



Building Rights to Exclusive Use to Common Property **Bylaws**

What you need to know...

1. Formalising Exclusive Use of Common Property

There are many ways to formalise the use of part of the common property and all require the consent of the owners corporation. The most common methods to formalise use include –

- Obtaining permission or a *licence* from the owners corporation to use that part of common property
- Arranging for a *lease* of that part of common property
- Arranging for an *exclusive use by-law* assigning rights with respect to that part of the common property
- Acquiring *freehold rights* to that part of common property via strata plan of subdivision

2. Choosing an Exclusive Use By-law

An exclusive use by-law confers on an owner a right to exclusively use and enjoy a specific area of common property that other owners are to be prohibited from using. Generally, an exclusive use by-law is the most cost effective way of formalising rights to exclusive use of common property, and is, in most cases, an enduring right that carries to subsequent owners of the lot for which it is conferred.

3. Revoking Rights of Exclusive Use

An owners right to exclusive use is not so easily revoked. An owner can lose the benefits of such a by-law only where –

- the by-law contains provisions for its termination, or
- the by-law contains provisions for its expiry, or
- there are surrounding circumstances where the owners corporation can revoke the bylaw, or



- where the owners corporation passes a repealing by-law pursuant to s52 of the *Strata Schemes Management Act 1996* (“the Act”), and the owner consents in writing the by-law being repealed (which is highly unlikely), or
- an Adjudicator makes an order to repeal or invalidate the by-law in accordance with ss157-159 of the Act.

4. Have a Specialist Strata Solicitor Prepare your By-law

A special by-law can protect you as much as it can protect the Owners Corporation. Any good strata solicitor would ask for a clearly marked strata plan diagram, measurements of the area, details of any works to be undertaken and rights and responsibilities of the owner. The details have to be adequate to carry the enduring right and avoid any future conflict in respect of the rights and privileges granted under the by-law.

Contact **Building Bylaws** to prepare your special by-law accurately to ensure your interests and the interests of the Owners Corporation are protected equally.