

**Publication Date: 17 October 2024**

## **YSP Podcast Transcript: 426 - How to resolve illegal renos, pet problems, and more**

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**Intro:** Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate and bite-sized information from an experienced and authoritative source.

**Amanda Farmer:** Hello and welcome to this week's podcast episode. I'm your host, Strata lawyer Amanda Farmer, and today I am taking you inside part of my live information evening delivered for residents of the City of Canada Bay Council. Back in July this year, council asked me to share some strata knowledge with its residents covering illegal renovation works in strata pets, parking and other nuisances.

If you were there in person, special hello to you. It was a very enjoyable evening. As I said on the night, some local councils do more than others for their strata residents, and the City of Canada Bay is absolutely up there as one of the councils that is the most engaged, I think, with their residents. And I noticed on LinkedIn recently that Emma Tang and her team at the City of Canada Bay won an award for the communication and engagement category at the 2024 Keep Australia beautiful awards for their work empowering strata communities to improve their recycling.

That was definitely another topic of discussion at the information evening. What you're going to hear today is around 20 minutes or so of what was otherwise a 1 hour presentation from me, and we've essentially cut this episode into two parts. For part one, I've selected for you a section of my live presentation that digs into what you can do as a strata community when an owner is carrying out or has carried out unapproved or illegal renovation work, including when that work is already complete.

I mention a couple of cases which I'm giving you the links to in the show notes for this episode. If you're not sure where to go to find the show notes, they're over [www.yourstrataproperty.com.au/podcasts](http://www.yourstrataproperty.com.au/podcasts) you'll see this podcast episode number 426 on that page. Click through and you'll have the show notes for the episode. You're also going to hear me talk about pets, parking, and how to enforce bylaws.

Then I'm going to jump back in here with you and introduce part two of today's episode. In part two, I'll give you a short introduction to my answers to three questions that were asked by audience members on the night to protect identities. I'm not giving you the audio from those who asked the question, but I am going to share what each question was for you and then take you over to the exact answer I gave that audience member live on the night.

So that'll be part two, some Q and A if you like hearing these snippets from live in person sessions delivered for councils and others. You can check out podcast episodes number 142, 158, 180, 211 and more recently, episode number 406, which is a snapshot of another information evening delivered for the city of Canada Bay recently. And whenever I drop one of these episodes giving you an insight into my information evenings, I inevitably hear from owners who say, Amanda, can you please come and deliver a session for my local council?

How do I make that happen? The best thing you can do is reach out to your local council, let them know that you'd like a strata education evening and if you've got a topic in mind, what you'd like to hear from me, you can recommend me to be the evening's special guest expert. Who should you contact at your council? Well, the City of Canada Bay evenings are hosted by their waste and sustainability team.

Working with councils for the last seven years or so, I've found that it is almost always the waste and sustainability teams that seem to be the most committed to engaging with and educating strata residents. I think there's probably also some state government funding available for this area which probably assists some ideas for your councils. They could host a session that not only covers some strata law, but also how to improve waste management in strata communities generally.

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**Amanda Farmer:** Perhaps they can bring in an expert on electric vehicle charging or solar installations. I know that has often been the approach of councils that I have worked with. Share a copy of this podcast episode with the relevant person at council so they have an insight into how we do things. The benefit of having someone like me deliver an education evening is that I can extend the invitation to the evening to my audience and bring council and its programmes to the attention of residents who might not otherwise be aware of them, helping council to build connections with local strata residents and who doesn't want to spend an evening having their strata questions answered by a strata lawyer at no cost to them.

It's certainly seen as a high value offer by a local council. For now, I will take you over to part one, an insight into my presentation for residents of the City of Canada Bay Council, and I'll soon be back with you to introduce the snapshot of our Q and A.

**Amanda Farmer:** Another example. This is where work is already underway and I think where you're in a building that you're a committee that may live on site, committee members live on site.

And you hear that noise, you hear that jackhammering. Your building manager is saying they're renovating a bathroom up there. I can see the new timber boards that are going up in the lift something is going on. That is a time where you may ring your strata manager and you may say, I think this is happening, what can we do? And if your strata manager is experienced or has access to a strata lawyer, they might be told you need to go off to the tribunal now, today, for an urgent stop work order.

And you can do this. And they are probably the easiest urgent orders to get are orders to stop work where work has not been approved. It's very easy to prove that the work hasn't been approved. We've got no minutes of a meeting where the work's been approved. You've got photos, you've got video of the work going on. You can head off to the tribunal and get that urgent order.

Your only problem is going to be that the tribunal is more backlog than ever. And I heard from a colleague the other day that interim urgent applications were taking four weeks to be heard. So that's not going to help you. But it's definitely worth trying because that is part of the history that you're going to have to show the tribunal, when ultimately you do want the work removed, that at least you tried to get that interim order.

So that's what happened here in the Price case. Strata plan 5319 and Price work was underway. It was a large scale renovation of a lot. We're doing everything here. We're taking out water, we're doing the kitchen, we're doing the bathroom. And approval had been sought, but approval had not been received. She started her work before she got approval. One of those frustrated owners, why do I have to wait for a meeting to be able to get my approval?

The owners corporation got some advice, got an interim order to stop work. So the work was partly completed, the approval is in process. And what happened was only part of the work was approved, only the kitchen and the electrical work was approved. And she had actually already taken out a structural wall and she didn't get approval for that. So removal of the walls was not approved. Ultimately, she was ordered to reinstate the wall between the laundry and the pantry and the affected areas of the lot and the common property to a structurally sound condition comparable to the adjacent areas of the common property not affected by the work.

You see the way that these orders, different language is used. That's probably the order that the owners corporation sought to. It's not a bad order to seek, but another example of how you need to cover those bases of reinstating the common property to a structurally sound condition. The interesting thing about this case is that I've told you. She applied for approval to remove her walls. It was a structural wall, so she needed that special resolution and that major works approval.

She didn't get it. And so she then started her own proceedings saying that the owners corporation had been unreasonable in refusing her application for approval to remove her wall. So that is open to an owner where they don't get approval for major work, they can say, owners corporation is being unreasonable. Go to the tribunal and ask the tribunal to give them approval. That happened in this case. So what the tribunal did in making these orders was to say, she needs to do all of these things, but she's got a really long time frame to do all of these things, and if her application in the meantime is approved, then she doesn't have to do these things.

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**Amanda Farmer:** So except as properly approved by the owners corporation under these sections. So it was kind of a clever way of the tribunal saying, I'm aware that this other application is on foot and I'm aware that she's separately seeking approval. She might get that at a future meeting. If she gets that, then she doesn't need to comply with my orders. So when work has either been done or is almost done, like in the Price case, you might often have a lawyer who advises you as a strata committee to consider retrospectively approving the work on reasonable terms.

So getting a bylaw in place to cover the owners corporation and to get that work approved, or trying to get a bylaw in place at a general meeting to get that work approved, because the tribunal will probably want to know if you've tried that and why aren't you approving the work? And is this just a case that the owner went ahead without knowledge, without understanding they needed approval?

And if so, can we fix that in a way that causes the least distress to everybody? Can we fix that by getting a bylaw in place? So my advice is often just that when I'm talking to committee members to say, well, is the work otherwise okay, are we happy with it? Is it just the fact that we didn't get this approval? Let's see if we can have a meeting, get a bylaw up and get this approval in place in a way that makes you happy, and then that will solve this problem.

So keeping your options open in that respect is a good idea. Let's talk about work that was done 40, 50, 60 years ago. This question comes up a fair bit. This Prior case, strata plan 4382. That picture is strata plan 4382. And those experienced in the room may have an idea of what this dispute was about, because you can see that some balconies are enclosed, some balconies are partly enclosed, and there's a balcony there that's not enclosed at all.

So over the years, this is a relatively old building. It looks like owners have gone ahead and enclosed their balconies, and this comes up all the time. Balcony enclosures, and there's no record of whether those balconies enclosures were approved or not approved, and everything's okay until there's a leak. And the owner says, well, that's the responsibility of the owners corporation. And the owner's corporation says, that's the responsibility of you, the owner, because you enclosed the balcony, you probably did a dodgy job, and that's why it's leaking.

Who's responsible? So that was exactly the argument in the Prior case. The owners corporation said, not our problem, that your enclosed balcony is leaking through the sliding doors and into the living area. That is a lot owner enclosure, and the lot owner is responsible for it. Now, this balcony had been enclosed for about 40 years, was the evidence, with no real complaints or no issues about it. It just didn't come up, which is so common until this complaint.

And when we're looking at these older buildings and trying to work out whether work was approved or not, it's very common that you will go to, or a lawyer will tell you to go to the documents that are held by the local council and to see if anything had ever gone before the local council to approve this work. Where we're changing the external appearance with balcony enclosures, it's often the case that you will need some form of council approval.

So it's a good idea to go through those archived records of the council and see what they show. Whether you're the owner who's inherited this, or you're the committee who's trying to solve this problem, you need to be armed with as much of the history as you can. So, in this case, there were council documents in the 1970s showing that the owners corporation had approved the application to council for the planning approval to enclose the balcony.

And the tribunal ended up saying that, Yes, we think that's enough. We think if it looks like council approved it, or it looks like the owners corporation signed the document that would allow council to approve it, stamped its seal on that development application. We think that's enough to assume that 40 years ago, this was approved by the owners corporation, we're going to apply what's called the presumption of regularity, which means that anything that should have been done probably was done because there's a little bit of evidence here showing that at least some level of approval was obtained.

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**Amanda Farmer:** This sounds bizarre to me, but there are two cases. Davenport is the other case, if you're interested in this two cases, and Davenport was an appeal level case where this presumption of regularity has been applied. It looks like council approved it back then. We're going to say owners corporation approved it. But guess what? There's no bylaw shifting responsibility over to the lot owner for this enclosure. So owners Corporation, you're responsible to repair and maintain it.

That's what happened in this case. Owners Corporation is responsible to repair the leaks to deal with the problem that has arisen because of the enclosed balcony. So you'll get these slides and you've got those case references there to look up. I'm going to move along because I know we're running out of time to pets. And again, a little summary here. Those of you who've been in the game for a little while, you'll know that this new section in our New South Wales legislation, section 137, has been in place since that Cooper case, the Horizon case, Angus and Joe Cooper, 2021.

A bylaw that unreasonably prohibits the keeping of an animal on a lot has no force or effect. Begs the question, what does unreasonably prohibits mean? Well, the section goes on to tell us that it is taken to be reasonable. So we start from a place that it is reasonable. Okay. From a legal interpretation perspective, that means it is taken to be reasonable. Means we start from a place that it is reasonable to keep an animal on the lot, unless the keeping of the animal, that animal, that specific animal, unreasonably interferes with another occupant's use and enjoyment of their lot or the common property.

So I say you can keep your man eating lion in your apartment until it eats a man. Then it's got to go. That's the New South Wales legislation. It is reasonable to keep a pet until that pet, not someone else's pet, until that pet, your pet, does something that unreasonably interferes. What does unreasonably interferes mean? That's in the regulation. Regulation 36 a. If that pet, that particular pet, is making persistent noise, repeatedly running at and chasing at another person or animal, attacking or menacing, causing damage to the common property, repeatedly endangering the health of another occupant, causing a persistent offensive odor, or is a menacing, dangerous or restricted dog under the Companion Animals act, then you can prohibit that animal.

But all of this is stuff that has to happen first. Okay. You can't prohibit an animal on the assumption or on the fear or on the guess that this is going to happen. This actually has to happen first. New legislation since December 2023. You might not have encountered this yet. Section 105, an owners corporation must not require an owner or occupier of a lot to pay a bond or a fee relating to the keeping of the animal or obtain insurance for an animal kept on the lot.

So what we're finding is since the Cooper case, and we can't ban pets and we can't have unreasonable prohibitions, some buildings that really didn't want to have pets in the building were saying, you want a pet? It's a \$1000 application fee. Strata committee will consider it and won't unreasonably refuse it. But it's \$1,000 application fee and you've got to insure your pet. You've got to pay an annual fee, whatever that creative they were coming up with.

The legislature said last year that's not on. I had a question last week in our member forum. Somebody said, Amanda, I'm being told I have to pay for the meeting to approve the pet. What do you think? And I said, I think that's a breach of 105 because I think that's a fee relating to the keeping of the animal on the lot. So I don't think you can be asking, because of this section, I don't think you can be asking owners who want to keep pets to pay for the meeting, the costs of the meeting that's convened just to approve their pet.

I think you need to be letting them know that they can wait until the next strata committee meeting, and the strata committee will consider your application at that meeting, but nothing charging that fee. Assistance animals have also been dealt with in these updates to the legislation. We can't prohibit or restrict the keeping on the lot of an assistance animal, and we can't impose an unreasonable burden in relation to the use of that assistance animal.

So we've never been able to restrict assistance animals. We know that. But we can't have bylaws that say you've got to carry your dog across the common property because somebody with a disability may not be able to do that. We also can't be asking for personal medical information. We can't be asking people to prove that they have a disability and that they need an assistance animal. They only have to prove that their animal is accredited under the Disability Discrimination act.

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**Amanda Farmer:** So have a close look at that. If you're dealing with assistance animals. And again, we come back to how important it is to have a bylaw that brings all this together and that explains to owners what our rules are when it comes to pets. I've told you, our legislation deems pets are allowed. It's happy days for pets. That doesn't mean that we should just be allowing a pet free for all.

You can still have conditions on the keeping of pets and you can still set out in your bylaw those provisions you saw in the regulation about unreasonable interference. Those should be in your bylaw. If your pet does any of these things that are in regulation 36 a, then your pet's got to go. You can say that in a bylaw that is reasonable. So you want to have a keeping of animals bylaw in place.

It will have an application and approval process embedded into that bylaw with those conditions of approval. And this is where you can say, you don't have to pay for a meeting, but we're not having a meeting until the next month or whenever our next committee meeting is. You'll notice that that's what's in the bylaw. Your application will be considered at the next committee meeting or within 30 days, whichever is the later.

Have a pet register so you know who's got what pets. If there's a fire, if there's an emergency, we want to make sure we're getting the pets out as well. You need to be monitoring the behaviour of the pets. We're talking about difficult behaviour here and nuisances. We've got pets who might be defecating in the lift. There's pets who might be damaging the common property. How do we know who's responsible for that?

If you've got CCTV, any strata lawyer will tell you. We love buildings that have CCTV. I know some people have objections to it, but it is incredibly helpful for monitoring behaviour like this. Building managers will agree, no doubt, if you've got committee members who are keeping their eyes open, taking photos, if they see breaches of the bylaws with those who own pets. If you're going to enforce these bylaws, which is next on my list, you've got a bylaw, you can enforce it.

Then you need to have evidence of the breach of the bylaw, otherwise you're not going to get very far. So have that keeping of animals bylaw in place. Other nuisances. I was asked to talk a little bit about parking and about noise. I'm happy to address those in question time, but essentially my comments are you need to have bylaws in place that regulate how we use the parking, how we use the visitor parking.

What is a visitor? How long can they park? Make very clear that residents can't be using the visitor parking. You will all have a bylaw about noise. It is a standard model bylaw that gets registered with your strata plans. Again, this comes down to monitoring. I mentioned CCTV as well. I mentioned the good work that our building managers do monitoring what's going on around the building and our committee members who are resident communicating where there is a problem.

A knock on the door is always a good first step. Those who are comfortable to do it, then perhaps a letter, then perhaps the more formal notice and ultimately the tribunal proceedings. If you've got a really recalcitrant offender, but if you have specific questions about parking, about noise, about other nuisances, smoking comes to mind as well, then I'm more than happy to answer them. How are we going for time?

Is it about question time now? And I'm back with you now, real time. Amanda Farmer not passed July 2024 Amanda Farmer, we are diving into our q and A and while many questions were asked on the night, I have pulled out three to share with you here on the podcast. First up, an audience member referred to my discussion of the Prior case, which you've just heard about, and asked, what if an owner did a renovation that's been there for quite some time?

They've then sold and it's not until the new owner is in that the owners corporation finds out about this renovation, realises that it hasn't been approved. Who is responsible for the illegal reno? Is it the owner's corporation or is it the owner? Here's my answer to that question. Bad luck. New owner. New owner inherits the sins of the past owner. Is that clear? You make a really good point about acting promptly as well, which is not something I covered.

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**Amanda Farmer:** But we don't want to leave it for 40 years because when you leave it for 40 years, you have this lack of knowledge in the building, lack of history, lack of records. Records where maybe there was a meeting that approved it, but those records are gone. So it's so important because people buy and sell and it's really not nice for a new owner to come in and inherit that problem.

But legally, yes, they do. But you also want to move quickly on anything illegal while it's still fresh in everybody's minds. You've got people who are witnessing the event, you've got records that are held by the current strata manager. Don't leave it too long thinking, oh, they've never had approval. If there's ever a problem, that's their problem. As you can see from the Prior case and the Davenport case, that's not necessarily how it's going to play out in the courts.

Next up, I was asked a question about windows with double glazing. This audience member said, if an owner is actually removing a window, replacing it with a double glazed window, isn't common property being affected? Doesn't that mean that you must then have a bylaw to cover the owners corporation and make sure that owner is responsible? Doesn't it need to go to a general meeting for a special resolution?

Here's how I answered that one. I'm so glad that you raised that, because this comes up a lot. We're affecting common property, so we need a buyer and we need a special resolution. That's what strata. I'll often hear strata managers advise. The fact is that our legislation, section 109, cosmetic work, section 110, minor work. If you read those sections, they acknowledge we're affecting common property. All of those things are affecting common property.

The legislation has said, yes, you're affecting common property. If you're not affecting common property, you can do what you like. The whole reason we have to think about whether we need approval is because we're affecting common property. But the legislation has said there's different levels of affecting common property. Driving a nail into a wall in order to hang a picture is not that important. It's affecting common property, but it's cosmetic work, so it doesn't need any approval.

Renovating your kitchen is affecting common property. Having an air conditioning unit is affecting common property. Double glazing your windows is affecting common property, but it's kind of medium level of importance, so it's minor work and it's an ordinary resolution or a strata committee approval. If you've got a bylaw saying strata committee, the only things. The legislation is very clear about this. The only things that need to go to general meeting, special resolution is waterproofing, changing the structure and changing the external appearance.

They're the only things. So you are absolutely right. Changing the window to double glazing is affecting common property. The legislation recognises that and says it needs a minor works approval and that approval is done at a meeting. There are minutes of that meeting and there are conditions on the approval. And one of your conditions on the approval should absolutely be that the lot owner is responsible for that window.

I get it. It's not going to be recorded in a bylaw. The minutes of that meeting may get lost down the track, but our lawmakers have decided that that's okay, because this work is not as serious as the major work. The last question I am sharing my answer to today came from an audience member who told me he was brand new to strata and he was struggling to understand the difference between what he is responsible for as an owner and what the owners corporation is responsible for.

He had a recent experience with his garage door, a motorised garage door. He was surprised to find out that he was responsible for that, and he was wondering, how is anybody who is new to strata supposed to understand where to draw the line? How do we know what we are responsible for and what we can otherwise assume the owners corporation will deal with? I'll take you over to my answer.

It's a great question, and I was at an event yesterday morning again on my soapbox about education and understanding at the point of purchase. It's a real missing piece in the way that we do strata, and it ends up with people like yourself coming into strata and not necessarily understanding generally what it's all about. But then the point you make is specifically about your building. There's some nuances there in your building about garage doors and motors.

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**Amanda Farmer:** It's probably the case that an owner has installed that motor at some point in the past. So the owners corporation is saying it's not original, it's not common property, we're not going to deal with it. Every building is different, unfortunately, and will have different quirks like that. So the best thing you can be doing is yes, asking your strata manager. And then I would suggest asking the second question when you get the yes or no answer, asking the second question, why is that the case?

Why am I responsible for that? Or why am I not responsible for that? And some buildings can and do pass bylaws making very clear who's responsible for what. What is lot owner responsibility? What is owners corporation responsibility? I think that's a really great idea. There's a couple of guides out there. Strata Community association produces a guide called who's responsible? Quick Google. It'll come up the who's responsible guide.

It's not too bad. It's definitely a good place to start, but it is the case that every building will be a little bit different. So welcome. We're here for you, and I'm glad that you found this community. Thank you for listening to your strata property, the podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at [yourstrataproperty.com](http://yourstrataproperty.com)