# Air Conditioning Issues Heating up your Scheme?

Issues concerning installation and maintenance of air conditioning systems are a common source of disputes in strata schemes. There are a number of reasons for this, but the major problem is the answer to questions like “what approvals do I need to install equipment” and “who is responsible for maintenance of the equipment” depend on circumstance, preventing schemes from adopting a “one size fits all” solution.

The most frequent questions we encounter are:

- What type of equipment is required or appropriate?

  This will primarily concern the lot owner, but the choice may impact on the building and have broader implications. In some cases, a portable unit will suffice. In other cases, something more substantial will be required, possibly requiring use and/or alteration of common property areas. In these cases, the lot owner should consult with the scheme’s strata manager or strata committee before making a formal proposal.

- Where should the equipment be situated?

  This will depend on the equipment, but installation of equipment in common property areas may have impact on amenity, so again the lot owner should consult with the scheme’s strata manager or strata committee before making a formal proposal.

- Will council approval be required?

  Installation of air conditioning equipment may be exempt development and not require development consent if certain conditions are met, including for residential premises, where the equipment:

  - Is ground mounted or wall mounted not higher than 1.8m, more than 0.45m from the boundary and does not face the primary road or for heritage properties, ground mounted and at the rear.
  - Does not reduce the structural integrity of the building or fire resistance of a wall.
  - Is designed to operate:
    - during peak time, at a noise level not exceeding 5 dB(A) above the ambient background noise level measured at the property boundary; and

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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- during off peak time, at a noise level that is not audible in habitable rooms of adjoining residences.

This is not an exhaustive list and is not universally applicable, e.g. different rules apply for heritage, commercial and non-residential properties, so owners may need to consult with the supplier or a suitable consultant.

- Will owners corporation approval be required?

  Normally, owners corporation approval will be required if there is to be any alteration to or use of common property. However, there are some special cases:

  - Section 109 of the Strata Schemes Management Act 2015 ("Act") permits "cosmetic work" without owners corporation approval, but is framed in such a way that it does not apply to 'reverse cycle split system air conditioners' as this is designated as a "minor renovation".

  - Section 110 of the Act and Clause 28 of the Strata Schemes Management Regulation 2016 ("Regulation") permit "minor renovations" with approval of an general meeting ordinary resolution. Although "installing a reverse cycle split system air conditioner" is expressly included in the definition of "minor renovations", Section 110 does not apply if the work involves structural changes (e.g. alters a structural wall) or alters the external appearance of a lot (e.g. installed externally). Further, a particular unit may not be a "reverse cycle split system".

  - Otherwise, i.e. where there are structural alterations or alteration of the external appearance of a lot, Section 108 will apply and require a special resolution.

- Will a by-law be required?

  When the equipment will be situated in common property areas, including airspace, a common property rights by-law will be required.

  A by-law may also be required if the installation of equipment requires changes to common property, such as drilling of holes on walls for piping and fixings.

- Can the owners corporation make a blanket by-law permitting air conditioning equipment?

  Yes, but this requires a special resolution and the written consent of the relevant owners. This can be a good opportunity to establish permitted equipment and siting and to allocate maintenance responsibility. However, obtaining the written consent from each owner is usually impracticable.

- Can the owners corporation make a blanket by-law allocating responsibility for air conditioning equipment to owners, regardless of who installed it?


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Yes, but this also requires a special resolution and the written consent of the relevant owners.

- Who will be responsible for maintenance of the equipment? Generally, this will be the owner of the equipment, which will generally be the owners corporation for ducted systems forming part of common property and the lot owner for stand alone systems, unless:
    - the owners corporation has adopted the common property memorandum ("Memorandum") prescribed by Clause 27 of the Regulation which provides that the owners corporation is responsible for air conditioning systems serving more than one lot and that a lot owner is responsible for an air conditioning system, whether inside or outside of the lot, which serves only that lot; or
    - there is a common property rights by-law providing otherwise.
- What can I do if approval for works and/or a by-law is refused? Owners should:
    - Investigate why the request was refused, i.e. the owners corporation concerns which led to refusal and try to address those concerns. This may necessitate engagement of consultants to provide reports, e.g. an acoustic or structural engineer.
    - If the refusal is unreasonable, consider an application to the NSW Civil and Administrative Tribunal.

We have considerable experience with these issues and can assist if you are having difficulties with them.

## Key takeaways

- Installation and maintenance of air conditioning systems often lead to disputes in strata schemes.
- Consultation with the strata manager or committee is crucial before proposing equipment installation.
- Certain air conditioning installations may not require council approval if they meet specific conditions.
- Owners corporation approval is typically needed for alterations to common property.
- A common property rights by-law may be necessary for equipment situated in common areas.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

**Prepared by Bannermans Lawyers**
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BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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