

FACT SHEET

EXCLUSIVE USE BY-LAWS

In this fact sheet we are aiming to provide information in regards to common property that has been granted exclusive use to individual lots and what responsibilities are therefore passed onto the lot as part of this exclusive use right.

What is an exclusive use by-law?

Section 170 of the Body Corporate and Community Management Act states:

“An exclusive use by-law, for a community titles scheme, is a by-law that attaches to a lot included in the scheme, and gives the occupier of the lot for the time being exclusive use to the rights and enjoyment of, or other special rights about –

- a) common property; or
- b) a body corporate asset.”

Requirements for making an exclusive use by-law

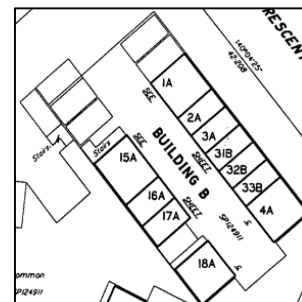
The rules for making an exclusive use by-law are stricter than those for making other by-laws and may only be attached to a lot if;

- a) the owner of the lot agrees in writing before the passing of the resolution without dissent consenting to the recording of the new community management statement to incorporate the exclusive use by-law – or votes personally in the resolution; and
- b) the body corporate passes a resolution without dissent to record a new community management statement that includes the by-law

It is a requirement under the legislation also that the body corporate must register the new community management statement (CMS) that includes the exclusive use by-law with the Titles Registry Office within 3 months after passing the resolution. The exclusive use by-law will only apply when the new CMS is recorded.

It should also be noted that before the Titles Registry Office records the new CMS, they may require the common property or body corporate asset the subject of the by-law to be identified in a plan, or in another way the registrar directs, to avoid doubt the extent of the common property or about the identification or extent of the body corporate asset.

An example of what the plan would look like:



Who is responsible for maintaining the exclusive use area?

Section 173 (2) & (3) of the Body Corporate and Community Management (Standard Module) Regulation 2008 states:

“An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance and operating costs for the part of the common property to which the exclusive use by-law applies.”

“However, if the lot was created under a building format plan of subdivision, in the absence of other specific provision in the by-law, the owner of the lot is not responsible for –

- a) maintaining in good condition roofing membranes that –
 - i. are on the part of the common property to which the by-law applies; and
 - ii. provide protection for lots or common property; or

- b) *maintaining in a structurally sound condition any of the following elements of scheme land that are part of the structure that is on the part of the common property to which the by-law applies and is not constructed by or for the owner –*
- i. *foundation structures*
 - ii. *roofing structures providing protection;*
 - iii. *essential supporting framework including load-bearing walls*

An example of an exclusive use by-law:

Exclusive use areas

The Proprietor for the time being of those lots described in Schedule E to this Community Management Statement shall be entitled for himself and his licensees to the exclusive use and enjoyment of those areas as set forth within the plan in Schedule E of the Community Management Statement. The Proprietor for the time being of each such lot shall use such exclusive use area for the purpose set out in Schedule E of the Community Management Statement and shall not litter the same or so use the same so as to cause a nuisance. The Proprietor of each lot shall be responsible, at such Proprietors expense, the performance of the duties of the Body Corporate pursuant to Section 114 of the Act in respect of such exclusive use areas.

Can improvements be made to an exclusive use area?

An exclusive use by-law may allow the owner who has the benefit of the by-law to make improvements to that area. This can include installing fixtures e.g. air conditioning unit, or making other changes to the common property. However, if no provision in the by-law exists, the owner can make application to the body corporate for approval to make the improvement – bearing in mind that the committee can approve improvements if the cost is \$3000 or less.

If the improvement cost is over \$3000 – this must be approved by ordinary resolution at a general meeting. This is detailed under Section 174 of the Body Corporate and Community Management (Standard Module) Regulation 2008.

Can owners ‘swap’ their exclusive use area with another owner?

The short answer is yes. However if 2 or more owners decide to swap the common property (or body corporate assets) that they have been granted under the exclusive use by-law – this is done by an agreed allocation. Details of the reallocation must be supplied to the body corporate and once the body corporate is advised, a new CMS must be lodged that include the changes. A general meeting resolution is not necessary in this case.

Can an exclusive use by-law be removed?

Once an exclusive use by-law is recorded it is difficult to have it removed. Under Section 171 (2)(b) it notes that the exclusive use by-law may stop applying the lot only if the lot owner agrees in writing before the passing of a resolution without dissent consenting to the recording of the new CMS that does not incorporate the exclusive use by-law, or the lot owner votes personally in the resolution. The Body Corporate then has 3 months to lodge the new CMS with the Titles Registry Office within 3 months after passing the resolution. The removal of the exclusive use by-law will only apply when the new CMS is recorded.

SOURCES

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2008-0273>

Body Corporate and Community Management (Standard Module) Regulation 2008, section 173-174, Reprint 1F effective 1 July 2018, Page 155-156

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2008-0270>

Body Corporate and Community Management (Accommodation Module) Regulation 2008, section 171-172, Reprint 1F effective 1 July 2018, Page 150-151

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2008-0271>

Body Corporate and Community Management (Commercial Module) Regulation 2008, section 129-130, Reprint 1F effective 1 July 2018, Page 111-112

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2008-0272>

Body Corporate and Community Management (Small Schemes Module) Regulation 2008, section 107-108, Reprint 1F effective 1 July 2018, Page 87-88

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1997-028/lh>

Body Corporate and Community Management Act 1997, Section 170-174, Reprint 1F effective 3 July 2018, Page 152-155

