



Body Corporate and Community Management

Maintenance

The following relates to maintenance responsibilities under the *Body Corporate and Community Management Act 1997* (the BCCM Act) and the *Body Corporate and Community Management (Standard Module) Regulation 2008* (the Standard Module). It is not an exhaustive guide and the legislation should be consulted as the primary reference.

Maintenance of common property and lots

Sections 159 and 170 of the Standard Module respectively, provide that the body corporate must maintain the common property in good condition and the owner of a lot must maintain his or her lot in good condition.

Utility infrastructure as common property

Utility infrastructure means pipes, cables, wires, sewers, drains, plant and equipment which supply lots or the common property with a utility service (e.g. water supply, gas or electricity supply, a telephone service or a sewer system).

The common property for a community titles scheme includes all utility infrastructure except for utility infrastructure that:

- supplies a utility service to only one lot
- is within the boundaries of the lot
- is not within a boundary structure for the lot.

Note: if all three criteria listed above are met, the utility infrastructure will not be considered common property and the lot owner will be responsible.

It is therefore important for both the body corporate and the individual lot owners to know exactly what part of the community titles scheme is common property and where the lot boundaries are located.

Survey plans

The survey plan for a community titles scheme shows the boundaries of the common property and the lots in that scheme. There are various types of survey plans and boundary definitions may differ depending on the type of plan registered. Registered survey plans can be obtained from Titles Registration in the Department of Environment and Resource Management.

The two common types of survey plans are building format plans and standard format plans.

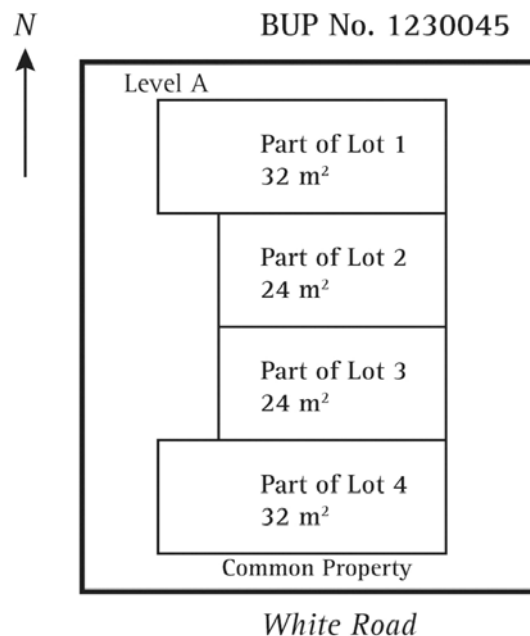
Building format plans (previously building units plans).

A building format plan is a form of subdivision that usually occurs within a building, but could apply to other developments like townhouses. A building format plan defines land using the structural elements of a building, including, for example, floors, walls and ceilings.

Where a lot is separated from another lot or common property by a floor, wall or ceiling, the boundary of the lot is the centre of the floor, wall or ceiling (sections 48C and 49C (4) of the *Land Title Act 1994*). An example of a community titles scheme established as a building format plan is a multi-storey block of residential units.

The following diagram represents a typical two storey building format plan and indicates how common property and lots may be shown on a plan.

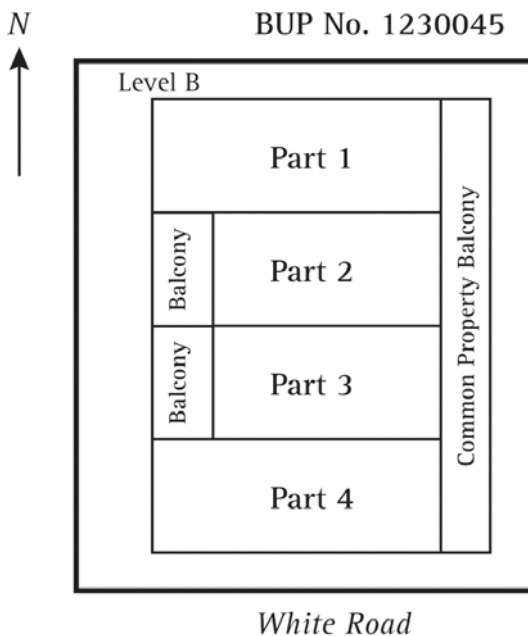
Diagram 1



On building format plans and building units plans, the boundaries of a lot can be represented by hard black lines. In diagram 1, the plan of level A shows the common property surrounding the building and those parts of the four lots (units) on level A.

Although not shown in the diagram, plans may also show visitor parking spaces, carports or swimming pools etc. The common property and the lots collectively make up the scheme land.

Diagram 2



The plan of level B in diagram 2 shows the balance part of the 4 lots and a common property balcony running along the eastern side of the building. The **thin line** that outlines the balcony indicates that the balcony is outside the boundary of the lot and is therefore common property.

Contrasting to this are the balconies attached to the western side of lots 2 and 3. The hard black lines define the boundary of lots 2 and 3. The thin line shows that each balcony is within the boundary of lots 2 and 3, and consequently the owners have the responsibility to maintain the balconies in good condition.

Where a balcony is included in a lot, as in lots 2 and 3 above, the boundary of the lot is the face of the balcony.

Maintenance under a building format plan

The body corporate is usually responsible for:

- the maintenance of the outside of the building including railings or balustrades on, or near to, the boundary of a lot and common property. This would include the balustrade on a private balcony
- gardens and lawns on common property
- the foundations of the building
- generally any doors or windows, and their fittings, that are situated in a boundary wall between a lot and the common property (including common property balconies). This also includes garage doors and their fittings.

The lot owner is generally responsible for:

- doors and windows leading onto a balcony that forms part of the lot
- kitchen, bathroom, bedroom cupboards
- sinks, dishwashers, garbage disposal units, shower screens and shower trays.

Other responsibilities of the lot owner:

- a hot-water system is installed on the common property, but supplies water only to a particular lot. The owner of the lot would be responsible for maintaining the hot-water system and the associated pipes and wiring
- any fixtures or fittings installed by the lot owner for the lot owner's benefit
- exclusive use areas the owner has the benefit of.

Examples of maintenance of utility infrastructure in building format plans

The body corporate's responsibilities

- A cold water pipe that services only one lot that is located in a concrete slab which forms the boundary between a lot on level five and a lot on level six of a building.

Why? Although the utility service only supplies one lot, it is located in a boundary structure.

The lot owner's responsibility

- A cold water pipe that services only one lot that is located in a wall separating the bathroom and the bedroom of the lot.

Why? The utility service is not considered common property as it:

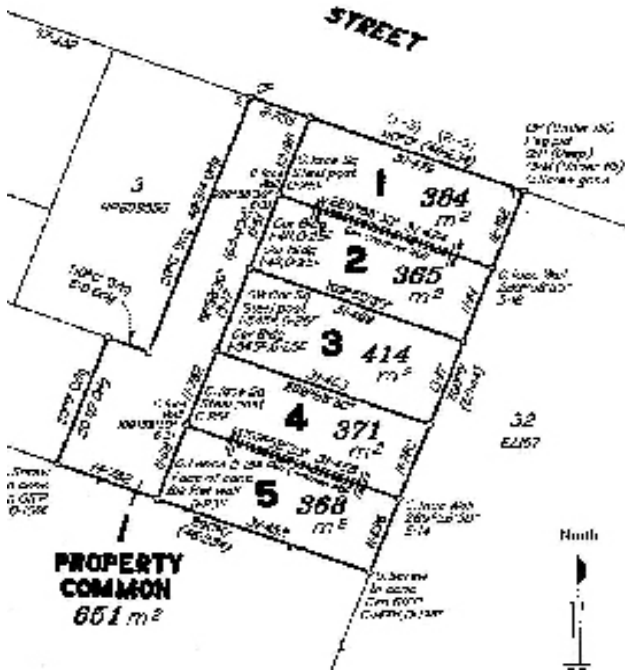
- supplies a utility service to only one lot
- is within the boundaries of the lot
- is not within a boundary structure for the lot.

Standard format plans (previously group titles plans)

A standard format plan defines land horizontally with references to marks on the ground or a structural element (for example, survey pegs in the ground or the corner of a dwelling). As an example, a standard format plan may include a townhouse complex, where the individual lots would comprise a building and land (front and/or back courtyards).

The boundaries of lots are defined by dimensions and bearings shown on the survey plan along with marks placed on the ground at the time of the survey.

The illustration below of a standard format plan shows the five lots and the area of common property. Each boundary on the plan is clearly defined using the reference marks referred to above. For example the length of the northern boundary of Lot 1 is shown as 31.479 metres on a bearing of 110° 0'.



Maintenance under a standard format plan

The body corporate is usually responsible for:

- the common property, including roads, gardens and lawns on common property
- some elements of utility infrastructure that are common property.

The lot owner is generally responsible for:

- their lot, including all lawns and gardens within the boundary
- the maintenance of the building including the exterior walls, doors, windows and roof with the exception of some elements of utility infrastructure that are common property
- the building foundations
- the painting of the lot.

Examples of maintenance of utility infrastructure in standard format plans

The body corporate's responsibilities

- The main water supply line for the scheme running beneath the rear private courtyards of lots.

Why? The water supply is a utility service to more than one lot and is therefore common property.

- Guttering and associated downpipes spanning more than one lot.

Why? Again, the guttering serves more than one lot and is therefore common property.

Note: water meters installed for a community titles scheme established after 1 January 2008 are the property of the water service provider.

The lot owner's responsibility

- The painting of the building.

Why? The building in a standard format plan falls within the boundaries of the lot. As the body corporate is only responsible for the maintenance of common property, the building is the lot owner's responsibility.

Exclusive use areas

An exclusive-use by-law for a community titles scheme is a by-law that attaches to a lot included in the scheme, and gives the occupier of the lot for the time being exclusive use to the rights and enjoyment of common property or a body corporate asset, or other special rights.

Where exclusive use is created in respect of common property, then the obligation to maintain that common property is transferred to the owner of the lot in question, unless there is specific provision in the by-law for maintenance remaining the responsibility of the body corporate (Standard Module section 173).

Dividing fences

The legislation does not specifically address responsibility for maintenance of dividing fences however, a number of adjudicator decisions have dealt with the subject and the general position is set out below. Specific circumstances of a particular situation may alter these broad guidelines.

- A dividing fence between a lot and the common property is shared equally between the owner of the lot and the body corporate.
- A dividing fence between two lots is shared equally between the lot owners.
- A boundary fence between a lot and an adjoining property is shared equally between the body corporate and the adjoining property owner. **Note:** even if the boundary fence is a fence forming the boundary of a lot and an adjoining property, the body corporate has been held to be responsible as the fence is in essence the boundary of the scheme.

Questions regarding dividing fences may come within the definition of a 'dividing fence' under the *Dividing Fences Act 1953*. For information about dividing fences visit:

www.justice.qld.gov.au and type “dividing fences” in to the Search box.

Pest control

The body corporate is generally responsible for any pest inspection, prevention and treatment work carried out on common property. A lot owner is individually responsible for any pest inspection and treatment carried out within their lot.

The body corporate may offer, as a service to lot owners, to arrange pest inspections and treatments of the individual lots at the same time as the common property is inspected (Standard Module section 169). The service only applies to those owners who, by agreement, take up the offer and the cost of providing the service is recovered individually from those owners and is not part of any body corporate levies.

Authorising maintenance

Firstly, the committee may make decisions that concern the day to day administration of the body corporate. This includes deciding maintenance work of a minor nature that comes within the expenditure limits of committees (Standard Module section 151).

If the overall cost of the maintenance is above the committee’s limit of spending the maintenance must be authorised by an ordinary resolution of the body corporate at general meeting. Additionally, if the cost of carrying out the maintenance is more than the limit for major spending at least two written quotes must be obtained (Standard Module section 152).

Improvement vs maintenance

While the day to day maintenance of the common property may be authorised by the committee or the body corporate as described above, improvements to the common property are dealt with differently.

For example, section 163 of the Standard Module provides, in part, that if the cost of an improvement is more than the basic improvement limit but not more than \$2000 x the number of lots in the scheme, the improvement must be approved by ordinary resolution (BCCM Act section 106).

The body corporate must be certain that the project contemplated is maintenance and not an improvement, for example the rendering of a building as opposed to replacing cracked bricks and repointing old mortar.

In order Reference No. 0161-2000, the adjudicator dealt with such an issue and provided a clear determination regarding the difference between improvements and maintenance.

For the full text of the order go to: www.austlii.edu.au/au/cases/qld/QBCCMCmr/2000/186.html

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office)

Phone (freecall): 1800 060 119
Email: bccm@justice.qld.gov.au
Website: www.justice.qld.gov.au/bccm
Street address: Brisbane Magistrate’s Court
Level 4, 363 George Street, Brisbane
Postal address: GPO Box 1049, Brisbane Qld 4001

Copies of the *Body Corporate and Community Management Act 1997*, the regulation modules, and any amendments can be accessed for free via the Office of the Parliamentary Council by visiting:

www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm

Copies can be purchased online by visiting

www.bookshop.qld.gov.au, or by contacting SDS Customer Service by phoning (07) 3883 8700 or 1800 801 123.

Disclaimer

The laws referred to in this guide are complex and various qualifications may apply in different circumstances. The information in this factsheet does not constitute legal advice. You are encouraged to obtain independent legal or financial advice if you are unsure of how these laws apply to your situation.

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