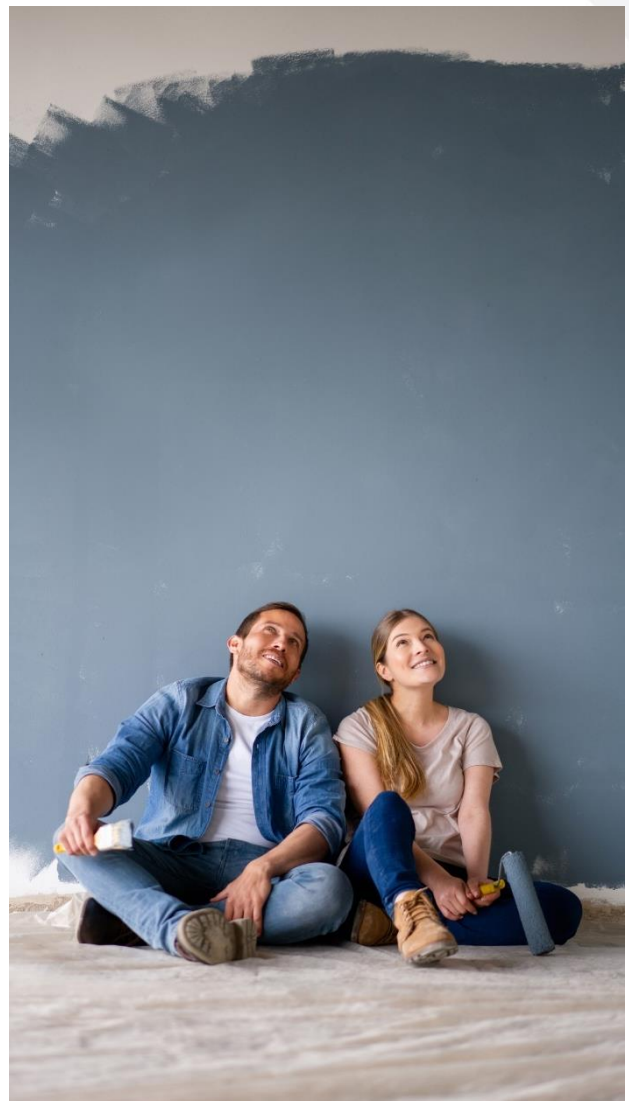
4. What do I do if the work has already been carried out without a by-law where one was required?

A by-law conferring a right of exclusive use or a special privilege in respect of the relevant works can be made after the works have been carried out. Strictly speaking, approval of alterations/additions to common property under section 108 or 110 of the SSMA 2015 cannot be given retrospectively, but there are various options available depending on the specific circumstances and details should be provided to the owners corporation so that appropriate action can be taken.

5. What can the owners corporation do if the work carried out has caused damage?

Section 132 of the SSMA 2015 allows for the Tribunal, on application by an owners corporation, to make the following orders if satisfied that work carried out by or for an owner or occupier has caused damage to common property or another lot:

- a) to make an order that the owner or occupier performs the work or takes other steps as specified to repair the damage,
- b) an order that the owner or occupier pay to the owners corporation or the owner of the lot a specified amount for the cost of repairs of the damage and any associated costs, including insurance and legal costs.



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