

decks, patios, balconies etc

The “Inside” versus “Outside” debate



We all like simple rules ... it just makes things easier to understand!

Many people have heard the saying:



“Inside Owner ... Outside Body Corporate”

This is a nice simple saying but sadly that while sometimes it is true there are many times it is simply not true ie it is a ‘myth’.

Decks, patios and balconies are just one of those exceptions.

Time to Read the Survey Plan!

This info sheet relates to **Building Format Plans BFP** (formerly known as Building Unit Plans BUP) – This style of plan is a subdivision of a building but may also include a private courtyard.

<p>Building Format Plan refer bottom right corner of the Survey Plan</p>

<p>Building Unit Plan (old name) refer each page of the Building Unit Plan</p>


Slightly different outcomes happen for **Standard Format Plans SFP** (formerly known as Group Title Plans GTP).

Why is the type of plan important?

The Section 49C of Land Title Act 1994 defines the boundary of lot as being: -

“... the boundary of a lot created under the plan, and separated from another lot or common property by a floor, wall or ceiling, must be located at the centre of the floor, wall or ceiling.”

The lot is really just a “box”. So common property includes the following: -

- Under the slab (below the “box”)
- Above the ceiling ie the roof cavity and roof (above the “box”)
- Outside the walls (outside the “box”)

However, we also need to remember that sometimes lots are not divided by a wall. For example, an outside balcony may form part of the lot and the boundary is simply an invisible plain at the edge of the balcony.

The wall might be “invisible”? ... What does this mean?

Yes ... the boundary can be invisible – the edge of this deck is the boundary of the lot.

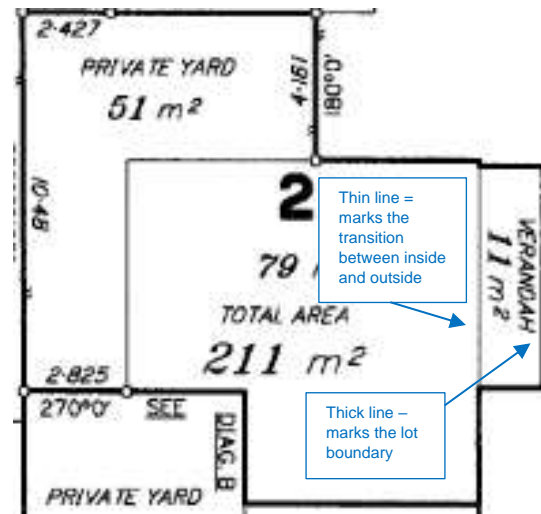


decks, patios, balconies etc

Illustrated slightly differently with highlighting to show the invisible plain.



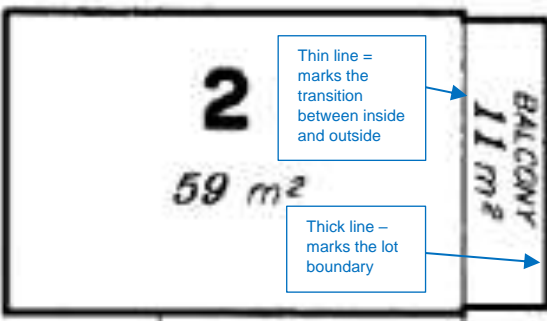
Downstairs Survey Plan information.



How do we know this is the edge of the lot? The survey plan tells us!

A careful examination of the Survey Plan for this actual complex and Lot 2 (as pictured) is needed.

The Verandah or Patio Area for this lot is also 'part' of the lot. So, the lot boundaries for this lot are really:

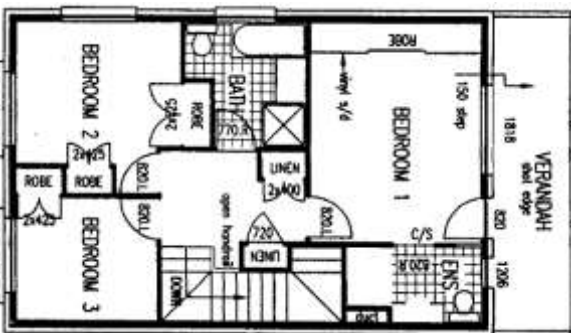


So now we now know the balcony is fully contained within the Lot exactly the same as the upstairs bedrooms.

'Myth Busted' ... this entire section or end of the building is 'outside' but it belongs to the Lot Owner ... the Survey Plan proves this for us.

This is the detailed Upstairs layout for this unit
(the survey plan used the terminology balcony whereas the architectural plans used the terminology verandah – this changes nothing)

Why is it important to know who 'owns' the deck, patio, verandah, balcony?



It is super important to know who 'owns' something because generally if somebody 'owns' something they are responsible to maintain it!

The above image relates to the Upstairs Part of the unit. Something interesting is also revealed for Downstairs for this Lot.

So, using the example, the above the Upper Deck and the Below Verandah or Patio is Owned by the Lot Owner so the Lot Owner (and not the body corporate) is responsible to maintain it.

decks, patios, balconies etc

The Owner Owns It ... therefore their cost to maintain! ... Right?

We have proved that the owner owns the Deck above, Does this mean they need to maintain it?

We are not quite there yet!

We need to look a little deeper.

The Law ... What does the law say?

Yes, it is super important to look at the Survey Plan to establish who 'owns' the deck, patio, balcony etc.

However, it is also super important to go back and read the law. Section 180 of the *Body Corporate & Community Management (Standard Module) 2020* needs to be checked:-

180 Duties of body corporate about common property—Act, s152

- (1) 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.

Note—

For utility infrastructure included in the common property, see section 20 of the Act.

- (2) To the extent that lots included in the community titles scheme are created under a building format plan of subdivision, the body corporate must—
- (a) maintain in good condition—
 - (i) railings, parapets and balustrades on, whether precisely, or for all practical purposes, the boundary of a lot and common property; and
 - (ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and
 - (iii) roofing membranes that are not common property but that provide protection for lots or common property; and
 - (b) maintain in a structurally sound condition the following elements of scheme land that are not common property—
 - (i) foundation structures;
 - (ii) roofing structures providing protection;
 - (iii) essential supporting framework, including load-bearing walls.
- (3) Despite anything in subsections (1) and (2), the body corporate is not responsible for maintaining fixtures or fittings installed by the occupier of a lot if they were installed for the occupier's own benefit.
- (4) Also, despite anything in subsections (1) and (2)—
- (a) the owner of the lot is responsible for maintaining, in good order and condition, utility infrastructure, including utility infrastructure situated on common property to the extent the utility infrastructure—
 - (i) relates only to supplying utility services to the owner's lot; and
 - (ii) is 1 of the following types—
 - (A) hot-water systems;
 - (B) washing machines;

- (C) clothes dryers;
- (D) solar panels;
- (E) air-conditioning systems;
- (F) television antennae;
- (G) another device providing a utility service to a lot; and

Examples for paragraph (a)—

- 1 An air-conditioning plant is installed on the common property, but relates only to supplying utility services to a particular lot. The owner of the lot is responsible for maintaining the air-conditioning equipment.
 - 2 A hot-water system is installed on the common property, but supplies water only to a particular lot. The owner of the lot is responsible for maintaining the hot-water system and the associated pipes and wiring.
- (b) the owner of the lot is responsible for maintaining the tray of a shower that services the lot, whether or not the tray forms part of the lot.
- (5) To avoid any doubt, it is declared that, despite an obligation the body corporate may have under subsection (2), the body corporate may recover the prescribed costs, as a debt, from a person, whether or not the owner of the lot, whose actions cause or contribute to the damage or deterioration of the part of the lot.
- (6) In this section—
- prescribed costs**, recoverable from a person, means the proportion of the reasonable cost to the body corporate of carrying out the maintenance that the body corporate reasonably considers can be fairly attributed to the person's actions.
- utility infrastructure** does not include utility infrastructure that—
- (a) is a device for measuring the reticulation or supply of water for a community titles scheme established after 1 January 2008; and
 - (b) is installed after 1 January 2008—
 - (i) under a permit issued under the Plumbing and Drainage Act 2018; or
 - (ii) in relation to a compliance request made after 31 December 2007 under the repealed Plumbing and Drainage Act 2002.

Ignore who owns the deck, patio or balcony the law requires the body corporate maintain certain parts.

Items	By Who
Railings 	Body Corporate

decks, patios, balconies etc

<p>Parapets</p> 	<p>Body Corporate</p>
<p>Balustrades</p> 	<p>Body Corporate</p>
<p>Roof Membrane</p>  <p>The membrane is protecting the lot below</p>	<p>Body Corporate</p>
<p>Essential supporting framework</p>  <p>inc Posts, Bearers & Joists</p>	<p>Body Corporate</p>

http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMComr/2012/289.html?context=1;query=Deck;mask_path=au/cases/qld/QBCCMComr

[1] While the applicant is required to maintain her own lot, section 159 of the Standard Module says that the body corporate is obliged to maintain/repair the handrail/ balustrade and fascia timbers as well as structural elements of the balcony such as the beams and joists. Where decking needs to be removed in order to access the structural elements, e.g. for inspection and/or replacement, the labour costs involved in removing and replacing the decking boards should also be borne by the body corporate. Where decking boards need to be replaced, the actual cost of the decking boards should be borne by the owner of the lot.

We need to make sense of this Adjudicator's decision

Painting or re-staining decking boards	By the owner
Replacing split decking boards etc	By the owner
Removing and replacing the decking boards so the joists can be replaced	By the body corporate

Tiled Decks or Patios

A very similar result happens for Tiled Decks or Patios

Replacing tiles	By the owner
Regrouting tiles	By the owner
Removing and replacing the tiles so either water proofing membrane or the supporting framework can be replaced.	By the body corporate

Doors and Windows Leading onto the Owner's Deck, Patio or Balcony.

Finally, if there are doors or windows leading onto the deck, patio or balconies and that deck, patio or balcony is **not** owned by the body corporate then the maintenance of the door or window rests with the owner and **not** the body corporate.

Decking Boards

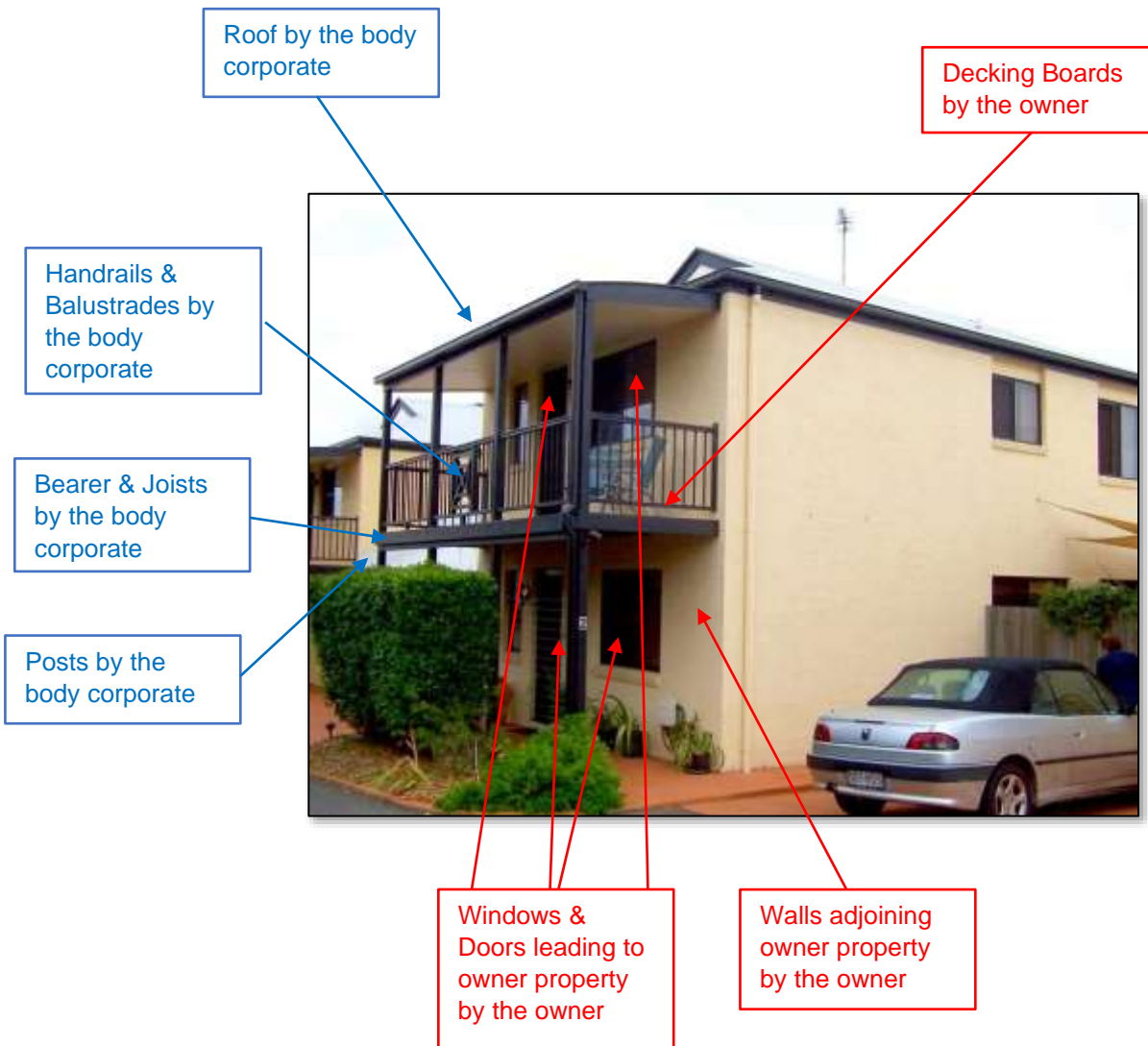
The maintenance of decking boards becomes a little more difficult.

Are decking boards 'essential supporting framework'?

The Adjudicator in Coconut Grove Villa [2012] QBCCMComr 289 (21 June 2012) case has provided some direction.

decks, patios, balconies etc

Back to a real-life example



Does the body corporate sometimes accept FULL responsibility?

Yes ... this happens quite often when all lots have decks, all decks are in similar condition and no owner is either advantaged or disadvantaged by the body corporate the accepting full responsibility.

decks, patios, balconies etc

Deck, Patio, Balcony Maintenance Checklist

Body Corporate

- Roof Structures (but not if deck was previously uncovered and the owner decided to cover the deck)
- Structural Posts
- Bearers
- Joists
- Decking Boards (but only if they need to be removed to undertake maintenance to structural framework)
- Tiles (but only if they need to be removed to undertake maintenance to structural framework)
- Tiles (but only if they need to be removed to undertake maintenance to a roofing membrane)
- Foundations
- Railing, Parapets and Balustrades (whether precisely or for all practical purposes on the boundary of the lot)
- Windows (leading on to common property only)
- Doors (leading on to common property only)
- Walls (facing onto common property only)
- Roofing membranes protecting lots or common property

Owner

- Decking Boards (unless they need to be removed to enable maintenance of the structural framework)
- Tiles (unless they need to be removed to enable maintenance of the structural framework)
- Tiles (unless they need to be removed to enable maintenance to a roofing membrane)
- Windows (but only if they lead from owner's lot to the owner's deck)
- Doors (but only if they lead from owner's lot to the owner's deck)
- Walls (but only if they are facing an owner's deck)
- Roof Structures (if later added eg if an owner covered a pergola structure)