

BYLAWS - BANNING OF PETS

The interpretation of the law [\[1\]](#) relating to 'by-laws' in a strata scheme, and how it applies to the keeping of pets, has a long and conflicted background. You can read through the history of the ongoing dispute between the Coopers and the Owners Corporation of Strata Plan 58068 (commonly known as the 'Horizon') here.

In short, the Coopers challenged a by-law that prohibited the keeping of pets in the Horizon. In the first instance, the NSW Civil and Administrative Tribunal (the Tribunal) ruled that a blanket ban on pets was invalid. The original decision of the Tribunal was later overturned by the Appeal Panel of the Tribunal, where it was found that a blanket ban on pets was valid on the basis that an owner assumes the responsibilities and obligations found in the by-laws of a strata scheme upon purchasing their apartment.

This Appeal Panel's decision has now been overturned by the Court of Appeal in *Cooper v The Owners - Strata Plan No 58068* [2020] NSWCA 250 [\[2\]](#) (Cooper).

The decision of the Court of Appeal - Supreme Court of NSW Today, the Court of Appeal in the Supreme Court of New South Wales held that a by-law prohibiting pets in a strata scheme is invalid because the by-law is oppressive, harsh, and unconscionable. You can read the full decision [here](#).

We have summarised the Court's reasoning in Cooper below:

1. The starting point is that owners in a strata scheme are the holders of a freehold estate. That is, all owners hold a freehold estate in a stratum. This means that each owner of a lot in a state scheme is also the holder of a bundle of property rights.
2. Second, a right that all freehold owners hold is the right to keep a pet within their own 'stratum' i.e. within their own lot. Apartment owners cannot be prevented from exercising

their property rights even through a by-law that has been passed unanimously by the owners' corporation. The only situation where a lot owner can be prevented from exercising a property right within their own lot, is if the exercise of that right impacts another lot owner's use and enjoyment of their own lot. There was no evidence of this in Cooper.

3. This means that a by-law that prevents an owner from keeping a pet in their own lot constrains an owner's property rights and brings no material benefit to other lot owners. This is because an animal can be kept within the confines of a lot, without interfering with another lot owner's use and enjoyment of their own real property.

4. Unlike the Tribunal Appeal Panel, the Court of Appeal held that the knowledge of a lot owner prior to purchasing their lot is not relevant. In practical terms, the fact that the Coopers were aware that the Horizon had a blanket prohibition on pets when they purchased their lot is irrelevant to the legal question.

5. Finally, the Court held that 'democratic governance principles' [\[3\]](#) as relied upon by the Tribunal Panel are not relevant to determining whether a by-law is harsh, oppressive or unconscionable. This is because by-laws are registered by the developer prior to the existence of the owners' corporation. Similarly, once by-laws are registered, they cannot be amended by a majority vote which are not conducive with democratic governance principles.

What does this mean for owners in strata schemes?

It is important that all owners' corporations start the process of reviewing their by-laws, particularly those that relate to the keeping of pets.

The Court of Appeal has provided some guidance on what may be deemed as a fair and valid by-law in the context of pets, but also more broadly.

In particular, the model by-laws set out in Schedule 3 of the Strata Schemes Management Regulation 2016 appear to

have been endorsed by the Court. We have summarised the Court's commentary below on what may be a valid by-law that relates to the keeping of pets:

- First, Option A of the model by-laws allows owners to keep an animal in their lot on the basis that the animal only enters common property if the animal is supervised by its owner. This type of by-law is unlikely to be harsh, oppressive, or unjust.
- Second, Option B of the model by-laws allows owners to keep animals in their lot and the common property, subject to obtaining the approval of the owners' corporation.

The common theme in each of the model by-laws above, is that owners are permitted to keep animals within their own lot. However, restrictions can be placed in respect of keeping animals on the common property.

Conclusion

Ultimately, the by-law in Cooper was considered 'oppressive' because it had the effect of constraining a common 'incident of property ownership' without providing a material benefit to other lot owners. The majority view of the owners' corporation is not relevant to the question of oppression. Even if a by-law was unanimously adopted by the owners' corporation, a by-law can still retain an element of oppression, which can be felt by future owners.

Get your by-laws reviewed now

[1] Strata Schemes Management Act 2015 (NSW), section 139(1).

[2] Cooper v The Owners - Strata Plan No 58068 [2020] NSWCA 250.

[3] Ibid at [48]