
Topic 6: Maintenance of exclusive use areas

What is an exclusive use by-law?

An exclusive use by-law for a community titles scheme is a by-law that attaches to a particular lot, giving the occupier of the lot sole use to the rights and enjoyment of a defined area of the common property, a body corporate asset or other special rights (A. s170).

An exclusive use by-law may attach to a lot only if:

- the lot owner agrees in writing; and
- a resolution without dissent is passed consenting to the recording of a new community management statement (A. s171).

By-laws for a community titles scheme are contained in the scheme's community management statement (CMS). The CMS should be consulted firstly, to confirm whether an exclusive use by-law applies to a particular lot in a scheme and secondly, to find out what the by-law states in relation to maintenance responsibilities.

A copy of the CMS may be obtained from the Department of Natural Resources and Water.

Maintenance of exclusive use areas

The responsibility to maintain the part of the common property that is the subject of an exclusive use by-law is transferred to the owner of the lot who has the benefit of the exclusive use area, unless the by-law specifically states otherwise (SM. s123).

Under an exclusive use-by law, a lot owner's maintenance responsibility usually extends to those parts of the common property from which the owner derives a benefit as a result of the exclusive use by-law, such as the lawns and gardens on common property land over which exclusive use has been granted. Typically, the lot owner will also be responsible for general maintenance of the exterior walls and windows that lead onto the exclusive use area. However, it does not include parts of the common property which are not directly related to the right of exclusive use, such as common property utility infrastructure that runs through an area of exclusive use (**Hillside Gardens - Order. 0215-2001**).

Adjudicators have also determined that unless specified in an exclusive use by-law, the body corporate remains responsible for all structural maintenance (including the membrane and roof coverings) as well as the maintenance and repair of the slab or footings of the building (**Pisces Apartments - Order. 0655-2001; Parkview Lodge - Order. 0442-1999**).

Improvements to exclusive use areas

An exclusive use by-law may contain specific clauses which authorise the lot owner, who has the benefit of the by-law, to make stated improvements, such as installing fixtures and alterations to the part of the common property to which the by-law applies.

If the by-law does not contain any specific authorisations, the lot owner will need to seek the body corporate's approval before making any improvement. A special resolution passed at a general meeting of the body corporate is required to authorise an improvement with a value of more than \$250 (SM. s124).