Clarity Regarding Council Entry to a Residential Premise

Date : November 3, 2020

The recent decision of the Land and Environment Court in *Bobolas v Waverly Council (No 2)* [2020], the latest instalment of cases between Bobolas and Waverly Council ('**Council**'), provides clarity as to the powers of entry possessed by councils onto residential land. This decision considered an application for judicial review challenging a section 22A order issued by Council is accordance to section 124 of the *Local Government Act 1993* (NSW) ('**the Act**').

The order sought by Council on 29 January 2020 was to remove waste and refrain from collecting further waste at the property by 26 February 2020. Pursuant to section 124 of the Act, a section 22A order enables council to issue such an order 'to remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises' if 'the waste is causing or is likely to cause a threat to public health or the health of any individual'.

The Applicants sought the following orders:

1. *An injunction prohibiting action proposed by Waverley Council;*
2. *More time to do the work themselves;*
3. *Backyard should be exempt as no basis or making an order in relation to it.*

The application was submitted under section 200 of the Act which prohibits the Council from entering onto the Applicant's residential premises.

Section 200 under Chapter 7, Part 2 of the Act provides circumstances in which Council can enter onto residential premise:

The powers of entry and inspection conferred by this Part are not exercisable in relation to that part of any premises being used for residential purposes except-

(a) with the permission of the occupier of that part of the premises, or

(b) if entry is necessary for the purpose of inspecting work being carried out under an approval, or

(c) under the authority conferred by a search warrant.

Despite such restrictions on entry to the residential premise, section 678 of the Act states that:

678 Failure to comply with order—carrying out of work by the council

(1) If a person fails to comply with the terms of an order given to the person under Part 2 of Chapter 7, the council may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.

The Court considered the relationship between section 200 and section 678 and whether the rights conferred by section 678 or orders made pursuant to section 678 for the purpose of allowing access to residential properties was qualified by section 200. Relying on an earlier decision in *Bobolas v Waverly Council (No 4)*[2015] NSWCA 337, the court found that section 200 is confined to the powers of entry and inspection for the purposes set out in Chapter 8, Part 2 of the Act. As section 678 does not fall within this scope, section 678 is separate and distinct to the powers conferred under section 678.

Thus, the Court held that Council was entitled to enter the residential premise under section 678 and carry out works required under the order.