# SUPREME COURT OF QUEENSLAND

| | |
|---|---|
| CITATION: | *Rakaia Pty Ltd v Body Corporate for "Inn Cairns" Community Titles Scheme 16010* [2012] QCA 306 |
| PARTIES: | **RAKAIA PTY LTD**<br>(appellant)<br>**v**<br>**BODY CORPORATE FOR "INN CAIRNS" COMMUNITY TITLES SCHEME 16010**<br>(respondent) |
| FILE NO/S: | Appeal No 2110 of 2012<br>QCAT No 123 of 2011 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Appeal *Queensland Civil and Administrative Tribunal Act* |
| ORIGINATING COURT: | Queensland Civil and Administrative Tribunal at Brisbane |
| DELIVERED ON: | 6 November 2012 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 9 August 2012 |
| JUDGES: | Margaret McMurdo P and White and Gotterson JJA<br>Separate reasons for judgment of each member of the Court, each concurring as to the order made |
| ORDER: | **Appeal dismissed.** |
| CATCHWORDS: | APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – OTHER MATTERS – where appellant appeals decision of QCAT appeal tribunal – where a dispute arose between a body corporate and a unit owner – where the dispute involved a development approval for a material change of use of Lot 36 from holiday accommodation to a multiple dwelling unit – whether the appeal tribunal erred in its findings with respect to the characterisation of the resolution as not being a decision on a restricted matter with the consequence that it was void as beyond the power of the committee to make as a decision of the body corporate – whether the attachment of the common seal to the IDAS form 1 was not authorised by the committee<br><br>*Acts Interpretation Act* 1954 (Qld), s 32C<br>*Body Corporate and Community Management Act* 1997 (Qld), s 290<br>*Body Corporate and Community Management (Accommodation Module) Regulation* 2008 (Qld) |

*Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 149(2)
*Sustainable Planning Act* 2009 (Qld), s 260(1)(e), s 263(1)

*Sorrento Medical Service Pty Ltd v Chief Executive, Department of Main Roads* [2007] 2 Qd R 373; [2007] QCA 73, cited

COUNSEL: I Erksine for the appellant
No appearance by the respondent

SOLICITORS: Mahoney Lawyers for the appellant
No appearance by the respondent

[1] **MARGARET McMURDO P:** I agree with Gotterson JA's reasons for dismissing the appeal.

[2] **WHITE JA:** I have read the reasons for judgment of Gotterson JA. I agree with his Honour's reasons and the order which he proposes.

[3] **GOTTERSON JA**: The appellant, Rakaia Pty Ltd, appeals against a decision of an appeal tribunal constituted under the *Queensland Civil and Administrative Tribunal Act* 2009 ("QCAT Act") by Alan Wilson J, President and Mr Kenneth Barlow SC, Member. The decision was delivered with reasons on 30 January 2012. The reasons were those of Mr Barlow SC with which the President agreed.

[4] This appeal is made pursuant to s 149(2) of the QCAT Act. As the appeal is on a question of law only, leave to appeal is not required.[1]

[5] The decision under appeal to this Court decided an appeal made pursuant to s 290 of the *Body Corporate and Community Management Act* 1997 ("BCCM Act") to the appeal tribunal from a decision of an adjudicator appointed by the Office of the Commissioner for Body Corporate and Community Management. The adjudicator's decision was made on 9 March 2011. Detailed reasons for it were given.

**The Scheme and the circumstances of the dispute**

[6] The "Inn Cairns" Community Titles Scheme 16010 ("Scheme") is a community titles scheme to which both the BCCM Act and the *Body Corporate and Community Management (Accommodation Module) Regulation* 2008 ("Accommodation Module") apply. There are 42 lots in the Scheme. The respondent is the body corporate for the Scheme.

[7] The appellant is the registered proprietor of seven lots in the Scheme and is also the caretaking service contractor and letting agent for the Scheme. HAAI Pty Ltd is the registered proprietor of Lot 36 in the Scheme. At all material times under the Scheme, the registered proprietor of Lot 36 has had the right to exclusive use of a carpark area, that forms part of the common property of the Scheme. This exclusive use area is given the designation "36A" on a plan attached to the Community Management Statement for the Scheme. It is convenient to refer to it as Carpark 36A.

---

[1] Compare s 149(3)(b) for appeals on a question of fact or of mixed law and fact where leave is required.

[8] At some time in 2010, HAAI Pty Ltd applied to the Cairns Regional Council ("Council") for development approval for a material change of use of Lot 36 from holiday accommodation to a multiple dwelling unit. Classification as a multiple dwelling unit would allow Lot 36 to be used for permanent residency as well as for holiday accommodation. The appeal record does not contain a copy of that application.

[9] It appears that in order to process the application, the Council required evidence of the consent of the respondent body corporate to the application insofar as it had consequence for the use of Carpark 36A in the common property. Correspondence from the Council specifying its requirement in this respect was not placed before the adjudicator or the appeal tribunal. Nor is it before this Court. However, it appears that the consent required by the Council of the body corporate was not in respect of a change of material use of Lot 36 itself. The use of the IDAS form 1 detailed at paragraphs [9] and [10] of these reasons suggests that the Council had imposed the requirement in reliance upon sections 260(1)(e) and 263(1) of the *Sustainable Planning Act* 2009. Those provisions together require that the written consent of the owner of land to the making of a development application for a material change of use of premises accompany the application.

[10] The appeal record does contain a document dated 6 October 2010 signed by Julie Humphries, the manager of the respondent. It is headed "**RESOLUTION PASSED OUTSIDE A COMMITTEE MEETING INN CAIRNS CTS 16010 on 4 October 2010**". This document indicates that these events occurred in sequence:

- On 27 September 2010, a motion in the following form was distributed to committee members of the respondent, Dorothy Holt, Frank Papparlado, Frank Marino, Cathy Bugeja and Josie Duffy: -

  > **"1. CONSENT FOR COUNCIL APPLICATION – MATERIAL CHANGE OF USE – AS IT ONLY RELATES TO THE EXCLUSIVE USE CAR PARK 36A**
  >
  > That the committee approves lot 36 to make an application to the Cairns Regional Council for material change of use to lot 36 converting from holiday accommodation to a multiple dwelling unit (ie to enable the lot to be used for permanent residence as well as holiday accommodation) in so far as it relates to the exclusive use car park because that car park is on common property.
  >
  > There will be no change in the use of the car park. It will still be used as a car park and it will still only be used in connection with the occupation of lot 36."

- By 4 October 2010, three of the committee members, Frank Papparlado, Cathy Bugeja and Josie Duffy, had voted on the motion.
- They all voted in favour of the motion, no committee member voting against it.
- There being a majority in favour of the motion, the resolution of the committee was that the motion be carried.

[11] This resolution is challenged by the appellant. Also challenged is an IDAS form 1 which, it appears, was completed and then forwarded to solicitors who were acting for HAAI Pty Ltd in the development application. Quite probably those solicitors had supplied the form to the respondent in a partially completed state with a request that it be completed and returned to them for the purpose of progressing the application.

[12] The form, as it appears in the appeal record, was pre-printed and contained the description "Integrated Development Assessment System form" at the top. Underneath, was the heading "Application details – IDAS form 1 Land Owner Consent". Below that heading there was a reference to the *Sustainable Planning Act* section 260(e)(i) and then a table with three columns which were headed respectively Name, Signature and Date. It may be inferred that the name "Body Corporate for Inn Cairns CTS 16010" had been typed in the first column by the time the form was supplied to the body corporate. Ms Bugeja affixed the common seal of the respondent body corporate to the form. She signed her name in the second column and wrote the date "07/10/10" in the third.

[13] This form was, it seems, sufficient for Council purposes. It approved the development application for material change of use of Lot 36 on 28 October 2010.

**The adjudication**

[14] By an application form dated 12 October 2010, the appellant applied for the appointment of an adjudicator. The appellant sought orders against the respondent body corporate by way of declaration:

- that the resolution was unlawful and is void and of no effect;
- that the resolution did not authorise the committee or any member of it to execute the IDAS form 1; and
- to the extent that the committee had executed the IDAS form 1, the execution was *ultra vires*, void and of no effect.

[15] The declaratory relief was sought on two grounds, namely:-[2]

> "(a) where there is common property involved (even where that common property is the subject of exclusive use) consent to the application must be given at a general meeting of the Body Corporate and must be by way of an ordinary resolution; and
>
> (b) the committee does not have the power to execute the material change of use application."

[16] The adjudicator invited submissions from all lot owners and received submissions from 17 of them. HAAI Pty Ltd made a submission which addressed in some detail legal issues raised by the application. It did so by incorporating a letter that its solicitors had written to the Council dated 18 October 2010. The respondent body corporate made a very brief submission to the effect that the committee believed that it had acted correctly. After having considered the submissions and the appellant's reply to them, the adjudicator dismissed the application.

**The appeal tribunal**

[17] By an application dated 15 March 2011, the appellant appealed to an appeal tribunal of QCAT against the adjudicator's decision. The appeal was on substantially the

---

[2] AB 8.

same questions of law as those upon which the application for adjudication had been based.[3]

[18] The parties to the appeal proceedings were the appellant and the respondent body corporate. The appeal tribunal determined the appeal on the papers. The appellant made detailed written submissions. The appeal tribunal's published reasons indicate that neither the respondent, nor any other person, made any submissions to it.

[19] The appeal tribunal's reasons addressed two questions. The first question is: Was the decision within the committee's power? The second is: Did the decision authorise the execution of the IDAS form? The answer it gave to each question is evident from the following concluding paragraph in the Member's reasons:

> "[35] For these reasons, I consider that:
>
> a) the committee decision was valid; and
>
> b) the decision authorised the execution of the IDAS form."

Conformably with these answers, the appeal was dismissed.

[20] As noted, the reasons were delivered on 30 January 2012. However, they were not provided to the appellant until 8 February 2012.

**The appeal**

[21] By notice of appeal dated 6 March 2012, the appellant instituted this appeal. It duly filed its written outline of argument dated 4 April 2012 which had been settled by counsel. The respondent filed a brief outline of argument by post which was received by the registrar of the Court of Appeal on 3 May 2012.

[22] The respondent stated that it wished to rely on the submissions made by HAAI Pty Ltd to the adjudicator and on the decisions of the adjudicator and of the appeal tribunal respectively. It did not wish to make any further submissions and asked to be excused from appearing on the hearing of the appeal, reserving its right to be heard with respect to costs should the appeal be successful. Thus, at the hearing of the appeal, oral submissions were heard on behalf of the appellant only.

[23] Before turning to the grounds of appeal I propose to outline the statutory setting in which this appeal arises and certain of the by-laws for the Scheme which have relevance for the issues raised on the appeal.

**Statutory provisions – common property, the body corporate**

[24] Part 3 of Chapter 2 of the BCCM Act (ss 35 to 44 inclusive) contains general provisions relating to common property and Part 1 of Chapter 3 thereof (ss 94 to 111A inclusive) is concerned with management structures and arrangements for the management of community titles schemes.

[25] By virtue of s 35(1) in Part 3, common property for a community titles scheme is owned by the owners of the lots included in the scheme, as tenants in common, in shares proportionate to the lot entitlements of their respective lots. An owner's interest in the common property is inseparable from the owner's lot interest.[4]

---

[3] As an appeal on a question of law only, leave to appeal was not required: *BCCM Act* s 289(2).

[4] Section 35(3).

[26] Notwithstanding that ownership of the common property resides with the lot owners as tenants in common, the body corporate is given a number of important attributes of ownership of it. It is the registered proprietor of the indefeasible title for the common property[5]. It may enter into transactions affecting common property in its own name and may sue and be sued for rights and liabilities related to the common property as if owner of it.[6]

[27] As well, one of the three general functions conferred on a body corporate for a community titles scheme by s 94(1) in Part 1 is to administer the common property for the benefit of the owners of the lots included in the scheme. Section 95(1) confers on such a body corporate all the powers necessary for carrying out its functions. I note at this point that the administration function and the broad general power together would have conferred ample authority on the respondent body corporate to make a resolution of a kind that was made on 4 October 2010. The appellant does not contend otherwise.

[28] The community management statement for the Scheme states that the regulation module which applies to the Scheme is the "Accommodation Module".[7] That module is the *Body Corporate and Community Management (Accommodation Module) Regulation* 2008 made under the BCCM Act.[8] The Accommodation Module requires that there be a committee for a body corporate for a community titles scheme.[9] Accordingly, the provisions of Division 2 Part 1 Chapter 3 of the BCCM Act (ss 98-101B) have application to this body corporate.[10]

**Statutory provisions: committee's power to act for body corporate**

[29] Section 100 of the BCCM Act confers power on the committee to act for the body corporate and regulates the exercise of that power in the following terms:

> "(1) A decision of the committee is a decision of the body corporate.
>
> (2) Subsection (1) does not apply to a decision that, under the regulation module, is a decision on a restricted issue for the committee.
>
> (3) Despite anything in a contract with the body corporate (including the engagement of a body corporate manager), a decision of the body corporate manager is void to the extent that it is inconsistent with a decision of the body corporate's committee.
>
> (4) If persons, honestly and reasonably believing that they are the committee for the body corporate, make a decision while purportedly acting as the committee, the decision is taken to be a decision of the committee despite a defect in the election of 1 or more of the persons.
>
> (5) The committee must act reasonably in making a decision."

---

5 Affidavit M J Downes Exhibit 1; Section 35(3).
6 Sections 35(6); 36(1).
7 Affidavit M J Downes Exhibit 1.
8 See s 21(1).
9 Section 8(1).
10 Section 98(1).

[30] By virtue of ss (1) and (2) of s 100, a decision of the committee is a decision of the body corporate unless, under the regulation module, it is a decision on a restricted issue for the committee. Thus, for the purposes of s 100, a decision is a decision on a restricted issue if, under the provisions in the applicable regulation module, the decision is a decision on a restricted issue. As noted, for the respondent body corporate, the applicable regulation module is the Accommodation Module. Section 42 of the Accommodation Module defines the concept of a decision on a restricted issue for the committee in the following terms:

> "(1) A decision is a decision on a restricted issue for the committee if it is a decision—
>
> (a) fixing or changing a contribution to be levied by the body corporate; or
>
> (b) to change rights, privileges or obligations of the owners of lots included in the community titles scheme; or
>
> (c) on an issue reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate; or
>
> *Note—*
>
> Issues reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate, must be recorded in a register—see section 199 (Register of reserved issues).
>
> (d) that may only be made by resolution without dissent, special resolution, majority resolution or ordinary resolution of the body corporate; or
>
> (e) to start a proceeding, other than—
>
> (i) a proceeding to recover a liquidated debt against the owner of a lot; or
>
> (ii) a counterclaim, third-party proceeding or other proceeding in relation to a proceeding to which the body corporate is already a party; or
>
> (iii) a proceeding for an offence under chapter 3, part 5, division 4 of the Act; or
>
> (iv) a prescribed chapter 6 proceeding; or
>
> (f) to pay remuneration, allowances or expenses to a member of the committee unless, under section 43, the decision is not a decision on a restricted issue for the committee.
>
> (2) In this section—
>
> ***prescribed chapter 6 proceeding***—
>
> (a) means a proceeding, including a proceeding for the enforcement of an adjudicator's order, under chapter 6 of the Act; but
>
> (b) does not include an appeal against an adjudicator's order."

[31] Importantly for this appeal, a decision to change rights, privileges or obligations of the owners of lots included in the Scheme is a decision on a restricted issue and therefore is a decision which the committee lacks authority to make as a decision of the body corporate.

**By-laws**

[32] The committee management statement for the Scheme contains a number of by-laws. There are two of them which call for consideration here. By-Law 34 is an exclusive use by-law within the meaning of that term as defined in s 170 of the BCCM Act. It confers the exclusive use right to the use of carparks to which I have referred. This by-law states:

> "The proprietor or occupier of each lot in the building will be entitled to the exclusive use for themselves and their licensees of the car park/s numbered the same number as the lot number of which he or she is the proprietor or occupier for the time being as set out in Schedule E and identified on the plan on pages 12 and 13 of the new community Management Statement. The Committee of the Body Corporate is authorised to vary such car park allocations and to transpose car parks from one lot to another at any time on the written request of the proprietors of the lots concerned. Each proprietor or occupier to whom exclusive use of a car park/s is given must use such car park/s for the purpose of car parking only unless the Body Corporate otherwise resolves and must not litter the car park/s or use it to create a nuisance."

Schedule E assigns Exclusive Use Area "36A" on the "attached plan" to Lot 36. On this plan, the area designated 36A is on the basement level. It is rectangular in shape and has dimensions of 5.1 m x 2.6 m.

An analysis of By-Law 34 reveals that it is comprised of the exclusive right to use the designated carpark area, a stipulation mandating use of the area for the purpose of car parking only and negative stipulations against littering the area or using it to create a nuisance.

[33] By-Law 39 relates to use of lots. By-Law 39.3 applies generally to lots. It states:

> "Subject to the rights granted in By-Laws 37 and 38A.2 all other lots have been designed and constructed for residential holiday letting and subject to rights of the proprietors and occupiers of those lots under the town plan for the local government area in which the building is situated, those lots must be used for residential holiday letting purposes only."

I note that By-Laws 37 and 38A.2 apply to use by the manager and the caretaker respectively. The expression "all other lots" means all lots other than Lots 1, 2, 3 and 6.

**Grounds of appeal**

[34] The appellant has two substantive grounds of appeal. It contends that the appeal tribunal erred in its findings with respect to the characterisation of the resolution as not being a decision on a restricted matter with the consequence that it was void as beyond the power of the committee to make as a decision of the body corporate (Ground 1), and with respect to the efficacy of the resolution in authorising the application of the body corporate's common seal to the IDAS form 1 (Ground 2).

[35] The relief sought is that the order made by the appeal tribunal be set aside and the matter be remitted to QCAT for determination according to law or, alternatively, that this court make the declarations which the appellant had sought in the adjudication.

[36] It is convenient to consider each ground of appeal separately.

**Ground 1**

[37] This ground of appeal squarely raises the issue whether or not the resolution of the committee was a decision on a restricted issue. Section 42(1) lists some six types of decisions as decisions on a restricted issue. The appellant contends that the resolution was a decision of the type described in (b) thereof, namely, a decision "to change rights, privileges or obligations of the owners of lots included in the community titles scheme". No reliance is placed on any other type of decision listed in s 42(1).

[38] I accept the appellant's submissions that:

pursuant to s 32C of the *Acts Interpretation Act* 1954, the word "owners" in the description of a type (b) decision is to be read as including the singular "owner" with the consequence that a decision to change rights, privileges or obligations of a single owner of a lot would be a decision on a restricted issue; and

the entitlement conferred upon the proprietor of a lot of exclusive use of the designated carpark is a right or privilege for the purposes of the description in (b). That characterisation finds support in the decision in *Sorrento Medical Service Pty Ltd v Chief Executive, Department of Main Roads*[11] where this court held that a contractual entitlement to exclusive use of a carpark was a right, a power or a privilege over, or in relation to, land for the purposes of the definition of "interest" in relation to land in s 36 of the *Acts Interpretation Act.*[12]

[39] The appellant argues that, within the meaning of the description in (b), the resolution changed the right or privilege conferred on the owner of Lot 36 by By-Law 34, and on that account, it was a decision on a restricted issue. The argument is dependent upon interpretations of both the description in (b) and the by-law which the appellant submits should be adopted. In summary, the interpretation of the description in (b) for which the appellant argues is one which would give an expansive meaning to the expression "decision to change" as would include a decision to consent to the making of an application for the approval of a change to a right, privilege or obligation of a lot owner. As to By-Law 34, the interpretation proposed is one that would narrow the mandated use of the carpark to one for the purpose of residential holiday letting car parking only.

[40] Turning first to the meaning of the expression "decision to change", I observe that it is necessary for the appellant to contend for an expansive meaning because, given its ordinary meaning, the expression means a decision which, of itself, effectuates a change. The resolution here did not effectuate a change to anything. What it did do was to manifest a consent to the making of an application for development approval for a material change of use of Lot 36 in so far as that application related to the

---

11 [2007] 2 Qd R 373.

12 Per Chesterman JA at [72], the President agreeing at [10].

exclusive use of Car park 36A. The only change in prospect was a material change of use of Lot 36. If that change was to be effectuated, it would be by approval of the Council and not by a decision of the body corporate or the committee.

[41] The appellant's argument for an expansive meaning does not draw upon variance in meaning that the expression "decision to change" might take according to ordinary usage. Rather, it relies upon "consistency and purpose" of the BCCM Act as a whole. Referring to the structure of Division 2, the appellant submits that "the purpose of the legislature in restricting issues that would otherwise be determined at committee level, requiring instead that they be determined in general meeting is to afford all lot owners greater participation and say in, and control over, restricted issues"[13] The appellant seeks to distil from this purpose an indication of legislative intention that each of the descriptions of a type of decision in s 42(1) should be interpreted expansively and, specifically with respect to the description in (b), that it is to be applied "not by reference to any change in the actual legal right of use that might be brought about by the relevant decision but rather by a consideration of whether the decision **impacts upon** the rights, privileges or obligations of the lot owners".[14] (emphasis applied.)

[42] I agree that the purpose of Division 2 has been correctly identified by the appellant. However, to my mind, that purpose does not signify the expansive approach to interpretation urged by the appellant. The legislature has decided how decision making power is to be distributed between the body corporate in general meeting and the committee. It has chosen the language by which the distribution of power is expressed. That language ought to be given its ordinary meaning.

[43] Particularly, with regard to the description in (b), I am unable to see that that purpose would warrant applying it in a way which, in effect, substitutes for "to change" the very significantly different "to impact upon" or even "to impact potentially upon", as the appellant would suggest. The appellant does not point to any aspects of text or context in Division 2 or in the BCCM Act as a whole, as signifying that a so significantly expanded and different scope of application for the description was intended. I am unable to accept the approach to interpretation of the expression "decision to change" advanced by the appellant.

[44] So far as interpretation of the mandated use of the carpark is concerned, the appellant points to the requirement in By-Law 39.3 that lots other than Lots 2, 3 and 6, be used for residential holiday letting purposes only. It is argued that reading the by-laws as a whole, the mandated use in By-Law 34 is to be interpreted as requiring that, for all other lots, the carpark must be used for the purpose of residential holiday letting car parking only. From that interpretation, the appellant argues that an alteration of the mandated use to one that would require use for the purpose of permanent residency and residential holiday letting car parking only would require a change to the exclusive right conferred by By-Law 34.

[45] The argument that a change to that right would result is wholly dependent upon the interpretation urged by the appellant. That is because the mandated use in By-Law 34 is "for the purpose of car parking only". Unqualified, that purpose would cover both permanent residency and residential holiday letting car parking.

---

13 Appellant's outline of argument paragraph 32.

14 *Ibid* paragraph 22.

[46] The interpretation upon which this argument is based would be attractive had the requirement for use for holiday letting purposes only not been immediately preceded by the important qualification in By-Law 39.3, namely, "subject to rights of the proprietors and occupiers of those lots under the town plan for the local government area in which the building is situated". By virtue of this qualification, if under the town plan the approved use of the lot would permit additional or different uses to residential holiday letting, then the requirement which follows it is to yield accordingly. In view of the qualification, I do not accept the appellant's narrowed interpretation of the mandated use for carparks in By-Law 34.

[47] It remains to note that the appellant seeks support for its contention from the fact that the respondent body corporate as "owner" of the common property was required by the Council to consent to the making of the application for a material change of use. Alluding to the two provisions of the *Sustainable Planning Act* to which I have referred, the appellant invites a conclusion to be drawn from the requirement that a change of rights of the owner of Lot 36 in respect of its use of Carpark 36A or, even, a change of rights of all lot owners, as owners of the common property, in respect of their use of the common property or that part of it as is occupied by Carpark 36A.

[48] In my view, that conclusion is not a sound one. In the first place, it is not at all clear that the Council imposed its requirement having first decided after deliberation that a material change of use of the common property, or any part of it, was integral to the application. Secondly, even if it had, such a decision would not be a determination of the issue having any binding legal effect. Thirdly, a material change of use upon which s 263(1)(a) is premised, is very different in character from a change of right, privilege or obligation of an owner of a lot.

[49] For these reasons, Ground 1 cannot succeed.

**Ground 2**

[50] The appellant contends, as it did before the appeal tribunal, that, even if the resolution was within the power of the committee to make, the attachment of the common seal to the IDAS form 1 was not authorised by the committee.

[51] In advancing this argument, the appellant refers to s 190 of the Accommodation Module which relates to the body corporate's common seal. Relevantly, s 190(2) permits the use of the common seal only as directed or authorised by ordinary resolution. This provision does not require that a body corporate must by ordinary resolution make a resolution directing or authorising use of the common seal. That that is so is evidenced by the provisions in s 190(3) which cater specifically for the event that such a resolution has not been made. In that event, this section permits use of the common seal if the committee has authorised its use.[15] I note at this point that there was no evidence before the appeal tribunal or this court that the body corporate had made an ordinary resolution of the kind envisaged by s 190(2). Nor was there evidence that the common seal had not been attached to the IDAS form 1 in the manner prescribed by s 190(3)(a).

[52] In these circumstances, the sole issue raised by the appellant was whether the committee's resolution had authorised the attaching of the common seal to the form. With respect to this issue, Mr Barlow SC observed:

---

15 Section 190(3)(a).

> "28. … [I]t is correct to say that the decision did not expressly authorise a committee member to sign an IDAS form, or to apply the body corporate's seal to such a form. However, it did "approve" the owner of lot 36 making the application, in response to a request from the owner. In that request, the owner informed the committee that, *"[f]or the purposes of the application the Council requires that the Body Corporate consent to the making of the application in so far as it relates to the exclusive use carpark because that carpark is on common property".* The owner attached an IDAS form 1 to the request.
>
> 29. In these circumstances, the "*approval*" of the application clearly encompassed a decision to execute, on behalf of the body corporate, the form required by the Council. To "*approve*" the application must involve a decision to take the necessary steps to manifest that approval. Otherwise there would (be) no point in making the decision. Indeed, one of the definitions of "*approve*" in the *Macquarie Dictionary* is "*to confirm or sanction officially*". To do that, it was necessary to execute the form."

I agree with the learned Member's observations and his conclusion that the resolution did authorise the attachment of the common seal to the form.

[53] This ground of appeal, too, cannot succeed.

**Disposition**

[54] For the foregoing reasons, this appeal must be dismissed. The respondent's very limited participation in the appeal does not warrant any order for costs in its favour.

**Order**

[55] The order I would propose is that the appeal be dismissed.