



Notice to Customers

(Body Corporate and Community Management Titling Operational Procedures Update May 2003)

This QRR Alert has been issued primarily to address business requirements arising from the recent introduction of the *Body Corporate and Community Management and Other Legislation Amendment Act 2003* which was assented to on 4 March 2003

In summary, the amendments to *The Body Corporate and Community Management Act 1997* (the BCCM Act) impacting on Titles Registration include:

- Greater efficiency in processes involving progressive development of schemes
- Allowing a body corporate to own a lot in the scheme for the purpose of allowing a letting agent to reside in the scheme
- Additional guidance in the establishment and adjustment of lot entitlements
- Resolution of titling matters associated with the compulsory acquisition of part of a scheme
- Creation of a layered scheme from a number of existing schemes
- More detailed and flexible provisions regarding arrangements with a body corporate about the supply of utility services and the recovery of the costs for the supply of the services
- Transfer of the "titling" provisions of the BCCM Act to the *Land Title Act 1994*.

The BCCM Act is supported by various regulation modules nominated to apply to particular community titles schemes. A range of amendments will be made to these regulation modules to complement the above provisions and address procedural matters for the operation of bodies corporate.

Amendments were also made to the *Land Act 1994* and *Land Title Act 1994* to allow the land registry to conduct titling business in an electronic environment and to clarify titling issues about covenants (section 97A).

The amendments have resulted in a number of procedural changes when dealing with scheme land.

Services Location Diagrams and Statutory Easements for Community Titles Schemes

Section 70 of the BCCM Act provides for services location diagrams (SLD) to be included in the community management statement (CMS) for 'scheme land' that is in standard format lots. The CMS also must comply with section 66 of the BCCM Act.

The SLD is an information tool for scheme owners and a person buying into the scheme. It will show, in general terms, the location of service easements for utility services, i.e. for water, power, phone, sewerage and the like on standard format lots and common property for standard format lots in the scheme land.

The SLD is not used for high-rise buildings because of the complexity of showing such services that are usually located in a confined space in the building.

As new service easements are included in the scheme land, the body corporate is required to either update the diagrams and include them in a new CMS or include additional services location diagrams with a new CMS. The amendments also deleted the statutory easement provisions from the BCCM Act and included them in the *Land Title Act 1994* (sections 115M to 115S).





Section 115M(2) provides that statutory easements only apply to a scheme if the lots included in the scheme are lots on:

- (a) A building format plan of subdivision; or
- (b) A volumetric format plan of subdivision; or
- (c) A standard format plan of subdivision registered under the *Land Title Act 1994* on or after 13 July 1997

There is no change to the requirements of Direction 9.20.7 of the Registrar of Titles Directions for the Preparation of Plans in relation encroachments for staged developments.

The first CMS and subsequent new CMS for a scheme made up of standard format lots and common property where the development approval by the local government was given on or after 4 March 2003 must include an SLD.

The body corporate must also lodge a request to record a new CMS including an SLD in the following circumstances:

- (a) When a change in the service easements for the standard format lots included in a community titles scheme, an SLD (the "original diagram") included in the community management statement no longer reflects the location of the current service easements; or
- (b) An SLD is not included in the community management statement and after the commencement of Section 70, a service easement ("new easement") is established for a standard format lot included in the scheme.

The new CMS is to be lodged within one year of when either (a) or (b) above apply.

Item 6 of the Form 14 Request to record new CMS (or first CMS) is to reflect the amendment or inclusion of an SLD.

Schedule D of the CMS form is to include a statement referencing the inclusion of an SLD and annexing the diagrams by way of alpha identifier to this Schedule. The type of service easement and/or statutory easement may be identified in schedule D in matrix form if desired. An example matrix is reproduced for reference:

<u>Lots on Plan or CP</u>	<u>Statutory Easement</u>	<u>Service Location Diagrams</u>
Lot 1 on RP [number] CP	Water, power, support Support	A, C
Lot 2 on SP [number]	Water, projections	C

Persons other than a licensed surveyor may prepare an SLD and certification is not required. The criteria for SLD can be found in the Registrar of Titles Directions for the Preparation of Plans. This is available from the Department's Internet site at the following address:

www.nrm.qld.gov.au/property/titles/rdpp/index.html.



Adjustment of the Contribution Schedule Lot Entitlement in a Community Titles Scheme under section 349 of the Body Corporate and Community Management Act 1997.

Sections 349 and 350 of the BCCM Act provide transitional arrangements to address a disparity in the 'contribution lot entitlements' in particular basic schemes. The transitional provision applies only to a basic scheme comprising standard format lots and building format lots in the same basic scheme. The scheme must have been:

1. Established before the commencement of the *Body Corporate and Community Management and Other Legislation Amendment Act 2002*, or
2. Registered after the commencement date of that Act but the application for development approval to the local government was made before the commencement date.

It is stressed that the transitional arrangement applies only in that situation and for that purpose.

The body corporate, by ordinary resolution, may change the contribution schedule lot entitlements of the lots included in the scheme. The resolution must be passed:

- (a) For a scheme mentioned in (1) above, within 15 months of the date of commencement; or
- (b) For a scheme mentioned in (2) above, within 15 months of being established.

A new CMS must then be lodged within 3 months of the passing of the resolution.

It must be particularly noted that this provision does not apply to a scheme where the application for development approval to the local government was made after the commencement of the *Body Corporate and Community Management and Other Legislation Amendment Act 2002*. The contribution schedule lot entitlements in the first CMS for these schemes must comply with section 66(d)(i) of the BCCM Act.

There is no lodgement fee payable for a new CMS lodged under the provisions of sections 349 and 350 of the BCCM Act. A new CMS lodged under these provisions may adjust the contribution schedule lot entitlements only once and applies to schemes created by a standard format plan and a building format plan. The new CMS must comply with the following:

1. Item 6 of the Form 14 – Request to register a new CMS is to indicate that the purpose of the document is to amend the contribution schedule lot entitlements in accordance with sections 349 and 350 of the BCCM Act (e.g. to record a New CMS amending the contribution schedule lot entitlements and Schedule A in accordance with Sec 349 & 350(2) of *The Body Corporate and Community Management Act 1997*);
2. Only amend schedule A of the CMS

The notation of the local government is not required in item 7 of the CMS. It is not necessary to deposit a copy of the resolution under section 350(2) of the BCCM Act.

Body Corporate acquisition of, and dealing with, a lot included in its own scheme

Sections 40 to 44 of the BCCM Act provide for a body corporate of a community titles scheme to acquire and/or deal with a lot included in its own scheme.

For a body corporate the interest in a lot included in its own scheme is restricted to:

1. Registering an easement for 1 or more basic utility services (section 44 of the BCCM Act); or
2. Acquiring a lot to create additional common property (section 37 of the BCCM Act); or
3. Acquiring a lot after the original owner control period has ended and converting the lot to common property and subsequently registering a lease for a residence for a letting agent and/or service contractor (section 40 of the BCCM Act).



1. Interest in a lot for registration of an easement for basic utility services

These are two party easements that must be for one or more basic utility services over a lot and the common property in a scheme. An easement for access purposes has been precluded from the legislation. The definition of a “**basic utility service**” in the Act is any of the following:

- (a) Water reticulation or supply
- (b) Gas reticulation or supply
- (c) Electricity
- (d) Telephone
- (e) Computer data or television
- (f) A sewer system
- (g) Drainage

It is not necessary for supportive evidence under the Regulation Module to be deposited with the instrument. However, if the body corporate is the servient tenement to a two party easement, then a copy of the resolution, as required under the Regulation Module, must be deposited.

2. Acquiring the lot to create additional common property

There is no amendment to the current requirements for creating additional common property for a scheme under section 37 of the BCCM Act.

3. Acquiring a lot for conversion to common property for a residence for a letting agent and/or service contractor

The following steps/instruments are required:

1. Interests currently registered over the lot must be dealt with (e.g. any mortgages must be released or leases surrendered)
2. Transfer of the lot to the body corporate
3. Plan of survey converting the lot to common property
4. New Community Management Statement (CMS)
5. Lease to the letting agent and/or service contractor

Dealings of this nature cannot be lodged until the original owner control period has ended (section 40(1) of the BCCM Act). All the dealings will be registered simultaneously.

The requirements of the instruments lodged are as follows:

Transfer of the lot to the body corporate

- A certificate under the Regulation Module must be deposited.

Survey Plan

- The Survey Plan must only be for the purpose of creating the additional CP. This precludes any other actions/surveys being dealt with on the same plan.
- The plan is to be signed by the Body Corporate.
- The approval of the local government is not required (section 50 (g) (iii) of the *Land Title Act 1994*)



New CMS

- Item 6 of the Form 14 – Request for new CMS must clearly indicate that the conversion of the lot to CP is pursuant to Section 40 of the BCCM Act. This will identify that the intent of the New CMS is to lease the new common property to a letting agent or service contractor
- Item 7 of CMS may be completed as either “N/A pursuant to Section 60(6)(b)(iv) of the *Body Corporate and Community Management Act 1997*.” or “N/A”
- Amendment of other schedules is not precluded provided they satisfy all other requirements
- If the conversion is in a layered arrangement, then a new CMS for the principal scheme must also be lodged

Lease

- A Certificate under the Regulation Module is to be deposited with the Lease.
- If the term of the lease with options for renewal is more than 10 years it is not necessary to deposit the approval of the local authority
- The leased area may be described as “part of the common property being formerly Lot 4 on SP [number]” or a new plan of survey or explanatory plan may be lodged

4. Reconversion Requirements

The following instruments are required to be lodged:

- (a) Surrender, cancellation or determination of the lease to the letting agent and/or service contractor
- (b) Plan of survey converting the common property to a lot
- (c) New Community Management Statement (CMS)
- (d) Transfer of the lot from the body corporate to the new owner

All the dealings will be registered simultaneously. The requirements of the instruments are as follows:

(a) Surrender of lease

The normal requirements for surrender of lease apply.

(b) Survey plan

- The survey plan must only be for the purpose of converting the common property to a lot in the scheme
- The plan is to be signed by the Body Corporate
- The approval of the local government is not required (section 50 (g) (iii) of the *Land Title Act 1994*)

(c) New CMS

- Item 4 of the Form 14 – Request to register new CMS is amended by including the new lot in the scheme land.



- Item 6 of the Form 14 – Request to register new CMS is to include wording similar to “for converting part of the common property to a lot pursuant to section 40 of the *Body Corporate and Community Management Act 1997*”.
- Item 7 of CMS may be completed as either “N/A pursuant to Section 60(6)(b)(iv) of the *Body Corporate and Community Management Act 1997*.” or “N/A”.
- Schedule A of the CMS is amended by inclusion of the new lot in the scheme
- The Form 14 – Request and the new CMS are to be signed by the body corporate
 - d) Transfer of lot from the body corporate to the purchaser
- The Form 1 – Transfer is signed by the body corporate
- A certificate under the Regulation Module must be deposited

Charge by utility service provider over community titles scheme land

Sections 196 and 197 of the BCCM Act provide a mechanism to allow recovery of fees where a body corporate does not pay for the utility services delivered to it (section 196(1)(a) of the BCCM Act) by allowing a charge to be recorded against the title of the registered owner.

Where the utility service provider is a local government the unpaid amount of the liability becomes an overdue rate under section 1016 of the *Local Government Act 1993* that is payable proportionately by each lot owner according to the contribution schedule lot entitlement for the lot.

However, if the utility service provider is not a local government (e.g. Energex) the unpaid amount is payable proportionately by each lot owner according to the contribution schedule lot entitlement for the lot and under the BCCM Act the amount payable by a lot owner is a charge on the lot.

The shifting of the liability to each individual owner and the ability to register a charge against an individual lot in the scheme will ensure owners act to have the body corporate, of which they are a member, pay for a utility services.

If the utility service provider is a local government the liability is to be dealt as an overdue rate under the provisions of the *Local Government Act 1993*. Other utility service providers may lodge a charge under section 197 of the BCCM Act.



Registration of a charge

A utility service provider, other than a local government, may ask the Registrar to register a charge over all the lots in a scheme under section 197 of the BCCM Act.

Form 14 – General Request is appropriate for the purpose. The applicant must be the utility service provider and the request may be signed in accordance with the execution requirements for the applicant or by a solicitor for the applicant. A certificate signed by the utility service provider stating that there is a charge on all the lots under section 196(9) (b) of the BCCM Act must be deposited with the request.

It is not required to deposit any certificates of title, if issued (section 154(2)(e) of the *Land Title Act 1994*).

Normal lodgement fees apply but there is no duty payable.

Removal of a charge

A utility service provider must remove a charge immediately after the amount secured by the charge is paid. The charge may only be removed by lodgement of a Form 14 – Request to remove charge and must be removed from all the lots in the scheme. A partial removal of a charge is not permitted. The applicant must be the utility service provider and the request may be signed in accordance with the execution requirements for the applicant or by a solicitor for the applicant.

It is not necessary to deposit any certificates of title if issued (section 154(2)(e) of the *Land Title Act 1994*).

Normal lodgement fees apply but there is no duty payable.

Resumptions over scheme land

Where part of the land in a community titles scheme is to be resumed by a constructing authority in accordance with the *Acquisition of Land Act 1967* the following instruments must be lodged for registration:

1. **Plan of subdivision**
2. **Request to record new CMS**
3. **A Resumption instrument.**

The requirements for the instruments lodged are as follows:

1. Plan of subdivision

The plan may only deal with the resumption action and must be signed by the constructing authority.

2. Request to record new CMS

- Only those changes to the contribution schedule lot entitlements caused by the resumption are to be reflected in Schedule A of the CMS. Differences in the contribution schedule lot entitlements must be explained.
- No other alterations or amendments in the CMS are permitted.
- The consent of the local government is not required in item 7 of the CMS (section 60(6)(b)(ii) of the BCCM Act).
- The Form 14 and Item 8 of the CMS are to be signed by the constructing authority. The consent of the body corporate is not required (section 62(4)(d) of *The BCCM Act*).

3. Resumption instrument

There is no change to the current Land Registry's requirements for a resumption instrument.