Is It Unreasonable to Refuse a By-Law to Install Air Conditioning? Tribunal Appeal Panel Says So

Recently, the Appeal Panel of the NSW Civil and Administrative Tribunal (the "**Appeal Panel**") held that a by-law submitted by a lot owner was unreasonably refused by an owners corporation. The owners corporation is now required to take all steps necessary to register the lot owner's by-law to approve the installation of two air conditioning units on an external common property wall (the "**AC By-Law**"). Here's the what, the why and why this matters to lot owners and owners corporations alike:

The What: The AC By-Law, the First Instance Decision and the Appeal

Here's what happened in *The Owners – Strata Plan No. 12185 v Brown [2025] NSWCATAP 51*:

1. In or around June 2023, the lot owner submitted the AC By-Law to be tabled at a general meeting of the owners corporation.

2. On 6 July 2023, the owners corporation held an annual general meeting (the "**2023 AGM**"). At the 2023 AGM, the motion to approve the AC By-Law was *defeated*.

3. On 17 November 2023, the lot owner filed proceedings against the owners corporation seeking an order from the Tribunal to approve the AC By-Law.

4. On 2 September 2024, the Tribunal published its decision on the proceedings (the "**First Instance Decision**"). The Tribunal held that the owners corporation was unreasonable in its refusal of the AC By-Law and the owners corporation was required to take all necessary steps to register the AC By-Law.

5. On 24 September 2024, the owners corporation lodged an appeal (the "**Appeal**") of the First Instance Decision with the Appeal Panel.

6. On 13 March 2025, the Appeal Panel dismissed the Appeal. In doing so, the owners corporation was required to take all necessary steps to register the AC By-Law.

The Why (Part 1): The Owners Corporation's Unreasonable Refusal of the AC By-Law

In the First Instance Decision, the Tribunal found that the owners corporation was unreasonable in refusing to pass the AC By-Law at the 2023 AGM. The owners corporation submitted a number of reasons as to why it refused. In short, the Tribunal rejected each of these reasons. Please see a table below of these reasons and why the Tribunal rejected them:

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The First Instance Decision		
	The OC's Reasons	**The Tribunal's Responses**
1	The air conditioning units would change the outward appearance of the building, which has a *"historic federation"* aesthetic. building.	The Tribunal found that there was no evidence given as to what the condensers would look like.
2	The location of the air conditioning condensers above the building's rear small courtyard would have been visible to all residents and visitors to the courtyard.	The Tribunal found that: A. The proposed site was *"not an inappropriate spot for the condensers";* B. There was no evidence as to whether the AC condenser units could be seen in part or in whole from the courtyard below; and C. There was nothing to suggest that the air conditioning condensers would be affixed on the front of the building or placed on the ground in the passageway.
3	The noise from the air conditioning condenser units would have diminished the peaceful enjoyment of anyone using the courtyard and the neighbours due to the proximity of buildings in a built-up area.	The Tribunal found: A. There was no evidence of any noise complaints to Council provided; and B. There was no acoustic report provided to support the contention that condensers would make a noise which would breach the noise regulations and cause complaint.
4	The structural pressure that the air conditioning units (weighing 30kgs each) would have after being attached to walls given the age of the walls (approximately 90 years).	The lot owner provided a report prepared by an engineer, who inspected the walls. Based on the findings of this report, the Tribunal was satisfied that the walls would adequately support the air conditioning units.
5	The air conditioning unit would have potentially caused damage to walls because of the history of water ingress, failed brick	Based on the findings of the engineer's report, the Tribunal noted that works would need to be carried out the walls in the future. However, the Tribunal was satisfied that the walls would adequately

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	ties and anterior water.	support the air conditioning units in their current state.
6	The AC units would cause *"damp and evaporation"* issues around the building.	The Tribunal was not satisfied that there would be a problem with potential evaporation from the condenser units.
7	By approving the AC By-Law, the owners corporation would be setting a precedent for other lot owners to submit their own applications to install air-conditioning condensers.	The Tribunal concluded: *"[47] And in the circumstances of climate change I find that by allowing this by-law to install condensers may see further applications for by-laws but this was not a reason for the Owners Corporation to reject the by-law."*
8	Complaints from neighbouring properties.	The Tribunal found that there was no evidence of frequent noise complaints.

The outcome of the Tribunal rejecting the owners corporation's reasons was that the owners corporation was required to take all steps necessary to register the AC By-Law. Just under a month later, the owners corporation appealed the First Instance Decision.

The Why (Part 2): Why the Appeal Was Dismissed

The Appeal Panel dismissed the Appeal on the basis that it found that the Tribunal was correct in finding that the owners corporation was unreasonable in refusing to pass the AC By-Law. The owners corporation submitted three grounds as to why it was of the view that the Tribunal was incorrect in making the First Instance Decision. In short, the Appeal Panel rejected all of these grounds. Please see a table below of these reasons and why the Appeal Panel rejected these grounds:

The Appeal		
	The OC's Grounds	**The Appeal Panel's Responses**
1	The owners corporation submitted that it had not received the engineer's report that the lot owner relied on until the day of the hearing. The owners corporation submitted	The lot owner's legal representative submitted that the engineer's report was served along with the lot owner's statement. The Appeal Panel accepted this submissions as the owners corporation had not

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	that this raised an issue of procedural fairness.	provided nay evidence to substantiate that the report had not been served.
2	The owners corporation submitted that the Tribunal had not given adequate consideration to the following: A. The material that was before owners corporation at the time of the 2023 AGM; B. Whether an alternative placement of the air conditioning condenser units would have been more suitable; C. The owners corporation's concerns about the placement of the condensers; and D. The impact on the building if all owners wanted air conditioning units.	The Appeal Panel rejected each of the owners corporation's submissions. The Appeal Panel further submitted that because the owners corporation had not provided any record as to why the other lot owners voted against the AC By-Law, the Tribunal was entitled to take into account other materials to ascertain what these reasons were.
3	The owners corporation was concerned that the Tribunal did not give sufficient weight to the fact that all other lot owners voted against the approval of the AC By-Law in exercising its discretion.	The Appeal Panel was not satisfied that the Tribunal had considered irrelevant matters or failed to take into account any relevant consideration. The Appeal Panel found that the Tribunal had taken into account the interest of all lot owners in making the First Instance Decision and there was nothing to suggest that the First Instance Decision was so unreasonable or unjust to suggest any other errors had occurred.

The outcome of the Appeal Panel refusing to grant the appeal is that the owners required to take all steps necessary to register the AC By-Law, as it was after the First Instance Decision.

Why It Matters (Part 1): Refusing By-Laws Generally

As a lot owner, it is important that any by-law that you submit to be tabled at a general meeting of the owners corporation has clear and reasonable terms. The reason for this is that it a proposed by-law with terms that are understandable and reasonable stand a better chance of being approved at a general meeting. It is also important

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in the event that the owners corporation refuses this by-law, that your proposed by-law will stand up to scrutiny in the Tribunal should you commence proceedings on the basis that your by-law was unreasonably refused.

It is important for other lot owners within an owners corporation to act reasonably when considering a by-law tabled by another lot owner. It is also important that the reasons why other lot owners refused a by-law at a general meeting are recorded and made available to be viewed by other owners within the scheme.

Why It Matters (Part 2): Refusing Air-Conditioning By-Laws Specifically

Both the Tribunal and the Appeal Panel accepted submissions from the lot owner that it was unreasonable for the owners corporation to refuse the AC By-Law specifically because it was to approve the installation of air conditioning units being installed. In the First Instance Decision, the Tribunal referred to *"climate change"* specifically in its consideration of whether it was unreasonable for the owners corporation to refuse the AC By-Law. Please see paragraph [47] of the First Instance decision extracted below:

> *"…*
>
> *[47] And in the circumstances of climate change I find that by allowing this by-law to install condensers may see further applications for by-laws but this was not a reason for the Owners Corporation to reject the by-law.*
>
> *…"*

The acceptance of this submission from may lay the groundwork in making more difficult for owners corporations everywhere to refuse by-laws to install air conditioning units. In any event, it is essential that any by-law that you table at a general meeting is clear, precise and reasonable. For assistance with drafting and submitting a by-law to be voted on at a general meeting please contact Bannermans.

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Key takeaways

- The Tribunal ruled that the owners corporation unreasonably refused the AC By-Law.
- The owners corporation's reasons for refusal were rejected by the Tribunal.
- The Tribunal required the owners corporation to register the AC By-Law.
- The decision highlights the rights of lot owners in strata schemes.
- The case underscores the importance of providing evidence when contesting by-laws.

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