

Managing property properly

By Jennifer Paddock

In this post I recommend 10 questions the trustees should consider when an owner is seeking permission to permanently alter the common property.

If an owner indicates that he wants to make a material change to the common property the trustees should ask the owner to make his application in writing explaining and showing with pictures if necessary, what change he would like to make.

Once the written proposal/application is received the trustees should consider the following:

Is the area of common property that the owner wants to alter subject to exclusive use rights in his favour [if so have a look at PMR 68(1)(vi) and Carryn's blog post on improving exclusive use areas here] or is it simply ordinary common property not subject to any special rights?

Will the alteration have any negative effect on other owners and tenants in the scheme?

Will the alteration negatively affect the harmonious appearance of the building? [See PMR 68(1)(iv)]

Will the alteration reduce the value of other units in the scheme?

If we give one owner this permission, others may want to do the same or something similar. What would the result be if all owners did this?

What about maintenance and repair of the altered area – who will be responsible? [The body corporate will be responsible for maintenance and repair of the area because it is common property unless special rules have been made or strict conditions imposed to the contrary]

Would any special conditions need to be attached to the consent to formalize the maintenance and repair responsibilities? [It's a good idea to attach conditions if the trustees want the owner and any subsequent successors-in-title to be responsible]

Would it be better to create and give the owner exclusive use rights to this particular area and then allow him to improve it? This way he is financially responsible for the area from the start. [See PMR 68(1)(vi) and section 27A of the Sectional Titles Act]

Do any additional body corporate rules need to be passed to formalize any necessary arrangements relating to this area? [If so, look at section 35 of the Act and my blog post on amending scheme rules here]

Do we need a lawyer to draft/check the drafting of any conditions or proposed rules to ensure they have the desired effect and are enforceable?