

Publication Date: 4 December 2018
YSP Podcast Transcript: Episode 141. Perennial Parking Problems - plus pets!

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Amanda Farmer: Hello and welcome. I'm Amanda Farmer and I have with me today Reena Van Aalst. Hi, Reena?

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: Doing well, thank you. Gearing up towards the end of the year, which is screaming towards us. Exciting, but, our clients tend to want everything done by the end of the year because the world ends at Christmas.

Reena Van Aalst: Exactly.

Amanda Farmer: So, no doubt you're feeling the pressure as well.

Reena Van Aalst: Yes. And, also a lot of celebration of Christmas parties to Amanda so, I've got to put that in the diary.

Amanda Farmer: That's true. Lots of socialising around this time, interrupting our emails and phone calls and deadlines. But, that's important-

Reena Van Aalst: Yes. An unspoken change. Instead of going to a meeting for us at night [unfortunately 00:01:08] sometimes occasionally I go to a Christmas party.

Amanda Farmer: Yes, it is. Now, let's jump into our wins and challenges as we discuss every time we get together, Reena. Challenges first; jump in.

Reena Van Aalst: My challenge has been that we had a meeting that's 3 or 4 months ago. There was actually a motion, it was a DA that was approved and basically, the next motion was to allow the strata manager to execute all documents and do all things necessary to basically allow the DA to be submitted and for the approval of the authorised works. At the meeting, one of the owners said, "Well, I don't agree with that. This motion is too broad." And, I said, "What exactly do you think the motion is saying?" Or, "You can do anything you want. That's what it says," and not so much, not exactly what it says. It says, "I'm authorised to do all things and sign any documents under seal necessary incentive towards obtaining the approval from [property 00:02:04] authorities for the works."

So, the works and in a sense, well sometimes when people start putting those concerns to other owners, Amanda, for those that were against the work in the first place, it started to unravel and basically, that motion was defeated. Exactly, and I just thought to myself, "Well, then how can an owners corporation if it doesn't give its managing agent that authority unless I would have to list every single document that I will need to sign and sometimes they're not known at the beginning."

I mean, the DA will be known, the information will still be good, perhaps other forms are known at the beginning, but then sometimes council has further requirements. In this case, there's also a subdivision of common property. So we need to sign documents for the land registry services. So, you've got to put the seal on documents and I was just wanted to ask you, Amanda about your thoughts on this and any ... Have you had any feedback from any clients that you've looked after where they have come to you about their aversion to such a motion?

Amanda Farmer: Yes, I've certainly drafted these motions. I can't say I've ever seen one defeated. In my experience, I've drafted them where we're doing things like a subdivision of common property. I did one recently where there was an amendment to a strata management statement for a BMC and they were 3 or 4 different parties involved. The strata manager at the general

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meeting was authorised and directed to do all things and sign all documents necessary to facilitate the submission of the plans. Amanda Farmer: I'm just using examples here, submission of the plans, finalisation of the documents. What we're trying to do there is cover off anything that we haven't thought of. If there needs to be an amendment to a document if there is a council administrative requirement or, "Oops! Here's a form we forgot to tell you that you need to sign and seal this."

Reena Van Aalst: Exactly.

Amanda Farmer: Which happens a lot.

Reena Van Aalst: A lot.

Amanda Farmer: We're trying to save the owners corporation from having to go back to a general meeting just for that purpose of authorising the signing of that document. So, it's perfectly legal to delegate that kind of a function to your strata manager particularly and, I would say only where you've already authorised the work in question. So in your case, it sounds like a development that's been ... The owners corporation has as it must do and especially resolve to allow a if it wasn't a particular owner to alter, upgrade the common property.

So, they've passed that special resolution there then agreeing that the DA is to be lodged and that you, the strata manager authorised and directed to sign all documents and do all things. Quite a common thing. No, I haven't seen buildings push back at that but, it is their prerogative if they want to, if they want, you'd have to go back. If a form needs to be signed to a general meeting to get that approval or authority, then that's what it's going to have to be.

Reena Van Aalst: I think also part of emotion including the decisions on the strata committee. So, I think some people had a problem with the strata committee as well in terms of what they thought their authority was and there was some obviously personal issues there as well. So, I think that contributed to the issue. But, yes. It's funny how sometimes there are certain things as a managing agent, and I'm sure as a lawyer Amanda, when you're advising clients you just take for granted that this is, you know, like a procedural thing, you know, you've done a, b and c, now this is part d just to get it all moving and then people for reasons that are not sometimes obvious, decline to allow the passage of that motion.

Amanda Farmer: And perhaps for reasons that are not at all connected with the subject matter of the motion.

Reena Van Aalst: Exactly.

Amanda Farmer: As we've said before, things can run smoothly and productively in buildings where everybody gets along. But, in buildings where they don't, we have these little stumbling blocks that we may not otherwise expect.

Reena Van Aalst: Exactly.

Amanda Farmer: Something else, just a tip for those kinds of motions. I often include particularly where I as the lawyer, I'm going to continue to be involved in the process. I include some wording along the lines of, "The strata manager is authorised and directed to do these things at all times. Taking into account the advice and guidance of the owners corporation, engaged lawyer, whoever that may be." [crosstalk 00:06:10].

Reena Van Aalst: In this case Amanda, there was no continuing involvement with the lawyer apart from submitting the motions for the alteration of common property. So ...

Amanda Farmer: Yes. Fair enough.

Reena Van Aalst: But, it's a good one to think about if it gives people more comfort.

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Amanda Farmer: Exactly.

Reena Van Aalst: Yes.

Amanda Farmer: Okay. My challenge for this week, this is a listener question. It has come from Tom and it relates to parking. I was trying to think back through more than about two and a half years of podcast episodes. I'm not sure that we've ever got stuck into the question of parking and this is a question that, Reena, I'm sure you've had many times over the years. We see it in the media. I get it a lot. What can we do about people illegally parking on common property, parking in the visitor parking, basically not obeying the rules, whatever they may be when it comes to parking in our scheme? And, Tom has specifically asked, "Can we tow them, can we tow these cars away?"

Reena Van Aalst: I think Amanda, you've given me advice in one of our schemes that asked that question actually.

Amanda Farmer: I'm sure I have. Do you remember when that was?

Reena Van Aalst: A long time actually.

Amanda Farmer: Yes. Well look-

Reena Van Aalst: I think you said that they were obstructing common property or something and therefore I think your reason was behind the cause of obstruction.

Amanda Farmer: Yes. Well, let's start there because we do now have a provision in our New South Wales 2015 Act, which was not in our earlier Act; our 96 Act and, that relates to the removal of motor vehicles. It's Section 125 of the Act but, you do need to read that together with Regulation 34, which is in the Strata Schemes Management Regulation. I will put links to these sections in the show notes so you can access them easily. What you can do now in New South Wales, if a vehicle is blocking an exit or entrance or otherwise obstructing the use of the common property, you can put a notice on it.

The notice has to meet some pretty strict requirements that are set out in Regulation 34. It has to be the right size, it has to describe the vehicle, it has to have a contact number for the strata committee, and if the notice has been on the vehicle for at least 5 days, must be at least 5 days and it hasn't moved. Then you can have it moved so, then you can tow it away legally. 5 days is a long time when a vehicle is obstructing an exit or an entrance so, otherwise obstructing the common property.

Reena Van Aalst: It's a long time if they are away for the whole 5 days. If I decide that, "I'll leave my car, I'm going away. I'll just leave my car in the visitor's parking while I'm away."

Yes. Yes. Well, here's the thing that that's a very good point about visitor parking because that's really where at least in my experience the problems really happen. Is the vehicle obstructing the use of common property if it's parked in the visitor parking-

Reena Van Aalst: Indefinitely.

Amanda Farmer: -indefinitely, and you know this person is not a visitor?

Reena Van Aalst: Exactly. Well, I mean, I would think that it would be. I mean, I'm no lawyer. That's why I'm talking to you. To me yes, everyone has the beneficial interest in the common property. And then when someone does it, they're having like exclusive use of that area.

Amanda Farmer: Yes. I talked this through with a building very recently and came to the same conclusion, but what I've said to them is, "Let's say that in your by-laws. Let's say if you are a resident so you're not a visitor and you're parking in the visitor parking, then you are unlawfully obstructing the use of the common property and Regulation 34 will be enforced against you." You know, as we said before, by-laws are there as preventative tools hopefully and for residents to be aware that they are not

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supposed to be parking in the visitor parking and we do have the right under our legislation. We may not highlight too much that it takes 5 days but, that the right to remove these illegally parked vehicles.

To answer Tom's question, that's really the best you're going to get at the moment under our law, don't go towing away vehicles that have been there for 2 hours, that is illegal. You do not have the right to do that. I have heard some advice in my time from non-lawyers but, other commentators perhaps in this sector who say under the cover of darkness, you might decide to have the vehicle removed to a public property rather than sitting on your private property because when it's on public property, the council or the police can deal with it. But, otherwise, when it's within your private property, there's not too much that you can do aside from this removal procedure. I certainly didn't advise you to do that but, I have seen that mentioned by a few different people in the past.

Reena Van Aalst: So Amanda, have any of your strata schemes that you dealt with or any of the YSP members ever done this? Like actually had a car towed?

Amanda Farmer: Not that I'm aware of but, when these things start to be talked about, I cover my ears and cover my eyes and say, "See, no evil. Hear no evil. You didn't tell your lawyer that."

Reena Van Aalst: Yes, actually. I mean, actually hear about any of our listeners or any of our managers or owners, schemes that if anyone's ever had to do that and where they towed the car and how did they find the car when they towed it. I'm actually quite interested in all that now so yes.

Amanda Farmer: I think the concept, of course, it depends on the property where it is and where the parking is. But, I think the concept is if you can move it sort of just 50 metres away so that it becomes council's problem and not yours, then it's problem solved but, there's a risk in doing that, that you're going to be caught dealing with somebody's private property which is illegal and you have no right to. You'd effectively be stealing their car.

Reena Van Aalst: That's what I thought.

Amanda Farmer: So, no lawyer is going to tell you to do that. So, I'll put those links in the show notes. I hope that's helpful to you, Tom. That may not be the answer you're looking for, no towing. Look, there's other creative ideas like bollards. I think Reena, you work with a building that has used that successfully and CCTV, I think people know they're being watched and they shouldn't be parking where they shouldn't be parking.

Reena Van Aalst: But, the only problem with that Amanda, is that if you don't have like a fob system wherever and sometimes people don't know where those people are going. So, they would call them ... I've got to believe they record them actually parking but, because the cameras don't sort of follow them-

Amanda Farmer: They could be visitors, you don't know.

Reena Van Aalst: Yes. And, also you don't know which apartment they're going to so, you can actually sort of write to that apartment.

Amanda Farmer: Yes. My idea with the CCTV is that it's going to stop problematic residents who you do know and I've seen that happen in a number of buildings where you think, "Lot 3, she's always parking in the visitor parking. I know her bags are heavy but, seriously."

Reena Van Aalst: Yes, exactly.

Amanda Farmer: It's going to stop that kind of thing because you know who they are.

Reena Van Aalst: Definitely, it will stop that. That's a good idea, Amanda.



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Amanda Farmer: All right. Well, those are the week's challenges. What's your win for this week, Reena?

Reena Van Aalst: Well, I'm just announcing our Women in Strata Christmas party that's coming up, Amanda, on Friday the 7th of December; this Friday.

Amanda Farmer: Indeed. Yes.

Reena Van Aalst: At the Royal Exhibition Hotel in Surrey Hills which is actually just across the road from central station. So, we hope that many of you can attend. It's going to be a wonderful event like it was last year.

Amanda Farmer: Yes.

Reena Van Aalst: You must book on our website actually. So even though there's no cost, we'd like to know obviously, you're coming. I want to make sure that it will be a great way for women and supporters of Women in Strata including men-

Amanda Farmer: Yes, indeed.

Reena Van Aalst: -to attend. We have 2 sponsors RETS, Sasha Boe and LUNA Building Management are also sponsoring the event. Thank you to both of them for their donation. I look forward to them.

Amanda Farmer: Yes. I'm hoping that when this episode goes to air, we're not sold out which could be very possible. So make sure you head over to the website to secure your spot fingers crossed that we aren't booked out. It was a very well attended event last year. I have some very fond memories of our Women in Strata Christmas party last year and such a good venue. We're back there again this year. Look forward to seeing so many of you.

Reena Van Aalst: Yes, it's a good way to catch up actually in a more relaxed atmosphere.

Amanda Farmer: Yes, nice time of the year. All right, the win that I would like to share with you this week relates to pets. The keeping of animals in our strata buildings. Now, we have had 2 now and who knows? It might be more by the time this episode goes out. 2 tribunal cases, which in short have supported the keeping of animals in a strata building. The first one is the Yardi case. This was the case that was actually decided back in February but, it was only reported for some strange reason at the end of August. So, you've probably seen a bit more in the media about it in recent times.

I'll put a link to that decision in the show notes. That's a case where there was a by-law banning pets. Lot owners moved in, they had a pet, it was Baxter, the dog. Wanted to be able to keep Baxter and the tribunal said that the by-law banning pets was harsh, unconscionable, and oppressive, so a breach of our Section 139 in our Act and, it was therefore invalid and Baxter could stay. So, really important case not only for its commentary on the keeping of animals but, for its testing of that new Section 139 too, that by-laws must not be harsh, unconscionable, or oppressive.

Since then, there has been another case and I only know about this case because the strata manager kindly alerted me to it. It is not a reported decision but, I have read the reasons of the member and it's a little bit different to the Yardi case in that it was an application for approval to keep a pet. The by-law said that pets were permitted with approval and approval was not given. So, this resident said that the owner's corporation had been unreasonable in refusing approval. The tribunal member agreed but, the very interesting part of this decision was that the tribunal member also said, "Even if this building banned pets, I would allow this pet to stay because a by-law banning pets is harsh, unconscionable, and oppressive pursuant to the decision in the Yardi case." law

Amanda Farmer: So, this second tribunal member, different member has followed or indicated that if he had to, he would follow the earlier tribunal member's decision in finding that by-laws banning pets are invalid. So, I had a chat to some journalists about this and there are a couple of articles published with my comments about what should buildings do and I suggest they review their pet bans if they have them and think about instead substituting that ban with an application process, a considered application

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process and make sure they're looking at each application on its merits rather than imposing a blanket ban.

Reena Van Aalst: So, Amanda, just in the same case that you said that it's not reported, in that case, you said that they didn't have a blanket ban they just had reasonable consent or whatever the wording is at the moment. Yes.

Amanda Farmer: And so, what were the criteria that the committee used to actually, not approve the application for the pet?

Reena Van Aalst: Yes, that was part of the problem. They didn't really set out what their reasons were for not approving the application. I think they had concerns about setting a precedent in the building, which is never a good reason. That's never a good reason.

Amanda Farmer: Yes, yes.

Reena Van Aalst: They didn't look into things like, "How do we manage noise, mess, danger or disturbance?" And, didn't even consider putting in procedures around that which is what I suggest buildings do. You manage the outcome you don't manage the fact of the animal. And, the tribunal found that there was no reason that the animal couldn't stay without some reasonable conditions around the approval and to simply say, "No, because we think it might be noisy or we think it might be messy or we don't want everybody to have dogs." Not good enough reasons.

Amanda Farmer: Yes. I think this is a very interesting issue because some buildings are very pet-friendly and some aren't, Amanda. A lot of schemes that I've managed and still manage certainly reasonable, "I bought into this apartment because there are no animals because there is a blanket ban and that's why I moved in because otherwise, I would have bought into a pet-friendly apartment building." And, I think that ... I mean, I am scared myself of animals because when I was young I was bitten by a dog and so I'm not really comfortable around animals myself. But, I do see the value to some people of having a pet but, when it comes to the committee giving reasonable consent.

I mean, the problem is on what grounds can they sort of not accept an application when nothing has happened for them to say, "Well, because you know, the dog pooped on day one." or, nothing. They're applying to bring the dog in, in this case. So, I find those that have by-laws are really a word in such a way that you really don't have any grounds to say no. And to me, if that's the case then I suppose after the events, when things have happened and there are reasons to say, "Well, you know, there are breaches of the consent." How does that then get enforced? I mean, how do you get rid of the dog? It's ...

Reena Van Aalst: Yes, on one view and perhaps that's the point. There is no reason to say no and maybe that's what points it out to. The by-laws in these terms point that out to committees and force them to go through that process and think about, "Okay, what are they really asking? Do we have mechanisms in place to control outcomes? Do we have conditions applicable to this approval? All right, well, we can't really say no." I think a situation where you might be able to say no, is when it comes to maybe somebody who wants 3 or 4 dogs. That may be an issue and, I'm saying, "Maybe." There may be situations where that's perfectly fine depending on if there's a terrace or it's the type of dog I'm not really sure.

And, there are certain breeds that are considered dangerous to my knowledge, again, not a dog expert, but there is a way of assessing what type of dog. And, I'm using dogs because that's quite common animal people find perhaps to be the most concerning in terms of noise and mess as opposed to cats. So, there may be some limited circumstances where the application just jumps out at you as, "Yes, this is really not going to be appropriate." But, we come back to ... Particularly when it comes to noise I guess if you were living in inner city of Sydney and you're in a terrace or a semi-detached property, you can't regulate whether your next door neighbour who is just as close, if not closer when you're living in a strata scheme, whether they have dogs.

Reena Van Aalst: So, the question then being, "Why is it that you can regulate your neighbour who might be 3 floors below you and 2 units across whether they could have an animal that's really not going to impact you at all?" So, I think it's important that the applications are assessed on a case by case basis. But, I've listed this as a win because we finally have some guidance on both the question of animals and the application of Section 139 and this new harsh, unconscionable or oppressive requirement.

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Amanda Farmer: Well, I had a recent application by a resident and managed to have a dog and basically in this particular by-law it's quite a well-drafted by-law and it actually refers to the weight, that the dog or animal can't exceed a certain weight. I think that probably pertains to the size of the animal. I think once you're over a certain size. Anyway, and in this particular case, this breed of dog was gonna exceed the weight criteria in the by-law and so, when the application was put through one of the committee members said, "Well, then we cannot approve these dogs at this point even though the owners said that, "Oh, not this dog is that way."

If you want you can look on the ... I can't remember what website it was but it was one of those websites that was not like a bloggy type one it's actually a proper website about animals and white dog breeds and whites and as it said that any dog of this type usually it's in this white range. And so, therefore, there was no way that that dog was going to satisfy that criteria, the by-law. But, the other members, they basically overruled what the bylaw had stayed and they approved the application. So, yes. I think that sometimes people who are pet-friendly sometimes people sort of transfer onto other people their own reaction if they wanted to have a dog.

Reena Van Aalst: Sure, yes.

Amanda Farmer: They won't let her have a dog so, even though the by-law did have some criteria sometimes ... But, obviously, it's been there. Problems? We haven't had any problems so we haven't had to enforce it. I think in a way if the community had given consent and it was outside of the by-law I'm not sure what we would have to do in that respect when we had already said yes. And then, now we're saying no.

Reena Van Aalst: Yes, consistency is key. I suggest, like anything within our strata buildings to be seen to be making consistent, transparent decisions with reference to criteria, which are actually applied, I think is important not just for decisions about animals but, any decisions that our committees and our owners corporations make.

Amanda Farmer: I think, I mean, obviously when it comes to people's homes Amanda, people are far more emotional in their thinking than when you're asking the same thing in your office block. You know what I mean? It'd be different how they would perceive that versus how they perceive things in their own home.

Reena Van Aalst: Absolutely.

Amanda Farmer: Yes. Interesting and it's good that we have the guidance that you said, Amanda, at least now you know, if there are other schemes that want to adopt by-laws, they have to keep these provisions in mind.

Reena Van Aalst: Yes. And, I have a feeling we'll see a few more pet cases cropping up in recent times. There may be a few before the tribunal now or even owners who've been wanting to keep pets and who are now challenging these by-laws. So, just have a look, if you are a committee have a look at what you've got in place at the moment in terms of regulating animals in your building and make sure you're comfortable with it. If you're not, then it might be a good time to change that requirement.

Amanda Farmer: Yes.

Reena Van Aalst: All right. That's it for me this week Reena, anything to add?

Amanda Farmer: No. All good Amanda.

Reena Van Aalst: Time to head off for Christmas drinks somewhere?

Amanda Farmer: No, time to get back to the office.

Reena Van Aalst: Back to work a few weeks to go.



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Amanda Farmer: Back to work, yes.

Reena Van Aalst: You'll be relaxing on the beach on Christmas Day or New Year's or, however you like to spend your holiday time. I'm sure.

Amanda Farmer: Yes, definitely I'm going to the beach.

Reena Van Aalst: It's just around the corner.

Amanda Farmer: Exactly.

Reena Van Aalst: Catch you next time.

Amanda Farmer: Okay, bye Amanda.

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