

## Hard floor surfaces



I want to install hard-surface flooring. What should I look out for in my scheme's existing by-laws?

Lot owners should carefully review the registered by-laws that specifically apply to your strata scheme before commencing your works. Your scheme's by-laws may contain various rules that could impact your proposed flooring changes, such as:

- the approval process to obtain owners corporation consent for hard-surface flooring that applies in your scheme, which may include approval in the form of a by-law;
- the scheme's preferred or prohibited acoustic underlay and flooring products;
- any documents that you may have to provide to your owners corporation before you start your flooring works, such as a product description or an acoustic engineer's report;
- a requirement that lot owners pay a bond prior to commencing works;
- restrictions on the locations that hard-surface flooring may be installed, for eg. not above bedrooms of neighbouring lots.
- a condition that hard-surface flooring be covered or acoustically treated to ensure the transmission of noise does not unreasonably disturb the peaceful enjoyment of any other owner or occupier.

Hard surface floors in strata schemes

Hard surface flooring\* is a huge issue in strata schemes. As someone that has timber floorboards, I see the appeal but as someone who has had Stompy the elephant (or on occasions, it sounded like a legion of stormtroopers) living upstairs, I too have felt the pain.

What is the issue with hard surface floors in strata schemes?

If a building is not originally built with hard surface floors then it is very likely that installing hard surface flooring will cause acoustic issues for the units below and beside.

Hard surface flooring often allows increased transmission of noise whether general noise such as TV's, conversations, or even occupants walking through their units. Hard surface flooring can also cause drumminess when walked on or creaking noises as the flooring expands and contracts.

All of these can seriously affect other lot owners or occupiers. Noise transmission can be addressed but often isn't with affected lot owners seen as complainers and their concerns sidelined.

How do I seek strata approval for hard-surface flooring?

A lot owner should apply for consent from their owners corporation before starting any proposed hard-surface flooring works. Section 110 of the Strata Schemes Management Act 2015 (the "Act") defines the installation or replacement of wood or other hard floors as a minor renovation. Consent for a minor renovation, including hard-surface flooring, is to be obtained in the form of an ordinary resolution at a general meeting of the owners corporation.

A lot owner must make an application for consent in writing to the owners corporation and include details of the work including copies of any plans, duration and times of the work, details of the persons carrying out the work, including qualifications to carry out the work, and arrangements to manage any resulting rubbish or debris. Your owners corporation may require additional documentation, such as confirmation of the product you intend to install or an acoustic engineer's report.

Do I need a by-law for hard-surface flooring?

A by-law in accordance with section 108 and 143 of the Act is a higher standard of approval than the law requires for hard-surface flooring. However, a benefit of including flooring changes in such a by-law is that the by-law may clearly set out the lot owner's obligations to the owners corporation before and after installation of the flooring, including any requirement to provide an acoustic engineer's report. The registration of a by-law for such works additionally ensures that the terms of the owners corporation's approval of a lot owner's flooring works are recorded on the common property certificate of title for the strata scheme.

Can I have my hard-surface flooring approved after it has been installed?

Yes, an owners corporation may consent to your hard-surface flooring works retrospectively. However, whether or not consent will be granted is at the discretion of your owners corporation, and may be subject to reasonable conditions.

I have health issues that mean I cannot live with carpet. Do I still need strata consent?

Yes, you do. Even if the current flooring requires replacement due to health concerns, you will require owners corporation consent, obtained in the form of an ordinary resolution of a section 110 motion at a general meeting of the owners corporation.

Our office has considerable experience in these matters and is able to assist with your queries in relation to hard-surface flooring and noise transmission.

### Flooring Disputes and Renovations

Unauthorised installation of hard-surface flooring in apartment units can result in disquiet between lot owners and owners corporations. Lot owners thinking about replacing carpeted flooring with timber, vinyl or hybrid floor coverings should carefully review their strata scheme's by-laws, consider the impact that the proposed flooring may have on noise travelling to neighbouring lots, and follow the correct approval process to ensure that their new flooring only needs to be installed once.

The Tribunal decision in *The Owners Strata Plan 4868 v Hibbard* [2020] NSWCAT ("Hibbard") involved a Manly lot owner who replaced carpet with hard flooring without appropriate consent, and was ordered by the Tribunal to remove the unauthorised flooring and install new flooring that is acceptable to her owners corporation. Hibbard highlights the importance of well-drafted by-laws in relation to the acoustic standard of hard-surface flooring to avoid disturbance caused by transmission of noise between lots.

Following Hibbard, owners corporations should pay particular note to the provisions in their by-laws regarding the following:

- the application process for lot owners wishing to apply for consent to install hard-surface flooring;
- the acoustic standard that hard-surface flooring installed on lot property must meet; and
- what documentation lot owners are required to provide to the owners corporation before and after hard-surface flooring works are installed, such as acoustic engineer reports.

For lot owners, Hibbard reinforces that approval from an owners corporation for changes involving hard-surface flooring should be sought before such works commence.

Lot owners who proceed with flooring works without first obtaining the consent of the owners corporation run the costly risk of being ordered by the Tribunal to remove or upgrade unauthorised flooring to meet an appropriate acoustic standard.

How can you address noise issues or enforce compliance with by-laws?

First, address it before it becomes an issue. Installing hard surface flooring requires an authorising by-law. I recommend that the by-law set strict standards of any new flooring system. For instance, I recommend that the by-law references the star rating system set out in the Guidelines for Apartments and Townhouses published by the Australia Association of Acoustic Consultants.

Typically, I suggest that any new floor must meet the four-star rating once installed. I also recommend that the owners corporation be given rights to enter the lot to remedy a breach of the authorising by-law should the lot owner refuse to do so. Then, if once installed the flooring does not meet this standard the owners corporation is authorised to do so.

Secondly, if the noise continues to be an issue or, if the owners corporation wants to force the lot owner to do something to fix the issue, then the owners corporation or the affected lot owner should consider taking an action in the NSW Civil & Administrative Tribunal (NCAT).

CONTACT US

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