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## *maintenance*

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## Who Pays The Bill? ....

A number of different groups may be responsible for maintenance:-

- The Lot Owner
- The Body Corporate
- The Builder \*
- The Insurer \*

*\* The responsibilities of the builder and the insurer will only be briefly discussed.*

## Owner versus Body Corporate – Maintenance Responsibilities



Area	How Determined	Who is Responsible
The Lot (or Unit) Standard Module s 170	Plan	Generally the Lot Owner
Private Courtyard (ie on Title) Standard Module s 170	Plan	Generally the Lot Owner
Exclusive Use Areas By-Laws or presumption under Standard Module s 173	Exclusive Use Plans and the By-Laws	Generally the Lot Owner (unless the lot owner has been excused from the responsibility)
Lot Owner Improvements The Minutes or under Standard Module s 174	The Minutes Authorising the Improvement	Generally the Lot Owner (unless the lot owner has been excused from the responsibility)
Common Property Standard Module s 159	Plan	Generally the Body Corporate
Utility Infrastructure Standard Module s 159	The Law	Either the Body Corporate or the Lot Owner depending on the circumstances

## But First ..... What Type of Plan?



A key determining factor in relation to establishing the responsibility for maintenance is the type of plan used by the Scheme.

There are three main types of plans:-


**Building Format Plan 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><b>Building Format Plan</b> refer bottom right corner of the Survey Plan</p>	<p><b>Building Unit Plan (old name)</b> refer each page of the Building Unit Plan</p>
	

**Standard Format Plan SFP** (formerly known as Group Title Plans GTP) – This style of plan is a subdivision of land.

<p><b>Standard Format Plan</b> refer bottom right corner of the Survey Plan</p>	<p><b>Group Title Plan (old name)</b> refer each page of the Group Title Plan</p>
	

**Volumetric Format Plan** – This style of plan is a subdivision of airspace for example, building over a railway line. (Not discussed in this document).

<p><b>Volumetric Format Plan</b> refer bottom right corner of the Survey Plan</p>	<p><b>No Previous Equivalent</b></p>
	

To correctly identify what parts of the scheme land are common property and what parts of the scheme land are individual lots, you should obtain a copy of the relevant plan for the scheme. Plans are available from any Queensland's Department of Natural Resources, Mines and Energy service centre.

## Lets Talk Definitions

### The Lot

The BCCM Act defines a lot as follows:-

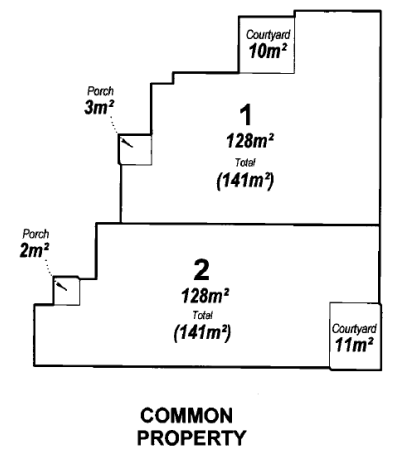
*“lot means a lot under the Land Title Act 1994 ...”*

Therefore, it is necessary to carefully examine the Plan for the Scheme to establish the boundaries of each lot.

Importantly, the boundaries of each lot are determined slightly differently depending on the type of plan.

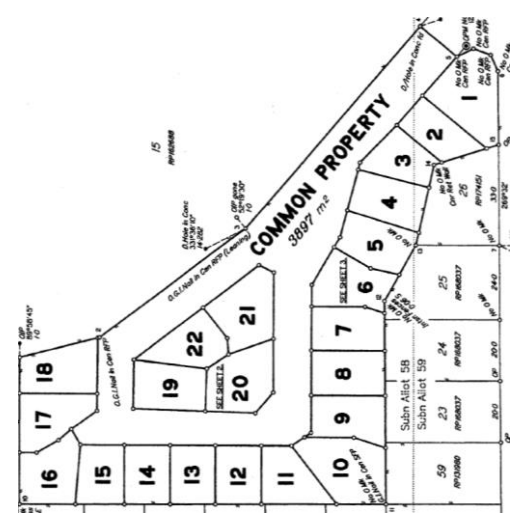
For a **Building Format Plan** all boundaries are based on the physical building structure. Therefore, the boundaries are formed by the centre of the floor, ceiling and outer walls.

### Example

<p><b>Comments</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> A Building Format Plan defines the building exactly</li> <li><input type="checkbox"/> Predominately used for villa, townhouse and high-rise developments (however, villa and townhouse developments can also be structured using a Standard Format Plan</li> <li><input type="checkbox"/> <b>Note:-</b> The Porch and Courtyard areas on this plan form part of the lot (ie maintaining these areas will generally rest with the lot owner)</li> </ul>	 <p>The diagram illustrates a Building Format Plan with two lots, 1 and 2, situated on a common property. Lot 1 is a rectangular unit with a total area of 128m², including a 3m² porch and a 10m² courtyard. Lot 2 is a rectangular unit with a total area of 128m², including a 2m² porch and an 11m² courtyard. The common property area is labeled 'COMMON PROPERTY' at the bottom.</p>
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For a **Standard Format Plan** there is no lower or upper boundary. Therefore, the lot extends from the centre of the earth to the edge of space. Whereas, the side boundaries maybe the centre of a brick wall or simply a line between two or more pegs or markers.

### Example

<p><b>Comments</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> A Standard Format Plan simply defines the land boundaries</li> <li><input type="checkbox"/> A Standard Format Plan does <b>not</b> define any structural elements or any building</li> <li><input type="checkbox"/> Predominately used for gated communities (however, can still be used for “normal” unit complexes)</li> <li><input type="checkbox"/> Cannot be used multi-story developments ie when one unit sits on top of another unit (however, it is possible to use in a two-story townhouse style development)</li> </ul>	 <p>The diagram illustrates a Standard Format Plan showing a grid of 22 numbered lots (1-22) arranged in a semi-circular or irregular pattern. The lots are numbered 1 through 22. A large area is labeled 'COMMON PROPERTY' with an area of 3897 m². The plan shows various boundaries, including walls and markers, and includes details such as 'Subm Aloc 58', 'Subm Aloc 59', and 'Subm Aloc 57'.</p>
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## Private Yards

A private yard may be created when a Building Format Plan is used. It is an area of land immediately adjacent to a lot and when created forms part of that lot.

Typically, these areas are small paved courtyard areas.

The boundaries for these courtyards are bounded on at least one side by the physical building structure and by pegs or markers on the other sides. The upper and lower boundaries extend from the centre of the earth to the edge of space.

Like each lot, it is necessary to carefully examine the Plan for the Scheme to establish the boundaries of each private courtyard.

### Example

Comments	
<input type="checkbox"/> A Private Yard is part of the lot (regardless that it sits outside of the building)	
<input type="checkbox"/> A Private Yard is actually on the Title ie the area of the private yard counts towards the area of the lot (this does not happen with exclusive use areas)	
<input type="checkbox"/> A Private Yard is often defined by reference to structural elements	
<input type="checkbox"/> The by-laws cannot regulate maintenance responsibility of a private yards. Maintenance generally rests with the lot owner (not the body corporate)	
<input type="checkbox"/> <b>Note:-</b> The “finer line” used between the building and the private yard. This is akin to walking between two bedrooms inside the unit. A private yard is just an “outside” room (ie maintaining these private yards will generally rest with the lot owner)	

## Exclusive Use Area

An Exclusive Use Area is created under an Exclusive Use By-Law. Section 133 of the BCCM Act defines an Exclusive Use By-Law as follows:-

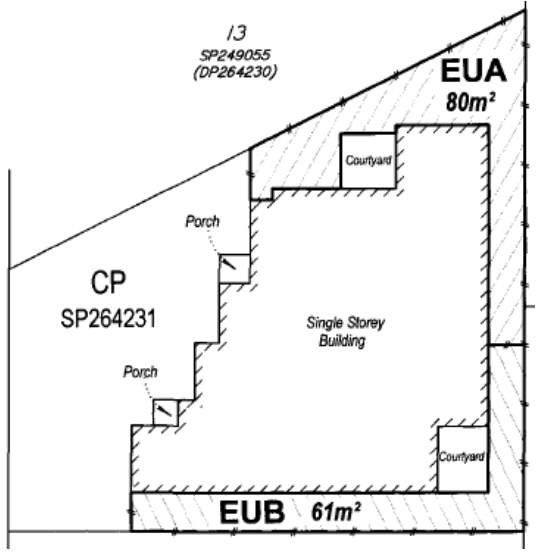
*“An “exclusive use by-law”, for a community titles scheme, is a by-law that attaches to a lot included in the scheme, and gives the occupier of a lot for the time being exclusive use to the rights and enjoyment of, or other special rights about –*

- (a) common property; or
- (b) a body corporate asset.”

The boundaries of any exclusive use area must be clearly marked or pegged and cannot extend beyond a two-dimensional plane.

To establish the boundaries of each exclusive use area it is necessary to the review the Community Management Statement, By-Laws and any Exclusive Use Plans.

## Example

<p><b>Comments</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> An Exclusive Use Courtyard forms part of the By-Laws contained in the Community Management Statement (CMS)</li><li><input type="checkbox"/> An Exclusive Use Courtyard is often defined by reference to structural elements</li><li><input type="checkbox"/> The by-laws determine maintenance responsibility. The maintenance responsibility can be either the body corporate or the lot (depending on the by-laws). If the by-laws make no mention of maintenance then maintenance rests with the lot owner)</li><li><input type="checkbox"/> <b>Note:-</b> Like a Private Yard an Exclusive Use Courtyard is akin to walking between two bedrooms inside the unit. An Exclusive Use Courtyard is just an "outside" room.</li></ul>	 <p>The diagram illustrates a building layout with a single storey building and a courtyard. The building is labeled 'Single Storey Building'. The courtyard is labeled 'Courtyard'. The building has two porches labeled 'Porch'. The common property (CP) is labeled 'CP SP264231'. The exclusive use area (EUA) is labeled 'EUA 80m²'. The exclusive use building (EUB) is labeled 'EUB 61m²'. The diagram also shows a lot number '13' and a plan number 'SP249055 (DP264230)'.</p>
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## Lot Owner Improvements

An improvement is any change to the building made by an owner.

Common examples of owner improvements include awnings, courtyard paving, balcony enclosures etc.

To establish what are owner improvements it will be necessary to review the minutes of the body corporate and the Register of Authorisations Affecting the Common Property.

Careful examination may be needed if an improvement was undertaken by an owner without the body corporate's approval.

## Common Property

Common property is described in the footnote to *Section 10* of the BCCM Act as follows:-

*"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".*

Common property may also include utility infrastructure which, will be explained later in this section.

To establish the boundaries of Common Property it is necessary to examine the Plan for the Scheme.

Remembering these boundaries may extend to the centre of a wall, floor or ceiling.

Within a Building Format Plan the body corporate is also responsible for maintaining the following:-

- Railings, parapets and balustrades on (whether precisely, or for all practical purposes) the boundary of a lot and common property; and
- Doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and
- Roofing membranes that are not common property but that provide protection for lots or common property.

## Utility Infrastructure

The Dictionary of the BCCM Act defines as follows:-

***utility infrastructure means—***

- (a) *cables, wires, pipes, sewers, drains, ducts, plant and equipment by which lots or common property are supplied with utility services; and*
- (b) *a device for measuring the reticulation or supply of a utility service.*

***utility service means—***

- (a) *water reticulation or supply; or*
- (b) *gas reticulation or supply; or*
- (c) *electricity supply; or*
- (d) *air conditioning; or*
- (e) *a telephone service; or*
- (f) *a computer data or television service; or*
- (g) *a sewer system; or*
- (h) *drainage; or*
- (i) *a system for the removal or disposal of garbage or waste; or*
- (j) *another system or service designed to improve the amenity, or enhance the enjoyment, of lots or common property.*

Section 20 of the BCCM Act provides that utility infrastructure is treated as common property, unless the utility infrastructure:

- supplies a utility service to only one lot; and
- is within the boundaries of the lot; and
- is not within a boundary structure (ie floor, wall or ceiling) for the lot.

However, Section of 159(3) effectively excludes utility infrastructure that services only one lot that provides a domestic utility service. For example, hot-water systems, washing machines, clothes dryers, air-conditioners etc

## Checklist of Common Maintenance Items

Item Requiring Maintenance	Building Format Plan	Standard Format Plan
Air Conditioning Units Servicing More Than One Lot Servicing A Single Lot Only	Body Corporate Owner	Body Corporate Owner
Balustrades, Balcony Railings etc (on or approximately on the boundary)	Body Corporate	Owner
Door Maintenance (including locks) Doors (not leading to common property) Doors (leading to common property)	Owner Body Corporate	Owner Owner
Dividing Fences Lot and Neighbouring Property Lot and Common Property Common Property and Neighbouring Property Common Property and Exclusive Use Area Common Property and Private Courtyard Private Courtyard and Neighbouring Property Private Courtyard and Private Courtyard Exclusive Use Area and Neighbouring Property  Exclusive Use Area and Exclusive Use Area  <i>Note: Where lot boundary is also boundary of the scheme land, then responsibility lies with the body corporate.</i>	BC & Neighbour BC & Owner BC & Neighbour BC & see By-Law BC & Owner Owner & Neighbour Owner & Owner see By-Law & Neighbour see By-Law	BC & Neighbour BC & Owner BC & Neighbour BC & see By-Law BC & Owner Owner & Neighbour Owner & Owner see By-Law & Neighbour see By-Law
Electrical Wiring Initial Investigation (if uncertain) Common Property Within a Common Wall Within a Floor or Ceiling (Common for BFP's) Within a Lot but servicing other Lots Wholly Within the Lot	Body Corporate Body Corporate Body Corporate Body Corporate Body Corporate Owner	Body Corporate Body Corporate Body Corporate Owner Body Corporate Owner
Exploratory Costs and Subsequent Rectification (eg to find plumbing leaks) Common Property Within a Common Wall Within a Floor or Ceiling (Common for BFP's) Within a Lot but servicing other Lots Wholly Within the Lot	Body Corporate Body Corporate Body Corporate Body Corporate Owner	Body Corporate Body Corporate Owner Body Corporate Owner



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Item Requiring Maintenance	Building Format Plan	Standard Format Plan
Fire Extinguisher Maintenance (body corporate should always monitor) Common Property Wholly Within the Lot	Body Corporate Owner	Body Corporate Owner
Fire Sprinkler System Maintenance	Body Corporate	Body Corporate
Fly Screens	Owner	Owner
Garden and Lawn Maintenance Common Property Within Lot Private Courtyard Exclusive Use Area	Body Corporate Owner <sup>1</sup> Owner <sup>1</sup> Owner <sup>1, 2</sup>	Body Corporate Owner <sup>1</sup> Not applicable Owner <sup>1, 2</sup>
Gutter Maintenance Servicing More Than One Lot Servicing A Single Lot Only	Body Corporate Body Corporate	Body Corporate Owner
Hot Water Systems Servicing More Than One Lot Servicing A Single Lot Only	Body Corporate Owner	Body Corporate Owner
Lift Maintenance (Common Property)	Body Corporate	Body Corporate
Owner Improvements	Owner <sup>3</sup>	Owner <sup>3</sup>
Painting Interior of Lots Exterior of Lots	Owner Body Corporate	Owner Owner <sup>1</sup>
Pool Maintenance	Body Corporate	Body Corporate
Resulting Damage Repair (eg water damaged carpets) (not covered by body corporate insurance) Common Property Wholly Within the Lot	Body Corporate Owner, unless caused by negligence of the body corporate	Body Corporate Owner
Shower Combinations Within a Common Wall Not Within a Common Wall	Body Corporate Owner	Body Corporate Owner
Shower Screen Replacement (consider insurance and responsibility for excess)	Owner (unless insurance claim)	Owner (unless insurance claim)

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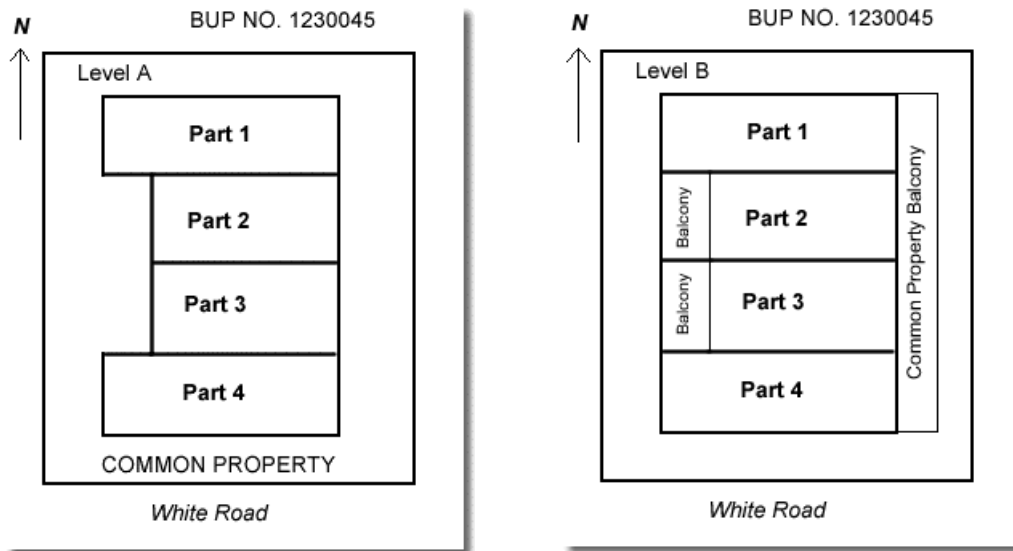
Item Requiring Maintenance	Building Format Plan	Standard Format Plan
Shower Trays Set into the Floor Placed Above the Floor	Owner Owner	Owner Owner
Television Antenna Servicing More Than One Lot Servicing A Single Lot Only	Body Corporate Owner	Body Corporate Owner
Water Pipes Initial Investigation (if uncertain) Common Property Within a Common Wall Within a Floor or Ceiling (Common for BFP's) Within a Lot but servicing More Than One Lot Wholly Within the Lot	Body Corporate Body Corporate Body Corporate Body Corporate Body Corporate Owner	Body Corporate Body Corporate Body Corporate Owner Body Corporate Owner
Window Cleaning Maintenance and Replacement (consider insurance and responsibility for excess) Windows (not opening to a balcony forming part of the lot) Windows (opening to a balcony forming part of the lot)	Body Corporate Owner	Owner Owner
Security Doors	Owner	Owner
Security Systems Servicing More Than One Lot Servicing A Single Lot Only	Body Corporate Owner	Body Corporate Owner

**Notes:-**

1. The Body Corporate may undertake this work on behalf of owners and should endeavour to recover the costs from the owners. However, if the maintenance work being undertaken to each lot is equal often administratively a body corporate will not seek to recover the costs but merely pay the costs as part of its normal expenditure.
2. The by-laws may excuse an owner from the responsibility
3. The authorisation may excuse an owner from the responsibility

## A Pictorial Example for A Building Format Plan

The diagrams below represent a typical 2 storey Building Format Plan or Building Units Plan.



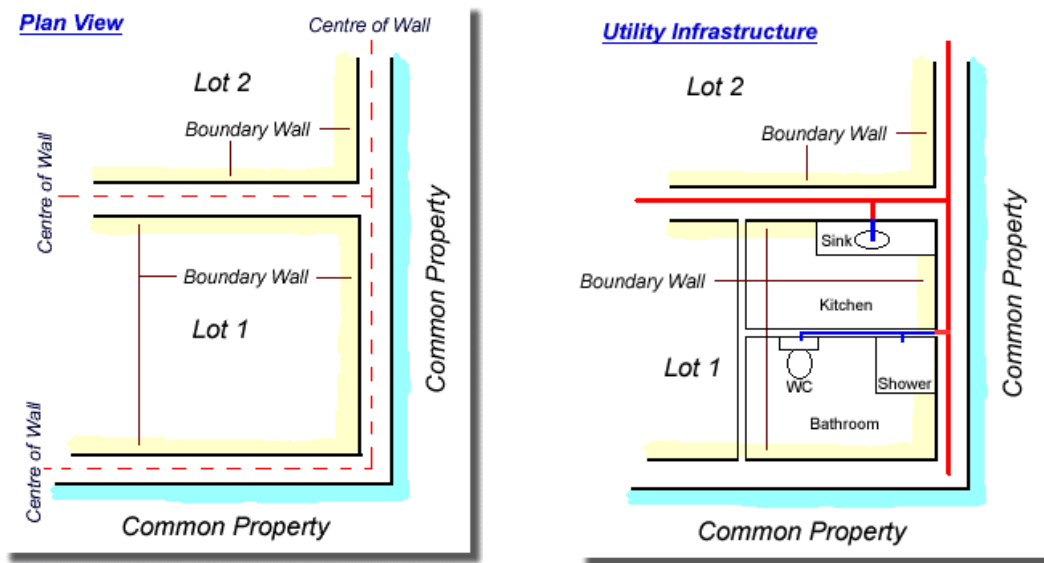
### Boundaries

- On building format plans and building units plans, the boundaries of a lot are represented by **hard black lines**.
- In the above case, the plan of level A shows the common property and part of the 4 lots (units) that together make up the scheme land.
- The plan of level B 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 common property.
- Note the balcony 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 is the face of the balcony.
- Where a lot is separated from another lot or the common property by a wall, floor or ceiling, the boundary of the lot is the centre of the wall, floor or ceiling (see boundary plan below). The walls, floor or ceilings that are on the boundary are known as **Boundary Structures**.

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The two plans below define firstly, the boundaries between lots, and lots and the common property, and secondly, some elements of utility infrastructure.



## **Maintenance Responsibilities**

**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.
- 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 usually responsible for:**

- Doors and windows leading onto a balcony that forms part of the lot.
- Kitchen, bathroom, bedroom cupboards.
- Sinks, dishwashers, garbage disposal units.

## **Utility Infrastructure Responsibilities**

### **The body corporate**

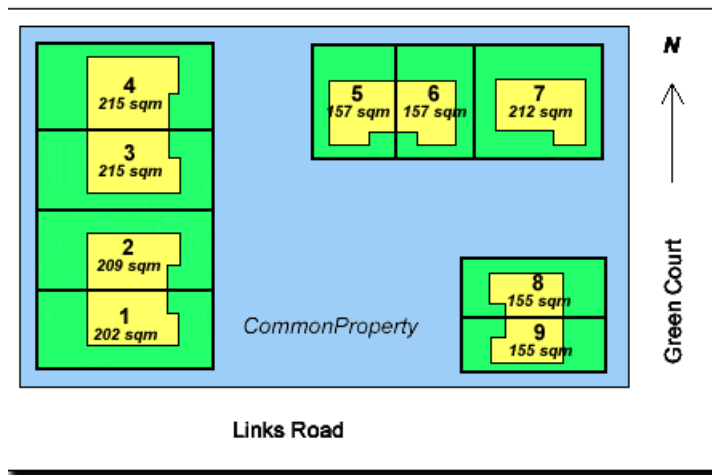
- The cold water pipes or cables shown in **red** on the utility infrastructure plan above, as they are located within a boundary structure.

### **The lot owner**

- The cold water pipes or cables shown in **blue** on the utility infrastructure plan above, as they service Lot 1 only, and are located within an internal wall and not a boundary structure.
- A hot-water system, including the associated pipes and wiring, supplying the service solely to the lot, whether or not the system is located on common property.
- An air-conditioning system, including the associated pipes and wiring, supplying the service solely to the lot, whether or not the system is located on common property.

## A Pictorial Example for A Standard Format Plan

The diagram below represents a Standard Format Plan showing the lots and common property.



### Boundaries

- On Standard Format Plans, the boundaries of a lot are represented by **hard black lines**.
- The plan above shows the common property (blue), the lots (green) and the buildings (yellow).
- Again, the **hard black lines** define the boundary of lots and the common property.
- Note that each building is within the boundary of each lot.

### Maintenance Responsibilities

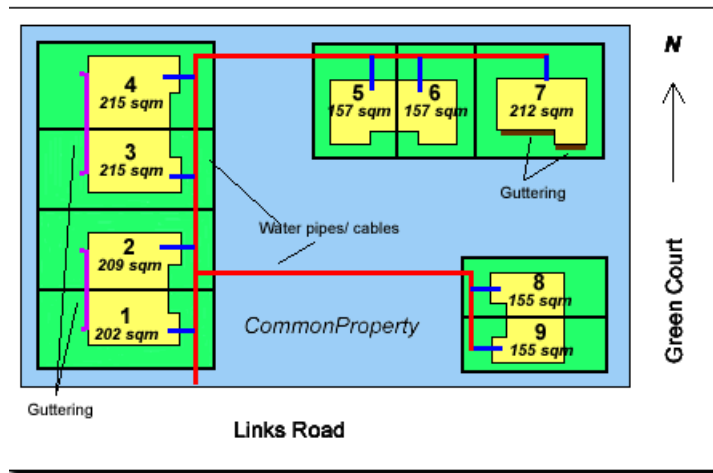
**The body corporate is usually responsible for:**

- The common property, including roads, gardens and lawns on common property.
- Some elements of utility infrastructure.

**The lot owner is usually responsible for:**

- Their lot, including all lawns and gardens within the boundary.
- Maintenance of the building also rests with the owner, this would include the exterior walls, doors, windows and roof with the exception of some elements of utility infrastructure.

The diagram below represents a Standard Format Plan showing some elements of utility infrastructure.



### Utility Infrastructure Responsibilities

#### The body corporate

- The water pipes or cables shown in **red** on the utility infrastructure plan above, as these supply the service to more than one lot (refer to the definition of utility infrastructure above).
- The guttering, and associated downpipes shown above in **pink** which span 2 lots (1 and 2 and 3 and 4), supplying a service to more than one lot.
- Any television antenna that services 2 or more lots.

#### The lot owner

- The water pipes or cables shown in **blue**, as they are located within the lot boundary and service 1 lot only.
- The guttering and associated downpipes shown in **brown** above on Lot 7.

## Builders' Warranty .... Is it a life time warranty?

**No** – but the builder does have some responsibility in relation to defective construction work for limited periods of time in accordance with the requirements of the Queensland Building and Construction Commission (QBCC).

### **Defective construction work**

Where the complaint is about defective work there are two categories which define a defect where the contractor may be held responsible for work that has not been performed in accordance with the Building Act, and in a good and workmanlike manner.

### **Defect Categories**

**Category 1 (6 years and 6 months)** defects are:

- Allow water penetration into a building
- Adversely affect the health and/or safety of the occupants
- Adversely affect the structural adequacy of the building:
- Adversely affect the serviceability, performance or functional use of the building or works

*Examples:- leaking showers, subsidence or settlement of footings, incomplete or inadequate termite protection.*

**Category 2 (6 months)** defects are:

- Result from failure of the contractor to meet a reasonable standard of construction and finish;
- Are of a kind, which commonly occur during the settling in period of a new building.

*Examples:- poor finishing detail, sticking windows and doors, cracked plasterboard and cornices*

### **Time limits**

The contractor may be held responsible for: Category 2 defects for a period of 6 months from completion of the work or, if the contractor has been notified in writing during this period the time limit may be extended to 7 months  
Your contractor may be held responsible for Category 1 Defects for a period of 6 years and 6 months from practical completion of the work.



## What Does Insurance Cover?

### What is Covered?

Insurance provides protection against fire, storm, tempest and other defined events. For example, damage to the building caused by fire would normally be covered by insurance.

### What is NOT Covered?

- Normal maintenance (this is the responsibility of either the body corporate or the lot owner)
- Latent defects in the building (if the defect occurs within the relevant warranty period the builder may be responsible – otherwise the responsibility will either rest with the body corporate or the lot owner)
- Exploratory Costs (including the Costs of Rectifying Exploratory Work) – for example, all work to expose a shower combination unit and the subsequent work to make good would generally not be covered)
- Damage to owners contents (including carpets, curtains, furniture etc)