

## Article Information

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## Enforcing By-Laws - Noisy Neighbour ordered to Remove Renovations

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*There is nothing more annoying than noisy neighbours – particularly within the confines of a community titles scheme. It is understandable, therefore, that most Bodies Corporate include in their by-laws a reference to 'excessive noise'. But what happens when noise by-laws are not complied with?*

*In a recent decision, the Body Corporate for 18 Kingsford Street provided a textbook example of what Bodies Corporate should do in these situations. It acquired orders effectively requiring one of their owners to remove newly laid, and extremely noisy, porcelain tiles from their lot.*

### Background

18 Kingsford Street is a small community titles scheme consisting of five residential lots (**Body Corporate**).

The by-laws for the Body Corporate include (**By-Law**):

*"A proprietor or occupier of a lot shall not upon a parcel create any noise likely to interfere with the peaceful enjoyment of the proprietor or occupier of another lot or of any person lawfully using common property."*

In September 2014, the owners of a lot 3, Eric and Violette Jonquille, replaced the carpet and underlay in their living areas and bedrooms with porcelain tiles (**Tiles**). Unfortunately for Mr and Mrs Jonquille and their neighbours, the Tiles were extremely noisy.

On or about 23 April 2015, the Body Corporate issued Mr and Mrs Jonquille with a Notice informing them that they (because of the Tiles) were contravening the By-Law (Breach Notice). Mr and Mrs Jonquille failed to remedy the Breach Notice.

As a result, the Body Corporate applied to the Office of the Commissioner for Body Corporate and Community Management (**Commissioner**) for orders to enforce the By-Law.

On 23 February 2016, an Adjudicator ordered that Mr and Mrs Jonquille had to take appropriate action to reduce the noise caused by the Tiles (**Orders**), which may be achieved by:

- a. installing carpet and underlay on top the Tiles;
- b. replacing of the Tiles with carpet and underlay; or
- c. replacing of the Tiles with new tiles that were quieter.

### Comments

The Orders obtained by the Body Corporate were extraordinary. Mr and Mrs Jonquille were effectively ordered to cover, remove or replace Tiles that we laid inside their lot little over a year ago.

It goes to show the powers that may be exercised by the Commissioner to resolve disputes under the *Body Corporate and*

*Community Management Act 1997 (BCCMA)*. It was not, however, a power that Adjudicator in this case exercised lightly.

Ultimately, the Adjudicator only made the Orders after considering all matters as well as evidence from the Body Corporate that included:

- a. an expert report indicating that the Tiles produced noise between 20 – 25 decibels in excess of the minimum rating recommended by the Association of Australian Acoustical Consultants; and
- b. audio recordings taken from inside the lot of Mr and Mrs Jonquille's neighbour over a two-week period.

### **Lesson for Bodies Corporate**

This case demonstrates how important expert evidence may be when proving a by-law has been breached.

Here, the Body Corporate alleged that the Tiles contravened the By-Law and were causing a nuisance for the purpose of section 167 of the BCCMA. To support these allegations, the Body Corporate could have simply acquired evidence from Mr and Mrs Jonquille's neighbour. Instead, they also obtained expert evidence that commented on:

- a. the actual noise generated by the Tiles, which included conducting impact tests at four different areas within Mr and Mrs Jonquille's lot;
- b. the amount of noise being transferred from the Tiles into neighbouring lots;
- c. the extent to which the noise exceeded recognised, minimum standards; and
- d. why the Tiles were so noisy, including the extent to which (if any) the Tiles were installed without a noise insulating membrane.

Undoubtedly, the Body Corporate incurred costs to acquire expert evidence, but by placing the best possible evidence before the Commissioner and the Adjudicator they arguably secured the best possible outcome.

If you or your Body Corporate is concerned about by-law enforcement or you simply wish to discuss the matters raised in this article in more detail, please contact Mario Esera.