

# Repairs & Maintenance of Common Property

*Presented by Mark Mellick*

Baseline Position

S152 of the Act.

The Body Corporate must:

- (a) Administer, manage & control common property reasonably and for the benefit of the owners;
- (b) Comply with the obligation with regard to common property under the Regulation Module.

S159 (1) of the Standard Module

The Body Corporate must maintain Common Property in good condition, including, to the extent that Common Property is structural in nature, in a structurally sound condition.

Therefore, the fundamental question is, what is common property?

Answer: 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.

By and large it will be obvious as to what Common Property is and what a lot is. However, if the answer to the question is not patently obvious, then recourse will need to be led to the survey plan creating the scheme as it will show the boundaries of the Common Property and the lots in the Scheme.

### **Survey Plans**

Two Common types

- (a) Building Format Plan (BFP); and
- (b) Standard Format Plans (SFP)

If your scheme is a BFP, then the Body Corporate has additional repair and maintenance obligations.

These additional obligations are to maintain in good condition:

- (a) Railings, parapets and balustrades on the boundary of a lot and Common Property;
- (b) Doors, windows and associated fittings situated in a boundary wall separating a lot from Common Property;
- (c) Roofing membranes that provide protection for lots and Common Property;
- (d) Foundation structures;
- (e) Roofing structures;
- (f) Essential supporting framework.

### **Utility Infrastructure (S20 of the Act)**

The Common Property for a scheme includes all utility infrastructure except for utility infrastructure that;

- (a) Services only 1 lot;
- (b) Is within the boundaries; and
- (c) Is not within a boundary structure for the lot.

Therefore, if it is established that what requires repair and maintenance is Common Property or utility infrastructure then the Body Corporate is responsible for that.

It is strict statutory duty. Failure by the Body Corporate to comply with its duty may have serious consequences for lot owners.

#### **EXAMPLES – BFP**

##### **Body Corporate Responsibility**

1. Maintenance of the outside of the building created by a BFP;
2. Garage doors;
3. Doors and windows in a boundary wall;
4. Lawns/gardens;
5. Elevators;
6. Building Foundation.

##### **Lot Owner Responsibility**

1. Doors and windows within the boundary of the lot;
2. Shower screens;
3. Hot water system located on Common Property which supplies 1 lot only;
4. Air con system located on Common Property which services 1 lot only;
5. Exclusive use areas the owner has the benefit of (unless the by-law granting the exclusive use provides to the contrary).

#### **Examples – SFP**

##### **Body Corporate responsibility**

1. Roads and Common Property lawns and gardens;
2. Guttering, if the guttering services more than 1 lot.

##### **Lot owner responsibility**

1. Maintenance of the building including exterior walls, doors, windows and roof;
2. All gardens and lawns within the boundary of a lot;
3. Painting of the lot.

#### **Authorising Maintenance and Repairs**

Having established that part of the Common Property requires money to be spent to repair or maintain it, then the Body Corporate must duly authorise that expenditure.

- (a) If expenditure required is within the Committee spending limit, then the Committee may organise expenditure (\$200.00 x No. of lots);

- (b) If expenditure is above the committee spending limit, then ordinary resolution of Body Corporate is required;
- (c) If above major spending limit (the lesser of \$1,100.0 x No. of lots of \$10,000.00) then 2 quotes must be obtained.

## **NB**

Adjudicator may authorise the Committee to spend above its spending limit where the spending is required to meet an emergency.

### **Improvements -v- repairs and maintenance**

Remember, improvements to Common Property are a different issue to the repair and maintenance of Common Property.

There are different rules for improvements to Common Property.

Basically – if the works provide something new for the benefit of the owners, rather than being a replacement of something which was there, then the works are likely to be deemed improvements to the Common Property.

### **Neglect of common property by body corporate**

1. Breach of the Body Corporate's statutory obligation to maintain Common Property is good condition.
2. If Common Property is in a dilapidated state, the public liability insurance cover may be refused.
3. Exposes Body Corporate to liability if lot owner can establish it suffered economic loss which was reasonably preventable:
  - *Seiwa Pty Ltd v The Owner: Strata Plan 35042*
  - *Magog No 15 Pty Ltd v the Body Corporate for the Moroccan*
  - *Klinger & Anor v Body Corporate for Costa D'Ora*

### **Miscellaneous**

1. The Body Corporate must also maintain Body Corporate assets in good condition.
2. The Body Corporate is entitled to recover from a lot owner damages where the owner actions cause damage to Common Property or the Body Corporate assets.

Queensland Government home > For Queenslanders > Your rights, crime and the law > Housing and neighbours > Body Corporate and Community Management > Maintenance and improvements > **Building format plan maintenance**

## Building format plan maintenance

A building format plan is a form of subdivision which usually applies to multi-story unit complexes, and in some cases, other developments like townhouses.

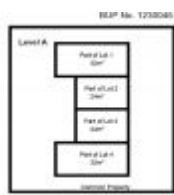
A building format plan defines land using the structural elements of a building, including floors, walls and ceilings.

### Defining lots and common property

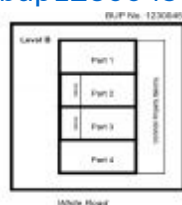
The [Land Title Act 1994](#) (PDF) (

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LandTitleA94.pdf>) defines a **building format plan** (BFP), previously known as a **building unit plan** (BUP). Where 1 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.

This diagram represents a typical 2-storey building format plan. It shows how common property and lots may be drawn on a plan.



- (<https://www.qld.gov.au/law/assets/images/bccm/building-format-plan/vccm-bup1230045-levela.jpg>)



- (<https://www.qld.gov.au/law/assets/images/bccm/building-format-plan/vccm-bup1230045-levelb.jpg>)

On a building format plan, the boundaries of a lot are represented by hard black lines. The diagram of level A shows the common property surrounding the building and parts of the 4 lots (units) on level A.

Plans can also show visitor parking spaces, carports or other features such as swimming pools. This common property and the lots together make up the scheme land.

The diagram of level B shows the rest of the 4 lots and a common property balcony running along the eastern (right) side of the building.

The thin line around this balcony shows that it is outside the boundaries of the lots, so the balcony is on common property.

Compare this to the hard black lines around the smaller balconies on the western (left side) of lots 2 and 3. This shows that these balconies are within the boundaries of lots 2 and 3.

Where a balcony is included in a lot (as in lots 2 and 3 in the diagram of level B) the boundary of the lot is the face of the balcony.

## Body corporate maintenance

The body corporate must maintain common property, as well as some things that are not on common property.

The body corporate is usually responsible for maintaining:

- the outside of the building
- the foundations and roof of the building
- roofing membranes that are not on common property but give protection for lots or common property
- essential structural elements of the building (like foundation structures, roofing structures that provide protection and load-bearing walls) even if they are not on common property
- roads, gardens and lawns on common property
- facilities on common property (like swimming pools and barbeques)
- railings or balustrades on, or near to, the boundary between a lot and common property, including the balustrade on a private balcony
- any doors or windows, and their fittings in a boundary wall between a lot and the common property (including in balconies, and including garage doors and their fittings)
- utility infrastructure (like equipment, pipes and wiring) that is on common property, or in a boundary structure, or services more than 1 lot.

## Lot owner maintenance

The lot owner is generally responsible for:

- the inside of the lot, including all fixtures and fittings inside the lot
- doors and windows leading onto a balcony that forms part of the lot
- a shower tray used by the lot, even if it is not within the boundaries of the lot
- utility infrastructure (like equipment, pipes and wiring) that is within the boundaries of the lot and only services that lot
- utility infrastructure (including equipment and associated wiring and pipes) that is on common property, if it only services that lot and is a hot water system, washing machine, clothes dryer, air-conditioner or similar equipment

- any fixtures or fittings, including on common property, that were installed by the occupier of a lot for their benefit
- exclusive use areas the owner has the benefit of, unless the exclusive use by-law says otherwise.

For more information see:

- [body corporate improvements](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/improving-common-property-and-lots) ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/improving-common-property-and-lots> )
- [utility infrastructure](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/utility-infrastructure-maintenance) ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/utility-infrastructure-maintenance> )
- [exclusive use by-laws](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/by-laws/exclusive-use-by-law). ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/by-laws/exclusive-use-by-law> )

## Paying for maintenance

- The body corporate must consider its spending limits and budgets if it has to spend money on maintenance.
- The body corporate cannot pay for, or levy owners for, maintenance that a lot owner is responsible for (such as cleaning windows within a lot), unless it:
- has an agreement with an owner

and

- charges that owner for the cost of the work.

A body corporate can undertake maintenance and recover the 'reasonable cost' from the lot owner if the owner has not done maintenance required under:

- body corporate legislation
- a notice given under other legislation
- the community management statement, including the by-laws
- an adjudicator's order
- the order of a court or tribunal.

## More information

- [Authority to spend](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/financial-management/authority-to-spend) ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/financial-management/authority-to-spend> )
- [Meetings](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/meetings) ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/meetings> )
- [General maintenance issues](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/other-maintenance-issues) ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/other-maintenance-issues> )
- [Utility infrastructure](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/utility-infrastructure-maintenance) ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/utility-infrastructure-maintenance> )

## Further questions?

If you have further body corporate questions you can [submit an enquiry](#) ( <http://www.qld.gov.au/law/housing-and-neighbours/body-corporate/roles-and-responsibility/general-enquiry/> ) or phone the information service on [1800 060 119 \(freecall\)](#) ( tel:1800060119 ).

We cannot give legal advice or rulings—we can only give you general information on body corporate legislation.

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Queensland Government home > For Queenslanders > Your rights, crime and the law > Housing and neighbours > Body Corporate and Community Management > Maintenance and improvements > **Standard format plan maintenance**

## Standard format plan maintenance

A **standard format plan** (SFP), previously known as a **group title plan** (GTP), defines land horizontally, using marks on the ground or a structural element of a building (e.g. survey pegs in the ground or the corner of a building).

A community titles scheme registered under standard format plan can include a townhouse complex where each lot has a building and a yard. The boundaries of lots in the scheme are defined by the measurements shown on the survey plan and any marks put on the ground when the survey was done.

This diagram of a standard format plan shows 5 lots and an area of common property. Each boundary on the plan is clearly defined using the reference marks.



- <https://www.qld.gov.au/law/assets/images/bccm/standard-format-plan/standard-format-plan.jpg>

## Body corporate maintenance

The body corporate is usually responsible for maintaining:

- roads, gardens and lawns on common property
- facilities on common property (like swimming pools and barbeques)
- **utility infrastructure** (<https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/utility-infrastructure-maintenance>) (like equipment, pipes and wiring) that is on common property, or in a boundary structure, or services more than 1 lot.

## Lot owner maintenance

The lot owner is generally responsible for:

- the inside of the building, including all fixtures and fittings (except utility infrastructure that is common property)

- the outside of the building within their lot boundary, including exterior walls, doors, windows and roof
- the building foundations
- all lawns, gardens and driveways inside the boundary of their lot
- utility infrastructure (like equipment, pipes and wiring) that is inside the boundaries of the lot and only services that lot
- any fixtures or fittings (including on common property) that were installed by the occupier of a lot for their benefit
- exclusive use areas the owner has the benefit of, unless the exclusive use by-law says otherwise.

For more information see:

- [improving common property and lots](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/improving-common-property-and-lots) ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/improving-common-property-and-lots> )
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- [exclusive use by-laws](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/by-laws/exclusive-use-by-law) ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/by-laws/exclusive-use-by-law> )

## Paying for maintenance

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The body corporate cannot pay for, or levy owners for, maintenance that a lot owner is responsible for (such as painting the building), unless it:

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and

- charges that owner for the cost of the work.

A body corporate can carry out maintenance and recover the 'reasonable cost' from the lot owner if the owner has not done maintenance required under:

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- [Other maintenance issues](https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/other-maintenance-issues) ( <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/maintenance-and-improvements/other-maintenance-issues> )
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