



# THE “VIRIDIAN CASE” AND THE TEST OF BODY CORPORATE “REASONABLENESS”

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Property developers and body corporate managers need to be aware of the recent High Court decision concerning the test of “reasonableness” in relation to body corporate decisions.

## INTRODUCTION

The recent High Court decision in *Ainsworth & Ors v Albrecht & Anor* [2016] HCA 40, otherwise known as the “**Viridian Case**”, has finally settled a lengthy series of litigation surrounding the expansion of one man’s balcony in a complex of high end coastal residences.

The High Court judgement has had significant implications for bodies corporate by providing clarity on the meaning of their obligations to “act reasonably”.

## BACKGROUND

In March 2011, a lot owner at the Viridian Noosa Residences, Mr Albrecht, decided he wanted to combine the balconies of two adjoining units to create one, larger balcony. To do this, the Body Corporate for the complex was required to approve it at a general meeting by way of resolution without dissent.

The Body Corporate put forward the motion to approve the balcony in August 2012, but several lot owners voted against it.

In September 2013, Mr Albrecht complained to an adjudicator for the Commissioner for Body Corporate and

Community Management, who found that the Body Corporate had been unreasonable in their decision and Mr Albrecht should be allowed to build his balcony.

An appeal was then brought by several lot owners to the Queensland Civil and Administrative Appeals Tribunal, and in October 2014, the decision was overturned once more as it was found to “override the will of a substantial majority of owners at Viridian”.

A further appeal by Mr Albrecht to the Queensland Court of Appeal in November 2016 reversed the Appeals Tribunal on the basis that the Adjudicator’s decision was not wrong in law.

The matter was finally brought to a head by the High Court following a subsequent appeal by the lot owners, where the decision was once again overturned, affirming the original decision by the Body Corporate to deny the approval for the balcony.

## “ACTING REASONABLY”

The *Viridian Case* lays down the test for “acting reasonably”.

In reaching a determination of whether a body corporate opposition to a motion requiring resolution without dissent is unreasonable, it is neither necessary nor desirable to attempt a complete consideration of all the relevant circumstances.

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Courts will be likely to identify unreasonable opposition to a motion if it is evident that:

- the opposition could not, from any rational perspective, have an adverse impact on an opponent's material rights; or
- the opposition is borne out of spite, ill will or desire for attention.

The above is not an exhaustive list however.

The High Court broadened the parameters of "reasonableness" by suggesting that if grounds of opposition resulted in a difference of opinion among reasonable minds, then it will be near impossible to view those differences as unreasonable.

#### WHAT DOES IT MEAN?

Bodies corporate will benefit significantly from the decision in the *Viridian Case* as it strengthens their ability to regulate the schemes they are operating under.

IF YOUR BODY CORPORATE IS FACING A POTENTIALLY CONTROVERSIAL DECISION, OUR CK STRATA TEAM CAN ASSIST AND PROVIDE GENERAL ADVICE ON ALL YOUR STRATA MATTERS.

In addition, it provides a clearer foundation from which to justify objections to any proposals that may affect owner's enjoyment of their lots.

Put simply, bodies corporate can now more easily assess whether a future decision will be a "reasonable one" in the eyes of the law.

In a practical sense, if a body corporate can establish one rational ground for opposition to a lot owner's proposal on the basis that it will affect the enjoyment of a lot, then they can rest assured that the adjudicator will be unlikely to interfere with their decision.

#### CONCLUSION

Committee members must familiarise themselves with these recent developments to the test of reasonableness. Despite the finding being favourable to bodies corporate, if any grounds for objection to controversial proposals are uncertain, bodies corporate may still be liable to challenges by unsatisfied lot owners.

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