RESPONSIBILITY FOR UTILITY CONDUITS AND SERVICES IN WYBALENA GROVE

At the AGM of 29 May 2007, questions were raised about who is responsible for maintenance costs associated with utility conduits and services running under common ground, notably sewerage and drainage pipes. A couple of unit owners suggested that the Grove's policy of having each unit owner take responsibility for the full length of their own unit's tributary pipes – that is, for the parts that run under common ground from the edge of their unit's entitlement until they connect with the utility mains, as well as for the parts that run within their entitlement – may be in breach of the ACT's Unit Titles Act 2001. The implication was that if this were true, then the body corporate should pay for the maintenance costs of those sections of a unit's tributary pipes that run under common ground.

This is an important issue in view of the ageing of Grove infrastructure and a related increase in maintenance requirements. It is also an issue that resurfaces with monotonous regularity, usually when a unit owner is facing a large bill for major plumbing works.

The purpose of this note is to explain why the Grove's current policy is defensible on legal grounds, and why it is sensible on financial and practical grounds.

Legal grounds

Under s51(3e) of the Unit Titles Act[1], the body corporate 'must maintain .. all facilities associated with the provision of the utility services mentioned in s35 (Easements given by this Act)[2], including utility conduits'. A 'utility service' is defined in the Act as including 'the collection and passage of stormwater, the supply of water, sewerage and drainage services, garbage collection services, gas, electricity and air services, and communication services'. A 'utility conduit' is defined as 'a conduit of any kind for the provision of a utility service, and includes, for example, pipes, wires, cables and ducts for a utility service'.

The following points appear relevant:

1. An easement refers to the strip of land within which water and sewerage mains are located, and is created to ensure that these mains are protected and can be maintained. They are generally labelled or marked out on unit title deeds, or on plans for the unit complex. There is no doubt that the Act requires the body corporate to maintain these easements, ie to ensure that both service providers and consumers (unit owners) have ready access to the mains. However, the Act is silent on whether the tributary pipes that connect each unit to these mains/easements form part of the 'easements given by this Act', and therefore part of what the body corporate must maintain. Significantly, the tributaries are not included on easements shown on Grove sewerage and drainage plans.
2. According to s51(5)[3] of the Act, the above authority of a body corporate exists 'only …if the provision of services potentially benefits all units'. Maintaining the easement benefits all units that are connected to the services/conduits contained within it, but maintaining a tributary pipe benefits only the unit to which it links.
3. Under s52 of the Act[4], a body corporate 'may, if authorised by a special resolution, enter into or carry out an agreement with an owner or occupier of a unit for the maintenance of the unit or the provision of amenities or services for the unit'. In other words, if sufficient Grove unit owners were so inclined, they presumably could authorise the body corporate to maintain a particular unit owner's tributary pipes. However, in the absence of such a resolution, the responsibility for the maintenance remains with the owner.
4. Under s55(1)[5] of the Act, only 'a unit owner or anyone else with an interest in a unit or the common property' (eg a service provider like ACTEW) can apply to the Magistrate's Court for an order requiring the corporation or the executive committee to exercise a function. The Grove's policy has been drawn to the attention of people in ACTEW, and they appear to have no objection to it. The possibility of any 'outsider' raising the question of the 'legality' of the policy – as some might fear in view of the policy being mentioned in the Grove Guidelines on the Grove's proposed web site – is therefore extremely remote.
5. The above interpretation of the Unit Titles Act is of course open to legal challenge, and, as noted above, s55 of the

1 Now Unit Titles (Management) Act – 2011 s 24(e)
2 See Unit Titles (Management) Act – 2001 s24(e) also
3 See Unit Titles (Management) Act – 2001 s24(e) also
4 Now Unit Titles (Management) Act – 2011 s 29
5 See Unit Titles (Management) Act – 2011 Part 8

Act provides for any unit owner to apply to the Magistrates Court for an order requiring the body corporate or executive committee to exercise a function. However, even if the Court finds in the applicants favour, under s55(2b), it has two options: firstly, to order the body corporate or executive committee 'to exercise the function', or secondly, to 'make any other order it considers just'. The latter means the Court will be open to considering the sorts of financial and practical reasons for the current arrangement that are listed below, and could accordingly still find in favour of the current policy.

Financial grounds

6. The only beneficiary of a unit's tributary pipes is the unit owner / occupier (ie all units are directly linked to the mains, with no units sharing a tributary). The current policy is consistent with the principle of 'beneficiary / user pays', which operates in respect of the supply of other services to Grove residents (eg water, gas).
7. If the current policy were changed, it would require the body corporate to accept a commitment to bear costs that are largely unpredictable and uncontainable, especially in a complex as large as the Grove. Financially, it would be an irresponsible decision, which would potentially effect negatively on property values.
8. The implications of a change of policy for body corporate levies would also be detrimental. For example, even an increase of $100 a year in each unit's levy would raise only about $10,000, a sum that would be exhausted by major works involving only two or three units (eg the replacement or relining of tributary pipes), or by the clearing of only about 65 blockages (at an average $150 a clearance).

Practical grounds

9. There are large variations in the length of each unit's tributary running under common ground (eg from a few metres to thirty or forty metres). If the current policy were to change, it would be extremely difficult to calculate a levy or cost reimbursement schedule that would equitably account for these variations.
10. To change the current policy would require a clear demarcation of the point along each tributary where a unit owner's responsibility ends and the body corporate's starts. This would require either the installation of a tributary riser (surface access point) on each unit's boundary (an expensive exercise, with the cost presumably being borne by the unit owner), or careful measurement of the location of a blockage every time one is cleared (eg via use of pipe cameras).

Concluding comments

The Grove's policy in regard to the maintenance of individual unit tributary pipes has been in operation for many years. It may differ from the policy of many other bodies corporate in the ACT, but the above points explain why it is defensible on legal, financial and practical grounds. Common sense suggests it should continue.

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