Civil and Administrative Tribunal

New South Wales

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| Case Name: | Camilleri v The Owners – Strata Plan No. 4987 |
| Medium Neutral Citation: | [2023] NSWCATCD 99 |
| Hearing Date(s): | 16 May 2023 |
| Date of Orders: | 01 August 2023 |
| Decision Date: | 1 August 2023 |
| Jurisdiction: | Consumer and Commercial Division |
| Before: | R. Alkadamani, Senior Member |
| Decision: | (1) Order that the application be dismissed. |
| Catchwords: | LAND LAW – Strata schemes – Proposed work by lot owner to common property – Whether owners corporation unreasonably refused to consent |
| Legislation Cited: | Strata Schemes Management Act 2015 (NSW) ss 108 – 111, 126 |
| Cases Cited: | Bruce v Knight [2021] NSWCATAP 224<br>Endre v The Owners – Strata Plan No. 1777 [2019] NSWCATAP 93<br>Kaye v The Owners – Strata Plan No 4350 [2022] NSWSC 1386 |
| Texts Cited: | None |
| Category: | Principal judgment |
| Parties: | Rosa Camilleri and Sandra Peer (applicants)<br>The Owners – Strata Plan No. 4987 |
| Representation: | Ms R Camilleri and Ms S Peer (applicants)<br>Mr Hogg and Mr Siva (respondent) |
| File Number(s): | SC 23/10654 |

Publication Restriction: None

## REASONS FOR DECISION

1 The applicants are the owners of lot 14 in strata scheme SP 4987. The strata scheme is a residential building located at ** Albert Street, Strathfield. The respondent is the owners corporation (**the OC**).

2 The applicants bring these proceedings because they sought the OC's permission to undertake renovations to lot 14 which the OC refused to provide. It is common ground that the proposed renovations included structural works. The applicants rely on s 126 of the *Strata Schemes Management Act 2015* (NSW) (**the SSMA**).

3 The Tribunal heard the application on 16 May 2023.

4 The applicants appeared and represented themselves.

5 The OC was represented by Mr Siva, a member of the strata committee, and Mr Hogg, the strata manager.

6 The applicants relied on a bundle of documents which was marked exhibit 1. It comprised emails with the strata agent, a structural engineer's report and various documents relating to renovation work which the applicants sought to undertake.

7 The OC relied on a bundle of documents which was marked exhibit A. It comprised notice of an extraordinary general meeting held on 20 July 2022, minutes of that meeting and an email.

### Findings

8 The applicants are the owners of lot 14 in strata scheme SP 4987.

9 The strata scheme is a residential building in Albert Street, Strathfield.

10 In early December 2021 the applicants' property agent, Mr Stoltenberg, and the strata manager, Mr Hogg, exchanged emails concerning a proposed "*major renovation*" to lot 14. Mr Stoltenberg informed Mr Hogg that the applicants were "*looking at doing a major renovation …that will included (sic) the removal of walls, new kitchen and bathroom.*"

11 Mr Hogg responded that "*Removal of Walls*" was a concern "*since walls may be load bearing*". Mr Hogg advised a report from a consulting engineer would be required in relation to the status of the walls "*to ensure the structural integrity of the building*".

12 Mr Hogg also informed Mr Stoltenberg that a by-law would be needed and the by-law "*would require the present and any future owner of unit 14 to be responsible for any repairs and maintenance arising in any part of the structure affected by removal of walls in unit 14*".

13 On 13 May 2022 a report from Dynamic Structural Engineering Group Pty Ltd (**the Dynamic Engineering Report**) and engineering drawings were completed. The Dynamic Engineering Report included some details of the proposed work and a statement to the effect that the proposed works "*will not affect the structural integrity of the building*".

14 At the hearing the only evidence as to the structural adequacy of the building after the proposed removal of the walls and installation of steel beams to replace them was the Dynamic Engineering Report. Consequently, the uncontested evidence is that the proposed works "*will not affect the structural integrity of the building*" and the Tribunal accepts this evidence.

15 On about 13 May 2022 the Dynamic Engineering Report and an email detailing the proposed renovations were sent by the applicants, or on their behalf, to the strata manager.

16 The details of the work included removal of a wall between the living room and the dining room and laundry. The Dynamic Engineering Report recorded that a steel beam would be "*required to allow opening between the existing Living and Dining/Laundry*" and provided the specification of the steel beam. The Dynamic Engineering Report also recorded that a steel beam would be "*required to allow opening between the existing Kitchen and Dining/Laundry*" and provided the specification of the steel beam. This work was structural work.

17 The removal of the walls, as referred to in the preceding paragraph, is work that would alter the common property. There is no dispute, and the Tribunal

finds, that the removal of the walls, as referred to in the preceding paragraph, is work that would comprise structural changes to the common property.

18 Other non-structural work was proposed. The non-structural work included removal of the bathroom vanity and toilet, removal of kitchen cabinets, removal of laundry cabinets and removal of some laundry tiles.

19 The applicants' proposed renovations works, both structural and non-structural, will be referred to in these reasons as the Renovation Works.

20 On 13 May 2023 the strata manager informed the applicants that the request for permission to undertake the Renovation Works was not accepted insofar as it comprised removal of the walls. Approval was provided for the balance of the renovations.

21 On 23 May 2022 one of the applicants forwarded to the strata agent an email from Mr Natoli, structural engineer, Dynamic Structural Engineering. Amongst other things, Mr Natoli stated:

> Removal of walls in home units and substituting beams is common practice in Sydney.
>
> Over the past 40 years as a Structural Engineer, I have engineered hundreds of similar proposals without incidence. The removal of three short walls and substituting two steel beams is not only equal to the support provided by the original walls, but is also considered better.

22 On 8 July 2022 notices were issued for an extraordinary general meeting to be held on 20 July 2022 (**the EGM**). The main item of business at the EGM was to consider a motion (**the Motion**) to make a special by-law in relation to the Renovation Works. The Dynamic Engineering Report was included in the documents accompanying the notice of EGM. The terms of the Motion were as follows:

> Within unit 14, sections of the brick wall be removed between the living, dining, kitchen and laundry. The sections of wall that are removed are to be replaced by steel beams of specification 200 UC 46 and 200 UB 30, attached to the perpendicular brick walls. Steel beams to be covered with 2 layers of 16 mm Fyrecheck Gyprock or fire protection material. The owners of unit 14 will always be responsible for any repairs or maintenance required to the areas from where the walls are removed.

23 At the EGM the Motion was defeated with 8 votes against and 1 vote in favour.

24 The minutes of the EGM record the following in relation to the Motion:

The meeting was addressed by the builder carrying out the renovations to unit 14 as well as several owners in attendance. Owners expressed concern at the proposal to remove load bearing walls from a unit in an essentially old building.

25 In early 2023 another iteration of a proposed by-law was circulated but as at the date of hearing that proposed by-law has not been considered by a general meeting of the owners corporation. The terms of this proposed by-law are as follows:

> 1 Recitals
>
> 1.1 The Owners – Strata Plan No 4987 SPECIFICALLY RESOLVE to make an additional by-law (the Special By-Law 1) on the following terms of this special by-law.
>
> 1.2 This by-law permits the Works to be conducted to Common Property by the Owner, subject to the terms of this Special By-law.
>
> 1.3 This by-law further grants to the Owner exclusive use of so much of the Works as comprise part of the Common Property so that the Owner may use and enjoy the benefit of the Works on the terms and conditions herein.
>
> 2 Definitions
>
> 2.1.1 "Building" means the building to which the Works are attached.
>
> 2.1.2 "Common Property" means the common property for the Strata Scheme.
>
> …
>
> 2.2.13 "Works" means:
>
> 2.1.13.1Structual Work:
>
> 2.1.13.1.1 Installation of 2 beams in place of demolished walls and box around the beams with 16mm fyrechek plasterboard; and
>
> 2.1.13.1.2 Demolish small section of walls to laundry room & part of entry wall from Living room to Dining room in accordance with the Plans provided by Dynamic Structural Engineering Group Pty Ltd on 13 May 2022.
>
> 2.1.13.2 Non-structural work:
>
> 2.1.13.2.1 Remove all existing soft floor covering, blinds, bathroom vanity and toilet, kitchen and laundry cabinets and part laundry floor tiles.
>
> ….
>
> 2.1.13.2.6 Supply and install new laminate or floating flooring to all rooms except for bathrooms and laundry which will remain as existing
>
> 3 Works and Exclusive Use
>
> 3.1 Works:
>
> 3.1.1 Notwithstanding any other by-law to the contrary, the Owner is hereby authorised to carry out the Works.
>
> 3.2 Exclusive Use:

3.2.1 The Owner has exclusive use of the Works, notwithstanding they comprise part of the Common Property to the extent set out in the description of the Works, which the Owners Corporation must not unreasonably refuse, and subject to the right of the Owners Corporation to access that part of the common property to remedy any breach by the Owner of this by-law in accordance with the provisions of this by-law, or as required under the Strata Legislation to access that area.

3.3 Maintenance.

3.3.1 The Owner must ensure the Works are kept in a proper state of repair and condition.

4 Terms and Conditions

4.1 Commencement: The Works can only be commenced on the following bases:

4.1.1 the Owner must give the Owners Corporation 3 business days' written notice before commencing the Works, and

4.1.2 at the same time (or earlier) provide the Owners Corporation with written evidence that the contractors are covered by an insurance policy for public liability not less than $10 million cap per claim; and

4.1.3 this By-Law must be registered before commencement.

4.2 Costs. The owner must pay their own legal fees of drafting the by-law, and pay for the Owners' Corporations registration fees for this By-Law.

4.3 During Construction of the Works. During this time, the Owner must, in relation to the Works:

4.3.1 Pay their own costs of the Works;

4.3.2 Only use qualified tradespersons;

4.3.3 Ensure the Works are carried out to a proper and workmanlike standard, compliant with any relevant Australian Standard;

4.3.4 Ensure the Works are carried out as soon as reasonably practicable after commencement;

4.3.5 Ensure the Works are only carried out during the hours of 8am – 5pm Monday to Friday, and not performed on Weekends nor public holidays;

4.3.6 If services need to be interrupted, notify the Owners Corporation 48 hours prior; and

4.3.7 Comply with any relevant laws.

4.4 After completion of the Works. The owner must:

4.4.1 Notify the Owners Corporation as soon as reasonably possible;

4.4.2 Rectify any defects to the Common Property as soon as reasonably possible and keep the Works in a proper and workmanlike manner; and

4.4.3 Allow a representative of the Owners Corporation access within 72 hours of completion of the Works to inspect the Works.

4.5 Failure of the Owner to comply with this By-Law

> 4.5.1 If the Owner is in breach of this By-Law, the Owners Corporation can give the Owner 30 days' written notice to comply.
>
> 4.5.2 If the Owner does not comply with the breach notice within that time frame:
>
> 4.5.2.1 The Owners Corporation is thereafter authorised to access the Works and remedy the breach by the Owner; and
>
> 4.5.2.2 The Owner indemnifies the Owners Corporation for the costs incurred by the Owners Corporation for any remedial works to the Works pursuant to this sub by-law.

26 At the hearing those representing the OC did not provide a satisfactory explanation as to why the proposed by-law had not yet been considered at a general meeting of the OC. One of the explanations was to the effect that it was unlikely to be passed. That was not self-evident in the circumstances of this matter, where the proposed by-law is substantially different to anything previously considered by a general meeting of the OC.

**Consideration**

27 The applicants originally relied s 127 of the SSMA. At the hearing, after a short adjournment, the applicants identified that they sought to rely on s 126 of the SSMA and the Tribunal granted them leave to proceed on that basis.

28 Sections 107 – 115 of the SSMA deal with common property and include provisions for the carrying out of work on the common property by a lot owner.

29 Section 108 of the SSMA relevantly provides:

> (1) **Procedure for authorising changes to common property** An owners corporation or an owner of a lot in a strata scheme may add 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.
>
> (2) Any such action may be taken by the owners corporation or owner only if a special resolution has first been passed by the owners corporation that specifically authorises the taking of the particular action proposed.
>
> (3) **Ongoing maintenance** A special resolution under this section that authorises action to be taken in relation to the common property by an owner of a lot may specify whether the ongoing maintenance of the common property once the action has been taken is the responsibility of the owners corporation or the owner.
>
> (4) If a special resolution under this section does not specify who has the ongoing maintenance of the common property concerned, the owners corporation has the responsibility for the ongoing maintenance.
>
> (5) A special resolution under this section that allows an owner of a lot to take action in relation to certain common property and provides that the ongoing

maintenance of that common property after the action is taken is the responsibility of the owner has no effect unless—

(a) the owners corporation obtains the written consent of the owner to the making of a by-law to provide for the maintenance of the common property by the owner, and

(b) the owners corporation makes the by-law.

(6) The by-law—

(a) may require, for the maintenance of the common property, the payment of money by the owner at specified times or as determined by the owners corporation, and

(b) must not be amended or repealed unless the owners corporation has obtained the written consent of the owner concerned.

30 Section 109 of the SSMA provides for an exception to section 108. Section 109(1) provides that the owner of a lot in the strata scheme may carry out "*cosmetic work*" to common property in connection with the owner's lot without the approval of the owners corporation. Section 109(2) provides an inclusive definition of cosmetic work which includes, among other things, installing or replacing handrails, painting and laying carpet. Section 109(5) identifies work which is not cosmetic work. Relevantly, pursuant to section 109(5), work involving structural changes is not cosmetic work.

31 Section 110 of the SSMA deals with "*minor renovations*". It relevantly provides:

(1) The owner of a lot in a strata scheme may carry out work for the purposes of minor renovations to common property in connection with the owner's lot with the approval of the owners corporation given by resolution at a general meeting. A special resolution authorising the work is not required.

(2) The approval may be subject to reasonable conditions imposed by the owners corporation and cannot be unreasonably withheld by the owners corporation.

(3) Minor renovations include but are not limited to work for the purposes of the following—

(a) renovating a kitchen,

(b) changing recessed light fittings,

(c) installing or replacing wood or other hard floors,

(d) installing or replacing wiring or cabling or power or access points,

(e) work involving reconfiguring walls,

(f) any other work prescribed by the regulations for the purposes of this subsection.

…

(7) This section does not apply to the following work—

(a) work that consists of cosmetic work for the purposes of section 109,

(b) work involving structural changes,

(c) work that changes the external appearance of a lot, including the installation of an external access ramp,

(d) work involving waterproofing,

(e) work for which consent or another approval is required under any other Act,

(f) work that is authorised by a by-law made under this Part or a common property rights by-law,

(g) any other work prescribed by the regulations for the purposes of this subsection.

32 Section 111 of the SSMA provides:

> An owner of a lot in a strata scheme must not carry out work on the common property unless the owner is authorised to do so—
>
> (a) under this Part, or
>
> (b) under a by-law made under this Part or a common property rights by-law, or
>
> (c) by an approval of the owners corporation given by special resolution or in any other manner authorised by the by-laws.

33 Consequently, under the SSMA works to the common property by a lot owner comprising structural changes are not "*cosmetic works*" within the meaning of s 109 and are not "*minor renovations*" within the meaning of s 110. The Renovation Works proposed by the applicants, as found above, comprised structural changes. The applicants therefore required approval pursuant to s 111(b) or s 111(c).

34 As set out above, the Motion to make the special by-law was defeated at the EGM. Consequently, the applicants bring these proceedings seeking an order from the Tribunal pursuant to s 126 of the SSMA.

35 Division 6 of Part 6 of the Act deals with the orders about property which may be made by the Tribunal. One of the provisions in Part 6 is section 126 which relevantly provides:

> (1) **Order requiring owners corporation to carry out work on common property** The Tribunal may, on application by a lessor of a leasehold strata scheme or an owner of a lot in a strata scheme, order the owners corporation to consent to work proposed to be carried out by an owner of a lot if the Tribunal considers that the owners corporation has unreasonably refused its consent and the work relates to any of the following –

a) minor renovations or other alterations to common property directly affecting the owner's lot,

b) carrying out repairs to common property or any other property of the owners corporation directly affecting the owner's lot.

36 In *Endre v The Owners – Strata Plan No. 1777* [2019] NSWCATAP 93 discussed the meaning of unreasonable of relation to ss 126 and 149 of the SSMA at [46] – [53] as follows:

> [46] The Tribunal said in its reasons, relying on the decision in *Yardy v Owners Corporation Strata Plan 57237* [2018] NSWCATCD 19, that "the word 'unreasonable' means not based on or in accordance with reason or sound judgement": reasons at [39]. In saying so, the Tribunal, correctly in our opinion, noted that the test was an objective test.
>
> [47] However, insofar as the Tribunal sought to suggest that one examines the objective reasonableness of the decision of the owners corporation by reference to the particular views reasonably held by objecting lot owners, we would not agree.
>
> [48] The plurality of the High Court in *Ainsworth v Albrecht* [2016] HCA 40 (Ainsworth) said at [63] that opposition by a lot owner might be unreasonable if "prompted by spite, or ill-will, or a desire for attention", that is if their opposition was motivated by matters which "on any rational view, [could not] adversely affect the material enjoyment of an opponent's property rights".
>
> [49] However, the High Court was concerned with a power to make an order "because of opposition [to a motion] that in the circumstances is unreasonable": Ainsworth at [17] and [48]. The High Court in Ainsworth was not concerned with whether the decision of the owners corporation in a general meeting was, in the circumstances in which that decision was made, unreasonable.
>
> [50] However, in the latter case, the High Court said in Ainsworth the question of unreasonableness in connection with a decision to pass or not pass a motion at a general meeting of the body corporate requires a determination of whether the decision made was "a reasonable balance of the competing interests affected by the proposal": Ainsworth at [49].
>
> [51] Similar views have been expressed by the Supreme Court of New South Wales in connection with s 158 of the 1996 Act (unreasonable refusal to make a by-law), now s 149(2) of the Management Act. In *Reen v Owners Corporation SP 300* [2008] NSWSC 1105, the Court said at [58]:
>
> > 57. The starting point here is that the by-laws are made to facilitate the administration and harmony of the strata scheme.
> >
> > 58. Senior Tribunal Member Balding was asked to consider whether SP 300's refusal to approve a new by-law granting the Reens exclusive use of garage number 3 was unreasonable, as Adjudicator Taylor had concluded. That determination required a consideration of the interests of all owners in the use and enjoyment of the lots and common property. It also required consideration of the rights and reasonable expectations of the Reens, who would derive a benefit under the by-law.

> [52] It follows that what the Tribunal is required to do is determine whether, in all the circumstances, the refusal of the respondent to approve the work was unreasonable.
>
> [53] That is not to suggest that individual lot owner's views are not relevant to determining whether the refusal by an owners corporation was unreasonable. Rather, it is one of the factors to be taken into account when determining whether the refusal to approve works was unreasonable in all the circumstances.

37 In *Bruce v Knight* [2021] NSWCATAP 224 the Appeal Panel undertook a detailed analysis of the authorities relating to determining the "*circumstances*" and "*matters*" that may be taken into account in determining the question of whether an owners corporation's refusal to consent to a common property rights by-law was unreasonable for the purposes of s 149 of the SSMA. Those observations can be applied to the issue of whether an owners corporation unreasonably refused to consent to work by a lot owner comprising alterations to common property under s 126 of the SSMA. The Appeal Panel summarised the principles at [53] as follows:

> [53] We summarise the principles to be applied as follows:
>
> (1) reasonableness must be assessed by reference to circumstances known at or prior to the passing of the relevant resolution: Maceys; Beckett; Drewe;
>
> (2) the determination of whether a refusal is unreasonable depends on the conduct of the owners corporation and all the relevant circumstances: Endre;
>
> (3) "circumstances" are different to "material". Subsequent evidence or "material" which goes to the circumstances existing at the time of the meeting is admissible: Donaldson;
>
> (4) the Tribunal is not confined to examination of the material before the meeting: Donaldson; Beckett;
>
> (5) individual owners can provide evidence of their reasons: Capcelea.

38 I turn to consider whether, for the purposes of s 126, the owners corporation unreasonably refused consent to the Renovation Works.

39 The Renovation Works involve removal of common property load bearing walls located within lot 14 and their replacement with steel beams. The Renovation Work included structural changes.

40 The Dynamic Engineering Report makes clear that the Renovation Work would not affect the structural integrity of the building.

41 On the other hand, the minutes of the 20 July 2022 EGM record lot owner concern at the proposal "*to remove load bearing walls from a unit in an essentially old building*". Had the owners not had the benefit of the Dynamic Engineering Report I would not have considered such concerns to be capricious or without foundation.

42 However, the lot owners did have the Dynamic Engineering Report. Furthermore, those voting at the AGM did not have any professional report or opinion as to structural issues other than the Dynamic Engineering Report. Consequently, the question that arises is whether, having regard to the contents of the Dynamic Engineering Report, the OC unreasonably refused consent for the Renovation Works. It seems to me that the Dynamic Engineering Report should have provided a deal of comfort to lot owners that the Renovation Works would not affect the structural integrity of the building.

43 In *Kaye v The Owners – Strata Plan No 4350* [2022] NSWSC 1386 (***Kaye***) the Court made the following observations at [47] and [48]:

> [47] Underlying this challenge (and that to (4)) was an assumption that the owners corporation would act unreasonably by having regard to "speculation" as to any possible disadvantage that might accrue to other lot owners from the proposed common property rights by-law. That was a false assumption. Those voting at the extraordinary general meetings were not required to disregard all considerations which were not established by some objective material placed before the meeting. Nor were they required to give particular weight to particular matters. Lot owners were entitled to have regard to their own interests and, so long as they did not act unreasonably, have regard to their own experience and beliefs as to how a particular change might affect them.
>
> [48] Further, the interests of the proponents and the interests of other lot owners were likely to be in conflict. It was not for the Appeal Panel to seek to "balance" those interests by apportioning weight between them, so as to conclude that a refusal would be unreasonable if the balance favoured the proponents. The function of the Appeal Panel was to determine whether the refusal was "unreasonable". In making that assessment, it was entitled to treat as a valid reason for voting against the proposal a belief or opinion, whether or not it was supported by "evidence". The Management Act does not require that the owners corporation accept any proposal which was objectively reasonable. Nor should the Tribunal, in applying s 149(1)(a) of the Act, decide that a refusal was unreasonable merely because it considered the proposal to be reasonable. The plaintiffs' contentions came close to such an assertion.

44 Although the observations in *Kaye* dealt with the issue of unreasonableness in the context of s 149, they are also relevant to the determination of whether an owners corporation unreasonably refused to approve work for the purposes of

s 126. The concerns of lot owners as to the removal of the load bearing walls was not supported by the evidence or materials placed before the EGM as contained in the Dynamic Engineering Report. Nevertheless, I am satisfied that those concerns were genuinely held and, as explained in *Kaye*, those voting at the EGM "*were entitled to have regard to their own interests and, so long as they did not act unreasonably, have regard to their own experience and beliefs as to how a particular change might affect them*".

45 In these proceedings, the Tribunal did not have the assistance of any statements or similar from lot owners explaining the reasons for the way in which they voted on the Motion. However, Mr Siva, a lot owner and strata committee member, appeared at the hearing on behalf of the OC. He indicated that a further concern that at least he held was the 'floodgates concern'. This was articulated as being a concern with having to approve similar proposals and gradually eroding the structural integrity of the building.

46 In *Kaye* the Court indicated at [42] and [64] that a concern of opening a Pandora's Box or opening the floodgates, based on human experience, is a valid concern. I do not, however, place much weight on this concern.

47 A further matter which I consider relevant is the issue of ongoing responsibility for the repairs and maintenance of the common property affected by the Renovation Works. In this respect the Motion provided the following:

> The owners of unit 14 will always be responsible for any repairs or maintenance required to the areas from where the walls are removed.

48 The scope of the responsibility of the owners of lot 14 was limited to "*the areas from where the walls are removed*". On its face, the scope of the ongoing responsibility for the repair or maintenance of the common property was limited to the physical area in lot 14 "*from where the walls are removed*". That is an important protection for the OC and other lot owners. However, I do not consider it to be sufficient in the sense that the ongoing responsibility of the owners of lot 14 for repairs or maintenance arising from removal of the walls should not be limited only to the areas from where the walls are removed.

49 I accept that there may not be any need in future for ongoing repairs and maintenance because the Dynamic Engineering Report concludes that the

Renovation Works will not affect the structural integrity of the building. However, in circumstances where the other lot owners are clearly concerned about structural issues arising from removal of load bearing walls, I do not consider that it is sufficient that the ongoing responsibility of the owners of lot 14 for repairs or maintenance arising from removal of the walls is to be limited to the areas from where the walls are removed.

50 The applicants did not draft the Motion and there is no suggestion that they unreasonably or even consciously intended to limit their ongoing responsibility for the common property repairs and maintenance to "*the areas from where the walls are removed*". Nevertheless, that is the Motion that was considered by the OC. Consequently, this is a matter that I consider to weigh against a conclusion that the OC unreasonably refused to consent to the Motion (which, of course, dealt with the Renovation Works).

51 Balancing all the above considerations, although the matter is finely balanced, I am not satisfied that the OC unreasonably refused to consent to the Motion. I consider that whilst the Dynamic Engineering Report should have provided comfort to other lot owners at the EGM, their concerns should also be addressed by the ongoing responsibility of the owners of lot 14 for repair or maintenance work to the common property arising from the removal of the load bearing walls, whether or not any consequent repair or maintenance work is required in the area where those walls were removed. I consider that the manner in which the Motion was drafted in relation to ongoing responsibility for repair and maintenance to the common property consequent on removal of the load bearing walls located within unit 14 should not leave the other owners in a position where they may have some risk or exposure because the repair and maintenance is not "*from the area from where the walls are removed*".

52 I have placed very little weight on the OC's floodgates' concern as I consider that the OC should deal with future applications for renovation works on their own merits.

**Orders**

53 For the reasons indicated above, I order that the application be dismissed.

**********

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar