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## Topic 1: Common property, assets, lots and utility infrastructure

At the basic level the BCCM Act and the regulation modules provide the body corporate must maintain the common property and lot owners must each maintain their lot.

In this and the following sections we will look at the basic maintenance responsibilities and some of the more complex situations, where both the function of a utility service and its location are important when determining maintenance responsibilities. Firstly, we will look at:

- Common property and assets
- Lots
- Utility infrastructure and utility services

### Common property and assets

**Common property** is described in the footnote to *Section 10* of the BCCM Act as follows:-

*"Common property, for a community titles scheme is, effectively, freehold land forming part of the scheme land, but not forming part of a lot included in the scheme".*

**Assets** acquired by the body corporate may also be incorporated into the common property and will need to be maintained by the body corporate.

For example assets may include the following:

- pool furniture for use around a common property swimming pool;
- gardening equipment;
- a boat; or
- freehold land acquired for the use of owners and occupiers (e.g. adjoining land purchased to use as a tennis court).

The body corporate must maintain common property and assets in good condition (SM. s159s and s165). Any parts of a building that are structural in nature (eg the supporting framework of a building in a building format plan) must be maintained by the body corporate in a structurally sound condition regardless of whether those parts of the building are common property or part of a lot (SM. s159).

### Lots

A lot owner is responsible for maintaining their lot in good condition (SM. s170). An occupier of a lot is required to keep parts of the lot that can be readily seen from another lot or common property in a clean and tidy condition (SM. s170).

### Utility infrastructure and utility services

In addition to maintaining the common property and lots, the legislation also assigns responsibility for maintaining the utility infrastructure within a community titles scheme.

Utility infrastructure includes:

- cables;
- wires;
- pipes;
- sewers;
- drains;
- ducts;
- plant and equipment that supply lots or common property with a utility service; and
- a device for measuring the reticulation or supply of a utility service.

Utility services include:

- water reticulation or supply;
- gas reticulation or supply;
- electricity supply;
- air conditioning;
- telephone service;
- a computer data or television service;
- a sewer system;
- drainage;
- a system for the removal or disposal of garbage or waste; or
- another system or service designed to improve the amenity, or enhance the enjoyment, of lots or the common property. (A. Schedule 6 Dictionary).

While most of the utility infrastructure is considered common property for a community titles scheme and is therefore the body corporate's responsibility to maintain, there are some exceptions. If all three (3) of the criteria listed below apply to the section of utility infrastructure in question, the owner of the lot will be responsible for its maintenance (A. s20) (SM. s170).

### **Utility infrastructure that is not considered common property**

Utility infrastructure that:

1. supplies a utility service to only one lot; and
2. is within the boundaries of the lot; and
3. is not within a boundary structure for the lot

Also, if a utility service, such as a hot water system or an air conditioning system, supplies just one lot, the lot owner must maintain it regardless of where it is located.

In order to establish maintenance responsibilities, the common property and lots in a scheme must be accurately identified. The registered survey plan for a community titles scheme clearly shows the boundaries of the common property and the lots in the scheme.

### **Special Note:**

Section 20 of the BCCM Act was amended by the *Water and Other Legislation Amendment Bill 2007*. The explanatory notes to the amendment state:

*The policy intent is that for all new community titles schemes established after 1 January 2008, water meters will be owned by the water service provider supplying water to the scheme, who will also be responsible for maintaining and replacing the meters, rather than being owned and maintained by the body corporate.*

*Clause 4 therefore amends section 20(1) to provide that common property for a community titles scheme does not include utility infrastructure that is a device for measuring the reticulation or supply of water (a water meter) for a community titles scheme established after 1 January 2008, and in relation to which a compliance request is made under the Plumbing and Drainage Act 2002 after 31 December 2007.*

In the following topics we will look at the different plan types and see how the boundaries can affect responsibility.